

for the appeal filed against C.O.C.P. No. 163 of 1987, the main judgment was a necessary document and, therefore, when the appeal is filed with a certified copy of the judgment in the main case the time taken for supply of the certified copy of the main judgment will have to be excluded in calculating the period of limitation and if that is excluded the appeal filed against the order in C.O.C.P. No. 163 of 1987 is to be treated as in time. Therefore, all the three objections raised by the learned counsel are devoid of merit and this application is ordered with costs. Counsel fee Rs. 500.

S.C.K.

FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJ.

HARCHAND SINGH,—Petitioner.

versus

PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ Petition No. 3503 of 1986

March 15, 1989.

Punjab Gram Panchayat Act (IV of 1952)—Ss. 95, 102(4) and (6)—Delegated authority—Appellate jurisdiction—Order of Joint Director/Divisional Deputy Director, Rural Development and Panchayats passed in exercise of delegated authority of Director, Panchayats—Whether such order passed by the delegatee of the Director can be appealed against before the Joint Secretary who is also ex-officio Director Panchayats.

Held, that there is no bar or illegality if the appeal against the order passed by a delegatee of Director's power is heard by the Director himself exercising powers of the Joint Secretary to the Government when acting as such and not as Director. The individual who exercises the delegated powers of the Director should not happen to be the Director himself by then to exercise the delegated powers of the State Government while hearing the appeal.

(Paras 9 and 10).

Petition under Articles 226/227 of the Constitution of India praying that the following reliefs may kindly be granted:—

- (a) records of the case be called for and after perusal of the same a writ of certiorari be issued, quashing the impugned orders Annexures-'P/7' and 'P/9'.

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- (b) any other order, writ or direction be issued in favour of the petitioner in the circumstances of the case as deemed fit by this Hon'ble Court.
- (c) the requirement of advance notice of motion be dispensed with.
- (d) filing of the certified copies of the Annexures 'P/1 to 'P/9' be dispensed with.
- (e) costs of this writ petition be allowed in favour of the petitioner.

And

It is further prayed that pending hearing of the writ petition, the operation of the impugned orders may kindly be stayed.

U. S. Sawhney, Advocate, for the Petitioner.

H. S. Bedi Addl. A.G., Punjab with B. S. Gill, Advocate, for Respondents 1 and 2.

Mrs. Shiela Didi Advocate, for No. 3 and 4.

JUDGMENT

Ujagar Singh, J.

(1) Civil Writ Petition No. 3503 and 6231 of 1986 are being disposed of by this judgment as a common question of law is involved in both these writ petitions.

(2) Harchand Singh Ex-Sarpanch, Gram Panchayat Suhara, Block Kharar, District Roopnagar filed writ petition No. 3503 of 1986 challenging order Annexure P. 7, dated 3rd October, 1985, passed by the Divisional Deputy Director, Rural Development and Panchayat, Patiala, exercising the powers of Director Panchayats Punjab respondent No. 2 and also to quash the order Annexure P. 9, dated 12th June, 1986 passed by the Joint Secretary, Respondent No. 1, exercising powers of Government dismissing the appeal filed by the petitioner.

(3) This petition came up for hearing before a Division Bench consisting of Mr. Justice D. S. Tewatia (as the then was) and Mr. Justice M. R. Agnihotri and the Division Bench passed the following order on 6th February, 1987:—

“Mr. Sahni cites 1979 R.L.J. 15 D.B. and states that this judgment squarely covers the present case and that the

order of the Director of Panchayats exercising the powers of the Government is without jurisdiction. Mr. Riar on the other hand, states that this Division Bench judgment requires reconsideration.

The petition is admitted to Full Bench. Since this order of ours would raise certain amount of uncertainty in regard to the fact as to whether the Director Panchayats would have the jurisdiction to decide the appeal as delegate of the Government against the order passed by his own delegate, i.e. The Divisional Deputy Director/Joint Director, it is desirable that the matter is set at rest at the earliest. We, therefore, direct that the case be listed before the Full Bench within three months."

