

Ujagar Singh v. State of Punjab and others (Mehar Singh, C.J.)

like the Rajasthan case, contains the distinguishing feature that the assessee had given an explanation which alone came to be considered by the successor authority.

(7) Precisely the same considerations prevailed in another Division Bench authority of the Mysore High Court in *Hulekar and Sons v. Commissioner of Income-tax Mysore* (4). There again a written representation had been given to one Income-tax Officer and the successor proceeded with the penalty proceedings as the assessee did not seek a fresh opportunity of being heard.

(8) In our opinion, the answer to the reference, therefore, must be made in favour of the assessee. In the circumstances, there would be no order as to costs.

MEHAR SINGH, C.J.—I agree.

K.S.K.

FULL BENCH

Before Mehar Singh, C.J., D.K. Mahajan and Gurdev Singh, JJ.

UJAGAR SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2489 of 1967

September 24, 1968

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Ss. 102(1) and 102(2)—Inquiry under—Nature and scope of—Bare minimum of the inquiry—Stated—Order of suspension of a Panch or a Sarpanch—No inquiry by the Government—Such order—Whether can be passed by the Deputy Commissioner.

Held, that an enquiry under sub-section (2) of section 102 of Punjab Gram Panchayat Act, being a statutory requirement must be there before a Panch or

(4) (1967) 63 I.T.R. 130.

a Sarpanch can be removed, though obviously, in the terms 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 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 charges must be made known to him, and (c) that he must be given every opportunity to meet the charges and to defend himself. Even though under sub-section (2) of section 102 of the Act, the nature and scope of the enquiry is left entirely to the discretion of the Government, it still cannot do away with those bare minimum requirements of an enquiry.

[Para 4]

Held, that sub-sections (1) and (2) of section 102 of the Act have to be read together, in which case the plain meaning of the same leads to only one conclusion, and no other, that when enquiry is ordered by the Government under sub-section (2), it is during the course of that enquiry that the Deputy Commissioner may exercise his power of suspension of Panch or a Sarpanch under sub-section (1) and that, if there is no enquiry ordered by the Government under sub-section (2), occasion for the exercise of the power under sub-section (1) by the Deputy Commissioner does not arise.

[Para 6]

Case referred by the Hon'ble Mr. Justice Shamsheer Bahadur, on 19th April, 1968 to a Full Bench for decision along with C.W. 416 of 1968 in which the same question of law has already been transferred by the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice Gurdev Singh,—vide their order, dated 27th February, 1968. The Full Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice Gurdev Singh, decided the case finally on 24th of September, 1968.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued quashing the impugned order of suspension, dated 23rd September, 1967 of respondent No 3.

S. S. KANG, ADVOCATE, for the Petitioner.

H. L. SIBAL, ADVOCATE-GENERAL, PUNJAB, WITH J. S. RAIKHY, R. K. CHHISER AND MOHINDERJIT SINGH SETHI, ADVOCATES, for the Respondents.

JUDGMENT

MEHAR SINGH, C.J.—The question that arises for consideration in these two petitions—Ujagar Singh v. State of Punjab, Civil Writ No. 2489 of 1967, and Bihari Lal Sarpanch v. Haryana State, Civil

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Writ No. 416 of 1968—before this Branch, is the meaning and scope of enquiry in sub-sections (1) and (2) of section 102 of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), and the power and scope of the Deputy Commissioner to make an order of suspension under sub-section (1) of section 102 of the very same Act ?

(2) It is common ground that in both the petitions the Deputy Commissioner concerned suspended each petitioner who is a Sarpanch of his particular Gram Panchayat, under sub-section (1) of section 102 of the Act, but without the State Government either exercising its own powers under sub-section (2) of section 102 of the Act or the Director of Panchayats, as its delegate under section 95 of the Act, exercising the same powers, having ordered an enquiry against the particular petitioner under sub-section (2) of section 102 of the Act. Bihari Lal's case first came for hearing before my learned brothers Mahajan and Gurdev Singh, JJ., on February 27, 1968, who being of the opinion that there appeared to be a certain measure of inconsistency between *Piyare Lal v. The Deputy Commissioner, Hoshiarpur and another* (1) and *Ram Ditta Singh v. The Deputy Commissioner, Ferozepur* (2), on the question, as above, referred the matter to a larger Bench. In the wake of that reference, when *Ujagar Singh's case* came before Shamsher Bahadur, J., for hearing on April 19, 1968, the learned Judge referred that cases also to the same larger Bench. This is how these two cases have come before this Bench.

