

Gurdial Singh v. The State of Punjab (Koshal, J.)

object without stating as to what that pre-determined object was, and without saying what were the political considerations which were extraneous, the appellants cannot be held to have made out any case for scrutiny on this ground. The vague allegations referred to above have been denied by the respondents in the corresponding paragraphs of their return in the same vague manner. It has been stated that the order has been passed after fully considering the facts of the case and not as a matter of routine, and that the impugned order was not politically motivated. In this situation it is impossible to entertain and decide the question of *mala fides* in these appeals.

(31) In view of the findings recorded by me earlier, I would allow all these five appeals, reverse the decision of the learned Single Judge and grant the writ petitions of the appellants and quash the impugned order purporting to terminate their leases under section 6 of the Act, and restrain the respondents from taking any action against the appellants in pursuance of the order. Respondent No. 1 shall pay the costs incurred by the appellants in this Court including the costs incurred by them in the writ petition.

H. R. SODHI, J.—I agree:

K. S. K.

CIVIL MISCELLANEOUS.

Before A. D. Koshal, J

GURDIAL SINGH.—Petitioner.

versus,

THE STATE OF PUNJAB.—Respondent.

Civil Writ N . 2957 of 1970.

April 16, 1971.

Punjab Gram Panchayat Act (IV of 1953)—Section 102—Order of suspension of a Sarpanch—Whether should be passed after prior notice and opportunity of being heard afforded to such Sarpanch.

Held, that a bare perusal of section 102(1) of Punjab Gram Panchayat Act is enough to show that an order of suspension is in the nature of an interim order which does not finally determine the matter under enquiry but

is passed pending such enquiry. The suspension of a Sarpanch means the issuance of a tentative direction delinking him from the responsibilities of office so as to eliminate the chances of mal-administration on his part, pending the result of a regular enquiry against him, an enquiry in which he fully participates and during the course of which he is afforded a full opportunity to meet the charges levelled against him. If the enquiry terminates in his favour, the order of suspension does not operate to his prejudice. If on the other hand, the charges levelled against him are found proved, he becomes liable to the appropriate penalty, the order of suspension coming to a termination in that case too. Hence the suspension of a Sarpanch is not an administrative order of the type before passing which the authority concerned must act in consonance with the principles of natural justice which require prior notice to the party affected as also that he be given an opportunity to defend himself. (Paras 3, 4 and 6).

Petition under Articles 226/227 of the Constitution of India, praying that on appropriate writ, order or direction be issued quashing the order of respondent No. 4, dated 26th August, 1970, (Annexure 'A') and the proceedings of enquiry conducted by respondent No. 3 and further prohibit them from taking any further action in pursuance thereof and also directing that notwithstanding the aforesaid order, the petitioner will continue to hold the office of the Sarpanch.

D. S. NEHRA, ADVOCATE, for the petitioner.

O. P. HOSHIARPURI, ADVOCATE, FOR ADVOCATE-GENERAL (PUNJAB).

R. S. MONGIA, ADVOCATE, for respondent No. 5.

KULDIP SINGH, ADVOCATE, for respondent No. 8.

JUDGMENT

KOSHAL, J.—(1) This petition under Articles 226 and 227 of the Constitution of India seeking the issuance of a writ quashing the order (Annexure "A" to the petition) of the Deputy Commissioner, Ferozepore (respondent No. 4) which directed the suspension of the petitioner from the office of Sarpanch, Gram Panchayat, Baghapurana (hereinafter referred to as the Panchayat) has arisen in the following circumstances. The petitioner was elected Sarpanch of the Panchayat in January, 1961, and again in January, 1964. He was holding that office when in the year 1970 a complaint was made against him by Harbhajan Singh son of Nidhan Singh (respondent No. 8) alleging *inter alia* that the petitioner had been guilty of misappropriation of Panchayat funds and had otherwise abused his position as Sarpanch.

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ShriGopal Singh, Deputy Director of Panchayat, Punjab, Chandigarh (respondent No. 3) held a preliminary enquiry into the complaint during the course of which he visited Baghapurana on the 22nd of May, 1970, when he took into possession some of the books and registers maintained by the Panchayat. Another such visit was made by him on the 13th of July, 1970, whereafter he made a report to respondent No. 4 holding the allegations proved. Thereupon respondent No. 4 passed the impugned order, the operative part of which is quoted below :

“On complaint of Shri Harbhajan Singh, Chairman, Market Committee, Baghapurana against Shri Gurdial Singh, Sarpanch, Gram Panchayat, Baghapurana, the Deputy Director of Panchayats, Punjab has made an enquiry on the following allegations and found Shri Gurdial Singh, Sarpanch guilty of the charges levelled against him in the complaint.

