

Darshan Singh  
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Punjab  
and others  
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name in the electoral roll of village Arno and to direct that the said application be disposed of afresh in accordance with law in the light of this order. The election held on 1st January, 1964 must also be quashed, and we hereby so order. There is accordingly now no question of declaring or not declaring the result of the election which was stayed by the Motion Bench. We need say nothing about the other more than 300 persons in regard to whom also the petitioner has made a grievance in his petition, because in the present proceedings, we are only concerned with the petitioner's grievance in so far as it affects him personally, though we have little doubt that if other persons, including those for whom the petitioner has also ventilated grievance, apply for inclusion of their names in an electoral roll, the authorities concerned would deal with those applications in accordance with law in the light of this order. The petition is accordingly allowed in the terms just mentioned. The petitioner will have his costs which we fix at Rs. 100.

Capoor, J.

S. B. CAPOOR, J.—I agree.

K.S.K.

#### CIVIL MISCELLANEOUS

*Before Mehar Singh and Prem Chand Pandit, JJ.*

PIYARE LAL,—Petitioner.

*versus.*

THE DEPUTY COMMISSIONER, HOSHIARPUR, AND ANOTHER,—  
*Respondents.*

Civil Writ No. 2405 of 1965

1965

October, 13th

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 102(2) (e)—Whether liable to be struck down—S. 102(1)—Deputy Commissioner—Whether competent to suspend Sarpanch or panch when enquiry against him is pending before another officer—Sarpanch suspected of embezzlement of Panchayat funds—Whether can be suspended.*

*Held*, that clause (e) of sub-section (2) of section 102 of the Punjab Gram Panchayat Act, 1952, is not liable to be struck down as being vague and conferring uncontrolled power on a Deputy Commissioner. The expression "interest of the public" definitely covers the case in which an allegation of embezzlement of the Panchayat funds is under enquiry.

*Held*, that the Deputy Commissioner has the power to suspend a Sarpanch or a panch when enquiry against him is pending.

before another officer. It is not necessary that the enquiry must be held by the Deputy Commissioner himself as there is nothing in sub-section (1) of section 102 which debars the Deputy Commissioner to have an enquiry held by another officer or authority. Nor is it necessary that the Sarpanch or panch should be prosecuted in a court of law for embezzlement before he is suspended.

*Petition under Article 226 of the Constitution of India, praying that the writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the impugned illegal and ultra vires order of respondent No. 1 and respondent No. 2 be restrained from holding any inquiry against the petitioner.*

A. M. SURI, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

#### ORDER

MEHAR SINGH, J.—The petitioner, Piyare Lal, in this <sup>Mehar Singh, J.</sup> petition under Article 226 of the Constitution, is a Sarpanch of the Gram Panchayat, Nandachaur in tahsil and district Hoshiarpur.

The Social Education and Panchayat Officer having inspected the accounts of the Gram Panchayat made a note pointing out certain irregularities in the same. With the return by respondent 1, the Deputy Commissioner of Hoshiarpur, has been filed annexure 'A', which is a copy of the report of that officer indicating that a case of temporary embezzlement and misappropriation of Panchayat funds was detected. The petitioner alleges that the District Development and Panchayat Officer, respondent 2, on that proceeded to an enquiry against him on his own, but in the return by respondent 1, it is clearly stated that it was he who on April 3, 1965, ordered respondent 2 to take up the enquiry against the petitioner. Respondent 2 called upon the petitioner to produce the Panchayat accounts consisting of cash book, receipt-book, muster roll, development works register and grants register, but the petitioner put him off twice on the ground that he was indisposed due to attack of cataract. Respondent 2 adjourned the enquiry at the request of the petitioner twice. The next

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hearing in the enquiry was June 7, 1965, when the petitioner informed respondent 2 that on account of Samiti elections he was unable to appear before him on that day.

On July 5, 1965, respondent 1 served a show-cause notice, copy annexure 'D', upon the petitioner, for his reply within ten days from the receipt of the notice, to explain why he should not be suspended, pointing out that he had not complied with the orders and had not produced the record before respondent 2 and saying "Your continuance as Sarpanch is, therefore, considered to be undesirable in the interests of public". On July 12, 1965, the petitioner rendered his explanation saying that he did not attend two hearings because of indisposition, the third hearing because respondent 2 did not inform the Secretary to accompany him to Court, and the last hearing because of Samiti elections. The first hearing was some time near about May 3, 1965, and the last hearing was on June 7, 1965, about which the petitioner said that he was deeply busy in Samiti elections. He seems to have all of a sudden recovered from the ailment in his eyes. Respondent 1 found the explanation unsatisfactory and by his order of August 25, 1965, copy annexure 'F', he proceeded to suspend the petitioner under section 102(1) of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953). It was upon that that the petitioner filed the present petition under Article 226 of the Constitution questioning the legality of the order of suspension made by respondent 1.

The learned counsel for the petitioner has urged three arguments. The first argument is that respondent 1 had no power to make an order of suspension against the petitioner under sub-section (1) of section 102, because there was no enquiry pending before him against the petitioner, though one such enquiry was pending against him before respondent 2. Sub-section (1) of section 102 reads:—

"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."

