

115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17336-2024 (O/M)
Date of decision : 23.08.2024

Vikas Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikas Mohan Gupta Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J.

1. Petitioner (Vikas Kumar) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for quashing the order dated 23.05.2024 (Annexure P-15), passed by respondent No. 2-Divisional Commissioner, Karnal Division, Karnal (in short 'Divisional Commissioner'), whereby the appeal filed by respondent No. 5 (Uday Singh) against his suspension order dated 05.01.2024 (Annexure P-13), passed by learned Deputy Commissioner, Kaithal (in short 'Deputy Commissioner'), was allowed and order dated 05.01.2024 was set aside and respondent No. 5 was reinstated.

2. Briefly, the panchayat elections were held in the State of Haryana in the month of December, 2022. The petitioner herein was elected as a Sarpanch of Gram Panchayat Ferozepur (Siwan), District

Kaithal. In the said elections, eight panchayat members were also elected, including respondent No. 5-Uday Singh.

2.1 According to the petitioner, upon formation of new panchayat, he called meeting of the gram panchayat being Sarpanch thereof by issuance of notice dated 19.01.2023 for the meeting scheduled for 31.01.2023. It is stated that six panchayat members including respondent No. 5 did not attend the meeting and since the coram was not complete, the meeting was adjourned. According to the petitioner, the notices for convening the meeting were sent through registered post as per the time frame provided under Haryana Panchayati Raj Act, 1994 (in short '1994 Act').

2.2 Similarly, according to the petitioner, the general meetings were again called for 09.02.2023, 17.02.2023, 25.02.2023 and 10.03.2023 and the notices were sent to all the panchayat members, however, six panchayat members (including respondent No. 5) refused to receive notices and also to attend meetings. Petitioner states that due to non completion of coram in the meetings, no proceedings could take place and the development works in the village have been adversely affected.

2.3 It appears that since the aforesaid six panchayat members did not attend five consecutive meetings, accordingly, respondent No. 4-Block Development and Panchayat Officer, Siwan, District Kaithal (in short 'BDPO'), called upon all the panchayat members to attend the meeting convened for 23.06.2023 and as per the proceedings of the meeting dated 23.06.2023 (Annexure P-7), various proposals put up in the meeting were not passed, whereupon the BDPO, vide his letter dated 11.07.2023 (Annexure P-8), wrote to the Deputy Commissioner,

Kaithal (in short 'Deputy Commissioner'), that the resolutions proposed in the meeting dated 23.06.2023 were not passed as five panchayat members showed their disagreement with these resolutions.

2.4 It further appears that the petitioner, being the Sarpanch represented to respondent No. 3-Deputy Commissioner to initiate action against panchayat members, who failed to attend five consecutive meetings, which calls for an action against them in terms of Section 51 of 1994 Act.

2.5 In view of the letter dated 11.07.2023 (Annexure P-8) and considering the representation made by the petitioner, the Deputy Commissioner, vide his letter dated 26.10.2023 (Annxeure P-10), asked the BDPO to conduct an inquiry and to submit a report if any action is to be initiated against the six panchayat members and also if an Administrator is to be appointed for the said Gram Panchayat. It appears that BDPO, vide his letter dated 04.11.2023 (Annexure P-11), submitted his report to the Deputy Commissioner recommending action against the six panchayat members, namely,

Sr. No.	Name	Ward No.
1.	Uday Singh, Panch	3
2.	Monika, Panch	6
3.	Ramesh, Panch	4
4.	Raghubir Singh, Panch	5
5.	Harpreet Kaur, Panch	7
6.	Suman Devi, Panch	8

2.6 Thereafter, the Deputy Commissioner issued show cause notices to the aforesaid six panchayat members (including respondent

No. 5 herein) vide order dated 05.01.2024 (Annexure P-13), passed by Deputy Commissioner (respondent No. 3), while exercising power under Section 51 (1) (b) of 1994 Act, suspended respondent No. 5.

