

the appeal in the court of Additional District Judge and Smt. Suraj Kaur and Harminder Singh, her sister's son had made applications for bringing them on record as legal representatives of the deceased. The application of Smt. Suraj Kaur was dismissed and that of Harminder Singh was accepted. Smt. Suraj Kaur came up in revision against the order of the Additional District Judge and prayed for stay of further proceedings before the Additional District Judge. This Court granted a stay. The stay order was communicated to the appellant court. In spite of the communication of the stay order, the Additional District Judge decided the appeal. The revision petition was ultimately accepted by the Court. In the aforesaid circumstances, the Court ordered that the appeal be decided afresh. A perusal of the facts shows that the observations were made by the learned Judge in a different context. This judgment is, therefore, of no assistance to the petitioner.

(7) For the aforesaid reasons, the revision petition fails and the same is dismissed with costs. Costs Rs. 150/-.

N.K.S.

FULL BENCH

*Before Prem Chand Jain, D. S. Tewatia and Harbans Lal, JJ.*

KASHMIRI LAL,—*Petitioner.*

*versus*

DEPUTY COMMISSIONER, SONEPAT, and others,—*Respondents.*

*Civil Writ No. 94 of 1979.*

January, 14, 1980.

*Punjab Gram Panchayat Act (IV of 1953) as amended by Punjab Gram Panchayat (Haryana Amendment) Act III of 1976—Section 102(1) and (1-A)—Order suspending a Panch under section 102(1)—Opportunity of hearing before passing such order—Whether should be afforded to the Panch.*

*Held, that in the case of an order of suspension under section 102(1) of the Punjab Gram Panchayat Act 1952 as amended in Haryana, the suspension would be almost by way of punishment for at that stage when a panch is sought to be suspended his removal is not under contemplation—There is merely a registration of a case*

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or an enquiry or trial into criminal allegations made in the complaint or in the police report. The removal of a Panch or Sarpanch is contemplated when, *inter-alia*, actual order convicting him of an offence of the kind envisaged in clauses (b) and (c) of sub-section (5) of section 6 of the Act is passed against him by the criminal court. In the wake of an order of conviction by a criminal court against a panch or sarpanch enquiry proceedings are initiated against him with a view to remove him and then an order of suspension is passed under the amended sub-section (1-A) of section 102 of the Act. In such a situation, the order suspending the Panch or Sarpanch would be a routine order—The offence having already been found established by a competent criminal court. Such would not be the position where a Panch or Sarpanch is sought to be suspended on the threshold of a mere registration of a case against him. There, the order would not be the routine one, for in that case firstly, it would have to be determined by the official concerned as to whether the facts asserted in the complaint constitute the offence with which he is charged and secondly, whether the offence is one which involves moral turpitude or reflects upon the character of the concerned Panch or Sarpanch or charge made or criminal proceedings taken against him would be likely to embarrass him in the discharge of his duties as Panch or Sarpanch. In a case like this, he shall have to apply his mind and give one or the other objective reason for coming to the conclusion that an order of suspension against the Panch or Sarpanch is necessary. Thus, before an order of suspension can be passed against a Panch or Sarpanch under the amended section 102(1) of the Act, an opportunity of hearing or notice has to be afforded to the said Panch or Sarpanch.

(Paras 6 and 7).

*Petition under Articles 226 & 227 of the Constitution of India praying that the following reliefs be granted :—*

- (i) *a writ in the nature of a writ of certiorari be issued calling for the records of Respondent No. 1 relating to the order Annexure 'P-4' and after a perusal of the same the impugned order be quashed;*
- (ii) *any other suitable writ direction order that this Hon'ble Court deems fit in the circumstances of the case be issued;*
- (iii) *an ad interim order be issued staying the operation of the order Annexure 'P-4' till the decision of the writ petition and*
- (iv) *costs of the petition be allowed to the petitioner.*

R. S. Mittal Advocate, with N. K. Khosla Advocate.

Bhoop Singh Additional A.G. (H).

