

(2000) 12 P&H CK 0150

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1377 of 1999

Raghu Nath

APPELLANT

Vs

Financial Commissioner and
Secretary to Government of
Haryana

RESPONDENT

Date of Decision: Dec. 7, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226
- Haryana Panchayati Raj Act, 1994 - Section 51, 51(3), 51(5)

Citation: (2001) 4 RCR(Civil) 134

Hon'ble Judges: Mehtab S. Gill, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Mr. Mahavir Sandhu, for the Appellant; Mr. Jaswant Singh, D.A.G., for the Respondent

Final Decision: Allowed

Judgement

G.S. Singhvi, J.

In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing of enquiry report Annexure P-2 dated 22.1.1998 submitted by the Sub Divisional Officer (Civil)-cum-Enquiry Officer, Jagadhri (respondent No. 3), the order Annexure P-5 dated 14.9.1998 passed by the Deputy Commissioner, Yamuna Nagar (respondent No. 2) removing him from the office of Panch and the appellate order Annexure P-6 dated 28.12.1998 passed by the Financial Commissioner and Secretary to Government of Haryana, Development and Panchayat Department (respondent No. 1) vide which he dismissed his appeal.

2. Briefly stated the facts of the case are that in the election held in December 1994, the petitioner was elected as Panch of Gram Panchayat, Ajipur Kalan, Block Bilaspur. In 1996, a complaint was made by the residents of village Ajipur Kalan

about the alleged unauthorised occupation by the petitioner of panchayat land falling in Khasra No. 126 and sale of Safeda trees standing over the panchayat land. After getting a preliminary enquiry conducted through the Development and Panchayat Officer, Yamuna Nagar, who reported that the allegations were prima facie correct, respondent No. 2 passed order dated 19.1.1996 for holding a regular enquiry u/s 51 of the Haryana Panchayati Raj Act, 1994 (for short, "the 1994 Act"). The enquiry was entrusted to respondent No. 3. After recording the evidence of the Department and the petitioner, he submitted report Annexure P-2 with the finding that charge regarding illegal possession of the petitioner had not been proved, but his brothers were illegally occupying the land with his connivance. He further held that charge of sale and cutting of Safeda trees is proved against the petitioner. On receipt of enquiry report, respondent No. 2 issued notice Annexure P-3 to the petitioner to show-cause as to why he may not be removed from the office of Panch and after considering the reply (Annexure P-4) filed by him, the said respondent passed order Annexure P-5 removing him from the office of Panch. The appeal filed by the petitioner u/s 51 (5) of the 1994 Act was dismissed by respondent No. 1.

3. The petitioner has challenged the enquiry report, the order of removal and the appellate order mainly on the ground that on the basis of finding recorded by respondent No. 3 about the alleged unauthorised occupation of panchayat land by his brothers, he could not be held guilty of the charge of unauthorisedly occupying such land. He has averred that respondent No. 2 could not have punished him on the charge of having connived with his brothers for facilitating their occupation of panchayat land because the same was not subject-matter of enquiry conducted by respondent No. 3 and no opportunity was given to him to rebut that charge. He has also challenged the findings recorded by respondent No. 3 about the sale of Safeda trees by stating that no evidence had been produced before the Enquiry Officer to prove that he had physically cut the trees standing on the panchayat land and sold them.

4. In the written statement filed on behalf of the respondents, it has been averred that the petitioner has been removed from the office of Panch on being found guilty of two charges levelled against him. According to them, the findings recorded by respondent No. 3 on the two charges levelled against the petitioner are pure findings of fact and the same cannot be interfered with by the High Court under Article 226 of the Constitution of India.

