

Saktu Ram v, The State of Haryana and others (V. Ramaswami, J.)

petitioner was granted the relief in the light of the violation of the rules, more particularly rules 8 and 10, by the Haryana Public Service Commission. Otherwise the Court opined that "it is open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that though 55 per cent is the minimum qualifying marks in the interest of higher standards, they would not appoint anyone who has obtained less than 60 per cent marks." This is precisely what had happened in *Subhash Chander Marwaha's* case (supra). In that case, no violation of any rule was involved. In the instant cases also, as has already been indicated, no violation of any rule has been pointed out. What to talk of violation of any rule, the learned counsel for the petitioners has not even made a reference during the course of his arguments to any rule governing the service which concededly are there, i.e., Service Rules of the Haryana State Co-operative Land Development Bank Limited, known as Staff Service Rules.

(8) In the light of the discussion above, the answer to the question posed in the opening part of this judgment has obviously to be in the negative, and we hold that once an offer of appointment is withdrawn before its acceptance, no legal right comes to vest in the would-be-appointee which can be enforced through a writ of mandamus. These petitions, thus, are devoid of merit and are dismissed but with no order as to costs.

S.C.K.

FULL BENCH

Before V. Ramaswami, C.J., Ujagar Singh and G. R. Majithia, JJ.

SAKTU RAM,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 264 of 1986.

May 5, 1988.

Punjab Gram Panchayat Act (IV of 1953)—Section 102—Complaint against Sarpanch—Preliminary inquiry ordered—Suspension

of Sarpanch during the course of inquiry—Revocation of the order of suspension—Notice to complainant—Requirement of such notice.

Held, that the power of suspension being vested in the Director which could be exercised only on his own volition, the complainant does not come into the picture at all when the enquiry is initiated on the basis of a complaint. The complaint is an information to the Director. Even if there is a basis or ground for making an enquiry and if those grounds are found to be true, the accused-officer could be removed from office, it does not necessarily follow that the Director shall exercise his power of suspension pending an enquiry. He will have further to be satisfied that in his opinion suspension pending enquiry was necessary. The question of suspension is purely a discretion vested in the Director and nobody can be said to have a legal or vested right to get an order of suspension. If the complainant has no legal or vested right in the order made by the Director, there is no question of issuing any notice to him before revocation of the order of suspension. Both at the stage of making original order of suspension and at the stage of revocation of the order of suspension, no notice need be given to either the accused-officer at the first stage or the complainant at the second stage.

(Paras 3, 4 and 7).

This case was referred to Full Bench by a Division Bench consisting of Hon'ble the Chief Justice Mr. Prem Chand Jain and Hon'ble Mr. Justice Sukhdev Singh Kang dated 1st April, 1986, the question involved in the C.W.P. is whether the complainant has to be afforded an opportunity of hearing or not before revoking the suspension order.

Petition under Article 226/227 of the Constitution of India praying that the order of the Director of Panchayats, Haryana dated 14th August, 1985 (Annexure P. 2) and the order of the Commissioner dated 23rd December, 1985 (Annexure "P-4"), may kindly be quashed and the operation of the same be stayed till the disposal of the petition.

G. S. Sandhu, Advocate, for the Petitioner.

N. S. Pawar, Senior D.A.G. Haryana, for the Respondents.

M. L. Sarin, Senior Advocate, A. S. Grewal, Miss Jaishree Thakur and Miss Ritu Bahri, Advocates with him, for Respondent No. 3.

JUDGMENT

V. Ramaswami, CJ (Oral)

(1) This writ petition has been referred to for consideration by a Full Bench on the ground that there are two conflicting Division

Saktu Ram v, The State of Haryana and others (V. Ramaswami, J.)

Bench judgments reported in *Suresh Chand and others vs. Director of Panchayat, Haryana and others* (1) and *Ram Saroop vs. Director of Panchayat, Haryana and others* (2), on the question whether a complainant is to be afforded an opportunity of hearing before revoking an order of suspension made under section 102 of the Punjab Gram Panchayat Act, 1953 (the Act in short), as applicable to the State of Haryana. Before we go into the real question that has been referred to, we may notice a few facts which relate to the filing of the writ petition.