2.7 Feeling aggrieved against the aforesaid order dated 05.01.2024 (Annexure P-13), respondent No. 5 herein filed an appeal before the Divisional Commissioner, who vide its order dated 23.05.2024 (Annexure P-15), set aside the suspension of respondent No. 5 and reinstated him, by observing as under :-

“ While arguing, counsel for the appellant contended that no notice(s) was sent to the appellant regarding meetings called by gram panchayat, Ferozepur for the dates 19.01.2023; 09.02.2023; 17.02.2023; 25.02.2023, whereas, as provided under rule 6 of The Haryana Panchayati Raj Rules, 1995 service of 03 (three) days' prior notice by the Sarpanch to the panchs through Chowkidar is mandatory and a copy of the notice is to be affixed/pasted in the panchayat office and notice as also agenda for meeting is to be sent by Gram Sachiv, which was not sent nor appellant ever received any notice nor any notice or agenda bears the signatures of the appellant nor appellant has ever refused to receive any notice. Appellant had received telephonic information regarding meet from Block Development and Panchayat Officer, Siwan to the effect that meeting of gram panchayat is to take place on 26.08.2023, as per rules, wherein, after receiving information, all panchs came present. The report sent by Block Development and Panchayat Officer, Siwan to Deputy Commissioner, Kaithal is not based on facts. Block Development and Panchayat Officer, Siwan had not called the appellant during inquiry and has sent the report without affording

an opportunity of hearing to the appellant, which is beyond facts and baseless and the same is not justified in the eyes of law. Compliance of the terms and conditions as provided under Section 13 of the Haryana Panchayati Raj Act, 1994 as also of Rule 6 of the Haryana Panchayati Raj Rules, 1995 has not been made nor proper inquiry has been made. Suspension of the appellant from the post of Panch made by the Deputy Commissioner, Kaithal relying upon the inquiry report of Block Development and Panchayat Officer Siwan is not justified. Appellant used to make active participation in social works and in future also, she will kept on participating in development works of the village. She will remain present in the meeting organized in respect of development works of the village. Counsel for the appellant further contended that while setting aside the order passed by Deputy Commissioner, Kaithal, appellant may be reinstated for the post of Panch.

During the course of argument, counsel for the respondent has contended that after formation of new Panchayat in Gram Panchayat, Ferozepur, a common meeting of gram panchayat with agenda was called by the gram panchayat for 19.01.2023, in which appellant had not come present. After that common meeting of Gram Panchayat, Ferozepur were called for 09.02.2023; 17.02.2023; 25.02.2023 and 10.03.2023, wherein appellant and 04 other panchs had not appeared, because of which proceeding for meting could not be accomplished. Since appellant and four other panch were not cooperating in development works of the village, therefore, intimation/complaint was made to Deputy Commissioner, Kaithal. Deputy Commissioner, Kaithal got conducted inquiry from

Block Development and Panchayat Officer, Siwan. On the basis of report of Block Development and Panchayat Officer, Siwan, Deputy Commissioner, Kaithal suspended the appellant from the post of Panch under Section 51 (1) (B) of the Haryana Panchayati Raj Act, 1994 with the observation that retaining her on the post of panch is not in the public interest. Appellant and other panchs had not attended the panchayat meetings deliberately and they have made violation of Section 51 of the Panchayati Raj Act, 1994. Notices were sent to appellant and other panchs calling upon them to attend the meeting through chowkidar, who had refused to receive the same. They had not attending 05 meetings even after service of notices. On dated 22.5.2023, a meeting was called by Block Development and Panchayat Officer, Siwan, which was attended by them. Order passed by the Deputy Commissioner, Kaithal does not suffer from any infirmity and keeping in view the public interest he has rightly suspended the appellant from the post of panch because of her non-participating in the meeting called for development works of the village. Appeal filed by the appellant is not forceful and thus, it may be dismissed.

After hearing the arguments advanced on behalf of both the parties and after perusal of the documents appeared on record, I have arrived at a conclusion that finding force in the contentions raised by the appellant in her appeal, the same is hereby accepted and order dated 05.01.2024 passed by Deputy Commissioner, Kaithal is hereby set aside. Because of suspension of Panchs of Gram Panchayat, Ferozepur, development works which are in the interest of village are being obstructed and thus, keeping in view the public interest

as also development of the village, while reinstating the appellant and other panchs, who have been suspended under this matter, they are being directed that they should ensure their participation in all the meetings called by Gram Panchayat Ferozpur in future.”