5. Shri Mahavir Sandhu argued that the finding recorded by respondent No. 3 in respect of charge No. 1 should be declared perverse because the charge levelled against the petitioner was about the illegal possession of 5 marlas in Khasra No. 126 and not of conniving with his brothers to facilitate unauthorised occupation of panchayat land by them. He then argued that respondent No. 2 could not have punished him on the basis of finding recorded on a charge which was not subject-matter of enquiry. Another argument of the learned counsel is that the

finding recorded by respondent No. 3 about the removal of trees from the panchayat land is based on no evidence and respondent No. 2 has totally overlooked this aspect of the matter. Learned counsel assailed the order of removal and the appellate order on the ground that respondents No. 2 and I did not, at all, consider the objection raised by the petitioner in reply to the show cause notice and in the memo of appeal about the illegalities committed by respondent No. 3 in holding him i.e. the petitioner guilty of two charges. The learned Deputy Advocate General argued that the finding of illegal occupation of panchayat land by the brothers of the petitioner is a pure finding of fact based on proper evaluation of the evidence recorded by respondent No. 3 and, therefore, the same cannot be made subject-matter of challenge in a writ of certiorari. He then argued that the inference drawn by respondent No. 3 about the petitioner's connivance with his brothers, who occupied the panchayat land, was quite logical and justified because he is living with his brothers. Learned counsel submitted that even though the charge of taking illegal possession of panchayal land has not been proved in strict sense, the order of removal passed by respondent No. 2 should be upheld because the petitioner has been held guilty of another grave charge of cutting and selling Safeda trees, which were standing on the panchayat land.

6. We have carefully examined the respective submissions and have gone through the entire record. The charges which were subject-matter of enquiry held by respondent No. 3 were as under :

"1. That according to the demarcation report of the Local Commissioner dated 1.4.1996 the panchayat land under Khasra No. 126 area five Marias and according to another mutual decision Shri Raghu Nath, Panch is in illegal possession of four Marias land of panchayat.

2. Five Marias land of the panchayat under Khasra No. 126 on which Shri Raghu Nath, Panch is in illegal possession, he sold Safeda trees for Rs. 10,000/- from this land about one and a half year ago and as such, he sustained loss to the panchayat."

After considering the evidence produced by the parties at the enquiry and making site inspection, respondent No. 3 recorded the following finding, qua charge No. 1 :

"After closing the evidence by the prosecution and respondent party, I my self has also inspected the land in dispute and on the spot the illegal possession of Raghu Nath, Panch was not found, and nor it was confirmed by any one. But his brothers have illegally occupied the land by putting therein fodder, cow dung cakes and by planting garlic therein and though Raghu Nath Panch has not occupied this land but the same was got occupied by his brothers which proves his connivance with them so that after removing from the post of Panch, he can possess the same because Raghu Nath and the family of his brothers is joint and before the complaint, the illegal possession of Raghu Nath Panch was found over the land. He has done all this job only to baffle the persons. According to the report of Local Commissioner

Shri Jiwand Ram, Retired Kanungo, the illegal possession of his was confirmed before making the complaint against him. Therefore, this charge is proved against him."

As regards charge No. 2, he recorded the following finding :

"All the departmental witnesses have stated that in the land in dispute the trees of Safeda were standing which were cut by Raghu Nath whereas the respondent Raghu Nath has denied this charge. The prosecution witness Shri Roop Chand has stated that on the spot in the land in dispute no root of tree has been seen. According to the report memo No. 3034 dated 8.9.1997 of Deputy Forest Officer, Yamuna Nagar, which was addressed to the Deputy Commissioner, Yamuna Nagar, and the same is the part of enquiry file reveals that the charge which pertains to cutting of trees from the panchayat land about two and a half years ago for the value of Rs. 10,000-12,000/-, in this regard on the spot no root was found and it was not proved that how many trees of which kind were cut. According to the evidence of the prosecution and the spot inspection, it is confirmed that the small trees which were standing on the land in dispute were cut by Raghu Nath Panch. But after the complaint and by the passage of time, Shri Raghu Nath Panch has removed all the proofs from the spot. Therefore, this charge is proved to this extent."

7. While issuing show cause notice respondent No. 2 changed the tenor of charge No. 1 and called upon the petitioner to submit his reply in respect of following charges :

" 1. That according to the demarcation made by the Local Commissioner on panchayat land on Khasra No. 126, you have allowed illegal possession of your brothers on 5 Marias land. This proves your collusion as you and your brothers have joint family.

