

by the committee it is not otherwise a case in which the jurisdiction of this Court under Article 226 or 227 of the Constitution can be invoked *inter alia* for the reason that the rule for computing the time adopted by the Committee is not patently erroneous and has not resulted in any manifest injustice in consequence of its infringement. In the *Northern India Caterers'* case recently decided by the Full Bench, for similar reasons this Court declined to grant the relief under Article 226 though it was found that the notice given to the petitioner was short by one day.

I. M. Lall
v.
Gopal Singh
and others
Tek Chand, J.

For reasons stated above, both the petitions Civil Writ No. 495-D of 1962 and Civil Writ No. 496-D of 1962 fail and are dismissed, but there will be no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

RAJINDER SINGH,—Petitioner

versus

THE DIRECTOR OF PANCHAYATS, PUNJAB,
AND OTHERS,—Respondents.

Civil Writ No. 768 of 1962.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 102—Notice to Panch before suspension—Whether necessary to be given and by whom—Reason that Panch's continuance in office was considered undesirable in the interests of the public—Whether adequate for his suspension.

1963
March, 18th.

Held, that a plain reading of sub-section (1) of section 102 of the Punjab Gram Panchayat Act, 1952 shows that two things are necessary before an order of suspension can be passed (1) that there should be an enquiry pending against the Panch, and (2) that he can be suspended for

any of the reasons for which he can be removed. Those reasons are detailed in sub-section (2) of this very section. This section does not talk of giving any notice before passing the order of suspension and it is not necessary for the Director of Panchayats to give any notice to the Panch before suspending him.

Held, that the reason given by the Director that the petitioner's continuance in the office of Sarpanch was considered undesirable in the interests of the public is fully covered by sub-clause (e) of section 102 of the Act. It cannot, therefore, be said that the petitioner was being suspended for a reason for which he could not be removed.

Case referred by the Hon'ble Mr. Justice P. C. Pandit, on 3rd December, 1962, to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mahajan and Hon'ble Mr. Justice P. C. Pandit, on the 18th March, 1963.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated the 2nd June, 1962.

ANAND SWAROOP, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

ORDER

Pandit, J.

PANDIT, J.—This is a petition by Rajinder Singh, Sarpanch, under Article 226 of the Constitution for quashing the order dated 2nd June, 1962, passed by the Director of Panchayats, Punjab, respondent No. 1.

The petitioner was duly elected Sarpanch of the Gram Panchayat, Barapind, in district Jullundur. Besides him, there were eight other panches of this Gram Panchayat. On 12th April, 1962 the District Development and Panchayat Officer, Jullundur, respondent No. 3, served a notice, annexure A, requiring

him to show cause within a week as to why he should not be suspended under section 102(1) of the Punjab Gram Panchayat Act, 1952, (hereinafter referred to as the Act), on the basis of certain charges, which were mentioned in that notice. He sent his explanation, annexure B, which was considered by respondent No. 1, who passed the impugned order, annexure C, on 2nd June, 1962 under section 102(1) of the Act and suspended the petitioner from the membership of the Panchayat and debarred him from taking part in any act or proceeding of the Panchayat during the period of his suspension. It was stated in this order that:—

Rajinder Singh
v.
The Director of
Panchayats,
Punjab and
others
—
Pandit, J.

“During the course of an enquiry it has transpired that Shri Rajinder Singh Sarpanch of Gram Panchayat, Barapind, tehsil Phillaur, district Jullundur, is alleged to have abused his powers as under:—

- (1) that he issued a notice to Shri Didar Singh for removal of roof over a street which was not warranted and beyond his power;
- (2) that he decided the said case on 18th June, 1961, against Shri Didar Singh without giving him proper opportunity for defence;
- (3) that he did not stay the proceedings in spite of the stay orders from the competent court;
- (4) that he manipulated and refused to give copies of the orders of the Panchayat; and
- (5) he abused and threatened Shrimati Banti, Lady Panch of his Panchayat, in a Panchayat meeting. His continuance in the office of Sarpanch is, therefore, considered undesirable in the interests of the public.”

Against this, the present writ petition was filed. It came up before me in the first instance and the learned

Rajinder Singh counsel for the petitioner raised the following four
 v.
 The Director of grounds:—

Panchayats,
 Punjab and
 others

—
 Pandit, J.

- (1) that, under the law, a notice by respondent No. 1 was necessary to be given to the petitioner before he could be suspended. In the present case, the notice, annexure A, had been issued by respondent No. 3, which he was not authorised to do and, consequently, all subsequent proceedings taken as a result of that notice were illegal;
- (2) that out of the charges mentioned in the order, annexure C, the first three were irrelevant for the purposes of section 102 of the Act and the fourth one was non-existent;
- (3) that out of all the charges even if one of them was bad in law, the whole order of suspension was illegal; and
- (4) that the impugned order was *mala fide*.

