

Nusrat Ali Khan and others
v.
Tirlok Chand Sharma and others

In the approach as above, the two appeals are accepted, the judgment of the learned Single Judge is reversed, and the petition of respondent Tirlok Chand Sharma is dismissed, leaving the parties to their own costs.

PREM CHAND PANDIT, J.—I agree.

Mehar Singh, J.
Pandit, J.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

SARWAN SINGH AND OTHERS,—Petitioners

versus

THE ADDITIONAL DEPUTY COMMISSIONER, PATIALA AND ANOTHER,—Respondents

Civil Writ No. 2612 of 1965

1965
October 28th

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 102—powers under—Whether can be exercised by Additional Deputy Commissioner.

Held, that there are clear indications of the intention of the legislature that the authority given to the Deputy Commissioner under section 102 of the Punjab Gram Panchayat Act is to a specially designated person by virtue of his office and not to any person exercising the powers of a Deputy Commissioner. The word "Deputy Commissioner" is used in the section to designate only the particular Chief Officer of the district holding that office and not to include any other person who may be exercising the function of a Deputy Commissioner in a District. Hence, the powers exercisable by the Deputy Commissioner under the section cannot be exercised in any circumstances by the Additional Deputy Commissioner.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order dated the 30th September, 1965 of respondent No. 1.

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

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE GENERAL, with JAGMOHAN SETHI, ADVOCATE, for the Respondents.

ORDER

Narula, J. NARULA, J.—The only question which calls for decision in this writ petition is whether "Deputy Commissioner"

in section 102 of the Punjab Gram Panchayat Act, 4 of 1953, as amended by Punjab Act 11 of 1964 includes "Additional Deputy Commissioner" wherever such an officer is posted.

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Sarwan Singh, Sarpanch and Sunder Singh and Shrimati Bhagirathi, Panches of the Gram Panchayat of village Naraingarh, tehsil and district Patiala, were ordered by Shri L. D. Kataria, Additional Deputy Commissioner, Patiala, on 30th September, 1965 to be suspended and were purported to be debarred from taking part in any act and proceedings of the Gram Panchayat with effect from that day on the allegation that certain acts enumerated in the order said to have been performed by the petitioners were *mala fide* and had caused a lot of loss to the Panchayat and by performing those acts the petitioners were alleged to have misused their official position. The Additional Deputy Commissioner by his said order (copy annexure 'A' to the writ petition) held that an inquiry had been conducted through the District Development and Panchayat Officer, Patiala, which had revealed that certain irregularities had been committed by the petitioners in connection with an auction. The impugned order of the Additional Deputy Commissioner, dated 30th of September, 1965, referred to above purports to have been passed under section 102 of the Act. The said section reads as follows:—

"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—

(a) on any of the grounds mentioned in sub-section (5) of section 6;

(b) who refuses to act, or becomes incapable of acting, or is adjudged an insolvent;

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(c) who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat, or Adalti Panchayat, as the case may be;

(d) who, in the opinion of Government or of the officer to whom Government has delegated its powers of removal, has been guilty of misconduct in the discharge of his duties;

(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;

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

(i) to submit the judicial file of a case within two weeks of the receipt of the order of any Court to do so;

(ii) to supply a copy of the order of the Gram Panchayat in an administrative or judicial case decided by it, within two weeks from the receipt of a valid application therefor.

(3) A person who is removed under sub-section (2) may be disqualified for re-election for such period not exceeding five years as Government may fix."

Mr. Anand Mohan Suri, the learned counsel appearing for the petitioners, has urged that the powers vested by section 102 of the Act for suspending a Panch for any of the reasons for which he is liable to removal and for debarring a Panch from taking part in any act or proceedings of the Gram Panchayat is vested in the Deputy Commissioner of the District as a *persona designata* and that those powers are not exercisable by any person other than the Deputy Commissioner even though such other person

may also be authorised to exercise some or most of the functions of the Deputy Commissioner in the same district and may be designated as "Additional Deputy Commissioner."

