

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.23901 of 2015
Date of Decision.22.05.2017

Naranjan Singh

.....Petitioner

Vs

Joint Development Commissioner, Rural Development and Panchayat
Punjab and others

.....Respondents

2. CWP No.24881 of 2015

Gurvinder Singh @ Jagga

.....Petitioner

Vs

Joint Development Commissioner, Rural Development and Panchayat
Punjab and others

.....Respondents

Present: Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for the petitioner in CWP No.23901 of 2015.

Mr. Birinder Singh Khehar, Advocate
for the petitioner in CWP No.24881 of 2015.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. B.S. Bains, Advocate
for respondent Nos.5 to 7 in CWP No.23901 of 2015 and
for respondent Nos.8, 9 and 11 in CWP No.24881 of 2015.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

:-

AMIT RAWAL J.

This order of mine shall dispose of two writ petitions bearing
No.23901 of 2015 and 24881 of 2015. The facts of the case are being
enumerated from CWP No.23901 of 2015.

The petitioners are complainant and are aggrieved of the
impugned order dated 14.10.2015 (Annexure P-9) passed by the Joint
Commissioner, Rural Development-respondent No.1 whereby the private-

respondent Nos.5 to 7 had been reinstated despite the fact that FIR bearing No.226 dated 29.11.2014 under Sections 458, 447, 427, 458, 511, 506, 148 and 149 IPC read with Sections 25/27-54-59 Arms Act (Annexure P-1) and FIR No.5 dated 14.01.2015 under Sections 452, 341, 323, 201, 148, 149 IPC (Annexure P-2) registered at Police Station Dhuri, District Sangrur, are pending adjudication, with a further prayer of mandamus for staying the order dated 14.10.2015 (Annexure P-9).

Mr. Saggar, learned senior counsel appearing for the petitioner in CWP No.23901 of 2015 and Mr. Birinder Singh Khehar, Advocate appearing for the petitioner in CWP No.24881 of 2015 submitted that the petitioner gave a complaint to the Deputy Commissioner, Sangrur, which was forwarded to the Block Development and Panchayat Officer, that culminated into registration of FIR bearing No.226 dated 29.11.2014 *ibid* under Sections 458, 447, 427, 458, 511, 506, 148 and 149 IPC read with Sections 25/27-54-59 Arms Act, registered at Police Station Dhuri, District Sangrur against Harbans Singh, Sarpanch, Bhawar Singh, Member Panchayat and Harvinder Singh @ Nikka, Member Panchayat. They were summoned for 21.01.2015 but failed to appear, as they had been taken into custody. Resultantly, they appeared before the BDPO on 13.02.2015. On the aforementioned date, the BDPO was also apprised of registration of another FIR bearing No.5 dated 14.01.2015 registered under Sections 341/323/148/149 IPC (Section 452 IPC added later on) with Police Station Dhuri, District Sangrur.

The Block Development and Panchayat Officer forwarded the complaint and statement of Sarpanch and Panches to the District Development and Panchayat Officer vide letter dated 18.12.2014 and

recommended for action to be taken against them. The forwarding letter and the recommendation are annexed as Annexure P-4 and P-5 respectively. The District Development and Panchayat Officer after considering the allegations against the aforementioned persons and taking into consideration the pendency of the FIRs, gave the report to the Director, Rural Development and Panchayat on 16.03.2015 (Annexure P-6).

The Director, Rural Development and Panchayat while exercising the powers under Section 20(3) of the Punjab Panchayati Raj Act, 1994, suspended Harbans Singh, Sarpanch and other Panches vide order dated 12.08.2015 (Annexure P-7). The affected parties i.e. private respondents preferred appeal before the Commissioner-respondent No.1, who vide impugned order allowed the same. The aforementioned order impugned in the writ petition is not sustainable in the eyes of law as the order of respondent No.1 is bereft of the factum of registration of FIR bearing No.5. In fact, the Appellate Authority failed to take into consideration that only the challan dated 23.06.2015 in respect of FIR No.226 dated 29.11.2014 and challan dated 26.06.2015 in respect of FIR No.5 dated 14.01.2015 have been filed but charges have also been framed. In both the cases copies of charge sheet dated 19.09.2015 and 14.08.2015 are Annexures P-10 and P-11 respectively.

The Appellate Authority has further gravely erred in not noticing the fact that once the charges have been framed, the private respondents were not liable to be reinstated into service in view of the aforementioned provisions of the Act, for, sub-section 3 of Section 20 of the Act, enables the Director to suspend the Sarpanch or Panch where a case against any of the aforementioned parties in respect of any criminal offence

is under investigation or enquiry or trial, which is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character.