(2) The third respondent Mukh Ram is Sarpanch of Gram Panchayat, Kail, P.O. Jagadhri, District Ambala. On the ground that he has occupied unauthorisedly Gram Panchayat land, the petitioner made a complaint to the Director of Panchayats, Haryana, against the Sarpanch. A preliminary enquiry was conducted by the Deputy Director Panchayats, Haryana and in his preliminary report dated July 15, 1985, he held there were *prima facie* grounds for holding the Sarpanch guilty of some of the allegations and that a regular enquiry could be ordered. On July 19, 1985, accepting the report of the Deputy Director, the Director ordered an enquiry under section 102 of the Gram Act and appointed the Sub-Divisional Officer, Naraingarh as Enquiry Officer. On the same day, pending the enquiry, he suspended the third respondent on the ground that the charges against him are so serious in nature that if it is proved, he would be liable to be removed from the office of Sarpanch and that restraining him from participating in any proceedings of the Gram Panchayat till further order was necessary. Even before the enquiry had been completed, on August 14, 1985, the Director cancelled the order of suspension and reinstated the Sarpanch forthwith, without prejudice to the enquiry pending against him. Against this order of the Director dated August 14, 1985, the petitioner preferred the appeal before the Commissioner under section 102(5) of the Act. Though the Commissioner originally stayed the rescinding order of suspension pending the appeal, later on he dismissed the appeal itself and revoked the stay order holding that it was not necessary for the Director to have issued a notice to the petitioner before issuing the order of vacation of suspension. Thereafter, the petitioner filed this writ petition for quashing the order of revocation dated August 14, 1985, as confirmed by the order of the Commissioner in appeal on December 23, 1985, on various grounds.

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

(2) 1983 P.L.J. 350.

(3) One of the points raised by the petitioner in the writ petition was that notice should have been issued to him before the Director revoking the order of suspension. In this behalf, he relied upon a decision of a Division Bench of this Court reported in *Suresh Chand's case* (supra). Though this judgment is dated November 22, 1978, the Division Bench had not noticed an earlier Division Bench judgment dated February 1, 1977, taking a contrary view. That may be because that was not reported at that time. The earlier Division Bench decision dated February 1, 1977, has since been reported in *Ram Saroop's case* (supra). Before we consider that judgment and the authorities, it is necessary to refer to the relevant provisions in the Act, as applicable to the State of Haryana. Section 102, which is the relevant provision, reads as follows:—

"102. Suspension and removal of Panches: (1) The Director may suspend any Panch where a case against him in respect of any criminal offence 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.

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

(1-B) A Panch suspended under this section shall not take part in any act or proceedings of the Panchayat during the period of suspension and shall hand over the records, money or any other property of the Panchayat in his possession or under his control to the person authorised by the Panch commanding majority in the Panchayat.

(2) The Director may, after such enquiry as he may deem fit remove any Panch:—

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

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

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

Saktu Ram v, The State of Haryana and others (V. Ramaswami, J.)

(d) who in the opinion of the Director has been guilty of misconduct in the discharge of the duties during his past or present tenure.

(e) whose continuance in office is, in the opinion of the Director undesirable in the interests of the public.

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

(i) submit the judicial file of the 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 has been removed under clause (a) or (c) of sub-section (2) may be disqualified for re-election for such period not exceeding five years as the Director may fix.

(4) A person who has been removed under clause (b), (d) or (e) of sub-section (2) shall stand disqualified for re-election for a period of five years from the date of his removal and a person who was removed under any of the said clauses on or after the first day of September 1965 shall stand disqualified for re-election during such period after the commencement of the Punjab Gram Panchayat (Haryana Amendment) Act, 1971, which falls within a period of five years from the date.

(5) Any person aggrieved by any order 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."

Section 5(5) of the Act, referred to in clause (2) of section 102 relates to the disqualifications to stand for election or to continue to be Sarpanch or Panch. The present case of suspension originally made was one under section 102, clause (1A), which as extracted above,

shows that it related to the power of the Director and the Deputy Commissioner to suspend a Panch during the course of an enquiry. Under the General Clauses Act, if a power is vested in an authority to make an order, it also implies a power to revoke, modify or vary that order at any subsequent stage, unless there is a specific bar. It is not a case of the parties that the Director has no power or that there was any bar under any of the provisions for revoking the suspension order. Since the said provision refers to power being exercised during the course of enquiry, it could be exercised by him *suo motu* if on a preliminary enquiry held, the Director was of the view that there is a *prima facie* case for holding regular enquiry. It is not always necessary that there should be a complaint for starting an enquiry under sub-clause (2) of that section or for suspending the Sarpanch or Panch during the course of such an enquiry. Though normally when a complaint is received, a preliminary enquiry is made in order to decide whether a regular enquiry is to be ordered and during such regular enquiry if the Director is satisfied that the charges are such, if ultimately the Panch is found to be guilty, he may be liable to be removed, he can suspend the Panch pending the enquiry. That is, whether on the basis of a complaint or on the basis of a *suo motu* enquiry, the Director has to consider as to whether he shall have to suspend the Panch or Sarpanch pending the enquiry. The suspension will not automatically follow an order for enquiry. The Director will have to be satisfied about the need for preventing him from functioning and from not taking any part in the proceedings of the Panchayat under the Act during the enquiry. He will have to be satisfied on this question. It is his opinion which is the relevant factor. Of course the decision cannot be arbitrary, capricious or on extraneous considerations or *mala fide*. We are also not now concerned with the question as to the nature of the order. But what is relevant is that at that stage, he exercises his opinion and suspends the officer even without notice to the concerned officer. Suspension during the enquiry does not require notice to the Panch before suspension. It is now well-settled by a series of decisions of this Court that before an order of suspension is made, there was no need for issuing and notice to the Panch or the Sarpanch concerned,—*vide Rajinder Singh v. The Director of Panchayats, Punjab* (3), *Narpat Singh v. State of Haryana* (4) and the decision in *Suresh Chand's case* (*supra*) at page 122. We are referring to this aspect, because if an order of suspension is made