(3) To appreciate the question that arises in these cases it is necessary to first make reference to the relevant parts of sub-sections (1) and (2) of section 102 of the Act, which read—

“102. (1) The Deputy Commissioner may during the course of an enquiry, suspend a Panch for any of the reasons for which he can be removed, and debar him from taking part in any act or proceedings of the said body during that period and order him to hand over the records, money or any property of the said body to the person authorised in this behalf.

(2) Government may, after such enquiry as it may deem fit, remove any Panch—(then follow five grounds of removal).”
The first ground of removal in clause (a) of sub-section (2) of section 102 has reference to the grounds mentioned in sub-section (5)

(1) I.L.R. (1966) 2 Punj. 20.

(2) 1968 P.L.R. 341.

of section 6 of the Act. According to that sub-section a person cannot be a member of a Gram Panchayat because of grounds (a) to (1), among which are the grounds (b), if he has been convicted of any offence involving moral turpitude unless a period of five years has elapsed since his conviction; or (e), he has been ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1898; or (i), he is a discharged insolvent. In *Ram Ditta Singh's case* what was held was that both sub-sections of section 102 of the Act have to be read together so that the plain meaning of the same is that when an enquiry is ordered by the Government under sub-section (2), it is during the pendency of that enquiry that the Deputy Commissioner has the power to suspend a Panch under sub-section (1) and that if there is no enquiry ordered or started by the Government under sub-section (2), the power under sub-section (1) in the Deputy Commissioner does not become operative. It was pointed out that a Panch can be suspended only when an enquiry against him has been ordered by the Government and not in consequence of an enquiry not ordered or started by the State Government. It was also pointed out that the language of sub-section (1) does not justify that a Deputy Commissioner can order some enquiry against a Panch apart from that by the Government under sub-section (2) of the Act. It was further observed that the Legislature has designedly framed the two sub-sections in the manner in which the same are, leaving the power to order or start an enquiry against a Panch with the Government alone as a matter of policy so as not to leave interference with the elected bodies, such as Gram Panchayats, in the hands of local officers by way of starting enquiries against the elected members of such local bodies. It has been said during the arguments that this observation was probably made because at the time the provisions of section 95 of the Act were not placed before the Bench. It appears to be so. According to section 95 of the Act, the Government can delegate its powers under the Act to a Deputy Commissioner of a District, apart from the Director of Panchayats. So the Government can, having regard to this provision, delegate its powers under sub-section (2) of section 102 of the Act to a Deputy Commissioner, though actually it has delegated its powers not to any Deputy Commissioner of any district in the State but to the Director of Panchayats, an officer at the centre who heads the Department of Panchayats. Sub-section (1) of section 102 originally gave power to the Director of Panchayats to suspend a Panch but that has been amended to vest that power in the Deputy Commissioner, obviously in the wake of the

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number of cases and the volume of work involved in this respect. In spite of the power under section 95 to delegate its powers under the Act to the Deputy Commissioner, the Government has not chosen to do so in so far as its power under sub-section (2) of section 102 is concerned. It has delegated that power to the Director of Panchayats only, an official of top rank in the Department. So, while such a delegation to a Deputy Commissioner is possible, the action of the Government itself supports the inference that it has paid attention to the policy of the Legislature that such powers are not to be delegated to district officials so that they may not interfere with the working of local bodies as Panchayats. In *Piyare Lal's* case, the precise question that arises for consideration in these two petitions did which was considered in *Ram Ditta Singh's* case, did not really arise. In that case the existence of a proper enquiry was never questioned. The argument was that for the validity of an enquiry it was to be held by the Deputy Commissioner and not by an officer, subordinate to him such as a Sub-Divisional Magistrate, and this argument was repelled. In that case, however, the order of suspension was maintained, but the obvious explanation of that is that there was no argument in that case that no proper enquiry, according to sub-section (2) of section 102 of the Act, was pending when the suspension of the Panch concerned was ordered by the Deputy Commissioner. When the two cases are considered together there might appear to be a seeming inconsistency, but, in substance, there is none. All the same, the question as posed above has been canvassed afresh before us and so it has been reconsidered.