In support of ground No. (1), learned counsel for the petitioner relied on a Single Bench decision of Dua, J., in Civil Writ No. 1642 of 1960 (*Bijay Singh and another v. Punjab State*) decided on 10th November, 1961, in which it was held that such a notice was necessary before a Panch could be suspended by the Director under section 102(1) of the Act. On the other hand, the learned Additional Advocate-General had placed reliance on a Division Bench decision of this Court in Civil Writ No. 1595 of 1960 (*Sodagar Singh v. State of Punjab*) decided by Dulat, J., and myself on 19th April, 1962, in which, while interpreting the provisions of section 123 of the Pepsu Panchayat Raj

Act (Act No. 8 of 2008 Bk.), we held that while acting under that section, the Director merely performed an administrative function and there was no obligation on him to act in a judicial or *quasi-judicial* manner and he could, therefore, disqualify any person, who had been removed under sub-section (1) of this section for re-election for such period not exceeding five years. Learned counsel for the petitioner had submitted that the two provisions were not similar, firstly, because in Punjab Act No. 4 of 1953, the pendency of an enquiry against the Panch was necessary before the Director could suspend him, which was not the case in the Pepsu Act. Secondly, under the Pepsu Act, the Director was authorised both to remove and suspend any member, if in his opinion he had abused his position or had continuously failed to perform the duties imposed by or under that Act or any rule made thereunder or his continuance was undesirable in the interest of the public, whereas under the Punjab Act he could merely suspend and the power of removal was given to the Government and that also after such an enquiry as it might deem fit and on the grounds which were mentioned in sub-section (2) of section 102. According to the learned counsel for the petitioner, since the pendency of the enquiry against the Panch was a pre-requisite to the order of suspension, therefore, the principles of natural justice applied and notice had to be given to the petitioner to explain his position before passing the order of suspension. He, therefore, contended that, under the Act, this notice had to be given by the Director himself, because under section 95 (2) of the Act, the Director could not delegate any of his powers specified in section 102 of the Act. In the present case, the notice issued by respondent No. 3 was, consequently, of no effect. Since ground No. 1 raised an important question of law as to whether under section 102 of the Act any notice was necessary to be given to the Panch and, if so, by whom,

Rajinder Singh
v.
The Director of
Panchayats,
Punjab and
others

Pandit, J.

Rajinder Singh
 v.
 The Director of
 Panchayats,
 Punjab and
 others

 Pandit, J.

before the Director could suspend him for any of the reasons for which he could be removed by the Government under sub-section (2) of that section and it might affect a large number of cases, I directed that the papers be placed before my Lord the Chief Justice for necessary action as provided for in proviso (b) to clause (1) of Chapter 111-B of the Punjab High Court Rules and Orders, Volume V. That is how the matter has come before us.

Learned counsel for the petitioner has raised the following three contentions before us:—

- (1) that a notice by the Director himself was necessary before passing the order of suspension against his client. Since in the present case, the notice had been given by the District Development and Panchayat Officer, Jullundur, the order of suspension passed by the Director was bad in law;
- (2) that even if one of the grounds on which the order of suspension was based was irrelevant for the purposes of section 102 of the Act, the whole order of suspension was illegal. In the present case, out of the grounds mentioned in the order of suspension, the first three were irrelevant and the fourth one was non-existent; and
- (3) that the order of suspension was *mala fide*.

As regards the first contention, the question to be determined is whether the provisions of section 102(1) of the Act contemplate the giving of a notice before the order of suspension can be passed by the Director and; if so, by whom.

Section 102 of the Act is as under:—

“S. 102. (1) The Director 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.

Rajinder Singh
v.
The Director of
Panchayats,
Punjab and
others

Pandit, J.

- (2) Government may, after such enquiry as it may deem fit, remove any Panch—
- (a) on any of the grounds mentioned in subsection (5) of section 6;
 - (b) who refuses 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;
 - (d) who in the opinion of Government or of the officer to whom Government has delegated its power of removal, has been guilty of misconduct in the discharge of his duties; and
 - (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 the case within two weeks of the receipt of the order of any Court to do so; and

Rajinder Singh
 v.
 The Director of
 Panchayats,
 Punjab and
 others

 Pandit, J.

- (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 sub-section (2) may be disqualified for re-election for such period not exceeding five years as Government may fix."

A plain reading of sub-section (1) of this section shows that two things are necessary before an order of suspension can be passed (1) that there should be an enquiry pending against the Panch and (2) that he can be suspended for any of the reasons for which he can be removed. Those reasons are detailed in sub-section (2) of this very section. Thus, it would be seen that this sub-section does not talk of giving any notice before passing the order of suspension. Learned counsel for the petitioner placed his reliance on *Bijay Singh and another's case* for the proposition that a show-cause notice was necessary before a Panch could be suspended under section 102 (1) of the Act. In that case, the Sarpanch and the Panches had been suspended during the course of an enquiry and later on, as a result of the enquiry removed from their offices and disqualified for a period of three years for re-election to the Panchayat. All these orders were jointly challenged by them in that writ petition. The learned Judge, while disposing of the petition, was considering the provisions of sub-clauses (1) and (2) of section 102 together. There is no separate discussion or interpretation of the provisions of sub-section (1) of this section. Besides, in the Letters Patent appeal filed against that judgment, it appears the Full Bench of this Court has upheld that decision only on the ground that there had been no enquiry against the petitioners as contemplated by the statute. Moreover, in the present case, it is common ground that on 12th

