

(1971) 01 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W. No. 2370 of 1970

Vatoo Ram

APPELLANT

Vs

The State of Haryana etc.

RESPONDENT

Date of Decision: Jan. 7, 1971**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Penal Code, 1860 (IPC) - Section 409
- Punjab Gram Panchayat Act, 1952 - Section 10, 102(1), 15, 25

Citation: (1973) 1 ILR (P&H) 602**Hon'ble Judges:** R.S. Narula, J**Bench:** Single Bench**Advocate:** R.N. Narula, for the Appellant; R.N. Mittal, for A.G., for the Respondent**Final Decision:** Dismissed

Judgement

R.S. Narula, J.

Besides claiming that the order of the Deputy Commissioner, Karnal, Respondent No. 2, dated July 10, 1970, suspending the Petitioner under Sub-section (1) of Section 102 of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. IV of 1953) from the office of Sarpanch of Gram Panchayat, Kangthali, Block Ghula, district Karnal, is illegal and invalid as the Petitioner had previously been exonerated of the same charges into which enquiry is now sought to be conducted, the Petitioner has raised two novel contentions in this petition under Articles 226 and 227 of the Constitution for quashing the aforesaid order of his suspension. Those contentions are (i) that Section 102(1) of the Act is ultra vires and void and (ii) even if a valid power of suspending a Sarpanch pending enquiry is deemed to have been conferred on the competent authority under Sub-section (1) of Section 102 of the Act, no power is vested by the Act in any authority to appoint any one else to discharge the functions of the Sarpanch during the period of suspension of a duly elected Sarpanch under

the Act. The three questions referred to above have arisen in the circumstances hereinafter detailed.

2. In the Panchayat elections held in 1963-64, the Petitioner was elected as Sarpanch of the Gram Panchayat in question. Order of suspension (Annexure "D") dated March 26, 1968, containing the charges on which suspension was directed was served on the Petitioner and he was actually suspended on those charges. By order Annexure "A" dated May 27, 1970, he was reinstated,. On June 10, 1970, he was asked by the Block Development and Panchayat Officer to continue to function as Sarpanch. On July 2, 1970, a fresh charge-sheet (Copy Annexure "B") was served on the Petitioner which was almost a" verbatim copy of the charge-sheet dated March 26, 1968, (Annexure "D"), About 8 days later, the impugned order of suspension dated July 10, 1970, (Annexure "C") was served on the Petitioner. In the endorsement under which copy of the order was forwarded to the Block Development and Panchayat Officer, Ghula, it was directed that the said officer should get the charge of the office of the Sarpanch duly transferred from the Petitioner.

3. On July 28, 1970, this writ petition was filed to quash the order of suspension dated July, 10, 1970, on the legal grounds mentioned above and on the further ground that the said order had been passed mala fide in pursuance of the policy of the Haryana State Government to oust all the Punjabi speaking persons (Punjabi Hindus and Sikhs) from Karnal District and particularly from the Ghula Tehsil. No copy of the first charge-sheet dated March 26, 1968, had been filed with the petition. When, therefore, the case came up before the Motion Bench (Harbans Singh C.J. and P.C. Jain J.) on July 29, 1970, the counsel for the Petitioner prayed for time to produce a copy of that charge-sheet in order to substantiate the first legal point sought to be urged by him. On the adjourned hearing, Petitioner filed Annexure "D" and stated that he had been suspended in 1968 and reinstated after two years but had again been suspended immediately thereafter on the same charges. The Motion Bench, therefore, directed the issue of a notice of motion to the Respondents returnable for August 27, 1970. In reply to the notice, the second Respondent filed his affidavit dated August 25, 1970, at the adjourned motion hearing on August 27, 1970. It was stated in paragraph 2 of the affidavit that the order of Petitioner's suspension was withdrawn on May 27, 1970, on account of a technical flaw and the Petitioner was accordingly reinstated and inasmuch as the order of suspension and charge-sheet had originally been embodied in one and the same order dated March 26, 1968, the charge-sheet also lapsed with the passing of the order of the Petitioner's reinstatement. It was claimed that a fresh charge-sheet had been issued to the Petitioner on July 2, 1970, and after that he had been placed under suspension on July 10, 1970, during the pendency of the enquiry against him in the above mentioned circumstances. Since no idea of the alleged technical flaw in the earlier proceedings had been given in the written statement, the learned Advocate-General for the State of Haryana who appeared for the Respondents on that day prayed to

the Motion Bench on August 27, 1970, for an adjournment to enable him to elaborate the written statement.