While reinstating respondent No.5 to 7, the Appellate Authority has not taken into consideration the fact that the Enquiry Officer as well as the Punishing Authority have taken into consideration the gravity of offence and registration of FIR will not enable them to discharge their duties of Sarpanch and Panches fairly, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. R.S. Bains, learned counsel appearing on behalf of the private respondents submits that the private respondents are victimized only due to political vendetta. The complaint was false and baseless. In fact, the answering respondents were elected Sarpanch and Panches of the village by the people in democratic set up, however, Niranjana Singh filed a complaint against the private respondents. He falsely alleged that the answering respondents are liable to be terminated from their posts. No opportunity was given to the answering respondents to present their defence. The report of the BDPO is false and biased. The provisions of sub-section 3 of Section 20 of the Act are not attracted.

In fact, some Trust had grabbed the precious shamlat land of Gram Panchayat, village Bararwal measuring 329 bighas 15 biswas belonging to the village. The same Trust in fact had no concern and title over the aforementioned land and the SDM, Malerkotla conducted an enquiry in this regard and gave report vide letter dated 30.03.2012 clearly mentioning that the Trust had no title. It is in this aspect of the matter, the petitioners have been involved in the aforementioned alleged offences. The allegation in the FIRs is that the answering respondents have trespassed in

the property belonging to the Trust whereas as per the facts mentioned in the enquiry report submitted by the SDM, Malkerkotla, the Trust is not the owner of the land, rather a trespasser itself, thus, here was no question of trespass and therefore, sections 447 and 458 of Indian Penal Code are not attracted. There was no intention of committing offence of intimidation and therefore, Section 506 and 511 IPC also not attributed. The FIRs have been registered in connivance with the local police. There are 13 accused in FIR bearing No.226 dated 29.11.2014 and 7 in FIR No.5 dated 14.01.2015 whereas the answering respondents are not the main accused nor there was any major attribution to them, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submissions of learned Senior Counsel appearing for the petitioner, for, no doubt provisions of Section 20 of the Punjab Panchayati Raj Act, 1994 do enable the Director to suspend any Sarpanch or Panch where a case in respect of any criminal offence is under investigation, enquiry or trial, likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character, but sub-section 1 of Section 20 also enables the Sarpanch and Panch to be removed on the grounds mentioned in Section 208 but none of the grounds envisage suspension on the basis of registration of FIR. Sections 20 and 208 of the Punjab Panchayati Raj Act, 1994 are reproduced as under:-

“20. Suspension and removal of Panch and Sarpanch (1) The Director may, after such enquiry as he may deem fit, remove any Sarpanch or Panch: -

(a) on any of the grounds mentioned In section 208.

(b) who refuses to act or becomes incapable of acting;

(c) who, being a Sarpanch, without reasonable cause, fails to hold meetings of the Gram Panchayat as required under sub-section (1) of section 16 for a period of two consecutive months;

(d) who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat,

(e) who during his present term of office or that immediately preceding it, has, in the opinion of the Director, been guilty of misconduct in the discharge of his duties; or

(f) whose continuance in office is undesirable in the interests of the public :

Provided that before the Director orders the removal of any Sarpanch or Panch under this sub-section, the reasons for the proposed removal shall be communicated to him and he shall be given an opportunity of tendering an explanation in writing.

Explanation: - The expression “misconduct” in clause (e) includes the failure of the Sarpanch or Panch without sufficient cause: -

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

(ii) to produce the Panchayat records on being required to do so by an officer of the Department of Rural Development and Panchayats not below the rank of Social Education and Panchayat Officer,-

(iii) to carry out the lawful orders of any competent authority or an Officer authorised by the State Government in this behalf; and

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

(2) A person, who has been removed under sub-section (1) may be disqualified for re-election for such period not exceeding five years from the date of his removal as the Director may fix.

(3) The Director may Suspend any Sarpanch or 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.

(4) The Director at any time, and the Deputy Commissioner or the District Development and Panchayat Officer during the course of an enquiry, may suspend a Sarpanch of Panch for any of the reasons for which he can be removed.

(5) A Sarpanch or Panch, suspended under this section shall not take part in any act or proceeding of the Gram Panchayat during the period of suspension and shall hand over the records, money and other property of the Gram Panchayat in his possession or under his control to the Panch as may be elected by the Panches from amongst panches in a meeting called by the Block Development, and Panchayat Officer for this purpose:

(6) Any person aggrieved by an order of removal or suspension passed under this section, may, within a period of thirty days from the date of communication of the order, prefer an appeal to the State Government.

208. Disqualification for Membership. *(1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if. –*

(a) he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State.