In order to decide this point the scheme of the Act has first to be seen. A Panch or a Sarpanch is elected by a cumbersome procedure prescribed under the Act. A Panch is not a nominee of the Government and is not there on account of favour of any authority but is the duly elected representative of the electorate which he represents. The Legislature has vested far-reaching and drastic powers to suspend a Panch in the course of an inquiry only if it relates to a charge on which the Panch is ultimately liable to be removed under sub-section (2) of section 102 of the Act. The power of removal has been vested in the State Government which ranks as No. 1 in the hierarchy of officers under the Act. The various authorities under the Act are (i) the State Government, (ii) the Director of Panchayats and (iii) the District Magistrate or the Deputy Commissioner. Some powers under the Act are exercisable by the District Judge and by a Subordinate Judge of the 1st Class. The power vested in the Deputy Commissioner under section 102 of the Act to suspend a Panch before even an inquiry is held on which it is decided to remove him is indeed a very drastic power.

Section 95 of the Act provides for delegation of powers by various authorities named in the Act. It provides for delegation by the Government, by the Director of Panchayats, by the District Magistrate, by the District Judge, by the Collector and even by the Deputy Commissioner or the Sub-Divisional Officer. Sub-section (6) of section 95 gives the Deputy Commissioner authority to delegate any of his powers of control to an officer not below the rank of an Extra Assistant Commissioner or to a District Panchayat Officer. Originally, i.e., before April 22, 1964, section 102(1) of the Act authorised the Director of Panchayats to suspend a Panch. By section 6 of the Punjab Gram Panchayat (Amendment) Act, 1964, which received the assent of the Governor on April 22, 1964 (hereinafter referred to as the amending Act) the word "Deputy Commissioner" was substituted for the word "Director" in section 102(1) of the principal Act. By section 4(2) of the

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Amending Act, a proviso has been added to sub-section (6) of section 95 referred to above. As a result of the addition made by section 4(2) of the Amending Act relevant part of section 95(6) of the Principal Act as amended reads as follows:—

“(6) The Deputy Commissioner may delegate any of his powers of control to an officer not below the rank of an Extra Assistant Commissioner or to a District Panchayat Officer.

Provided that the power specified in section 102 shall not be delegated by the Deputy Commissioner.”

The above-mentioned express bar created by the Legislature to the delegation of the power exercisable under section 102(1) of the Act to any authority below the Deputy Commissioner himself is the clearest possible indication of the intention of the Legislature that the authority given to the Deputy Commissioner in that sub-section is to a specially designated person by virtue of his office and not to any person exercising the powers of a Deputy Commissioner.

“Deputy Commissioner” has been defined in section 2(14) of the Punjab General Clauses Act as follows:—

“Deputy Commissioner” shall mean the chief officer in charge of the general administration of a district.”

It looks to me beyond comprehension that it can be successfully argued that there can be two chief officers in charge of general administration of a district. The general administration of a district may be carried out by as many officers as may be necessary in the circumstances of any particular district but one and only one of them can be “the chief officer in charge of the general administration”. The very word “chief” denotes head, principal, highest, first or outstanding.

There can be only one chief officer in a particular set up. In *Guru Datt v. Sohan Singh and another* (1), a Division

Bench of this Court (Dua and Mahajan, JJ.) held in connection with the meaning of the word "Deputy Commissioner" in section 121 of the Punjab Panchayat Samitis and Zila Parishads Act, 3 of 1961, as follows:—

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"It has next been contended that the Additional Deputy Commissioner has been performing the functions of the Deputy Commissioner and, therefore, the orders passed by the former must be deemed to be orders passed by the latter. Here again, I am unable to sustain the argument. The Deputy Commissioner, in the case in hand, is, in my opinion, a *persona designata* and, therefore, it is the Deputy Commissioner alone who can as such perform the functions which the statute and the rules made thereunder confer on him."

