(1988) 07 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 5982 of 1988

Gurcharan Singh		APPELLANT
	Vs	
State of Punjab and others		RESPONDENT

Date of Decision: July 27, 1988

Acts Referred:

- Punjab Gram Panchayat Act, 1952 - Section 102(4)

Hon'ble Judges: M.M. Punchhi, J; Amarjeet Chaudhary, J

Bench: Division Bench

Advocate: H.S. Mattewal, with Mr. P.S Thiarra, for the Appellant; S.S. Saroan, AAG Punjab, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Punchhi and Amarjit Chowdhry, JJ.
A point of jurisdiction only has been raised in this writ petition.

2. The petitioner was an elected Sarpanch of the Gram Panchayat, Katoo, Block Barnala, District Sangrur. He attracted a complaint. After some preliminary enquiry, Shri Narinder Saroop, Joint Director, Panchayats, exercising the powers of the Director, Panchayats, delegated to him vide Punjab Government notification No. So. 19/PA-4/53/5-107/96 dated May 16, 1986, suspended the petitioner u/s 102(4) of the Punjab Gram Panchayat Act, 1952 (for short ''the Act''). The petitioner challenged the said order in this Court by means of CWP No. 752 of 1988. It was dismissed in limine by passing the following order:-

We have heard the learned counsel for the petitioner. It is not disputed by him that an appeal is maintainable against the said order u/s 102(6) of the Act before the State Government and that no appeal has been filed by the petitioner. It is contended by Mr. Dhillon that the State Government has delegated the powers to hear the appeals to the Director of Panchayats, whereas the impugned order has

been passed by the Joint Director as delegatee of the Director and, therefore, no useful purpose will be served if an appeal is filed, as the Director cannot hear an appeal against his own order. After giving our thoughtful consideration to the matter, we are of the view that the petitioner should avail of the remedy of the appeal before the Government If the powers of hearing the appeals have been delegated by the Government to the Director, we trust the appeal will not be heard and decided by him, but it will be heard and decided by some other competent authority.

With the above observations, the writ petition is dismissed in limine.

3. The petitioner filed an appeal before the State Government u/s 102(6) of the Act. This was dismissed by Shri P. Ram, IAS. Joint Secretary to Government Punjab, Department of Rural Development and Panchayats, exercising the powers of the government vide order dated May 25, 1988, Annexure P-4. The petitioner has approached this Court by means of this petition challenging the jurisdiction of the Joint Secretary in deciding the appeal.

4. Reliance has been placed by learned counsel for the petitioner on Nasib Singh v. State of Punjab 1979 P.L.J. 15, passed by a Division Bench of this Court consisting of D.S. Tewatia and K.S. Tiwana, JJ. to contend that an official who has the dual power of the government and that of the Director, Panchayats, cannot exercise the appellate powers against an order of the Joint Director passed as Director. The precedent, however, does not support the learned counsel. There the original order had been passed by the Deputy Divisional Director of Panchayats exercising the powers of the Director and the appeal u/s 102(6) of the Act had been disposed of by the Deputy Secretary, Development exercising the powers of the Director. In that situation, it was held by the Bench that an official of the coordinate rank could not exercise powers on behalf of the Government under sub-section (6) of section 102 of the Act while sitting in appeal on the order of the Director. This case is obviously distinguishable from the facts of the instant case.

5. It was also pressed into service that the said decision has been doubted in CWP No. 3583 of 1986 by a Division Bench consisting of D.S. Tewatia and M.R. Agnihotri, JJ and that this factor would also entitled the petitioner to have the writ petition admitted. The doubt expressed by the Bench was:-

……Since this order of ours would raise certain amount of uncertainty in regard to the fact as to whether the Director Panchayats would have the jurisdiction to decide the appeal as delegate of the Government against the order passed by his own delegate i.e. the Divisional Director/Joint Director, it is desirable that the matter is set at rest at the earliest…

We again repeatingly observe that these observations do not fit in with the facts of the instant case.

6. Here, the appellate authority himself was no other than the Joint Secretary to Government, Punjab, in the Department of Rural Development and Panchayats and specifically his order is titled to have been passed exercising the powers of the government. Such power vested in the Joint Secretary is beyond doubt. But a Standing Order dated May 10, 1988. passed by the Adviser to the Governor of Punjab Department of Rural Development and Panchayats, has been placed on record to show hearing of appeals u/s 102(6) against orders made by the Director of Panchayats appointed by the Government under the Act was to be done at the level of the Secretary to Government, Punjab, Department of Rural Development and Panchayats, and other appeals u/s 102(6) were to be disposed of at the level of the Joint Secretary, Rural Development and Panchayats. Now here, the aforesaid notification dated May 16, 1986, has also been placed on record to show that Shri Narinder Saroop was Joint Director of Panchayats conferring on him all the powers, duties and functions of the Director under the Act. So the original order being of the Joint Director, may be conferred with the powers of the Director of Panchayats, an appeal against his order lay under the Standing Orders dated May 10.1988, to the Joint Secretary. Rural Development and Panchayats. The appellate order, Annexure P-4, was thus passed in the valid exercise of jurisdiction.

7. The argument of the learned counsel that the Secretary to Government, Punjab, is also conferred the powers of the Director, and a fortiori the Joint Secretary has been conferred the powers of the Joint Director and, therefore, an appeal could not lie, suffers from a basic fallacy, for an officer may be conferred with more than one powers but the point arises that he must at one point of time be aware of what powers he is exercising and whether he was competent to do so or not. Mr. P. Ram while disposing of the appeal was definitely conscious that he was exercising the powers of the Joint Secretary to Government, Punjab, Rural Development and Panchayats Department, and that he was sitting in appeal against an order passed by the Joint Director, Panchayats, exercising the powers of the Director, Panchayats. The appellate function of the Joint Secretary to Government, Punjab, cannot be called a coordinate function with the Joint Director, Panchayats, on the supposition that the Joint Director also stood vested with the powers of the Director or Joint Director, Panchayats. What needs to be avoided is that a man cannot sit in appeal against his own order or that against an order of an officer coordinate in jurisdiction. We find nothing of the kind in this case, even closely scrutinising the mechanics of it.

8. No other point has been urged.

9. Finding no merit in the petition, we dismiss the petition in iimine.