K. S. Kundu, Advocate.

## JUDGMENT

*D. S. Tewatia, J., (Oral).*

(1) Whether a Panch or Sarpanch is entitled to an opportunity of hearing before an order is passed by the authority in question suspending him under section 102(1) of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act) as amended by the Haryana State Legislature, is the significant question that falls for consideration in the two writ petitions Nos. 94 and 422 of 1979-Civil Writ No. 422 of 1979 was ordered to be listed alongwith Civil Writ No. 94 of 1979 and Civil Writ No. 94 of 1979 was admitted to Full Bench by the motion Bench as the ratio of the Division Bench of this Court reported in *Suresh Chand and others v. Director of Panchayats, Haryana and others*, (1) which had held that a Panch or Sarpanch before being suspended under section 102(1) of the Act by the authority competent to suspend him is entitled to a notice, came to be doubted in view of the Full Bench decision of this Court reported in *Gurcharan Singh v. State of Haryana and others* (2).

2. The Full Bench in *Gurcharan Singh's case* was considering the requirement of section 27(1-A) of the Punjab Co-operative Societies Act (25 of 1961) inserted by Haryana Act No. 22 of 1972, which alongwith the main provision of section 27(1) of the said Act, is reproduced below:—

“27(1) If in the opinion of the Registrar a committee or any member thereof persistently makes default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws or commits any acts which is prejudicial to the interests of the Society or its members, the Registrar may after giving the committee or members as the case may be, an opportunity to state its or his objections, if any, by order in writing:—

- (a) order fresh election to the committee; or
- (ii) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified in the order which period may, at the discretion of the Registrar be extended from time to time, so,

(1)1979 P.L.J. 116.

(2) 1978 P.L.J. 403.

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however, that the aggregate period does not exceed five years;

(b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to the provisions of this Act, the rules and the bye-laws.

(1-A) Where the Registrar while proceeding to take action under sub-section (1), is of the opinion that suspension of the committee or member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the committee or member, as the case may be, and where the committee is suspended, make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed:

Provided if the committee or member so suspended is not removed, it or he shall be reinstated and the period of suspension shall count towards its or his term."

3. The abovesaid provisions were considered analogous to the old provision of section 102(1) of the Act by the Full Bench in *Gurcharan Singh's case* (supra) and, therefore, the interpretation put on these provisions by this Court in various Single and Division Bench decisions was approved and it was held that where the suspension order was passed under section 27(1-A) of the Co-operative Societies Act, no opportunity of hearing in law was contemplated. In this regard, the following observations of the Full Bench in *Gurcharan Singh's case* would be instructive:

"Apart from principle and rationale, there appears also to be a plethora of authority within this Court on an analogous provisions. Section 102(1) of the Punjab Gram Panchayat Act similarly vests a power of suspension of a Panch, in the Deputy Commissioner during the course of an enquiry instituted against him for his removal. That the provisions are of a similar nature appears to be manifest. In interpreting the said provisions, a Division Bench of this Court in *Rajinder Singh v. The Director of Panchayats, Punjab*, (3), had occasion to observe that the said section did not

talk of giving any notice before passing the order of suspension and did not choose to read any principle of natural justice therein. Similar observations were made by Shamsher Bahadur, J. in *Ratti Ram v. The Deputy Commissioner, Patiala*, (4), Koshal, J. (as the learned Chief Justice then was) in *Gurdial Singh v. The State of Punjab and others*, (5), similarly had an occasion to construe section 102(1) of the Gram Panchayat Act and held that no notice or opportunity before passing an order of suspension against a Panch was required by the statute.....”.

4. The proposition canvassed before us is that the Full Bench in *Gurcharan Singh's case* had approved the earlier decisions of this Court (Single Bench and Division Bench) rendered while interpreting old section 102(1) of the Act, holding that a Panch or Sarpanch being suspended under the said sub-section had no right of hearing prior to the passing of order of suspension and since, in substance, there is no point of distinction either between old section 102(1) of the Act and the amended section 102(1) of the Act or for that matter between amended sub-section (1) and sub-section (1-A) of section 102 of the Act, the latter being in *pari materia* with the old section 102(1) of the Act. So the Division Bench decision in *Suresh Chand and others' case* runs counter to the Full Bench decision.