(4) In both the cases the common question of law which arises before the Full Bench is as under :

"Whether an order passed by Joint Director/Divisional Deputy Director, Rural Development and Panchayats exercising delegated powers of the Director, Rural Development and Panchayats can be appealed against before the Joint Secretary, exercising the powers of the State Government who is also *ex officio* Director under the Act."

and this reference has been placed before this Bench.

(5) Before discussing the facts of each case separately, we propose to examine the law point raised.

(6) Section 102 of the Punjab Gram Panchayat Act, 1953 (hereinafter called as 'the Act') is reproduced as under :—

"102. Suspension and removal of Panches.—

- (1) The Director may, after such enquiry as he may deem fit, remove any Panch—
 - (a) On any of the grounds mentioned in Sub-section (5) of Section 6;
 - (b) Who refuses to act or becomes incapable of acting;

- (c) Who, being a Sarpanch, without reasonable cause, fails to hold meetings of the Gram Panchayat as required under Sub-section (1) of Section 15 for a period of two consecutive months;
- (cc) Who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayats; or
- (d) Who during his present term of office or that immediately preceding it, has, in the opinion of the Director, been guilty of misconduct in the discharge of his duties or whose continuance in office is undesirable in the interests of the public :

(7) Provided that before the Director orders the removal of any Panch under this Sub-section, the reason for the proposed removal shall be communicated to him and he shall be given an opportunity of tendering an explanation in writing.

Explanation.—The expression 'misconduct' in clause (d) includes the failure of the Panch without sufficient cause—

- (i) to submit the judicial file of a case within two weeks of the receipt of order of any Court to do so;
 - (ii) to produce the Panchayat records on being required to do so by an officer of the Panchayat Department not below the rank of Social Education and Panchayat Officer;
 - (iii) to carry out the lawful orders of any competent authority or an officer authorised by the Government in this behalf;
and
 - (iv) to supply a copy of the order of Gram Panchayat in an administrative or judicial case decided by it within two weeks from the receipt of a valid application therefor;
- (2) A person who has been removed under Sub-section (1) may be disqualified for re-election for such period not exceeding five years from the date of his removal as the Director may fix.
- (3) The Director may suspend any 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 in the discharge of his duties or involves moral turpitude or defect of character.

- (4) The Director at any time and the Deputy Commissioner of the District Development and Panchayat Officer during the course of an enquiry, may suspend a Panch for any of the reasons for which he can be removed.
- (5) A Panch suspended under this Section shall not take part in any act or proceeding of the Panchayat during the period of suspension and shall handover the records, money and other property of the Panchayat in his possession or under his control to the (Panch authorised by the Block Development and Panchayat Officer under Section 15).
- (6) Any person aggrieved by an order of removal of suspension passed under this Section, may, within a period of thirty days from the date of communication of the order, prefer an appeal to the Government”.

It is not disputed that the Director has been defined as under.—

“‘Director’ means the Director of Panchayats appointed under this Act;”

Section 95 of the Act authorises the Government to delegate by Notification all or any of its powers under this Act other than the powers to make rules, to a Deputy Commissioner or the Sub-Divisional Officer as the case may be, or the Director. Again the Director may, with the previous permission of the Government delegate any of his powers other than those delegated to him, to an officer not below the rank of District Panchayat Officer. Under the provisions of this section the State Government has delegated its powers to the Director and the Director himself also has delegated his powers other than those delegated to him to the Joint Director as also to the Divisional Deputy Director, Rural Development and Panchayats. This delegation of powers is not challenged in both these cases. Rather the whole argument is based on the basis of this delegation of powers. The only challenge is whether an order passed by a delegatee of the Director can be appealed against before

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the Director who is exercising also the delegated powers of the State Government. The counsel for the State has shown a copy of the standing order dated 11th October, 1985 issued by Shri Amarinder Singh then Agricultural and Forest Minister, Punjab endorsed by the Deputy Director, Panchayats for Secretary to Government, Punjab and it reads as under :—