- (i) That 6/7 years before the Panchayat Samiti has given amount for the purchase of refrigerator. But the Sarpanch has neither purchased for the last several years nor given to Veterinary Dispensary and has used the amount himself.
- (ii) That Sarpanch has never called Panchayat meeting.
- (iii) That Sarpanch has not deposited the Panchayat fund in the Bank and kept the amount with him.
- (iv) The Sarpanch auctions panchayat land measuring 18/20 acres himself and misappropriates the amount.
- (v) The Sarpanch has embezzled Rs. 65,000 being Chairman of Co-operative Society and released on bail after remaining 7/8 days in jail.
- (vi) The Sarpanch has installed electric motor in the land of his relative instead of panchayat land.

The continuance of the Sarpanch is not considered desirable in the public interest.

(2) In exercise of the powers conferred upon me under section 102(1) of the Punjab Gram Panchayat Act, 1952, I Amrik Singh Pooni, Deputy Commissioner, Ferozepore, therefore, suspend the said Shri Gurdial Singh, Sarpanch, Gram Panchayat, Baghapurana and debar him from taking part in any act or proceeding of the Panchayat during the period of suspension. He should hand over charge of money and property of the Gram Panchayat to the Panch to

whom the majority of the Panches of the Gram Panchayat authorise in this behalf within a week's time from the receipt of the suspension order."

(2) The impugned order was attacked in the petition on numerous grounds, only the following two of which have been urged by Mr. Nehra before me :

- (1) The impugned order inflicts a punishment on the petitioner who is thereby visited with "civil consequences". As the order was passed without holding an enquiry after notice to the petitioner, it disregards principles of natural justice and is, therefore, liable to be struck down.
- (2) Shri Tej Singh, Member, Legislative Assembly, Punjab (respondent No. 5) and Shri Gurcharan Singh, Member of Parliament (respondent No. 6) harboured deep feelings of animosity against the petitioner with whom they have had political rivalry for long. They brought pressure to bear on the Council of Ministers headed by Shri Parkash Singh Badal whose chances of survival as Chief Minister were then bleak and it was at their instance that respondents Nos. 3 and 4 acted to the detriment of the petitioner. The action covered by the impugned order is, therefore, *mala fide*.

(3) In support of ground (1) Mr. Nehra has relied on the following observations in *State of Orissa v. Dr. (miss) Binapani Dei and others*

(1) :

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an

(1) A.I.R. 1967 S.C. 1269.

enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matter involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

* * * * *

It is true that the order is administrative in character but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

In my opinion these observations have no application to the case of suspension of a person from the office of Sarpanch because no civil consequences directly flow from such a suspension which is intended to meet an emergency and constitutes action taken during the pendency of a regular enquiry which may or may not give rise to civil consequences. They were made in a case where an order regarding the date of birth of Dr. Binapani Dei, on which depended the date of her retirement from service, was passed by the Government without recording any evidence. Some preliminary enquiry was made by one Dr. S. Mitra, but the contents of his report were not disclosed to Dr. Binapani Dei who was required to show cause why the

4th of April, 1907, should not be accepted as her date of birth which she claimed to be the 10th of April, 1910. Now the order impugned in that case was clearly one which finally determined the question of Dr. Binapani Dei's date of birth to her prejudice thus entailing civil consequences for her. The case of suspension of a Sarpanch is of an entirely different nature, mean as it does, the issuance of a tentative direction delinking him from the responsibilities of office so as to eliminate the chances of mal-administration on his part, pending the result of a regular enquiry against him—an enquiry in which he fully participates and during the course of which he is afforded a full opportunity to meet the charges levelled against him. If the enquiry terminates in his favour, the order of suspension does not operate to his prejudice. If, on the other hand, the charges levelled against him are found proved, he becomes liable to the appropriate penalty, the order of suspension coming to a termination in that case too. This clearly follows from the provisions of sub-section (1) of section 102 of the Punjab Gram Panchayat Act (hereinafter referred to as the Act) which may with advantage be reproduced here:

“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 from taking part in any act and 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.”