On the adjourned hearing, that is, on September 10, 1970, the Deputy Commissioner, Karnal, filed a further affidavit dated September 9, 1970, wherein he gave details of the previous proceedings against the Petitioner. In spite of those details, the Respondents had not admitted that any enquiry had been held against the Petitioner or any inquiry Officer had been appointed or that any report exonerating the Petitioner had been made. The Petitioner, therefore, asked for time to give details about the kind of enquiry that had been conducted, if at all during the period March 26, 1968, to May 27, 1970. At the next adjourned motion hearing, both sides filed further affidavits independently of each other. In paragraphs 1 to 5 of the Petitioner's affidavit dated September 21, 1970, he gave details of the notice received by him, of the evidence by way of affidavits produced by him, of the report of the Inquiry Officer exonerating the Petitioner and recommending the withdrawal of the criminal case against him and claimed on that basis that the statements made in the affidavit of the Deputy Commissioner were not correct. On the side of the Respondents, the Deputy Commissioner himself appears to have realised that his earlier affidavits were not clear and, therefore, filed a further affidavit dated September 20, 1970, wherein he stated that on receiving applications from the Petitioner about his earlier order of suspension not being legal the matter had been referred by the Deputy Commissioner to the Block Development and Panchayat Officer, Ghula, for his comments who had, instead of sending his own comments on the application of the Petitioner, sent the same for comments to the Social Education and Panchayat Officer who, in turn, recorded the statements of some of the persons produced by the Petitioner before him and also received some affidavits produced by the Petitioner. It was still maintained that no enquiry was, however, held by the Social Education and Panchayat Officer into the charges levelled against the Petitioner. It was maintained that after the examination of the case subsequent to the receipt of the report of the Block Development and Panchayat Officer it transpired that the initial order of suspension of the Petitioner had been passed by the then Deputy Commissioner at a time when no enquiry was pending against him and thus the orders of the Petitioner's suspension were not in accordance with law and, therefore, the Petitioner was reinstated and a fresh order of his suspension passed. It was added that any evidence recorded by the Social Education and Panchayat Officer or any finding given by him could not be said to be an action taken by him in the course of an enquiry in pursuance of the charges against the Petitioner and the comments of the Social Education and Panchayat Officer were based on the evidence produced by the Petitioner with respect to the application submitted by him and not in relation to the charges which had been framed against the Petitioner. It was in the above-mentioned circumstances that the writ petition was admitted by the Motion Bench on September 21, 1970, as the Bench felt that the entire case needed being looked into. No further affidavits have been filed by

either side after the admission of the petition.

4. Mr. R.N. Mittal, the learned Counsel for the Respondents, produced the entire original records of the office of the Deputy Commissioner, Karnal, and of the office of the Block Development and Panchayat Officer relating to the Panchayat Samiti, Ghula. The original records are mostly in Hindi and learned Counsel for both sides read them to me. Those records reveal that subsequent to filing his representation, dated September 19, 1968, (Copy Annexure "R-2" attached to the affidavit of the Deputy Commissioner, dated September 20, 1970) claiming a thorough enquiry into the matter to avoid unnecessary harassment and mental agony the Petitioner sent applications (copies Annexures "R-4" and "R-5"), dated January 28, 1969, to the Director of Panchayats Haryana and to the Deputy Commissioner, Karnal, for being reinstated as his suspension was invalid in view of a recent decision of this Court. In the meantime, the Director of Panchayats, Haryana, had already written to the Deputy Commissioner, Karnal, on January 1, 1969 (Vide letter Annexure "R-3") to intimate to the Director if any enquiry against the Petitioner had been ordered by the Director of Panchayats or the Government before the Petitioner was suspended on March 26, 1968. Obviously, that communication had been addressed because of the pronouncements of this Court to the effect that an order u/s 102(1) of the Act suspending a Sarpanch could not be passed except during the course of an enquiry ordered by the Government. The original records further showed that the Block Development and Panchayat Officer had, on the basis of the affidavits and evidence produced by the Petitioner, submitted a report dated August 12, 1969, suggesting the withdrawal of the criminal case registered against the Petitioner u/s 409 of the Indian Penal Code and also recommending the reinstatement of the Petitioner. The adoption of that report of the Block Development and Panchayat Officer had been recommended by the Sub-Divisional Officer in his note, dated November 26, 1969. When that note was put up to the Deputy Commissioner on December 1, 1969, he wrote on it that he felt further examination of the case to be necessary and, therefore, directed the case to be put up to his successor presumably because the then Deputy Commissioner was under orders of transfer. The case was then marked to the District Attorney (D.A). On January 20, 1970 the District Attorney reported that no order of enquiry against the Petitioner had ever been passed by the Government and, therefore, the order of his suspension was not legal and consequently it would be proper to reinstate him and then to order an enquiry and appoint an Inquiry Officer for that purpose. He based that opinion on certain judgments of the High Court. When the note of the District Attorney was put up to the Block Development and Panchayat Officer, he directed on January 26, 1970, that the relevant judgments of the High Court be put up to him. The case was then put back before him with copies of the relevant judgments on January 29. On February 28, 1970, the Block Development and Panchayat Officer recorded a note on the case wherein he recommended; (a) that since the case had already been registered u/s 409. Indian Penal Code, and was being proceeded with, the department should not withdraw