“In supersession of the orders issued,—*vide* Punjab Government Endst. No. 12/1/83/4467-72, dated 1st February, 1983, and in pursuance of the provisions of rule 18 of the Rules of Business of the Punjab Government, 1985; it is hereby directed that the following cases, powers for disposal of which are vested in Government, shall now be disposed of by the Joint Secretary to Government, Punjab, Department of Rural Development and Panchayats :—

1. Declaration and establishment of Gram Sabha area under Sections 4 and 5 and fixation of number of Panches under section 6 of the Punjab Gram Panchayat Act, 1952.
2. Cases before the Government under section 100 of the Act *ibid*.
3. Hearing of appeals under sub-section (6) of Section 102 and revision petitions under sub-section (5) of Section 105 of the Act *ibid*.

Provided that in cases under Sr. No. 2 and 3 above, if the order against which appeal or revision petition is filed, is of the Director of Panchayats appointed by the Government, such case, appeal or revision shall be disposed of by Secretary to Government, Punjab, Department of Rural Development and Panchayats.”

This very point came up for hearing in a case *Nasib Singh, Ex-Sarpanch v. The State of Punjab and others* (1), before a Division Bench of this Court consisting of D. S. Tewatia and K. S. Tiwana, JJ. (as then they were) and it seems that the same was decided in *limine*. In that case, it was held as under :—

“It is not disputed that the order, annexure P. 8 in appeal, had been passed by the official who held the post of Director,

as also that of the Deputy Secretary (Development). Since the order has been passed by the Deputy Divisional Director of Panchayats, exercising the power of the Director, the official of the coordinate rank cannot exercise power on behalf of the Government under sub-section (6) of section 102 of the Act, while sitting in appeal, on the order of the Director. Hence, this order, Annexure P. 8, is clearly without jurisdiction and is, therefore, quashed."

The learned counsel basing his argument on this judgment, has put forth a proposition that the order of the delegatee of the Director has to be considered as an order of the Director himself and appeal against that order cannot be heard by a person who is both the Director and the Joint Secretary as these powers stand vested in him by the State Government. This argument has been countered by the opposite counsel who has submitted that the Director has two capacities. In one capacity he exercises the powers of the Director but in the delegated capacity he exercises the powers of the State Government as well. When the Director is conscious that he has to exercise the delegated powers of the State Government there is nothing illegal if he hears an appeal against the orders of an officer who has exercised powers of the Director.

(8) A similar case *Gurcharan Singh v. The State of Punjab and others* (2), came up before a Division Bench of this Court which was headed by one of us (M. M. Punchhi, J). In that case, the petitioner was suspended by Shri Narinder Saroop, Joint Director exercising the powers of the Director delegated to him. The petitioner had earlier filed Civil Writ Petition No. 752 of 1988 but the same was dismissed by another Division Bench headed by Mr. Justice R. N. Mital (as he then was) and one of us (M. M. Punchhi, J.) was a member in *limine* on the grounds that the order was appealable and in spite of the objection that no useful purpose would be served if an appeal is filed as the Director cannot hear an appeal against his own order, it was held that if powers of hearing the appeals have been delegated by the Government to the Director it is expected that the appeal would not be heard and decided by him and it will be heard and decided by some other competent authority. The petitioner filed an appeal before the State Government and the same

(2) 1989(1) All India Land Laws Reporter 71.—
ILR (1989)1 Pb. & Hry. 18.

was dismissed by Shri P. Ram Joint Secretary to Government. The petitioner filed the said writ and the same came up before the said Division Bench. Before that Bench *Nasib Singh's case* (supra) was referred to but this case was distinguished and it was held that in that case the original order had been passed by the Deputy Divisional Director of Panchayats, exercising the powers of the Director and the appeal under Section 102(6) of the Act had been disposed of by the Deputy Secretary (Development) exercising the powers of the Director. In view of that situation, Deputy Secretary was considered to be an official of the co-ordinate rank as the Deputy Secretary had not exercised powers on behalf of the Government under sub-section (6) of Section 102 of the Act while sitting in appeal against the order of the Deputy Director exercising powers of the Director. Ultimately, it was held in *Gurcharan Singh's case* (supra) that the appellate authority was no other than the Joint Secretary of the Government, Punjab in the department of Rural Development and Panchayats and specifically his order is titled to have been passed exercising the powers of the Government which powers vested in the Joint Secretary. A reference was made to a standing order dated May 10, 1988, passed by the Adviser to the Governor of Punjab Department of Rural Development and Panchayats, according to which the hearing of appeals under section 102(6) against the orders made by the Director of Panchayats appointed by the Government under the Act was to be done at the level of Secretary to Government. And other appeals under section 102(6) were to be disposed of at the level of Joint Secretary. Ultimately, it was held as under :

