

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-2202-2020 (O&M)
Date of decision : 14.01.2021

Amandeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Baldev Singh Sidhu, Advocate for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

ANIL KSHETARPAL, J.

The petitioner, who is an elected Sarpanch of the Gram Panchayat Uba Block, District Mansa, has invoked the extraordinary writ jurisdiction of the Court for issuance of a writ in the nature of certiorari for quashing the order dated 26.08.2019 passed by the Director which has upheld in appeal by the Financial Commissioner Rural Development and Panchayat, Punjab, Rural Development on 19.12.2019 while suspending him from the office of Sarpanch.

Question which requires consideration is “Whether the pendency or registration of FIR is itself sufficient to suspend an elected Sarpanch of the Gram Panchayat?”

Although, it has not been pleaded, however, it well known that the elections of the Gram Panchayat in the State of Punjab took place in December, 2018. The petitioner was elected as Sarpanch of the aforesaid Gram Panchayat. He has been placed under suspension on 26.08.2019 by the Director Rural Development and Panchayat Punjab on account of pendency of various FIRs.

Trigger came from registration of latest FIR No.19 dated 25.03.2019 under Sections 353, 186 of IPC. At this stage, it would be appropriate to extract the details of the various criminal cases given in para 3 of the writ petition, correctness whereof is not disputed by the State:-

<i>Sr. No.</i>	<i>Detail of case</i>	<i>State</i>
1	FIR No.26 dated 26.03.12 U/s 447, 427, 511, 148, 149 IPC, P.S. Talwandi Sabo	Under Investigation
2	FIR No.14 dated 06.02.13 U/s 307, 34 IPC 25, 54, 59 Arms Act, P.S. Sadar Mansa	Acquitted on 27.11.2015
3	FIR No.27 dated 02.04.15 U/s 498-A, 406 IPC, P.S. Sadar Mansa	Acquitted on 09.10.15
4	FIR No.55 dated 03.03.13 U/s 224, 225, 332, 352, 186, 395 IPC, 25 Arms Act, P.S. Bathinda	Acquitted
5	FIR No.05 dated 11.01.15, under Sections 307, 186, 148, 149 IPC, PS Cantt. Bathinda	Acquitted
6	FIR No.07 dated 18.01.15 Under Section 25 Arms Act, P.S. Cantt	Pending in the Court
7	FIR No.52 dated 16.04.15 Under Section 307, 323, 148, 149, P.S. Civil Line Bathinda	Pending in the Court
8	FIR No.25.03.2019, Under Section 353, 186 IPC, P.S. Joga, Mansa	Under Investigation

It is apparent that the petitioner stands acquitted in FIRs No.14, 27, 55 and 5. FIR Nos.26, 7 and 52. After the elections, the petitioner has been nominated as an accused in FIR No.19 dated 25.03.2019 under Sections 353, 186 of IPC.

Section 20 of the Punjab Panchayati Raj Act, 1994, enables the Director to suspend any Sarpanch or Panch, which is extracted 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; or
(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; or

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

(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 or 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.”

In the present case, the Director has invoked the power under Sub-Section 3. On careful reading thereof, it is apparent that the Director, before passing the order of suspension, is required to form opinion that the charge against the elected Sarpanch or Panch is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character. In other words, before the Director passes an order of suspending an elected

representative of the Gram Panchayat, it is obligatory for him to form an opinion about the aforesaid requirements.

In the present case, from the reading of the orders (Annexures P-1 and P-2), it is apparent that the Director did not form an opinion, how the petitioner is likely to face embarrassment while discharging the duties of an office of Sarpanch or how the registration of FIRs involves moral turpitude or defect of character. The Director has only recorded that it would not be in the public interest to keep the Sarpanch on the post. This is not a ground provided in the Act and hence, the impugned order is not in accordance with the statutory provision.

Still further, this aspect can be examined from another perspective. It may be noted here that the petitioner has already been acquitted in four criminal cases noticed in the information compiled in the tabulated form. FIR No.26 dated 26.03.2012 is pending for nearly 9 years. The case is still under investigation. The allegations are with regard to criminal trespass and damage to the property. One can safely assume that the Investigating Agency, as of now, could not find any material to nominate the petitioner as an accused. FIR No.52 dated 16.04.2015 and FIR No.7 dated 18.01.2015 are pending in the Court. These FIRs are relating to the alleged offence relating to the period before the elections took place. The petitioner was still elected by a huge margin. Now let's shift our focus to the latest FIR. On careful reading of FIR No.19, it is apparent that the petitioner, being Sarpanch of the Village, had informed the police about the fact that Sukhdev Singh @ Saabi has been thrashed by his children. Assistant Sub Inspector alongwith other police officials reached at the spot where the children of Sukhdev Singh @ Saabi had caught hold of their father. Allegations were that a lady had come to do some

work in the house and the children suspected illicit relationship between her and their father. The police wanted to take Sukhdev Singh with them without taking any action against the female. At that time, it is alleged that the petitioner alongwith the other Panches and certain other persons stopped the vehicle and misbehaved with the police party. Keeping in view the aforesaid facts, the FIR had been registered on the complaint made by the Assistant Sub Inspector. The case is under investigation.

As noted above, this is the only FIR, post the election of the Sarpanch.

It is apparent that the order of the Director fails to meet with the requirements of the statutory provision. Still further an elected representative cannot be kept under suspension for such a long time. As noticed above that the petitioner was suspended vide order dated 26.08.2019. More than one year and three months have elapsed. A Sarpanch is elected for a period of five years. In these circumstances, this Court is of the opinion that the orders passed by the Director, which has been affirmed by the Financial Commissioner, do not deserve to be sustained.

Hence, the orders dated 26.08.2019 and 19.12.2019 (Annexures P-1 and P-2) passed by the Director & the Financial Commissioner, Rural Development and Panchayat, Punjab are set aside and consequently, the writ petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

14.01.2021*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:-
Whether reportable:-****Yes/No
Yes/No**