
(1971) 04 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 129 of 1971

Uttam Singh Sarpanch

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 16-04-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gram Panchayat Act, 1952 — Section 102(1)
Gram Panchayat Rules, 1965 — Rule 23(1)

Citation : AIR 1972 P&H 131

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Judgement

1. This petition under Articles 226 and 227 of the Constitution of India seeks the issuance of a writ quashing the order dated the 22nd December, 1970 (Annexure "C" to the petition) passed by the Deputy Commissioner, Gurdaspur (respondent No. 2) which directs the suspension of the petitioner from the office of the Sarpanch of the Gram Panchayat, Rampur (hereinafter referred to as the Panchayat) under S.102(1) of the Gram Panchayat Act (hereinafter referred to as the Act) and has arisen in the following circumstances. The petitioner was elected Sarpanch of the Panchayat in the year 1954 and again in the year 1964. He was holding that office when, in the month of June, 1969, respondent No. 4 made against him a complaint to which an enquiry was ordered by respondent No. 2 after permission therefore had been accorded by the Director of Panchayats, Punjab on the 31st of July, 1969 through a letter (Annexure "A" to the return of respondent No. 2) which also authorised respondent No. 2 to take any action against the petitioner under Section 102(1) of the Act such as he might consider necessary. The Block Development and Panchayat Officer, Batala, held the enquiry and made to respondent No. 2 a report on the basis of which a show-cause notice was issued to the petitioner on the 9th of March, 1970. (Annexure "A" to the petition). This notice details the following four charges in relation to which the petitioner was called upon to furnish explanation:--

"1. In contravention of Rule 23(1) of the Gram Panchayat Rules, 1965, you kept Rs.1700/- to Rs.1800/- i.e., more than Rs.50/- belonging to the Panchayat from December 1965 to July 1969 and utilized it for your personal use and thereby caused loss of interest to the Panchayat which was to be paid by the bank on that amount.

2. In the year 1960 the fish pond was auctioned for rs.380/-. According to the rules, you did not recover 1/4 th of the auction amount at the spot and due to your negligence, the said amount has not been realised as yet. Again in the year 1967, the said fish pond was auctioned for three years for a sum of Rs.305/- in the absence of any resolution passed by the Panchayat. This clearly shows that action regarding the Panchayat affairs was not taken according to rules.

3. The resolution for the auction of the Panchayat land was not passed in accordance with the instructions issued under the Punjab Village Common Lands (Regulation) Rules, 1964. Moreover, the auction amount was not realised in cash at the spot.

4. As per instructions of the Government, the meeting of the Panchayat ought to have been held at the time of hari and sawni crops but no such meeting was called."

In relation to the first two charges the written reply of the petitioner (Annexure "B" to the petition) stated:

"No. 1 CASH IN HAND

According to resolution of the Panchayat dated the 26th August, 1969, I have paid to the Panchayat a sum of Rs.483.75 as interest regarding Rupees 1800/- for a period of 3 years and 7 months from December, 1955 to July, 1959 at the rate of 7 1/2 percent per annum. Receipt No. 12 was issued and on 26th August, 1969, Rs.483.75 have been credited as income in the cash book of the Panchayat.

"No. 2 CONTRACT OF FISH POND FOR 1960

The contract of shamlat fish pond for the year 1960 was auctioned for Rs.380/-. The new election of Panchayat was also held in the year 1960 and thereafter I handed over the charge to Shri Kirpa Ram Sarpanch. So the remaining amount was to be recovered by the new Panchayat.

In 1967, this pond was leased out for a sum of Rs.305/- for 3 years due to scarcity of rain and water shortage in the pond and nobody is prepared to take this fish pond on lease on account of less water in it."

Thereafter respondent No. 2 passed the impugned order in which all the four charges above detailed were repeated and the operative part of which runs thus:

"From the above-mentioned facts, it has been found that the Sarpanch has misused his office and due to his negligence, the Panchayat had to suffer a great loss. The Punjab Government has accorded sanction u/s 102(2) of the Gram

Panchayat Act, 1952 for conducting enquiry against the Sarpanch and in the interest of this enquiry. I deem proper that action should be taken against Shri Uttam Singh Sarpanch u/s 102(1) of the said Act. The explanation furnished by the Sarpanch to the above mentioned charges is not satisfactory.