In *Ajaib Singh v. Gurbachan Singh and others* (2) their Lordships of the Supreme Court held in connection with the distinction between a District Magistrate and Additional District Magistrate for the purposes of the Defence of India Act, 1962 as follows:—

"The next question is whether an Additional District Magistrate can be said to be of the same rank as the District Magistrate. We are clearly of the opinion that an Additional District Magistrate is below the rank of a District Magistrate and cannot be said to be of the same rank as the District Magistrate. We may in this connection refer to S. 10(2) of the Code which shows that an Additional District Magistrate need not necessarily be conferred with all the powers of the District Magistrate under the Code or any other law for the time being in force. He can be an Additional District Magistrate though he may be exercising only some of the powers of the District Magistrate. Clearly, therefore, an Additional District Magistrate must be an officer below the rank of the District Magistrate. Further sub-section (3) of S. 10 bears this out. That

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sub-section says that for certain purposes, the Additional District Magistrate shall be deemed to be subordinate to the District Magistrate. Therefore, even if the Additional District Magistrate is invested with all the powers of a District Magistrate under the Code or under any other law for the time being in force, he is still below the District Magistrate for certain purposes mentioned in S. 10(3) of the Code. Besides there is only one District Magistrate in a District and all other magistrates whether they be Magistrates first class or even Additional District Magistrates must obviously be below him in rank. As S. 3(2) (15) of the Act provides that the power of detention cannot be exercised by any officer below the rank of the District Magistrate, such power cannot be exercised by an Additional District Magistrate who is, in our opinion, an officer below the rank of a District Magistrate. The order of detention passed by Shri Lall Singh on June 30, 1964 when he was not the District Magistrate of Amritsar but only an Additional District Magistrate is not in accordance with the Act and Rules and must be set aside."

It is needless to multiply authorities in favour of the petitioner on this point. He has relied on a large number of cases including the Division Bench judgment of this Court in *Janak Dulari v. Narain Das* (3,) and the Supreme Court judgment on the basis of which the above case was decided to quote that in somewhat similar circumstances it has been consistently held that "District Judge" or "Court of District Judge" is not the same thing as "Additional District Judge" or "Court of Additional District Judge" as the definition of "District Court" or "District Judge" in the General Clauses Act shows that the Court of the District Judge is the principal Court of original jurisdiction and that in spite of the fact that there may be many officers in the district exercising the functions of a District Court, there can only be one principal Court of original jurisdiction in a district.

On the other hand, Mr. L. D. Kaushal, the learned Deputy Advocate General has referred to the judgment of

a Full Bench of the Madhya Pradesh High Court in *Ram Milan and another v. Bansi Lal Tej Singh and another* (4) wherein it was held in connection with the interpretation of section 13(3) of the C.P. and Berar Relief of Indebtedness Act, 24 of 1939, that the Deputy Commissioner acting under that provision of law could not be said to be a *persona designata* as section 13 of that Act conferred some powers on the Deputy Commissioner and other subordinate revenue officers and some on the Deputy Commissioner alone. The Full Bench of that Court held that the scheme of that Act showed that even while acting under section 13(3) of that Act a Deputy Commissioner merely acted as a revenue officer and there was nothing to show that he had to act otherwise than as such. The considerations, which prevailed with the Full Bench of the Madhya Pradesh High Court are wholly wanting in the instant case. The scope and the scheme of that Act is entirely different from that of the Act in hand. The learned Judges of the Madhya Pradesh High Court approved in that judgment a passage in an earlier judgment wherein it had been held as follows :—

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“The scheme of the section of the Relief of Indebtedness Act is to invest the Deputy Commissioner and other revenue officers with certain powers, but one such power, namely, the granting of the certificate, is vested only in the Deputy Commissioner. That, with all due respect, is not sufficient to make the Deputy Commissioner a *persona designata* any more than in any other Act where only the Deputy Commissioner is mentioned.

If the Deputy Commissioner acts qua revenue officer in sub-sections (1) and (2) and presumably again in sub-section (4) of the section in common with other revenue officers, it is difficult to see how he ceases to be a revenue officer only for purposes of the third sub-section where he exercises powers which are not thought fit to be conferred on other subordinate revenue officers”

(4) A.I.R. 1958 M.P. 203.