(4) Now, it is obvious that under sub-section (2) of section 102 it is the power of the State Government to remove a Panch and this the State Government can only do 'after such enquiry as it may deem fit'. The nature and scope of the enquiry is left entirely to the discretion of the State Government, but enquiry there must be before removal of a Panch can be ordered by the Government. At one time the learned Advocate-General for Punjab did take up the position that where a ground exists as in clause (a) of sub-section (2) of section 102, having regard to the grounds (b), (e) and (i) of sub-section (5) of section 6 of the Act, there can possibly be no room for any enquiry. His argument has been that if a case has been carried up to the Supreme Court (a) in which conviction for a criminal offence, involving moral turpitude, is maintained, or (b) in which the order for giving security for good behaviour is

maintained, or (c) in which adjudication of an insolvent is upheld, then any enquiry under sub-section (2) of section 102 would be a meaningless formality and, in substance, no such enquiry is called for. In any one of such cases the State Government can proceed straightway on the basis of the final decision of the Supreme Court to remove the Panch. However, during the hearing reference was then made to *Pirithi Singh v. The Deputy Commissioner, Rohtak* (3), in which a Division Bench consisting of Dua and Narula, JJ., quite clearly and pointedly took a contrary view and held that even in such a case an enquiry must follow in the sense that the final decision to be used against a Panch for his removal must be put to him and he asked to explain his position with regard to the same rendering any explanation which would either not justify his removal or would be some mitigation in his favour. On this the learned Advocate-General of Punjab veered round to the position that an enquiry under sub-section (2) of section 102 being a statutory requirement must be there before a Panch can be removed. though obviously, in the terms 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 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 charges must be made known to him, (c) that he must be given every opportunity to meet the charges and to defend himself. Even though under sub-section (2) of section 102 of the Act the nature and scope of the enquiry is left entirely to the discretion of the Government, it still cannot do away with those bare minimum requirements of an enquiry. Subject to that the nature and scope of the enquiry is entirely in its discretion. So there is no longer any controversy over the meaning and scope of this sub-section. Then the power of the Deputy Commissioner to suspend a Panch only comes into existence if a pre-condition exists, that is to say, an enquiry is pending against the Panch. A Deputy Commissioner cannot suspend a Panch for the purpose of an enquiry. For him to invoke his power and jurisdiction of suspension of a Panch, an enquiry must be pending when an order to that effect is made. The words used are 'during the course of an enquiry'; but it is not said enquiry

(3) CW.. 2717 of 1965 decided on 28th February, 1966.

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ordered by whom, enquiry to what end and for what purpose, and enquiry conducted by whom. These matters are not at all to be found in sub-section (1) of section 102, and, to my mind, for an obvious reason; because both the sub-sections have dealt with only one enquiry, and that is the enquiry that the Government may order under sub-section (2), and it is during the pendency of that enquiry that power of suspension is given to the Deputy Commissioner to suspend a Panch. It is contended on the side of the State that that would lead to great inconvenience to the Government, because while the Deputy Commissioner takes steps to move the Government to make an order for an enquiry under sub-section (2) of section 102, a Panch or a Sarpanch continuing in office may do incalculable and irretrievable harm to the institution of the village Gram Panchayat, as usually Government takes quite a time before making such orders. But I have not known that an argument of inconvenience entitled a Court to read a provision to vest a power in an authority where the language of the statute itself does not do so clearly. Another argument that has been urged on the side of the State Governments is that while the State Government has a power to order an enquiry under sub-section (2), the Deputy Commissioner has an independent power to order enquiry under sub-section (1) of section 102. It has, however, been difficult to explain on the side of the two State Governments for what purpose does the Deputy Commissioner order an enquiry under sub-section (1) of section 102, because his power of suspension of a Panch does not come into existence or operation till an enquiry is already pending before the exercise of such power. So he must have a power to order an enquiry before he makes an order of suspension. But there is no such power given to him under sub-section (1) of section 102. The learned counsel for the State Governments have then urged that the nature and scope of enquiry that may be ordered by the Deputy Commissioner under sub-section (1) of section 102 is the same as of a preliminary enquiry with the purpose and object of making up his mind whether or not to move the Government so that the latter may proceed to exercise its power of ordering an enquiry for the purpose of removal of a Panch under sub-section (2) of section 102. If this was so, the Legislature would obviously not have used the expression 'during the course of an enquiry' in sub-section (1) of section 102, for it would have then said simply during the course of a preliminary enquiry in order to see whether or not a case or rather a *prima*