the same but leave it to the Court to decide it; and (b) that the earlier order of Petitioner's suspension having been passed otherwise than in the course of any enquiry by the Government, the order of suspension was contrary to the judgments of the High Court and should, therefore, be withdrawn but it would not be proper to put back the Petitioner to duty as a Sarpanch and it was suggested by him, that, immediately after reinstatement, enquiry should be ordered by the Government and the Petitioner resuspended during the course of the enquiry. He also suggested that the Government Advocate may, if necessary, be consulted in this behalf. When the above-mentioned note of the Block Development and Panchayat Officer reached the Deputy Commissioner, he passed orders on the same to the effect that he agreed with the first suggestion regarding not withdrawing the criminal case, but he did not agree with the view expressed by the Block Development and Panchayat Officer regarding the legality of the order of suspension and he thought that the Petitioner's suspension was in order. On April 20, 1970, however, the Deputy Commissioner discussed the matter with the District Development and Panchayat Officer in view of the latest pronouncements of the High Court shown to him and on a reconsideration of the matter and the High Court rulings, he reviewed his earlier decision, dated March 2, 1970, on the second point and approved of suggestion (b) of the Block Development and Panchayat Officer dated February 28, 1970, regarding the reinstatement of the petitioner and his resuspension. The Deputy Commissioner's order was then marked to the District Development and Panchayat Officer and the District Attorney. Mr. Gurparshad, District Attorney, discussed the matter with the authorities on May 8, 1970, and thereafter draft for approval was put up on May 17, 1970, to the District Development and Panchayat Officer. After the draft had been approved, the order reinstating the petitioner was passed. Enquiry was thereafter ordered in the course of which the petitioner was suspended by the impugned order. The history of the case, as it emerges from the original official records, referred to above clearly shows that in fact the petitioner was never exonerated of the charges levelled against him by any competent authority at any time. It further shows that the original show cause notice, charge-sheet and order of suspension were withdrawn by the Government as they were found to be invalid according to the pronouncements of this Court. Mr. Narula, the learned counsel for the petitioner, submitted that the order of reinstatement which is not supported by any reasons amounts to exonerating the petitioner of the charges which had been framed against him. I am unable to agree with this contention. The order of reinstatement merely amounted to terminate the earlier order of suspension. The circumstances in which this happened are more than clear from the official records which were produced in support of the return to the rule issued in this case. The only other point argued by Mr. Narula in connection with his first submission is that during the pendency of the criminal proceedings u/s 409, Indian Penal Code, no departmental proceedings u/s 102 of the Act could be taken against the petitioner. This submission is, in my opinion, equally devoid of any force. There was no bar to a departmental enquiry being ordered against the Sarpanch u/s 102(2) of the Act and

in the competent authority suspending him under sub-section (1) of section 102 during the course of such enquiry even if criminal proceedings were pending against him in a competent Court of law.

5. This takes me to the two purely legal questions raised by Mr. Narula. Section 102 of the Act reads as follows :

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 him 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.