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The learned counsel for the petitioner contends that the expression "the course of an enquiry" as used in this sub-section means every single stage or point in the continuance of the enquiry, and in this respect he relies upon *Burmah Shell Oil Storage and Distributing Company of India Limited v. The Commercial Tax-Officer* (1), in which at page 323 he refers to this citation by their Lordships: "The word 'course' etymologically denotes movement from one point to another—", and his argument is that at all stages the enquiry must be pending before the Deputy Commissioner to give him power under that sub-section to make an order of suspension of a Panch or a member of a Panchayat. He refers to proviso to sub-section (6) of section 95 that the powers specified in section 102 cannot be delegated by the Deputy Commissioner. His contention thus has been that respondent 1 has no power to delegate the enquiry under section 102(1) to respondent 2. But there is nothing in that sub-section which leads to the conclusion that the expression "the course of an enquiry" as used in it means the course of an enquiry before the Deputy Commissioner himself. There is nothing in the section which debars the Deputy Commissioner to have an enquiry held by another officer or authority. The learned counsel is not able to deny that an enquiry was pending against the petitioner when the impugned order was made suspending him, but what he has pressed is that it was not pending before the Deputy Commissioner. This is true, but respondent 1 has in his affidavit by way of return clearly explained that respondent 2 was conducting the enquiry under his orders. This is not prohibited by sub-section (1) of section 102 nor is it any wise contrary to any part of that sub-section. There is thus no occasion for delegation of any of his powers under section 102 by respondent 1 to respondent 2, because under section (1) of that section it is not a statutory requirement that the enquiry must be held by the Deputy Commissioner himself. Thus this argument is without substance.

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(1) A.I.R. 1961 S.C. 315.

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It is then argued by the learned counsel for the petitioner that non-production of accounts and books of the Panchayat is not one of the grounds on the basis of which respondent 1 could make an order under sub-section (1) of section 102. He can make an order under that sub-section on all the grounds on which a member of Panchayat can be removed and those grounds are enumerated in sub-section (2) of section 102. Only clause (e) of that sub-section is material. It reads:—

“Government may, after such enquiry as it may deem fit, remove any Panch—(e) whose continuance in office is in the opinion of Government or of the officer to whom Government has delegated its powers of removal, undesirable in the interests of the public.”

It has already been shown that in the show-cause notice of July 5, 1965, copy annexure ‘D’ respondent 1, did say to the petitioner “Your continuance as Sarpanch is, therefore, considered to be undesirable in the interests of public.” It is obvious that in this manner respondent 1 was referring to the ground of removal of a Panch as in section 102(2) (e), which can be a ground for suspension under sub-section (1) of section 102. So that in spite of suspicion of embezzlement of Panchayat funds about the petitioner, when called upon he refused to produce the accounts of the Panchayat, respondent 1 was justified in reaching the conclusion that it was in public interest that the petitioner be suspended under sub-section (1) of section 102. In any event it is his conclusion in this respect that is to prevail. In this connection the learned counsel has also referred to sub-section (5) of section 6 and has contended that disqualification from becoming a member of a Sabha is incurred consequent upon prosecution and conviction of a person, and he considers that the only course that should have been pursued against the petitioner is prosecution for embezzlement. This is misconceived because section 102(1) gives the power to the Deputy Commissioner to suspend a member of a Panchayat on the grounds given in that sub-section and this is what has happened in this case. So that even this argument does not prevail. In this connection the learned counsel for the petitioner has urged another aspect of his argument that clause (e) of sub-section (2) of section 102 is so vaguely worded with

no clear direction to the Deputy Commissioner for the exercise of his power that it must be struck down as vague and conferring uncontrolled power on a Deputy Commissioner. The learned counsel says that the expression 'interest of the public' is not capable of clear and definite meaning. In this he is mistaken. The expression is meant definitely to cover the type of cases as the present in which an allegation of embezzlement of the Panchayat funds is under enquiry. There is no vagueness in so far as this is concerned and it is clear that respondent 1 has acted squarely within his power in relying on clause (e) of section 102(2) to make it the basis of the order of suspension against the petitioner.

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The only other argument that the learned counsel has urged is that in the order of suspension respondent 1 has not purported to suspend the petitioner on the ground as in section 102(2) (e), and in fact in his return he specifically says that no order under that provision has been made against the petitioner, but that what he has stated in his order is that he was acting in exercise of powers conferred on him under section 102(1) (e) and the learned counsel stresses that there is no such provision in the Act. This is not an error of any substance. But respondent 1 should have stated that he was making the order in exercise of the powers conferred upon him under section 102(1), read with clause (e) of sub-section (2) of the same section. Instead he has read as if clause (e) was to be taken to have become part of sub-section (1) of section 102 and it is in this approach that reference to section 102(1) (e) has been made in his order. This is not a matter of substance and it does not invalidate the order of respondent 1. It is clear that the order of respondent 1 is under sub-section (1), read with clause (e) of sub-section (2) of section 102.

This is all about the only arguments that have been urged by the learned counsel for the petitioner at the hearing. This petition, therefore, fails and is dismissed, but there is no order in regard to costs.

PREM CHAND PANDIT, J.—I agree.

Pandit, J.

B.R.T.