“The appellate function of the Joint Secretary to Government, Punjab, cannot be called a coordinate function with the Joint Director, Panchayats, on the supposition that the *Joint Director* also stood vested with the powers of the Director or Joint Director, Panchayats. What needs to be avoided is that a man cannot sit in appeal against his own order or that against an order of an officer coordinate in jurisdiction. We find nothing of the kind in this case, even closely scrutinising the mechanics of it.” (Emphasis supplied).

(Note :—The emphasized words were corrected to be Joint Secretary *vide suo moto* order of the Bench).

(9) Sub-section (3) of Section 102 of the Act empowers the Director to suspend and sub-section (1) thereof empowers the Director to remove any Panch for the reasons mentioned therein respectively. Sub-section (4) thereof also deals with powers of the Director to suspend the Panch. When the powers of the Director are delegated, with the previous permission of the Government, to an officer not below the rank of District Panchayat Officer the delegatee officer will exercise the said powers of the Director conferred on him by the above provisions. Thus, the order passed by such delegatee has to be considered factually as the order of that officer as a delegatee and not of the Director himself. Technically, of course, it may be considered as order of the Director. There is no doubt that appeal against this order under sub-section 6 of section 102 of the Act will be maintainable to the Government. Again under section 95 of the Act, as already stated above, Government can delegate its own powers to hear such appeals to a Deputy Commissioner or the Sub-Divisional Officer as the case may be, or the Director. Again technically speaking therefore, any delegatee of the powers of the Government can hear such appeals but this may lead to a situation where a delegatee of Director's powers or the Director himself passes the order and appeal against the same happens to be heard before a delegatee of Government who is lower in rank from, or coordinate with, the delegatee of Director's powers in the first situation or the Director in the second situation. In such situation an appeal should not be heard by that delegatee of Government's powers as this will be most unreasonable and will cause not only embarrassment to both the delegates but will lead the parties to lose confidence in the scheme of the Act. Such a contingency has already been avoided by standing order dated May 10, 1988 mentioned above according to which hearing of appeals against the orders made by the Director of Panchayats has to be done at the level of Secretary to Government and other appeals at the level of the Joint Secretary. The result is that there is no bar or illegality if the appeal against the order passed by a delegatee of Director's powers is heard by the Director himself exercising powers of the Joint Secretary to the Government when acting as such and not as Director.

(10) In view of the above discussion we are of the view that there is no illegality if an order passed by a delegatee of the powers of the Director is appealed against before the Director exercising the delegated powers of the State Government when he hears the appeal as such and not as exercising the powers of the Director. Of course, the individual who exercises the delegated powers of the Director

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should not happen to be the Director himself by then to exercise the delegated powers of the State Government while hearing the appeal. The question of law referred to is answered in the affirmative.

(11) Now coming to the facts of Writ Petition No. 3503 of 1986 the petitioner was charge-sheeted through letter No. Steno/RE. 102/82/87 dated 11th January, 1983 from the office of Deputy Director Panchayats and was directed to join the inquiry on 28th January, 1983 and after regular inquiry, report annexure P.2 was sent to the punishing authority. The inquiry report indicated as under:—
Charge No. 1 :

“On making enquiries and looking into the record about this charge, it was found that the Panchayat received a grant of Rs. 1,38,450 under the head of streets and drains which has been utilized in full. The Sarpanch has himself admitted that he had used some old uprooted bricks in the chowk of Chet Ram. No entry of that in the stock register was made. The entry of all the rest of the bricks exists in the Stock Register. The Block Overseer has also not done the complete measurement of the work so far done. The Executive Engineer, should get the measurement done under his supervision for further investigation of this charge so that an estimate of all the bricks used can be made and action deemed necessary be taken.”