5. In our opinion, there is no apparent or latent conflict between what the Full Bench in *Gurcharan Singh's case* (supra) has pronounced and the view enunciated by the Division Bench in *Suresh Chand and others' case* (supra), for the view expressed by the Division Bench in regard to the said sub-section (1-A) of section 102 of the Act, which is in *pari materia* with old sub-section (1) of section 102 of the Act, is in line with the consistent decisions rendered by this Court while interpreting old sub-section (1) of section 102 of the Act which had been approved by the Full Bench in *Gurcharan Singh's case*. This can be best driven home by taking notice of the observations of the Division Bench and the reasons given for its conclusion, but before doing so, let us, for the sake of facility of reference, take note of the

(4) 1965 P.L.R. 529.

(5) 1971 P.L.J. 417.

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relevant provisions of the statute. Old section 102(1) is in the following words:—

“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.

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Amended sections 102(1) and (1-A) of the Act are in the following words:

“102(1) 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.

(1-A) The Director or the Deputy Commissioner may, during the course of an enquiry, suspend a Panch for any of the reasons for which he can be removed.

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In the case of *Suresh Chand and others* (supra), the Division Bench came to consider the relevance of hearing before order of suspension is passed under the amended section 102(1) of the Act in the wake of a submission that the petition was claimed to be barred on the ground of an alternative remedy against the order passed under the said provision being available under section 100(2) of the Act. Section 100(2) of the Act invests the Government with the power to call for and examine the record of any executive order made under the Act for the purpose of satisfying itself as to the legality or propriety of such order. The question arose as to whether the

order passed under the amended section 102(1) of the Act was or was not in the nature of an executive order. The Bench held that while an order passed under the amended sub-section (1-A) of section 102 of the Act would be an executive order, the one passed under the amended section 102(1) of the Act would be a quasi-judicial order and couched its reasoning in the following words, with which we are in entire concurrence:

“Section 100(2) will apply only if the order is of executive nature. Therefore, it becomes necessary to see whether an order, as is impugned in this case, is an executive or is quasi-judicial in nature. The suspension under section 102(1)(old) is equivalent to section 102 (1-A) (new) Section 102(1-A) has been newly added. Previously, there used to be a suspension of only one type as is apparent from section 102(1)(old) and that was during the course of enquiry. After the amendment, the suspension is now of two types: one is as provided in section 102(1) where a Panch can be suspended in respect of a criminal offence against him under investigation, enquiry or trial, if the charge made or the proceedings taken are likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character, and the other is during the course of enquiry. It is apparent from the language of section 102(old) and section 102(1-A) that the suspension during enquiry does not require notice to the Panch before suspension and this view has been pronounced in a number of judgments of this Court, out of which reference can be made to *Rajinder Singh v. The Director of Panchayats, Punjab, Chandigarh*, (supra), *Ratti Ram v. The Deputy Commissioner, Patiala* (supra) and *Gurdial Singh v. State of Punjab etc.* (supra). But, that is not the position in the case of suspension under section 102(1)(new). When an information is brought to the notice of the Director about the pendency of the investigation, enquiry or trial for a criminal offence against a Panch, the order is not to flow from that authority automatically. He is to apply his mind to the nature of the accusation and the charge and then satisfy himself whether it is of a type, which can embarrass the person accused of that charge in the discharge of his functions as a Panch or involves moral