(3) 1963 P.L.R. 1085.

(4) 1985 P.L.J. 221.

Saktu Ram v, The State of Haryana and others (V. Ramaswami, J.)

without reference to Panch or Sarpanch against whom action is taken, whom we refer to as the accused-officer, there is no question of that order giving any vested in the Director which could be exercised only on his own volition, the complainant does not come into the picture at all when the enquiry is initiated on the basis of a complaint. The complaint is an information to the Director. Even if there is a basis or ground for making an enquiry and if those grounds are found to be true, the accused-officer could be removed from office, it does not necessarily follow that the Director shall exercise his power of suspension pending an enquiry. He will have further to be satisfied that in his opinion suspension pending enquiry was necessary and that the accused person shall not be permitted to take part in any of the proceedings of the Panchayat. The complainant cannot ask as of right to suspend the Panch pending the enquiry. When a suspension order is made it cannot also be treated as a relief granted to the complainant.

(4) The power of suspension provided in section 102(1) of the Act is pending investigation, enquiry or trial in respect of criminal offence against a Panch or a Sarpanch. In this case, two conditions will have to be satisfied for exercising the power of suspension; (1) investigation, enquiry or trial in respect of a criminal offence against the Panch or Sarpanch shall be pending and (2) in the opinion of the Director, the charge made or the proceedings taken against him is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character. While clause (1A) enables him to suspend "during the course of enquiry" which is not merely filing of a complaint, but something more, i.e. preliminary investigation and a finding that there is a *prima facie* case for holding a regular enquiry into the conduct under section 102(1) of the Act, if a criminal case is pending against him he can invoke his jurisdiction subject to the condition of his being satisfied that the offence involves moral turpitude or defect of character or the proceeding against is likely to embarrass him in the discharge of his duties. Even if the offence involves moral turpitude or defect of character or is likely to embarrass him in the discharge of his duties it is not obligatory on the part of the Director to suspend a Panch. In both these circumstances, therefore the question of suspension is purely a discretion vested in the Director and no body can be said to have a legal or vested right to get an order of suspension. If the petitioner has no legal or vested right in the order made by the Director, there is no question of issuing notice to him before revocation of the order of suspension.

(5) This was the view taken in the decision reported in *Ram Saroop's case (supra)*. In that case also, the writ petitioners questioned the order of the Director of Panchayats, Haryana, revoking the order of suspension of a Panch without notice to the complainant. The learned Judges observed:—

“Where information is given to the appropriate authority for taking action against a public servant and action is taken in pursuance of that information, we do not think that it is necessary to give an opportunity to the informant, if the authority concerned later wants to revoke its earlier order. The informant is no more than a mere informant and cannot be considered to be party to the lis or an aggrieved party, on that account alone so as to be heard before an order against the public servant is revoked.”

The analogy referred to in the next sentence after this passage may not be quite accurate but the view of the learned Judges on the question of notice is definite and not coloured by the analogy.

(6) In the other decision in *Suresh Chand's case (supra)* without noting the above judgment in *Ram Saroop's case (supra)* which was an earlier decision, though reported later on, another Division Bench has taken a contrary view. The passage which is relevant in this regard is at page 125 of the judgment which reads as follows:—

“There is yet another ground justifying the quashing of this order, that is, it was on the complaint of petitioner No. 1 that respondent No. 2 had come to the conclusion as recorded in Annexure P.2. When the respondent No. 1 was to differ with Annexure P. 2 so soon after its passing, the exigency of the situation and principles of natural justice and the principles laid down in *Mange Ram's case (supra)* required that petitioner No. 1 should have been heard against the proposed order. Order Annexure P. 3 is, therefore, quashed for the above reasons.....”