facie case exists for the purpose of enabling the Government to reach the conclusion whether it would or would not exercise its powers under sub-section (2) of section 102. In support of this argument the learned Advocate-General for Punjab has referred to Chapter IX in the Act and sections 95 to 100 in the same. As has already been stated, under section 95 the State Government has the power to delegate its own powers under the Act to a Deputy Commissioner or even a Sub-Divisional Officer or the Director. According to section 96 a Gram Panchayat is to permit, at all reasonable times, any officer or other person whom the Director or the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, may authorise in this behalf to have access to all its books, proceedings and records and to enter on and inspect any immovable property occupied by, or any work in progress under the orders of, or any institution controlled by it. Section 97 gives power to the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, by order in writing to suspend the execution of any resolution or order of the Gram Panchayat other than an order passed in judicial proceedings or prohibit the doing of any act which is about to be done or is being done under cover of the Act. All such acts or actions of the Deputy Commissioner or the Sub-Divisional Officer or the Director are subject to the authority and control of the Government according to section 98. If a Gram Panchayat makes default in the performance of any duty other than judicial functions imposed upon it by or under the Act or under any law for the time being in force, the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, has been given discretion to fix a period for the performance thereof according to section 99. And under section 100, the Government has the power to call for and examine the record of proceedings of any Gram Panchayat for the purposes of satisfying itself as to the legality or propriety of any executive order passed therein and may confirm, modify, or rescind the order and there is similar power in the Government with regard to the record of any executive order made under the act. The learned Advocate-General for Punjab has contended that these sections make it clear that the Deputy Commissioner has almost complete control over the functioning of a Gram Panchayat; leaving out the judicial functions of the same, and the control goes to the extent of vesting power in him to suspend resolutions and orders of a Gram Panchayat. From this the learned counsel spells a power in the Deputy Commissioner to

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order a preliminary enquiry into the conduct of a Panchayat under sub-section (1) of section 102; and he would read the word 'enquiry' in that sub-section as meaning preliminary enquiry for the purpose indicated in his argument as above. In *Ujagar Singh's case* Mr. Sukhdev Singh Kang, learned counsel for the petitioner, has pointed out the fallacy in this approach because he said that if on consideration of these sections a power of enquiry of a preliminary nature is attributed to the Deputy Commissioner, why cannot the same be attributed to a subordinate officer like the Sub-Divisional Officer; who figures in most of these sections along with the Deputy Commissioner in the matter of control of Gram Panchayats. It is apparent that there cannot be substance in the argument urged on the side of the respondents that if such an implied power to hold a preliminary enquiry is not read in sub-section (1) of section 102; the Deputy Commissioner's power of control; as in the sections already referred to, becomes meaningless. This obviously is not so, for the powers of the Deputy Commissioner or the Sub-Divisional Officer in those sections are independent powers having nothing to do with an enquiry. It may be that in consequence of the exercise of such control certain defaults may come to light which may lead to the Government ordering an enquiry against a Panch or a Sarpanch; but the power of control in those sections is not only independent; but also effective and complete in itself. So this argument on the side of the respondents is untenable. There is one other matter to which reference may be made at this stage for it was an argument urged on the side of the respondents that if a preliminary enquiry is held by the Deputy Commissioner and certain charges are proved against a Panch; the Government may proceed to act on that to take action under sub-section (2) of section 102. It is an argument contrary to the express words of sub-section (2) of section 102 and needs no further consideration.

(5) The power under sub-section (1) of section 102 to suspend a Panch originally resided in the Director but by section 6 of the Punjab Gram Panchayat (Amendment) Act, 1964 (Punjab Act 11 of 1964), for the word 'Director' were substituted the words 'Deputy Commissioner'. It was this amendment which brought about this change. The objects and reasons explain this change in this manner—"The suspension of Sarpanch or Panch can at present be

ordered by the Director. Experience has shown that it is physically impossible for one officer to deal expeditiously with the large number of cases on this object. It is, therefore, proposed to empower the Deputy Commissioner to order the suspension." It is clear that the amendment in this respect resulted from the volume of work in such cases. The important part of the work affecting the very continuance of the Gram Panchayats has been retained in the hands of the highest officer of the Department, that is to say, the Director, in so far as the question of removal of a Panch is concerned, but once that decision has been taken, the matter is, on account of the amendment, then left with the Deputy Commissioner concerned. This is the reason for the change. However, the conclusion is not available from the language of sub-sections (1) and (2) of section 102 that the words 'during the course of an enquiry', in sub-section (1), mean an enquiry independent of and separate from the enquiry that the Government may make under sub-section (2) for the purpose of removal of a Panch. As has been pointed out, suspension under this particular provision can only take place when the enquiry has been ordered. There is nothing in sub-section (1) which gives the power for enquiry to a Deputy Commissioner apart from the Government's power to order an enquiry under sub-section (2). If such a power was conceded, it would only possibly have the end purpose of moving the Government to an enquiry as envisaged by sub-section (2) of section 102, in other words, as suggested by the learned counsel for the respondents, it has to be a preliminary enquiry. But the language of sub-section (1), as already stated, does not justify such a reading of it which can only be done either by radical departure from the language or by addition to the language, neither of which course is permissible.