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

(a) on any of the grounds mentioned in sub-section (5) of section 6;

(b) who refuses to act, or becomes incapable of acting or is adjudged an insolvent ;

(c) who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat or the Adalti Panchayat, as the case may be ;

(d) who, in the opinion of the Government or of the officer to whom Government has, delegated its powers of removal, has been guilty of misconduct in the discharge of duties;

(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 :

Provided that nothing in this sub-section shall be deemed to debar the Government from removing any Panch on the ground specified in clause (d) or clause (e) for the acts done or omitted to be done during the term of his office immediately preceding that in which proceedings for removal are initiated :

Provided further that before the Government notifies the removal of the Panch under this sub-section, the reasons for the proposed removal shall be communicated to the Panch concerned and he shall be given an opportunity of tendering an explanation in writing ;

Explanation.♦The expression "misconduct" in clause (d) includes the failure of the Sarpanch without sufficient cause-

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

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

therefor.

(3) A person, who has been removed under Sub-section (2) may be disqualified for re-election for such period not exceeding five years as Government may fix." The argument of Mr. Narula is that there is no provision in the Act which authorises the Government to appoint some one who has not been elected as a Sarpanch to act as a Sarpanch during the time of suspension of a Sarpanch u/s 102(1) of the Act and, that being so, no Sarpanch can be suspended as the Panchayat would cease to function without a Sarpanch and it could not be the intention of the Legislature to create such a situation. Counsel submitted that Section 10 of the Act provides for filling the vacancy of a Sarpanch only in the three contingencies mentioned therein, i.e., in case of the vacancy having occurred (i) by the death, (ii) by the resignation; or (iii) by the removal of a Sarpanch and not in any other contingency. Section 10 of the Act reads as follows: - "10. Whenever a vacancy occurs by the death, resignation or removal of a Panch, or a Sarpanch, a new Panch or Sarpanch, as the case may be, shall be elected in such manner as may be prescribed, and the person so elected shall hold office for the unexpired portion of the term for which the person in whose place he was elected would have otherwise continued in office." There is no doubt that Section 10 does not provide for a vacancy being created by the suspension of a Sarpanch. Nor does Section 10 authorise the election of a new Sarpanch in place of a Sarpanch who is suspended u/s 102. But Section 25 of the Act provides as below: -
15(1) The Sarpanch and, in his absence, the Panch elected by the Panchayat for the purpose, shall be responsible for the maintenance of all prescribed records and registers and other property belonging to or vested in the Sabha or the Panchayat and, on the vacation of his office, the outgoing Sarpanch or Panch shall hand them over to the Sarpanch or to such other Panch as may be authorised in this behalf by the Deputy Commissioner.

(2) If on a requisition made in this behalf by the Executive Officer of the Panchayat Samiti, any person within a period of ten days of such requisition fails under Sub-section (1) to hand over the prescribed records and registers and other property belonging to or vested in the Sabha or the Panchayat to the Sarpanch or Panch referred to in that Sub-section, the Executive Officer of the Panchayat Samiti shall apply to a Magistrate of the First Class within whose jurisdiction the Sabha area is situated for securing from such person records, registers and other property.

In my opinion, it is open to the Government to ask the Panchayat to elect one of its existing Panches to act as a Sarpanch for the maintenance of all prescribed records and registers etc. during the absence of a Sarpanch who might have been suspended. That being so, no such stalemate is likely to be created as is apprehended by Mr. Narula by the mere suspension of a Sarpanch pending an enquiry. Strength for his argument has been derived by counsel from a recent judgment of their Lordships of the Supreme Court in [The Sub-divisional Officer, Sadar, Faizabad Vs. Shambhoo Narain Singh](#), , Section 95 of the U.P. Panchayat Raj