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It is significant to note that in the Punjab Act certain powers are vested in the Collector, others in the District Magistrate and still others in the Deputy Commissioner though it is a matter of common knowledge that very often all the three offices are held by the same officer in a district. This is also indicative of the intention that the word "Deputy Commissioner" was used in section 102(1) of the Act to designate only the particular Chief Officer of the district holding that office and not to include any other person who may be exercising the functions of a Deputy Commissioner in a district. Mr. Kaushal has then relied on a judgment of the Andhra Pradesh High Court in *Yeleswarapu Ramachandar Rao v. State of Madras (Now Andhra Pradesh) and another* (5), wherein it was held that the question whether a person is appointed as a *persona designata* or not depends on the intention to be gathered from the words and the nature of functions to be performed and objects and purposes of the relevant statute. So far as the judgment of the Andhra Pradesh High Court lays down the above preposition of law, it is unexceptionable. But the learned Judges of that Court held that the exercise of powers by a District Judge under section 16 of the Telegraph Act, 1885, were not exercised by him as a *persona designata* but as a Court and, therefore, the functions under that provision of law could be delegated by him to an Additional District Judge. It is needless to go further into the law decided in that judgment of the Andhra Pradesh High Court as it is nobody's case in this writ petition that the Deputy Commissioner had delegated his powers under section 102 (1) of the Act to the Additional Deputy Commissioner. In fact such delegation is expressly prohibited by the proviso to sub-section (6) of section 95 of the Act. The case of the respondents as disclosed in their written statement as also as pressed before me by the learned Deputy Advocate General is that the Additional Deputy Commissioner exercises all the powers of the Deputy Commissioner. I have already held above that this is a completely erroneous view of the legal position and that the scheme of the Act clearly indicates that the powers exercisable by the Deputy Commissioner under section 102(1) of the Gram Panchayat Act, 4 of 1953, as amended by Punjab Act 11 of 1964 are not exercisable in any circumstances by the Additional Deputy Commissioner.

(5) A.I.R. 1962 Andh. Prad. 58.

In this view of the matter the impugned order is wholly without jurisdiction as it has been passed to the detriment of the petitioners by a person not authorised by law to pass it. This writ petition has, therefore, to be granted on this short ground and the impugned order has to be set aside.

Mr. Anand Mohan Suri, the learned counsel for the petitioners then wanted to urge certain other contentions in support of the writ petition. In the view that I have taken of the first argument of the learned counsel referred to above, I do not consider it necessary to mention or deal with those points. It would be open to Mr. Suri to raise them if and when it becomes necessary to do so in other appropriate proceedings.

It is significant that in the instant case the petitioners made a written representation to the Additional Deputy Commissioner as soon as they received the impugned orders questioning his authority. A copy of that representation has been filed with this writ petition as annexure 'B' thereto. This is dated 5th October, 1965 and the petitioners had prayed in it for the cancellation of the impugned orders on the solitary ground that the Additional Deputy Commissioner had no authority to pass them. The respondents, however, insisted on claiming the orders to be within the jurisdiction of the Additional Deputy Commissioner.

In the above circumstances this writ petition is allowed and the impugned order of the Additional Deputy Commissioner dated 30th September, 1965 (copy annexure 'A' to the writ petition) purporting to suspend the petitioners as Sarpanch and Panches, respectively of the above-named Gram Panchayat and debarring them from taking part in any act and proceedings of the Gram Panchayat is hereby set aside and quashed. The petitioners will have their costs from the respondents. Counsel fee Rs. 200.

K.S.K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Prem Chand Pandit, JJ.
MUNICIPAL COMMITTEE, TARN TARAN,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1373 of 1965.

Industrial Disputes Act (XIV of 1947)—S. 10—Minimum wages fixed by Government not paid by employer to its employees for certain period—Whether creates an industrial dispute which

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