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turpitude or defect of Character. All the criminal offences under investigation, enquiry or trial may not embarrass a Panch in the discharge of his duties or may not involve moral turpitude or defect of character. Take for example a charge under section 304-A, 323, 326, etc. of the Indian Penal Code. These may not cause any of the problems to any Panch as mentioned in section 102(1). These are not exhaustive and are given only for the purpose of illustration. An offence involving moral turpitude may possibly in each case cause embarrassment of the nature envisaged in Section 102(1)(new), but all the offences causing embarrassment may not involve moral turpitude. The authority has to analyse the material placed before it critically to arrive at a conclusion and all the three ingredients of section 102(1) have to be considered disjunctively. The Director has to satisfy himself that *prima facie* things exist, which may call for an action of suspension or may not call for such an action by him. He can arrive at this conclusion only if he applies his conscious mind and is satisfied objectively. If after such an application of mind he comes to a conclusion that there is no *prima facie* case for the suspension of the Panch, he may not suspend him. If, on the other hand, his objective satisfaction is to the effect that the nature of the offence under investigation, enquiry or trial is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character, then the word 'may' in section 102(1)(new) has the compulsive force of 'shall' and he has no option but to suspend the man complained against. The Director may act *suo motu* on learning things or on the information provided by some one. In some cases, the information supplied might be **self-contained and on its basis the Director may arrive at a positive conclusion.** Cases may not be wanting when the information may be incomplete and the Director may feel the necessity of a further probe into the matter, for which he may require the assistance of the complainant. In that case, he will have to hear the person supplying the information. That envisages the hearing of the complainant before the passing of the order of suspension. Such an application of the mind is not an attribute of executive



order. Such an 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 the manner discussed above, 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 Direction 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. A close study of section 102(1)(new) also gives an insight to the intention of the legislature in enacting this provision. So far as suspension is concerned, it existed in old section 102(1). If, such an application of mind was not required, then there was no necessity for enacting section 102(1) after amendment, in this language. The amendment has a purpose behind it, which is that the suspension in cases, where there is no enquiry, should not be automatic or mechanical. The Director should apply his mind and make an objective study of the accusation and then take a decision. When this is the position, the nature of the order of the Director acting under section 102(1)(new) and deciding in favour of suspension of a panch, after such an objective satisfaction, does not simply remain executive, but becomes quasi-judicial. The language of the statute calls upon the Director to act in this particular manner, which is quite distinct from the old provision re-enacted in the form of section 102(1-A).....”

6. As for the poser in regard to any material distinction between the two aforementioned provisions of old section 102(1) and the amended section 102(1) or for that matter the amended section 102(1-A) of the Act as to hold that in one case the order would be quasi-judicial requiring the authority concerned to afford an opportunity of hearing to the Panch or Sarpanch in question before ordering his suspension and in the other case treating the order as an executive order and spelling out no such requirement of affording an opportunity of hearing to the Panch or Sarpanch in question, it

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may be observed that in the former case order of suspension would be almost by way of punishment, for at that stage when he is sought to be suspended his removal is not under contemplation there is merely a registration of a case or an enquiry or trial into criminal allegations made in the complaint or in the police report. The removal of a Panch or Sarpanch is contemplated when, *inter-alia*, actual order convicting him of an offence of the kind envisaged in clauses (b) and (c) of sub-section (5) of section 6 of the Act is passed against him by the criminal Court. In the wake of an order of conviction by a criminal Court against a Panch or Sarpanch, enquiry proceedings are initiated against him with a view to remove him and then an order of suspension is passed under the amended sub-section (1-A) of section 102 of the Act. In such a situation, the order suspending the Panch or Sarpanch would be a routine order the offence having already been found established by a competent criminal Court. Such would not be the position where a Panch or Sarpanch is sought to be suspended at the threshold of a mere registration of a case against him. There, the order would not be the routine one, for in that case, firstly, it would have to be determined by the official concerned as to whether the facts asserted in the complaint constitute the offence with which he is charged and, secondly, whether the offence is one which involves moral turpitude or reflects upon the character of the concerned Panch or Sarpanch or charge made or criminal proceedings taken against him would be likely to embarrass him in the discharge of his duties as Panch or Sarpanch. In a case like this, he shall have to apply his mind and give one or the other objective reason for coming to the conclusion that an order of suspension against the Panch or Sarpanch is necessary.

7. We, therefore, approve the view taken by the Division Bench in *Suresh Chand and others'* case (supra) and hold that before an order of suspension can be passed against a Panch or Sarpanch under the amended section 102(1) of the Act, an opportunity of hearing or notice has to be afforded to the said Panch or Sarpanch. We, therefore, allow these two Writ Petitioners Nos. 94 and 422 of 1979.