April, 1962, the District Development and Panchayat Officer, respondent No. 3, had issued a notice (annexure 'A') to the petitioner asking him to show cause as to why he should not be suspended under section 102(1) of the Act on the grounds mentioned in that notice. To that, the petitioner had given his reply (annexure 'B'). After considering the same, the Director of Panchayats, respondent No. 1, passed the impugned order of suspension (annexure 'C'). There is, thus, no force in this contention.

Rajender Singh
v.
The Director of
Panchayats,
Punjab and
others
Pandit, J.

As regards the second contention, it is mentioned in the order of suspension, quoted above, that during the course of the enquiry it had transpired that the petitioner was alleged to have abused his powers on five grounds and, thus, his continuance in the office of Sarpanch was considered undesirable in the interests of the public. For that reason he was suspended under section 102(1) of the Act. As already mentioned above, the Director could, during the course of the enquiry, suspend him for any of the reasons for which he could be removed. The reason given by the Director that the petitioner's continuance in the office of Sarpanch was considered undesirable in the interests of the public is fully covered by sub-clause (e) of section 102 of the Act. It cannot, therefore, be said that the petitioner was being suspended for a reason for which he could not be removed. As regards the five grounds mentioned in the suspension order, on the basis of which the Director passed the impugned order, we have gone through them and we do not think that any one of them is irrelevant for the purposes of section 102 of the Act. As regards the argument that the fourth ground was non-existent, this matter cannot be gone into, because it is only after the enquiry is complete that the Director would come to a finding whether that ground had been established or not. The two rulings, namely, *Maharaj Kishan Khanna v. The State*

Rajender Singh of Punjab and others (1), and Rameshwar Dayal v. The Director of Gupta v. The Regional Transport Authority, Meerut Panchayats, Punjab and others

 Pandit, J.

(2), relied on by the learned counsel for the petitioner have no application to the facts of the present case, because in both of them the impugned orders were based on extraneous grounds as well. In the present case, all the grounds, as already mentioned above, are relevant for the purposes of section 102 of the Act and the question as to what would be the effect if any one or more of them had been extraneous to the provisions of the Act does not arise for decision in this case. There is, thus, no force in this contention also.

While arguing the third contention, learned counsel submitted that the petitioner, as a representative of the cultivators of village Barapind, had taken part in the anti-Betterment Levy agitation and was fined Rs. 200 and, therefore, the Ruling Party was inimical towards him. After his election as a Sarpanch, the Congress group in the village filed an election petition against him and in that petition made his conviction in the Anti-Betterment Levy agitation as one of the grounds for setting aside his election. Moreover, in the last General Elections, the petitioner had supported the independent candidate, Sardar Hari Singh in the Phillaur Constituency, as against Doctor Mulkh Raj, the Congress candidate, who was a close friend of Sardar Darbara Singh, Minister Incharge of the Panchayats Department. For all these reasons, the authorities were bent upon removing the petitioner from his elected office at the instigation of the Ruling Party. It was also submitted that even though several months had elapsed when the impugned order of suspension was passed on 2nd June, 1962, on further enquiry against the petitioner had proceeded, which showed that the order of suspension was *mala fide*.

(1) I.L.R. 1961 (2) Punj. 595—19 61 P.L.R. 593.

(2) A.I.R. 1958 All. 575.

In the return filed by the respondents, all the allegations made by the petitioner have been controverted. It has been stated that the petitioner was not a representative of the cultivators of village Barapind, but as a member of the Communist Party he had taken part on the Anti-Betterment Levy agitation. There was, however, absolutely no question of any enmity of the Ruling Party with him. The election petition against the petitioner was filed by one Shri Udham Singh who was not a member of the Congress Organisation. It was further stated that the respondents had no information about the alleged support given by the petitioner to Sardar Hari Singh against Doctor Mulkh Raj or about the alleged friendship of Doctor Mulkh Raj with Sardar Darbara Singh, the Community Development Minister. The action against the petitioner was being taken on the charges made in an open enquiry and there was absolutely no interference from any quarter. Under these circumstances, there is nothing on the record to substantiate the allegation of malice. As regards the contention that no further enquiry was conducted after the impugned order of suspension, this point cannot be gone into in the present proceedings, because we are only concerned with the validity of the order of suspension. In case, the petitioner has any grievance against what transpired after the impugned order, he can take recourse to an appropriate remedy available to him under the law.

Rajender Singh
v.
The Director of
Panchayats,
Punjab and
others
—
Pandit, J.

In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court.

D. K. MAHAJAN, J.—I agree.

Mahajan, J.

B.R.T.