
(1983) 03 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1297 of 1976

Zorawar Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 02-03-1983

Acts Referred:

Citation : (1983) ILR (P&H) 470 : (1983) PLJ 376 : (1985) RRR 489

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

Advocate : R.S. Saini, Adv., R.N. Narula, Advocates for appearing Parties

Judgement

M.M. Punchhi, J.(Oral)

1. This petition under Articles 226 and 227 of the Constitution of India, has arisen in the following circumstances :

The petitioner had been elected as a Panch of the Gram Panchayat, Ahmedpur. One Chanan Singh, had been elected as a Sarpanch. The said Sarpanch was removed by the Director of Panchayats, Punjab. The petitioner was appointed as an acting Sarpanch on 24.10.1966. The order of removal of Chanan Singh, Sarpanch was set aside by this Court on a writ petition on 2.2.1969. The petitioner made way as an acting Sarpanch on 27.3.1969 in favour of Chanan Singh. While he acting as a Sarpanch he kept in his custody a sum of Rs. 2735.39 far in excess of the limit prescribed under Rule 23 of the Gram Panchayat Rules. The petitioner was then removed as a member of the Panchayat by the Director of Panchayats, Punjab, vide order dated 13.10.1969, Annexure R1/A. The Director ordered that action be taken against the petitioner in order to recover the loss occurred to the Panchayat by employing the provisions of Section 105 of the Gram Panchayat Act (hereinafter called the Act).

The Extension Officer who was working as a Block Development and Panchayat Officer, Budhlada on 28.8.1970, issued a notice (Annexure P.1) to the petitioner to explain why action, under section 105 of the Act be not taken against him for the amount illegally retained by him and the interest be recovered from him to

the extent the Panchayat had suffered a loss. The petitioner was advised to put in reply for the purpose till 10.9.1970. As averred by the petitioner in this petition, he ignored that notice, since he considered it to be issued by an authority which was not competent to issue such a notice. The said authority again issued notice, Annexure P.2 on 28.10.1970 to the petitioner calling upon him to explain why an amount of Rs. 1185.75 as interest/loss suffered by the Panchayat be not recovered from him. This again was turned by the petitioner a deaf ear. Since, the petitioner did not avail of the opportunity afforded to him, the said authority vide order Annexure R4/A dated 9.12.1970 held the petitioner responsible for the payment of Rs. 2735.39 as the outstanding sum and Rs. 1185.75 as the interest accrued thereon due to the Panchayat. The total figure thus stood at Rs. 3929.14 as outstanding against the petitioner. The said sum was then sought to be recovered from the petitioner as arrears of land revenue. The Assistant Collector, Second Grade then in the year 1974 issued a demand warrant, Annexure R5 against the petitioner, but the petitioner did not pay the said sum. Then again the petitioner received a notice in the year 1976, Annexure R7 asking him to make payment and yet no payment was made. Since, the petitioner was apprehensive that a warrant of arrest could be issued against him, he filed the present petition in this Court.

2. Shri R.N. Narula, learned counsel for the petitioner, has raised three jurisdiction points to challenge the orders and action of the respondents. These are :

(i) that the authority issuing the notices, Annexures P1 and P2 was the Block Development and Panchayat Officer, Budhlada and under the law it was only the District Panchayat Officer, who was competent to issue such a notice;

(ii) that the said notices were issued beyond the period of one year and thus the entire action was beyond the power of the said authority; and

(iii) that the sums in question could not be recovered as arrears of land revenue.