8. Before parting with the judgment, we may observe that a perusal of the two impugned orders on facts suggest an utter in application of mind on the part of the official who passed the same.

The impugned order, annexure P. 4 in Civil Writ No. 94 of 1979, is in these words:—

“The inquiry of the complaint against Shri Kashmiri Lal, Sarpanch, Gram Panchayat, Butana Kundu, Block Mundlana, was got done through the Block Development and Panchayat Officer, Mundlana. The Block Development and Panchayat Officer has sent his report,—*vide* his letter No. 2159, dated 21st November, 1978 and on perusal of the same it has been found that the Sarpanch Shri Kashmiri Lal has molested a Balmiki woman of village Butana and against whom a case has been registered in Baroda Police Station,—*vide* F.I.R. No. 74, dated 6th October, 1978 under section 354/506 I.P.C. in which he (Sarpanch) has been stated to be an accused and the challan has been submitted to the Court. In this way Shri Kashmiri Lal Sarpanch, Gram Panchayat Butana Kundu, has brought bad name to his post and has proved himself to be characterless.

As Shri Kashmiri Lal is a Sarpanch of Gram Panchayat, Butana Kundu, therefore, I Vishnu Bhagwan, I.A.S., Deputy Commissioner, Sonapat, suspend Shri Kashmiri Lal Sarpanch, Gram Panchayat, Butana Kundu *under Section 102(1) of the Gram Panchayat Act, 1952, during the inquiry* and I prevent him from taking part in any proceedings of the Panchayat and order that the record of the Gram Panchayat, cash and other property which is with Shri Kashmiri Lal Sarpanch be given to the Social Education and Panchayat Officer, Mundlana at once.”

The impugned order, annexure P. 1 in Civil Writ No. 422 of 1979, reads as follows:—

“It has been reported by the Block Development and Panchayat Officer, Khol that a case under sections 353/186/332/382 and 34 I.P.C. and under sections 135/136 of the Representation of peoples Act, 1951, registered against Jaswant Singh Sarpanch, Peethrawas Block, Khol,—*vide* F.I.R. No. 62, dated 24th July, 1978, which is pending in the Court.

*In the above circumstances, it is not in public interest for Jaswant Singh to hold the office of Sarpanchship.*

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I, B. D. Dhallia, IAS, Deputy Commissioner, Mohindergarh, exercising the powers under section 102(1) of the Punjab Gram Panchayat Act, 1952, suspend Shri Jaswant Singh Sarpanch from the office of Sarpanch, Gram Panchayat Peethrawas and hereby order that Shri Jaswant Singh (under suspension) will not be entitled to take part in the proceedings and meetings of the Gram Panchayat during suspension. This order will take effect immediately."

A perusal of these orders would show that in one case (in Civil Writ No. 94 of 1979) the order is passed under section 102(1) of the Act using the expression 'during the inquiry' when, in fact, no order under section 102(1) of the Act can be passed 'during the inquiry', because the order that has to be passed during the enquiry is one under section 102(1-A) of the Act. An order of suspension under section 102(1) has to be passed on receiving information regarding the registration of a criminal case or pending of an enquiry or trial in a criminal case and not when an enquiry is contemplated against a Panch or Sarpanch for his removal, which is contemplated only if an order convicting the Panch or Sarpanch for the offence of the kind had already been passed by a criminal Court.

(8) In the other case (in Civil Writ No. 422 of 1979), the order is passed, on satisfaction of the official concerned, that it is 'in the public interest'. Section 102(1) of the Act does not warrant an order being passed for suspending Panch or Sarpanch 'in the Public interest'. Such an order can be passed only if the criminal case against the Panch or Sarpanch that is registered against him or pending trial is such which involves moral turpitude or defect of character or likely to cause embarrassment to the Panch or Sarpanch for performance of his duties as such.

9. In the circumstances, however, there will be no order as to costs.

Prem Chand Jain, J.—I agree.

Harbans Lal, J.—I agree.

N.K.S.