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Heard.

5. It is noticed at the outset that the petitioner has filed the present writ petition in his individual capacity.

6. On a pointed query to the learned counsel for petitioner as to which legal right of the petitioner has been infringed with the passing of the impugned order dated 23.05.2024 (Annexure P-15), ordering revocation of suspension order of respondent No. 5 and directing his reinstatement as panchayat member; the only answer forthcoming is that the action against respondent No. 5 and other panchayat members was initiated on the complaint of petitioner, therefore, he has the locus to challenge the order dated 23.05.2024 (Annexure P-15).

7. In ***Raghuwar Dayal v. the State of Haryana, C.W.P. 5409 of 1999 decided on 28.5.1999***, a Division Bench of this court, observed that the power of suspending an elected representative should not be exercised casually by the administrative authorities. Some of the observations made in that decision are apt to quote:-

"..Before concluding, we wish to emphasise that the executive authorities who are entrusted with the power to suspend or remove the elected representatives of the local bodies like Municipalities and Gram Panchayats must bear in mind that those who win the confidence and

trust of the people through the process of elections and occupy public positions are often made targets of vilification campaign by the opposite group(s). In a majority of cases, the allegations of commission of irregularities are made. If the power of suspension and/or removal of the elected representatives is exercised liberally in such cases, then the mandate of the people will be indirectly frustrated, a situation which will not be good for the health of the democracy at the grass root level. It will be doing greater harm than good to the institution of local bodies. Therefore, unless the allegations of financial irregularities or gross misconduct are found proved, the authorities concerned must exercise restraint and as and even in those cases in which it becomes imperative to exercise the power of suspension or removal, cogent reasons must not only be recorded but must be communicated to the affected person. In our considered view, the elected representatives cannot be treated worst than the government employees in whose cases the requirement of passing a reasoned order has been consistently insisted by the Courts in the last 40 years."

8. The Division Bench of Rajasthan High Court in the case of ***Surendra Kumar Garg and ors. v. The State of Rajasthan and Ors., RLW 2005(1) Raj. 478 (Law Finder Doc Id # 355901)***, while dealing with the question of locus standi of the complainant, held as under:-

"3. In this appeal, the appellant-petitioners have challenged the impugned order of the learned Single Judge dated August 26, 2003 on two grounds. Firstly, it was contended that the learned Single Judge has committed serious illegality and irregularity while dismissing the writ petition, without taking into consideration the provisions of Section 39 and 97 of the

Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act, 1994')- He also made an attempt to assail the impugned judgment with reference to Section 39 of the Act, 1994 and submitted that by virtue of the said provisions of the Act and in the facts and circumstances of the present case, the State Government has no jurisdiction to pass such impugned order and there is no reason to hold that the respondent No. 3 is not guilty. Secondly, it was contended that the appellants are office-bearers of the same Panchayat and, in the public interest, they have made a complaint against the respondent No. 3, Smt. Surta Devi, as they have locus standi to do so and know the consequences of the complaint. In the public interest, the State Government should take action against the respondent No. 3.

4. It may be mentioned that respondent No. 3 was served with the charge sheet vide memorandum dated 18th January, 2001 under Section 38 of the Act, 1994. She denied the charges and stated that the charge sheet is politically motivated. Thereafter, enquiry was conducted and the matter was referred to the Government with the recommendation of the Divisional Commissioner. The State Government has not accepted the recommendation of the Divisional Commissioner and the matter was ordered to be dropped by the State Government vide its letter No. F3/J/Janch/Jai/2002/2926 dated 29.6.2002.

5. Heard learned counsel for the parties at length.

6. So far as the ground of locus standi is concerned, it may be mentioned that once the complaint is made, the business of the complainant is over. He is no more person to make any interference as the complaint is the subject -matter of enquiry between the party concerned and the Government and no-one has a right to make an interference. The complainant is only an informer and

the business has been completed by the appellants, while making complaint against the respondent No. 3 and they have no interest left in the matter to get acquaintance with the further development of the proceedings. Apart from that, the State Government has always inherent jurisdiction to revoke its earlier order in view of the subsequent events taking place in the matter. In this connection, reference of Bharat Kumar v. The State of Rajasthan and Ors., 2000 (2) WLC (Raj.) 270, and Mahadev Prasad Yadav v. State of Rajasthan and Ors., RLR 1990 (1) P. 157 = (RLW 1990 (1) Raj. 529 may be made..."

