

Before G. C. Garg & M. L. Koul, JJ.

DEV SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

C.W.P. 10084 of 95.

March 22, 1996.

Punjab Panchayati Raj Act, 1994—Ss. 20(1)(a), 20(3) and 102(1)—Indian Penal Code, 1860—S. 302—Suspension of Sarpanch on ground of being charge-sheeted for offence under section 302 IPC—Offence under section 302 IPC involves moral turpitude—On appeal Financial Commissioner upholding the order of suspension—Nature of offence under section 302 IPC under trial likely to embarrass Sarpanch in the discharge of his duties—Director Panchayats suspended Sarpanch without notice—No prejudice shown on ground of violation of principles of natural justice—Order of suspension and order of appellate authority confirming suspension upheld.

Held, that the petitioner was charge-sheeted by the Additional Sessions Judge on 27th March, 1995 and the order of suspension has been passed against the petitioner on 29th May, 1995. It *ipso facto* shows that the charge-sheet framed against the petitioner has been taken into consideration by the authority concerned and once the petitioner was charge-sheeted for an offence of murder which involves moral turpitude, therefore, it was in the interest of the Panchayat and Sarpanch as well that he should not have participated in any proceedings in the Panchayat which would have definitely embarrassed him. The passing of the order without a notice having been given to the petitioner, in no manner has given a cause that the principle of natural justice has not been taken care of.

(Para 5)

Further held, that the merits of the present case are quite different from those involved before the Full Bench. In the case in hand an alternative remedy of appeal was availed of by the petitioner and the appellate authority has considered the appeal on all pros and cons and has found that once the Additional Sessions Judge on enquiry has charge-sheeted the petitioner and had found him *prima facie* responsible for the murder of one Baljit Singh and Gurmit Singh and the case was pending for trial, therefore, he was ordered not to perform important judicial, executive and administrative functions for the fact that the post of Sarpanch is very

important and a Sarpanch (the petitioner) who was involved in a case under Section 302 of the Indian Penal Code and his moral turpitude was involved, was not a proper person to be retained to hold the post of Sarpanch and as such his suspension was properly passed.

(Para 6)

Further held, that we do not feel that the petitioner has in any manner been prejudiced when the order passed by the Director has been found by the appellate authority to have been passed on the correct facts of the case. The petitioner, therefore, in no way shall be deemed to have been suspended to function as a Sarpanch without he having been heard by the authority. The order is well in accordance with law and does not suffer from any impropriety or illegality.

(Para 7)

Naresh Parbhakar, Advocate, for the petitioner.

J. C. Nagpal, Advocate, for respondent No. 4.

A. G. Masih, A.A.G. Punjab, for respondent Nos. 1 to 3.

JUDGMENT

M. L. Koul, J.

(1) The petitioner, who as per the version made in this petition, happens to be a member of Panchayat Samiti Block, Kharar, district Ropar, by virtue of Annexure P-6 has been suspended by the Director Panchayats,—*vide* order dated 29th May, 1995 under Section 20(1)(a) and 20(3) of the Punjab Panchayati Raj Act, 1994 from the post of Sarpanch of the said Panchayat and was restrained from participating in the proceedings of the Panchayat. It was also ordered that the record of the Gram Panchayat in his possession should be given to the Additional Panch or the Panchayat Secretary. Aggrieved of the said order an appeal was preferred by him before the Financial Commissioner and Secretary, Rural Development and Panchayats, who heard the petitioner and other side in detail and found that the petitioner was involved among other offences for an offence under Section 302 of the Indian Penal Code for which he had been charge-sheeted by the Additional Sessions Judge, Ropar and is standing trial before that Court. It was, therefore, observed that as the petitioner as a Sarpanch had to perform number of important judicial, executive and administrative functions, therefore, he being involved in a case under Section 302 of the Indian Penal Code was not deemed to hold the confidence of the people to perform any work and therefore it was held that he had been rightly suspended.

(2) Aggrieved of the order, the present petition has been filed by the petitioner on various grounds. It was canvassed at the bar by the learned counsel for the petitioner that before the order of suspension it was imperative upon the authorities i.e. Director Panchayats that he should have given a notice to the petitioner and after an opportunity of hearing was afforded to him then only such an order could be passed.

(3) In this behalf learned counsel for the petitioner places reliance on a Full Bench decision of this Court in *Kashmiri Lal v. The Dy. Commander Sonapat* (1). We have minutely gone through the judgment. It has been observed by their lordships that the application of mind which is the requirement of Section 102(1) (new) is not postulated by Section 102 (1-A) or Section 102(1) (old). To reach a conclusion in favour of suspension under Section 102(1) (new) by applying the mind in such manner the Director has to keep in view the principles of natural justice and has to give a notice to show cause to the person, who is adversely affected by such order of suspension. He can, if given an opportunity, satisfy the Director that the accusation or the criminal offence, which is the subject matter of investigation, enquiry or trial, neither amounts to moral turpitude or defect of character nor is in any way likely to embarrass him in the discharge of his duties as a Panch.

(4) The very language of Section 102(1) of the Punjab Gram Panchayat Act, is retained in sub-clause (3) of Section 20 of the Punjab Panchayati Raj Act, 1994 which reads as under :—

“20. *Suspension and removal of Panch and Sarpanch :*

(1) xxx xxx xxx

xxxx xxx

(2) xxx xxx xxx

xxxx xxx

(3) The Director may suspend any Sarpanch or Panch where a case against him in respect of any criminal offence is under investigation, enquiry or trial if, in the opinion of the Director, the charge made or proceeding taken against him is likely to embarrass him

found by the appellate authority to have been passed on the correct facts of the case. The petitioner, therefore, in no way shall be deemed to have been suspended to function as a Sarpanch without he having been heard by the authority. The order is well in accordance with law and does not suffer from any impropriety or illegality. Hence the writ petition is dismissed.

R.N.R.

Before G. S. Singhvi, H. S. Bedi & S. S. Sudhalkar, JJ.

ANIL SABBARWAL,—Petitioner.

versus

THE STATE OF HARYANA & OTHERS,—Respondents.

CWP 5851 of 96.

March 21, 1997.

Constitution of India, 1950—Art. 226—Public Interest Litigation—Petitioner challenging discretionary quota allotment of plots in urban estates of Haryana—Locus standi.

Held, that the petitioner who has espoused the cause of the public by bringing it to the notice of the Court that powerful and influential persons of the society have grabbed the public property on the basis of allotment made under the discretionary quota and if the prime land allotted to them in an arbitrary manner is made available to the public at large, then the public exchequer will be greatly benefitted and all eligible persons will be able to participate in the process of disposal of the public property by way of auction or by way of allotment. The petitioner has been able to demonstrate that those who are able to pull strings of political power can reap benefits in disregard to the constitutional ethics. We, therefore, do not find any merit in the objection raised by the learned counsel for the respondents/objectors that the writ petition should be dismissed on the ground of lack of locus standi.

(Para 34)

Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—Ss. 15(3) and 30(1)—Chief Minister's 5 per cent discretionary quota for allotment of plots in Haryana—C.M. not vested with absolute discretion to make allotments according to his choice—Government's powers to give directions to HUDA not unlimited or unfettered and the same can be given only for efficient