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) has been found guilty of any corrupt practice in any election of a Gram Panchayat, Panchayat Samiti or Zila Parishad;

(c) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a Sarpanch or Panch of Gram Panchayat or member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction, or

(d) has been convicted of an election offence, or

(e) has been ordered to give security for good behavior under section 110 of the Code of Criminal Procedure, 1973 , or

(f) has been notified as disqualified for appointment as public servant except on medical grounds ; or

(g) is a whole-time salaried employee of any local authority, Statutory, Corporation or Board or a Co-operative Society, registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government ; or

(h) is registered as a habitual offenders (Control and Reforms) Act, 1952 or any other law for the time being in force; or

(i) has not paid the arrears of tax imposed by a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be; or

(j) is a tenant or lessee or contractor or share-holder in any property of the Gram Panchayat, Panchayat Samiti and Zila Parishad, or

(k) is in unauthorised occupation of property belonging to any local authority; or

(l) being a Sarpanch has cash in hand exceeding the amount, permitted under the rules made-under this Act;

(m) is member of either House of Parliament or of the Legislature of the Punjab State:

Provided that a member of either House of the Parliament or Legislature of Punjab State may be elected as a Sarpanch or member of Gram Panchayat, Panchayat Samiti or Zila Parishad if, along with his nomination paper gives undertaking to the effect that he shall resign the

membership of either House of Parliament or of the Legislature of the Punjab State, as the case may be, and so resigns before taking the oath or making affirmation for taking over the office of Sarpanch of a Gram Panchayat or a member of any Gram Panchayat, the Panchayat Samiti and Zila Parishad;

(n) has been convicted of an offence under the protection of the Civil Rights Act, 1955 within a period of five years immediately preceding the last date of the filing of the nomination papers; or

(o) being a Sarpanch or Panch does not attach certificate with his nomination papers to the effect that he has handed over to the Block Development and Panchayat Officer complete charge of the record of the Gram Panchayat and of the cash, if any, with him.

It is deduced that Section 208 deals with disqualification for membership. On going through the aforementioned provisions, none of the provisions are attracted, entitling the member of the Panchayat i.e. Sarpanch or Panch to be disqualified. Neither the orders of authorities while suspending the private respondents reveal that it would embarrass any of the Panch or Sarpanch in the discharge of his duty or involves moral turpitude or defect of character, rightly so, the Appellate Authority while exercising the power vested in it, has set aside the order.

The order reinstating the private respondents is innocuous as no doubt the Appellate Authority formed an opinion that the challan had not been presented. Be that as it may be. Even if the challan has been presented, for the sake of repetition, none of the grounds as envisaged in sub-section 4 of Section 20 are attracted so that the petitioners remain suspended. The aforementioned view of mine is drawn from the ratio decidendi culled out from the judgment of Hon'ble Supreme Court in **Ajit Singh and another Vs. Financial Commissioner and Secretary to Government and another (2009) 16 SCC 308** where noticing the provisions of Haryana Panchayati Raj Act, which are para materia, the Hon'ble Supreme Court of India formed an opinion that none of the ingredients of

embarrassment in discharge of duty was attracted. Paragraphs 2 and 3 of the judgment reads as under:-

“2. The appellants were suspended from service as Sarpanch and Panch under the provisions of Section 51(1) (a) of the Haryana Panchayati Raj Act, 1994 by an order dated 30.11.2000 passed by the Deputy Commissioner, Mohindergarh. Section 51(1)(a) permits the suspension of a Sarpanch “where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director or Deputy Commissioner concerned 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.

The provision requires, as a precondition, the forming of the opinion that the charge made or proceeding taken against the Sarpanch or Panch is likely to embarrass him in the discharge of his duties or in involves mortal turpitude or defect of character. The order of the Deputy Commissioner, Mohindergarh records no such opinion.

3. The appellants preferred an appeal under Section 51(5) of the Act which was dismissed by the Financial Commissioner. The order seems to proceed upon the basis that the show cause notice which had been served upon the appellants before the passing of the impugned order contained the likelihood of embarrassment in the discharge of duties because of the registration of the criminal case against the appellants. It also seemed to proceed upon the basis that mere registration of a case against them was enough. The show-cause notice only required the appellants to explain why they should not be suspended. It was thereafter for the Deputy Commissioner to be satisfied that the appellants were likely to suffer embarrassment in discharge of their duties because of the registration of the criminal cases against them. The formation of that opinion, as stated above, is absent. That such an

averment was made in the show-cause notice is not enough.”

Even mere registration of FIR is no ground to suspend a Member of Panchayat Samiti as has been held by Division Bench of this Court in **Satnam Singh @ Kala Vs. State of Punjab and others 2003(3) RCR (Civil) 716.**

Resultantly, the orders under challenge, in my view, are not vitiated in law, much less, cannot be said to be falling within the purview of the judicial review. No ground for interference is made out. The writ petitions are, thus, dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No