(12) It was also held that the net result of the enquiry was that the Sarpanch did not pay full attention of the auctioning of the sand and that Amar Singh and Bhajan Singh were not entitled to cut the *kikars*. It was suggested that proceedings should be taken only after checking the revenue record. Attitude of Jasbir Singh and Gurnam Singh towards panchayat work was held to be not good. Annexure P.3 is an order of the Joint Director exercising the powers of the Director. This shows that four charges survived and the Joint Director came to the conclusion that on the basis of these charges it would not be in public interest for the petitioner to continue as a Sarpanch any longer. A notice was, therefore, issued to show cause under Section 102 (1) (2) of the Punjab Gram Panchayat act that as to why the petitioner should not be removed from the office of Sarpanch and further be the not disqualified for contesting panchayat election for a period of five years. Annexures P.4, P.5 and P.6 are the respective replies given by Harchand Singh

petitioner. Ultimately Annexure P.7 is the order of the Joint Director passed against the petitioner holding him guilty and removing him from the office of Sarpanch under Section 102(1) of the Gram Panchayat Act 1952 and disqualifying him from contesting panchayat election for five years under section 102(2) of the Act. The petitioner filed an appeal under Section 102 (6) of the Act. After hearing the petitioner, it was held as under :—

“It is quite clear that the appellant Sarpanch had failed to keep proper account of the use of bricks at the time of construction of drains and pavement of streets in the village. In the absence of this record, it has rightly been held that 45250 bricks were not accounted for and apparently misused.”

Annexure P.9 further shows that according to the observation in the appeal orders were also made about the Junior Engineers and the Block Development and Panchayat Officer to be responsible for having not properly supervised the work which led to the misuse of the bricks and embezzlement of their price and this aspect of the matter was to be looked into by the Department for taking action against them. *Kikar* trees growing within the *Lal Lakir* and the ownership of the persons who sold these trees had not been proved and Sarpanch was held to have failed to protect the property of the Gram Panchayat and was negligent. So far as keeping of excess amount was concerned interest in respect of that amount could be recovered from the petitioner but this charge did not necessitate removal from his office. Charge No. 4 was held not to be proved. Two charges were held to have been proved against the petitioner and they were considered adequate necessitating his removal from the Sarpanchship. The appeal of the petitioner was rejected as there was no force in the same.

(13) The counsel for the petitioner has urged that during the course of inquiries a favourable report had been sent. But Shri Joginder Singh Thind being prejudiced against him insisted to hold an inquiry and his impartiality was challenged by the petitioner. From the facts of the file we are satisfied that so far as inquiry reports are concerned the matter was at preliminary stage. Thereafter, the regular inquiry was made and on that basis a report was submitted to the Joint Director who after issuing show cause notice and hearing the petitioner found him guilty and the petitioner

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was punished as mentioned in the order. In appeal also the matter has been thoroughly gone into and the two charges have been held to be proved and the same have been held to be sufficient for the removal awarded. We also do not find any infirmity in the findings recorded, by both the authorities below. However, appellate order Annexure P.9 does not deal with disqualification from contesting panchayat election for five years under section 102(2) of the Act specifically. Therefore, this disqualification seems to have been removed and taking into consideration this aspect we hold that this disqualification of the petitioner stands removed and order Annexure P.7 is modified to that extent.

(14) In this view of the matter Civil Writ Petition No. 3503 of 1986 stands dismissed with the above modification, with no orders as to costs.