2. So now, I Gurpartap Singh, Sahi, I. A. S., Deputy Commissioner, Gurdaspur, Punjab, suspend Shri Uttam Singh Sarpanch. Gram Panchayat, Rampur u/s 102(1) of the Gram Panchayat Act till further order and debar him from taking part in the meetings of Gram Panchayat during the period of his suspension. He should hand over the entire record, cash and property with him, belonging to the Panchayat to the Panch elected by the Panchayat for this purpose with majority vote."

2. The impugned order was challenged in the petition on various grounds, only the following two of which have been urged before me by Mr. Shahpuri:

(1) The impugned order inflicts a punishment on the petitioner who is thereby visited with "civil consequences." As the order was passed without holding an enquiry after notice to the petitioner, it disregards principles of natural justice and is, therefore, liable to be struck down.

(2) Shri Satnam Singh Bajwa, Minister, Development and Panchayats. Punjab (respondent No. 3), was inimical to the petitioner whom he was always out to harm. It was he (respondent No. 3) who engineered the complaint leading to the impugned order and by reason of whose influence the show-cause notice dated the 9th of March, 1970 (Annexure "A" to the petition) was issued. Respondent No. 3, however, ceased to be a Minister by the end of March, 1970, but again came to hold that position in the month of August, 1970. No action was taken in respect of the complaint made against the petitioner during the interval. From these facts it clearly follows that the impugned order was passed mala fide.

3. There is no force in ground (1) as held in *Gurdial Singh v. State of Punjab*, Civil Writ No. 2957 of 1970 (Punj), decided by me earlier today. Reference to the same may be made for my reasons in that behalf.

4. I do not find any substance in ground (2) either. As already stated, the permission to hold an enquiry was granted to respondent No. 2 by the Director of Panchayats and there is nothing to indicate that the same was accorded and the action following thereupon taken at the behest of respondent No. 3. Material on the record is no doubt available to show that respondent No. 3 had reason to harbour feelings of animosity against the petitioner. But even if it be assumed that it was he (respondent No. 3) at whose instance the complaint was made and the enquiry directed, it does not follow as a matter of course that the action so taken was mala fide. If that action is justified in law on the facts of the case, the mere circumstance that respondent No. 3 was inimically disposed to the petitioner and, therefore, grabbed the opportunity of bringing him to book would not render the impugned order liable to be struck down. Before the petitioner can claim that the impugned order to be set aside on the ground of mala fides, it

would not be enough for him to show that the relations between him and the authority passed it were strained but he must also bring out that the enquiry was directed without legal justification, and in this the petitioner has completely failed. A perusal of the show-cause notice and the petitioner's reply to the first two charges contained therein unmistakably point to the existence of a strong prima facie case against him. Charge No. 1 alleges temporary embezzlement by him of the Panchayat funds amounting to Rs. 1700/- to Rs. 1800/- for the period December, 1965 to July 1969. In relation to this charge all that he stated in his reply was that he had paid interest on the amount of Rs.1800/- to the Panchayat in pursuance of a resolution passed by it. The reply is wholly silent as to whether or not he was guilty of retention of the sum in question with him over a period of more than three years, which retention, being unauthorised, would amount to temporary embezzlement of the Panchayat funds. Again, in charge No. 2, he was asked to explain as to why he had not recovered 1/4 th of the amount of Rs.380/- at the time of the auction of the fish-pond lease. The plea taken by him is that the new Panchayat and a new Sarpanch were also elected "in the year 1960 and, therefore, I handed over the charge to Shri Kirpa Ram Sarpanch." It is quite clear that the petitioner has evaded the real issue and has not put forward any explanation for his failure to realise at the time of the auction a sum of Rs.95/-. It thus appears prima facie that the petitioner had really no explanation to offer in respect of the allegations covered by charges No.1 and 2 and that those charges were well-founded. If that be so, there was every reason for respondent No. 2 to hold a regular enquiry into the petitioner's alleged misconduct. In fact if respondent No. 2 had refused to order such an enquiry, he would have failed to carry out what was obviously his bounded duty.

In these circumstances, the petitioner cannot make a grouse of his enmity with respondent No. 3 which can by no stretch of imagination be held to absolve him of ant acts of malfeasance or misfeasance that he may have been guilty of, even though the prime mover behind the enquiry might have been respondent No. 3.

5. For the reason stated, the petition fails and is dismissed with costs. Counsel's fee Rs.50/-.

6. Petition dismissed.