
(1979) 02 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2394 of 1975

Virender Mohan

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 15-02-1979

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 102

Citation : (1979) 02 P&H CK 0002

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : U.S. Sahni with Mr. Vinod Sharma, for the Appellant; A.S. Sarhadi, A.G. Punjab with Shri N.S. Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Tandon, J.—Virnder Mohan petitioner was Sarpanch of Gram Panchayat Sanghol, Tehsil Samrala District Ludhiana. The proceedings u/s 102 of the Punjab Gram Panchayat Act (hereinafter the Act) were started against him on the baits of five allegations contained in Annexure P. 1 which he was called upon to explain. He submitted his explanation Annexure P. 2. The Director of Panchayats conducted the enquiry associating the petitioner and passed the order dated April 17.1975, Annexure P. 3 ordering his removal. He also directed that proceedings u/s 105 of the Act be initiated against him and the action completed within two month. It is against this order that Virender Mohan has filed the present writ alleging that the Director of Panchayats while passing the impugned order Annexure P. (sic) has been swayed totally which extraneous and irrelevant consideration which are not borne out either from the record or from the facts of the case. He has, therefore, prayed that the order Annexure P. 3 be quashed.

2. The writ has been resisted. It has been averred that the petitioner was given full opportunity to produce his evidence with a View to prove his innocence. The impugned order was passed after consideration of the explanation Annexure P. 2 given by him and also affording him opportunity by way of personal hearing on

various dates.

3. The term of the petitioner as Sarpanch has since expired and new election of the Panchayat was held, in the month of June, 1978. The learned Advocate-General on behalf of the respondents has argued that in view of this the writ has been rendered infructuous. He has placed reliance on *Rameshwar Prasad Agarwal Vs. A.K. Sinha and Others*, The petitioner in that case had applied under Article 226 of the Constitution for the issue of a writ of certiorari for quashing a special resolution of the Municipal Commissioners but the force of the resolution had come to an end long before the petition came up for hearing. It was held that the application had become infructuous and no useful and effective writ of certiorari could or should be issued in respect of that resolution which had spent Its force.

4. The learned counsel for the petitioner has contended that the expiry of the term of the petitioner as Sarpanch and the new election of the Panchayat held in June, 1978 do not render the writ infructuous because the impugned order of his removal continues to cast a stigma on him.

5. In my opinion, the contention of the learned Advocate General must prevail, The impugned order relates to the removal of the petitioner as Sarpanch. He has not been disqualified for reelection for any period under sub section (2) of section 192 of the Act. In the event of the writ being accepted, the petitioner can neither claim reinstatement as Sarpanch nor can he be reinstated as such nor can the authorities initiate action against him afresh u/s 102 of the Act. The order of his removal has coterminated with the expiry of his term as Sarpanch. The impugned order of his removal, therefore, stands exhausted and the writ prayed for, if issued, would be futile and infructuous. The writ petition is, therefore liable to fail on this ground.

6. This apart, the petitioner cannot succeed on merits as well. The learned counsel for the petitioner has argued that he was not served with any chargesheet nor was he supplied the statement of allegations explaining the background of the charges. He was neither associated in the fact finding enquiry nor a copy of the fact finding enquiry was supplied to him. The impugned order Annexure P. 3 ordering the removal of the petitioner as Sarpanch is not a speaking order inasmuch as the Director has not dealt with or controverted the points raised by the petitioner in his written explanation. The enquiry conducted by the Director which resulted in the removal of the petitioner as Sarpanch has consequently violated the principles of natural justice. The impugned order Annexure P. 3 is, therefore, liable to be quashed.

7. u/s 102 of the Act, the Director can remove any Panch (Sarpanch) after such enquiry as he may deem fit in *Ujagar Singh v. State of Punjab* ILR (1969) P&H. 59, it was held that on enquiry under sub-section (2) of section 102 of the Act being a statutory requirement must be there before a Sarpanch can be removed, though obviously, in the term of the sub-section, the nature and form of the enquiry, having regard to the circumstances of a particular case, has entirely

been left to the discretion of the Government. The bare minimums of an enquiry are (a) that a clear and definite charge or charges must be given or stated to the delinquent, (b) that the material forming the basis of the charge or must be made known to him and of that he must be given every opportunity to meet the charges and to defend himself. In *Mehar Singh v. The State of Punjab* (1971) 73 P.L.R. 96, it was held that the order of removal passed under sub-section (2) of section 102 of the Act is a quasi-judicial order and it is expected to be a speaking order. Though it is not necessary that the authority should write a detailed judgment as a Court would do, yet he must indicate as to how the explanation offered is unsatisfactory. It was further held that it is not necessary that this reasoning should be incorporated in the formal order but it will suffice if in the file the explanation is discussed and reason recorded for considering the explanation to be unsatisfactory which could show that the authority concerned has applied its mind, has considered the material placed on the record, and has not passed the impugned order mechanically.

8. It is admitted by the petitioner that proceedings were started against him on the basis of five allegations contained in Annexure P. I which he was called upon to explain. The allegations contained in Annexure P. I are self explanatory. The petitioner gave a detailed explanation Annexure P. 2. The Director then conducted the enquiry regarding the petitioner. The explanation given by him was taken into consideration. He was heard on a few occasions. The explanations on some points were obtained from certain authorities. The Director then passed the impugned order Annexure P. 3 which is in detail. Each allegation has been discussed separately. The explanation given by the petitioner regarding each allegation has been considered in substance. It is therefore, difficult to hold that the enquiry conducted by the Director was defective or the order passed by the Director is not speaking. The main emphasis of the learned counsel for the petitioner is that in view of the explanation given by the petitioner the Director should have not given adverse finding on the allegations against the petitioner. The scrutiny regarding the justifiability of the findings on the allegations can be gone into in an appeal, but not in the writ proceedings. It is interesting to note that the petitioner himself tendered his resignation as a Sarpanch of the panchayat before the Director, who observed in the impugned order that the petitioner was not interested in running the affairs of the Panchayat. The enquiry conducted by the Director as also the impugned order Annexure P. 3 cannot violate the principles of natural justice. The order of removal of the petitioner is, therefore, not liable to be quashed.

9. The Director during enquiry found that in November, 1969, the petitioner as a Sarpanch of the Panchayat gave a donation of Rs. 10,800/- towards the Fifth Quincentenary celebrations of Guru Nanak Dev Ji without obtaining approval from the competent authority and again Rs. 4, 800/- to the local school on February 4, 1975, unauthorisedly. He directed that proceedings u/s 105 of the Act be initiated against him and completed within two months. The learned counsel for the petitioner has urged that the petitioner was justified in giving

donations and the order of the Director directing the starting of proceedings u/s 105 of the Act against him is liable to be quashed. There is no merit in this contention. The direction of the Director regarding the starting of proceedings u/s 105 of the Act against the petitioner is administrative in nature and is not a quasi-judicial order. It is neither an order u/s 102 nor under 105 of the Act. The proceedings u/s 105 of the Act against the petitioner have yet to be initiated. If and when such proceedings are initiated it will be open to the petitioner to explain that the donations made by him were authorised and justified. The petitioner has thus no locus standi to challenge the administrative direction of the Director to initiate proceedings against him u/s 105 of the Act.

10. In the result, the writ fails and is dismissed with costs.