3. With regard to the first point raised, it is to be noticed that section 105 of the Act, as it then stood, authorised a District Panchayat Officer concerned to assess by order in writing, the amount due from a member of a Gram Panchayat on account of loss, waste or misapplication of any money or property belonging to the Gram Panchayat if such loss, waste or misapplication was a consequence of the member's neglect or misconduct while as a member. The precise objection is that the Block Development and Panchayat Officer who purported to have issued the notices, Annexures P1 and P2, was not District Panchayat Officer. It need be mentioned here that the designated officer "District Panchayat Officer" had not been defined in the Act. However, the existence of such designated officers is a matter beyond doubt. The State in its return has appended a notification dated 30th October, 1959, Annexure R8 to show that the Governor of Punjab had been pleased to merge the posts of District Panchayat Officer and Block Development Officers with effect from 1st November, 1959 and had thereby conferred upon

the Block Development Officers, the powers, duties and functions in their block areas of District Panchayat Officers. The said notification puts the matter beyond doubt that the Block Development Officers and District Panchayat Officers were the same functionaries. Thus the notices issued by the Block Development Officer, Annexures P.1 and P.2, were issued by the District Panchayat Officer within the meaning of Section 105 of the Act. The contention raised merits dismissal on that score.

4. As a sequel to the first point, another point was sought to be raised that the signatory to the notice, Annexure P1 was not even a Block Development and Panchayat Officer, but was rather an Extension Officer, who on account of the leave of the incumbent was performing those functions. On that score, it is claimed that the said officer was not authorised to perform functions, under section 105 of the Act. This point has not been specifically raised in the petition and consequently there is no clarification in the return as to what was the source of such delegation or passing over of functions. I decline to pronounce on this aspect of the matter.

5. The second contention raised pertains to limitation for the issuance of notices, Annexures P1 and P2. It would be seen from subsection (4) of section 105 of the Act that no person can be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication, but after the expiry of one year from his ceasing to be member whichever is earlier. The petitioner bases his claim on the premises that since he stopped acting as a Sarpanch on 27.3.1969, the period of limitation of one year is to be computed therefrom. The State on the other hand contends that the petitioner was removed from the office of Panch with effect from 13.10.1969 and as such the period of limitation has to be computed from that date. Undeniably the petitioner was a member of the Gram Panchayat when he was elected to that body. As a member of the Panchayat, he was asked to take over as the acting Sarpanch. After ceasing to be an acting Sarpanch he remained a Panch till the date of his removal. And even otherwise the word "Panch" has been defined under Section 3(1) of the Act to mean a member of Gram Panchayat whether elected or appointed under this Act and including a Sarpanch. So whether a person is a Panch or a Sarpanch, he is a member of Gram Panchayat and whenever he ceases to be a member of that body, the period of limitation is one year, asking him to make good any loss, waste or misapplication of any money or property belonging to that body. The mere incidence of the petitioner having acted as a Sarpanch is neither here nor there for the invoking of Section 105 of the Act. The petitioner having remained as an Acting Sarpanch, did not put him in a different category for he was and remained as a member of Gram Panchayat. The second contention too merits dismissal and is accordingly repelled.

6. The third contention raised is with regard to the power of the Collector to recover the sums in question as arrears of land revenue. The State has taken

shelter in its power under section 85 of the Act. The learned counsel for the petitioner has pointed out that the said section is studied in Chapter VII of the Act which provides for Finance and Taxation. He contends that the recovery of arrears, as permitted under section 85 of the Act, has to pertain to finance and taxation and none other. According to him the sums in question were not of either category. The argument, to my mind, is completely hollow. Section 80 of the Act requires a Sabha fund to be established and maintained. One of the sources of the said fund is the balance standing on the credit of the Panchayat at the commencement of the Act. Concededly the principal sum which went into the hands of the petitioner were part of that Sabha fund. The interest accrued thereon would also form part of the Sabha fund. Rule 23 of the Gram Panchayat Rules puts a prohibition for any member of the Gram Panchayat to keep in his custody any moneys belonging to the Gram Panchayat (Sabha fund), beyond a sum of Rs. 50/ at one point of time. Thus, these sums would be sums due under the Act and obviously the Collector under Section 85 of the Act thereof, would be entitled to recover such sums as due under the Act, as if they were arrears of land revenue. On this analysis the third contention raised too is repelled.

7. No other point was urged.

8. For the foregoing reasons, this petition fails and is hereby dismissed with costs.