9. The Hon'ble Supreme Court in **Ravi Yashwant Bhoir v. Collector, (2012) 4 SCC 407**, observed thus:-

"58. Shri Chintaman Raghunath Gharat, ex- President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria.

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal

*grievance which can be appreciated and not a statpro
ratione voluntas reasons i.e. a claim devoid of reasons...”*

10. In view of afore discussion, it must be held that role of the petitioner is merely that of an informer, who brought the act of commission or omission of the respondent No. 5- Member Panchayat to the notice of the State Government or its authorities. Even if the Government, acting on the complaint of the petitioner, had initiated proceedings against the respondent No. 5 for his removal and placed him under suspension, the petitioner could have no further role to play in the matter except perhaps as a witness in enquiry proceedings. Once the enquiry proceedings begin, it is a matter between the Government and the respondent No. 5. But the Petitioner cannot be considered as a necessary party in a legal proceeding where such member panchayat would challenge the order of his suspension nor would he have any locus standi in his personal capacity to challenge the decision of the Appellate Authority to revoke the order of suspension.

11. Even otherwise, the action against respondent No. 5 was taken for his absence in five consecutive general meetings of the Gram Panchayat in terms of Section 51 (3)(d) of 1994 Act. On the other hand, the stand of respondent No. 5 before the Appellate authority was that no three days prior notice was served upon him, as envisaged under Rule 6 of Haryana Panchayati Raj Rules, 1995 (in short '1995 Rules'), which reads as under :-

***“6. Time and place of meeting and conduct of
business of a Gram Panchayat. [Section 13].-(1) No
meeting of a Gram Panchayat shall be held unless a
notice of at least three clear days intimating the day,***

time and place of the meeting and the business to be transacted at the meeting, is given to the Panches and Sarpanch [through village Chowkidar]. Such notice shall also be pasted at the office of the Gram Panchayat :

Provided that in an emergency, for reasons to be stated in writing, meeting may be called by the Sarpanch at a shorter notice.

(2) For purposes of proviso to sub-section (1) of section 13, the concerned Block Development and Panchayat Officer shall be the prescribed authority.

(3) The notice and agenda of a meeting of the Gram Panchayat shall be sent by the Gram Sachiv concerned and he shall attend the meeting and if possible, make suggestions on items relating to development work.

(4) The names of the panches at each meeting shall be entered in the Proceeding Book of the Gram Panchayat. If a panch leaves the meeting before it is over, the fact shall be recorded in the proceedings at the stage at which he leaves the meeting.

(5) The proceedings of a meeting shall be recorded as each item is disposed by the Gram Panchayat. If a resolution has been passed unanimously the fact shall be so recorded. In other cases the names of the Sarpanch and Panches who vote for or against the resolution, shall be recorded against each resolution.

(6) The order of the business as laid down in clause (i) of sub-rule (10) of rule 5 may, as far as may be applicable, apply to the business to be transacted at a meeting of a Gram Panchayat.

(7) The proceeding of Gram Panchayat meeting shall be recorded in the Hindi, in the Proceedings Book maintained for this purpose. ”

12. During the course of the hearing before this Court, learned counsel for petitioner has not disputed the fact that out of five general meetings called by the Gram Panchayat, in one general meeting scheduled for 17.02.2023, which was called vide notice dated 14.02.2023, there was no three days prior notice to respondent No. 5. The said fact is clearly evident from Annexure P-3. Apparently, the aforesaid submissions found favour with the Appellate authority while setting aside the suspension order and ordering reinstatement of respondent No. 5.

12.1 Therefore, in peculiar facts and circumstances of this case, it cannot be said that respondent No. 5 remained absent in five consecutive general meetings of the Gram Panchayat as one of the meetings dated 17.02.2023 was not validly convened.

13. Keeping in view the aforementioned facts and circumstances, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

14. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

23.08.2024
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No