Act (26 of 1947) enumerates the punishments which can be inflicted, on an elected Pradhan of a Gaon Sabha. One of those punishments referred to in Section 95(g) of that Act is of suspension of a Pradhan. In purported exercise of that power Shamboo Narain Singh of Gram Sabha, Asapur, was placed under suspension by the Sub-Divisional Officer, Sardar, Faizabad, on September 18, 1963. The validity of that order was challenged in a writ petition which was dismissed by a Single Judge of the Allahabad High Court but allowed on appeal by a "Division Bench of that Court on the ground that Section 95(l)(g) did not empower the Sub-Divisional Officer to pass the impugned order. The correctness of the Division Bench judgment was maintained by the Supreme Court. The contention of the Pradhan and servant was created between the Government and the Pradhan Sub-Divisional Officer to the effect that a relationship of a master and, therefore, the Government had inherent power to suspend the Pradhan during the enquiry against him was turned down by the Supreme Court on the ground that a Pradhan cannot be considered to be a servant of the Government as he is an elected representative and there is no contractual relationship between him and the Government much less the relationship of master and servant. In the U.P. Act there was no express provision authorising the suspension of a Pradhan pending an enquiry. Suspension was provided for only as one of the punishments. The Supreme Court held that the Government had, therefore, no inherent power to suspend the Pradhan. The argument addressed on behalf of the Sub-Divisional Officer about power of suspension being implied as an essential part of the execution of an order of removal was repelled by the Supreme Court on the ground that such power can be implied only when it is absolutely essential for the discharge of the power conferred and not merely because it is convenient to have such a power. Hedge, J. who prepared the judgment of the Supreme Court observed that the Court was not satisfied that the power to place an officer under suspension was absolutely essential for the proper exercise of the power conferred u/s 95(l)(g) of the U.P. Act. The mere possibility of interference with the course of enquiry or the possibility of further misuse of powers were held to be not sufficient to enlarge the scope of the statutory power. There is no quarrel with the law laid down by their Lordships of the Supreme Court. That, how, ever, is of no avail at all to the Petitioner in the present case as Sub-section (1) of Section 102 of the Act specifically authorises the Deputy Commissioner to suspend a Sarpanch during the course of an enquiry ordered by the Government. No such provision was found in the U. P. Act. Hedge, J. specifically observed in the judgment of the Supreme Court, this connection, as below:
Our attention has not been invited to any provision either in the Act or in the rules framed thereunder which the Appellant (Sub-Divisional Officer) could have made such an order (order suspending the Pradhan during the course of the enquiry).

It was also found by the Supreme Court that the P. P. Act did not contain any provision like Section 15 of the Punjab Act (in force in Haryana) authorising the election or appointment of a Sarpanch during the absence of the elected one.

6. It is the common case of both sides that Section 10 of the Act has no application to the case of suspension pending enquiry. Mr. Narula, however, contended that even section, 15 cannot apply to the case. His submission was that a casual vacancy in the office of a Sarpanch is caused by his suspension pending enquiry and since Section 10 of the Act does not provide for another Sarpanch being elected for such a vacancy, the language of Section 15 cannot be stretched to fill in that gap which appears to have been deliberately left by the Legislature. I am unable to agree with this submission of Mr. Narula. Section 15 is the general provision relating to the arrangements which can be made during the absence of a Sarpanch. Normally the provision would have covered temporary as well as, permanent vacancies of a casual nature but Section 10 having been enacted as a special provision to cover cases of vacancies of a casual nature which are permanent in the sense that the Sarpanch who has vacated the seat cannot possibly come back to it during the remaining term of his office, Section 15 applies to all other cases. Whereas a new Sarpanch has to be elected u/s 10, an existing Panch alone can be asked to perform the specified duties of a Sarpanch who is absent u/s 15. Again, the Sarpanch elected u/s 10 to fill a casual vacancy remains in office during the remaining term of the original Sarpanch but a Panch elected to carry on the specified duties of the Sarpanch u/s 15 work only till the original Sarpanch comes back or vacates his office, and is, replaced by a newly elected Sarpanch u/s 10. It is also significant that a newly elected Sarpanch u/s 10 of the Act has all the Powers of a Sarpanch but one elected u/s 15 can only discharge the functions enumerated in that provision. The two sections are, therefore, meant to provide for different kinds of contingencies. In my opinion, Section 15 authorises the election of any of the existing Panches of the Panchayat concerned as a Sarpanch to carry on the specified functions of that office during the absence of the original Sarpanch who might be placed under suspension during the course of an enquiry. The Deputy Commissioner has not appointed any one in the instant case. The direction to the Block Development and Panchayat Officer is in accordance with law and it is presumed that he would require the Panchayat to elect one of its Panches to carry on the functions of the Sarpanch in question u/s 15 of the Act till the culmination of the, proceedings against the Petitioner. In this view of the matter, no illegality is found in the impugned order. I hold that Section 102(1) is intra vires, that the Panchayat can elect one of its Panches to perform the specified functions of a Sarpanch during the period of suspension of the Sarpanch in the course of an enquiry and that the impugned order of suspension of the Petitioner is valid and in accordance with law. This petition, therefore, fails and is dismissed though without any order as to costs.