(6) The consequence then is that the answer posed to the question; in my opinion, is the same as in *Ram Ditta Singh's case*, that sub-sections (1) and (2) of section 102 of the Act have to be read together, in which case the plain meaning of the same leads to only one conclusion, and no other, that when enquiry is ordered by the Government under sub-section (2), it is during the course of that enquiry that the Deputy Commissioner may exercise his power of suspension of Panch under sub-section (1) and that, if there is no enquiry ordered by the Government under sub-section (2), occasion for the exercise of the power under sub-section (1) by the Deputy Commissioner does not arise.

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It is not denied that in these two petitions no enquiry against the Sarpanch concerned was ordered by the Government under sub-section (2) of section 102 when the Deputy Commissioner concerned proceeded to make an order of suspension against him under sub-section (1), with the result that the order of suspension has to be quashed, and it is accordingly quashed in each case. Respondent 1, the State, in each case shall bear the costs of the petition, counsel's fee Rs. 100 in each case.

D. K. MAHAJAN, J.—I agree.

(7) Gurdev Singh, J.— I entirely agree with my Lord the Chief Justice that Ram Ditta Singh's case correctly lays down the scope and extent of the powers of the Deputy Commissioner to suspend a Panch under section 102 (1) of the Punjab Gram Panchayat Act, 1952 (IV of 1953). As expressly stated in this provision the power to suspend a Panch can be exercised by a Deputy Commissioner "for any of the reasons for which he can be removed" and "during the course of an enquiry". The reasons for which a Panch can be removed have been laid down by the Legislature in sub-section (2) of section 102 of the Act which also envisages the holding of an enquiry before removing a Panch. As has been laid down by a Division Bench of this Court in Pirthi Singh v. The Deputy Commissioner, Rohtak (3), it is incumbent upon the Government to hold an enquiry before removing a Panch. Both sub-sections (1) and (2) of section 102 of the Act have to be read together as they relate to the manner and the process by which a Panch or Sarpanch, who is liable to be removed from his office is to be proceeded against. The power to suspend a person holding a government or any other office during the pendency of an enquiry against him is well-recognized and the authority vested in the Deputy Commissioner to suspend a Panch, who is liable to be removed, is a part of the same process as it is specifically provided that this power may be exercised "during the course of an enquiry and for any of the reasons for which his removal can be ordered." As the language used in this provision is quite clear and admits of no ambiguity, the enquiry in the course of which the Deputy Commissioner is empowered to suspend a Panch cannot be any enquiry other than the one provided under sub-section (2) of the same section. It thus follows that the Deputy Commissioner can exercise his authority to suspend a Panch only after an enquiry under sub-section (2) of section 102 has been ordered by the competent authority and is pending.

(8) The contention put forward on behalf of the States of Haryana and Punjab that the enquiry during the course of which the Deputy Commissioner is authorised to suspend a Panch is not confined to the enquiry provided under sub-section (2) of section 102, is untenable, as it is not only not borne by the context in which the expression "an enquiry" has been used in sub-section (1) of section 102, but would also lead to anomalous results. Admittedly there is no provision in the Act expressly authorising the Deputy Commissioner to hold an enquiry against a Panch or Sarpanch with a view to remove or suspend him from his office. The word "inquiry" has not been defined in the Act itself and construed in its general sense, it would include even an investigation and going into allegations against a Panch by any person to whom a complaint is made or to whose notice some lapse or misconduct on the part of a Panch or Sarpanch comes. There is nothing in section 102 or any provision of the Act which even remotely indicates that in the course of an enquiry other than the one prescribed under sub-section (2) of section 102 a Panch or Sarpanch should be suspended. In fact it has been held by this Court recently in *Ajaib Singh v. The State of Punjab, etc.* (4), that the enquiry during the pendency of which a Deputy Commissioner can suspend a Panch does not include investigation into a criminal offence.

(9) In view of what has been said above and for the reasons given by my Lord the Chief Justice on elaborate and careful consideration of the various contentions, put forward before us, I am firmly of the opinion, in agreement with my learned brothers, that it is only in the course of an enquiry ordered by the competent authority under sub-section (2) of section 102 of the Punjab Gram Panchayat Act, 1952, that a Deputy Commissioner can order the suspension of a Panch

FULL BENCH

Before Mehar Singh, C.J., P. C. Pandit and R. S. Narula, JJ.

CHANAN DASS,—Appellant.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Letters Patent Appeal No. 305 of 1964

May 8, 1968

High Court Rules and Orders Volume V, Chapter 3-B, Rule 1, proviso—Reference of a case by a Single Judge to Division Bench—Division Bench deciding

(4) C.W. 13 of 1966 decided on 10th March, 1966.