The decision referred to in *Mange Ram's case* is the one reported in *Mange Ram v. The State of Haryana (5)*. In that decision, while holding that a complaint has no *locus standi* to challenge the legality of an order suspending the operation of a previous order under which the Chairman of a Panchayat Samiti had been suspended, expressed the view that the Punjab Panchayat Samitis and Zila

Saktu Ram v, The State of Haryana and others (V. Ramaswami, J.)

Parishads Act, 1961, contains no provisions for revoking or modifying the order of suspension pending the result of enquiry. We are unable to agree with this view of the learned Judge because under the General Clauses Act, which we have referred to earlier, and which is not in dispute in this case, the Director has the power to revoke or modify the earlier order of suspension pending the result of enquiry. The learned counsel also referred to a decision in *The Gram Panchayat, Kamalpur v. The Deputy Commissioner, District Jind and others* (6). That was the decision of a Single Bench, but that was on the peculiar circumstances of the case where the Panchayat was pitted against the Sarpanch and there was an existing order of the competent authority against the Sarpanch for delivery of possession of the Panchayat land in his possession and for depositing certain money with the Panchayat which had not been complied with and which was the ground on which the suspension order was made. In the circumstances, learned Single Judge observed that the decision of reinstatement ought not to have been passed at the back of the Panchayat and without giving the Panchayat an opportunity to place material before the Deputy Commissioner on which his removal would be justified. In our opinion, the most reasonable and justifiable view is that expressed in Ram Saroop's case (supra).

(7) We may also refer to another decision of a Division Bench of this Court to which two of us (V. Ramaswami C.J and Ujagar Singh J) were a party and that is reported in *Nathu Ram v. S. N. Goyal and others* (7). In that case, pending an enquiry, the Sarpanch was suspended. The Enquiry Officer held that 8 of the 11 charges were proved and submitted the report to the Director. The Director sent the report to the Sarpanch asking for his explanation as to why the findings of the Enquiry Officer should not be accepted. The Sarpanch submitted his explanation. After consideration of the explanation of the Sarpanch, the Director held that all the 11 charges had not been proved and in that view, set aside order of suspension and reinstated him as Sarpanch. The complainant filed a writ petition, praying for quashing of this order of the Director. One of the submissions by the writ-petitioner which is relevant for our purpose was that the Director should have forwarded the enquiry report of the Enquiry Officer to the complainant also and should have asked for his explanation also before setting aside the earlier order of suspension. It was held that it was not necessary to issue any notice to the complainant, calling him to show cause as to

(6) 1968 P.L.R. 403.

(7) 1988(1) L.L.R. 517.

whether the report could be accepted and whether the reinstatement order could not be made and why the suspension could not be revoked. The Division Bench also held that no principles of natural justice have been violated by the Director in not giving a notice. This judgment even as a case of revocation or suspension after the enquiry was over, since the question for consideration was, whether any notice should be given before the revocation of the order, is irrelevant and, in our opinion, it makes no difference, as the stage of issuing an order will be relevant only for the purpose of considering, whether there was any material for revocation and not on the question, whether any notice at all shall be issued to the complainant, while dealing with the question, we shall have to keep apart the validity of the order on merits or other grounds such as malice etc. which are entirely different from the question, whether notice shall be given to the complainant before ordering the revocation. Even the complainant who had not been given notice, might have a right to question the order on the ground that there is no material for revocation or on the ground that the order is *mala fide*, but that is not to say that before ordering a revocation, notice shall be issued to the complainant. Both at the stage of making original order of suspension and at the stage of revocation of the order of suspension, no notice need be given to either the accused-officer at the first stage or the complainant at the second stage.

(8) In view of the foregoing circumstances, we are of the view that Suresh Chand's case (*supra*), insofar as it related to the question of notice or opportunity of hearing to be given to the complainant before revoking the order of suspension is wrongly decided and the correct view is that in the decision in Ram Saroop's case (*supra*). We answer the reference accordingly.

(9) When we wanted to refer the matter to the learned Single Judge for disposing of the case on merits on the other grounds relating to the legality of the order the learned counsel for the respondents pointed out that investigation is already over and the Sarpanch has been found not guilty of the charges and, therefore, it may not be necessary to refer back the case to the learned Single Judge and that we might dismiss the writ petition. The learned counsel for the petitioner also did not argue the case on merits, in view of the findings of the enquiry.

The writ petition accordingly fails and is dismissed. However, there will be no order as to costs.

S.C.K.