(15) The facts in C.W.P. No. 6231 are that Rajinder Singh petitioner challenged his removal from the office of Sarpanch under Section 102(1) and his disqualification from contesting elections for a period of five years under section 102(2) of the Act,—*vide* order Annexure P4-A passed by the Divisional Deputy Director, Rural Development and Panchayat respondent No. 2 and dismissal of his appeal,—*vide* annexure P.5 by the Joint Secretary, although appeal the bar on the petitioner from taking part in the election for a period of five years was removed.

(16) One Shri Harnirmal Singh and others filed a complaint that the petitioner had taken shamilat land on lease in open auction and has not deposited lease money into the Gram Panchayat fund. Preliminary inquiry was directed to be conducted by the District Development and Panchayat Officer, Ferozepur. The said officer conducted the inquiry and sent his inquiry report with the submission that a regular inquiry be conducted against the petitioner. Divisional Deputy Director respondent No. 2 was directed by the Joint Director to conduct a regular enquiry and he after completing the inquiry submitted his inquiry report to the Joint Director, on the basis of charges proved during the inquiry. Show cause notice was served on the petitioner who sent a reply dated 11th February, 1985 but the same was found to be unsatisfactory. The case was then sent to the Divisional Deputy Director, Rural Development and Panchayats for disposal under section 102(1) and (2) of the Act.

Three charges were held to have been established against the petitioner and the same are as under :—

- “(i) That he being a panch, took shamilat land on lease for the year 1981-82 and the lease money was outstanding against him.
- (ii) That being a lessee of Shamilat land he contested Panchayet Election during September, 1983 and lease money of Rs. 10,00 was still outstanding against him, thereby violated the provisions of Section 6(5)(f) of the Punjab Gram Panchayat Act.
- (iii) That during the earlier tenure of Sarpanch (1975—78) paid Rs. 175 to his wife Smt. Jagdeep Kaur as care-taker of the T.V. set whereas no payment was required to be made,—*vide* resolution of Gram Panchayat dated 9th January, 1978 Public Relations Department was to pay Rs. 25 per month.”

(17) Charge No. 1 was proved against the petitioner as he was held to be a lessee. It was further found that there was no entry of lease amount of Rs. 110 for the year 1983-84 in any record and the petitioner had, therefore, not deposited the lease money even after being elected as Sarpanch in September 1983. It was also held that the petitioner caused benefits to his wife by paying Rs. 175 for taking care of T.V. set at the rate of Rs. 25 per month while according to the rules no member of panchayat or Sarpanch or any of his near relatives such as brother, father, grand-father, wife's brother wife's father, son, son-in-law can become an employee of Gram Panchayat. In the order Annexure P-4/A, it is mentioned that it was not in the public interest that the Sarpanch petitioner should continue in this office and, therefore,—*vide* this order the petitioner was removed from the office of Sarpanchship and debarred to contest election for a period of five years.

(18) The petitioner filed an appeal before the State Government which was heard by Joint Secretary and was decided,—*vide* Annexure P.5. Allegation against the petitioner *qua* the lease of land was held to be not proved as the matter was highly of suspicious nature. The Joint Secretary observed as under :—

“After having seen the record of this case, it appears that the chances of interpolations having been made in the record

in respect of Receipt No. 52 are even so far as both the appellant and the previous Sarpanch Har Nirmal Singh, are concerned.”

So far as charge of interpolation was concerned it was held to be proved against the petitioner as also the charge for benefit of Rs. 175 to the wife of the appellant but this charge would not enta removal. Therefore, a sum of Rs. 175 was directed to be recovered from the petitioner. On charge No. 2 disqualification for taking part in election for five years was held as not called for. Regarding interpolations the finding is not definite. The Joint Secretary has used the words ‘in all probability the interpolations took place when the record was in the custody of the appellant and the then Panchayat Secretary’ and the same do not indicate that this finding was affirmed. At the most there was a probability of the record to be in custody of the petitioner and as against this the same probability was against the Secretary for being in custody of the records. We fail to understand how the responsibility can be fixed on either of the two unless it is definitely found that one or the other was in the custody of the record when this interpolation took place.

(19) In view of this discussion, we accept this writ petition on merits and quash the orders copies of which are Annexure P.4/A and P.5. **No costs.**

R.N.R.