(4) A bare perusal of these provisions is enough to show that an order of suspension is in the nature of an interim order which does not finally determine the matter under enquiry but is passed pending such enquiry. It is akin to the arrest and detention of a person accused of a criminal offence pending investigation into the charges against him and his trial therefor, or to an order of attachment before judgment in a civil case, or to one of appointment of a receiver in insolvency, or to one directing the issuance of a temporary injunction during the pendency of a civil suit in which a permanent injunction is prayed for. In the very nature of things such orders have to be and are passed only on the basis of the existence of a *prima facie* case (which not unoften depends on the subjective satisfaction of the Court concerned in pursuance of the

material placed before it by the party moving it) and not on the basis of findings finally determining the main dispute. The adoption of this course does not disregard any principle of natural justice. On the contrary it is intended to defeat the mischief which may result from the continuance of a pre-existing wrong during the course of a judicial or quasi-judicial proceeding which naturally takes time to conclude. To insist that an interim order of the type above indicated must itself be passed after a full opportunity has been afforded to the parties to substantiate their respective allegations would frustrate the very object of the order which cannot be construed as one entailing any civil consequences such as were envisaged by their Lordships while making the above quoted observations.

(5) It is not disputed before me that the enquiry held by respondent No. 3 was preliminary in nature, that his findings were merely intended to serve as the basis of the charges contained in the impugned order and that after the impugned order was passed, the petitioner was to be given a full opportunity to submit his reply to the charge-sheet and to adduce such evidence, in rebuttal of the allegations made and the evidence to be adduced against him in his presence, as he thought fit. The real enquiry, therefore, on the basis of which any action prejudicial to the petitioner was to be taken was to follow the impugned order and that was the type of enquiry in relation to which their Lordships made the above-quoted observations.

(6) In holding that an order of suspension of a Sarpanch is not an administrative order of the type before passing which the authority concerned must act in consonance with the principles of natural justice which require prior notice to the party affected as also that he be given an opportunity to defend himself, I am fortified by authority. *Rajinder Singh v. The Director of Panchayats, Punjab* (2), and *Ratti Ram v. The Deputy Commissioner, Patiala* (3), are rulings directly in point.

(7) The matter may also be looked upon from another angle. According to the provisions of section 102(1) of the Act, an order of

(2) 1963 P.L.R. 1085.

(3) 1965 P.L.R. 529.

suspension of a Sarpanch can be passed only during the course of an enquiry and then only for reasons for which he can be removed from office. If such an order cannot be passed without a quasi-judicial enquiry, the need for the enquiry pending which its passage is envisaged becomes non-existent. According to Mr. Nehra, it was incumbent on the Deputy Commissioner to hold a regular enquiry into the charges levelled against the petitioner for the purpose of determining whether an order of suspension was called for or not. If his point of view is correct, the same enquiry must be repeated, after the question of suspension has been resolved, in order to determine the desirability of removal of the petitioner from office. Such an interpretation of the provisions of sub-section (2) is obviously untenable.

(8) In view of what I have said above ground (1) must be repelled as meritless.

(9) Coming to ground (2) I am of the opinion that there is no merit therein either. It does appear that there was deep political rivalry between respondents Nos. 5 and 6 on the one hand and the petitioner on the other. It may also be that they had political influence with the Chief Minister. But then there is nothing to indicate that respondents Nos. 3 and 4 were not acting *bona fide* but were guided solely by "instructions from above". In any case the petitioner has utterly failed to show that there was no material at all available in support of the charges levelled against him, and unless he shows that, respondent No. 4 cannot be said to have gone out of his way to order a regular enquiry against the petitioner and to direct his suspension in the meantime. All that Mr. Nehra has urged in this connection is that charge (v) forming part of the impugned order had nothing to do with the duties of the petitioner as Sarpanch, that the order, therefore, embraces extraneous matter which could not form a ground for the suspension of the petitioner from the office of Sarpanch and that it indicates that the Deputy Commissioner was acting *mala fide*. The argument is without force in view of the provisions of clause (e) of sub-section (2) of section 102 of the Act which may be quoted here for facility of reference:

'102. (1) * * * * *

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(2) Government may, after such enquiry as it may deem fit, remove any Panch—

(a) * * * *
* * * .

(b) * * * *
* * * .

(c) * * * * *
* * * .

(d) * * * *

(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 :

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* * *.

(10) It will thus be seen that a misdemeanour which attracts the penalty of removal (and which, therefore, constitutes a ground for suspension pending enquiry) need not be one related to the duties of the concerned Sarpanch as such. On the other hand, any sort of misconduct which renders undesirable the continuance of a Sarpanch in office in the interests of the public could well form a ground for removal. For example, if a Sarpanch were to commit theft in the house of a neighbour or be guilty of perjury, the ground covered by clause (e) quoted above would be satisfied in his case even though the offence committed by him would have no direct bearing on the discharge of his official duties as a Sarpanch. In this view of the matter charge (v) constitutes as good a ground for the suspension of the petitioner from the office of Sarpanch as the other charges enumerated in the impugned order.

(11) For the reasons stated, no fault can be found with the impugned order. Accordingly the petition fails and is dismissed but with no order as to costs.