2. That small trees of Safeda were standing on 5 Marias panchayat land under Khasra No. 126 which were sold by you after cutting. This has resulted financial loss to panchayat."

8. The petitioner contested the show cause notice on various grounds including the one that the charges incorporated in the notice are quite different from the ones which were subject matter of enquiry. The relevant extract of the reply filed by him reads as under :

"Extract of Reply Dated 7.4.1988. xx xx xx That the Inquiry officer has neglected the demarcation dated 17.12.1996 given by the departmental witness Roop Chand, Patwari, Block Office Bilas-pur, while sending his enquiry report. In this report, it has specifically been mentioned that there is no possession of Raghu Nath Panch on the disputed land.

That the Inquiry Officer himself inspected the disputed land and did not find possession of Raghu Nath, Panch: Even after this, it is not understood on which

ground the Inquiry Officer has confirmed this charge, xx xx xx

That the notice for which reply is being given is against the principles of natural justice as the charges for which the Inquiry Officer was appointed are quite different from the present notice for which reply is being given.

That charge No. 1 is utterly wrong and is not based on the facts. Defendant had neither been in possession of Khasra No. 126 nor it exists even now. Even the Inquiry Officer could not find any possession of the defendant on the spot. Ram Ku-mar, brother of the defendant lives separately. This is also wrong that the defendant and his brothers have joint family.

That charge No. 1 has not been shown u/s 175 of the Haryana State Panchayati Raj Act, 1994.

That charge No. 1 is altogether different from the charges framed in letter No. 4919 dated 19.9.1996. Therefore, this notice legally has no base. xx xx xx

That the conclusion of the Inquiry Officer in connection with charge No. 1 is totally contrary and against his spot inspection report because the Inquiry officer has himself visited the spot and gave conclusion that there is no possession of Raghu Nath Panch, on the spot. But he has proved charge No. 1 against Raghu Nath, Panch, for which he has based his conclusion that he will occupy it after removal from the post of Panch. This is beyond the powers of the Inquiry Officer. Moreover, the report of the Inquiry Officer is against the above mentioned judgment of the Hon"ble High Court.

Reply to Charge No. 2. - That charge No. 2 is totally wrong and is baseless because the defendant was neither in possession of the disputed land nor it even exists today. Then, the question of cutting the trees by him do not arise. The conclusion which the Inquiry Officer has given about this charge is totally against the facts on record/file and law. There is no evidence about it on the file. Even nothing is clear in demarcation report to the effect that there is any tree on the spot and even no evidence has ever come on the file which could show that who has planted the trees. AW-1 Siri Chand son of Matu Ram has given witness against the defendant and he has stated that two trees are still on the spot whereas no such evidence was available at the time of on the spot inspection by the Inquiry Officer."

9. Without considering the reply in a correct perspective, respondent No. 2 ordered his removal by making the following observations :

"I after examining carefully all the facts placed on the record and after hearing the said Panch personally, came to the conclusion that Shri Raghu Nath, Panch has illegal possession over 5 Marias of Panchayat land comprised in Khasra No. 126 and he has also cut the trees from this land whose price was about Rs. 10,000/-. According to the enquiry report, he was also found in illegal possession of other 4 Marias land. In order to mislead the Enquiry Officer, he even removed the roots of

the trees which were cut from the said land and now he has put his brothers in possession of said panchayat land. Shri Raghu Nath, Panch and his brothers have one joint family. The Inquiry Officer has fully held him responsible. As such, Shri Raghu Nath, Panch is guilty of occupying the Panchayat land illegally by himself and putting his brothers into the illegal possession of the panchayat land and also caused financial loss to the panchayat by cutting the trees worth Rs. 10,000. Therefore, he is not entitled to hold the post of Panch in the interest of public."

10. Respondent No. 1 dismissed the appeal filed by the petitioner with the following observations :

"The enquiry report, on the basis of which the impugned order has been passed, is based upon the statements of witnesses, including the appellant, spot inspection by the Enquiry Officer himself and demarcation report. Therefore the argument to the effect that the enquiry report is not based upon the facts is devoid of any merit. Explanation 2(ii) of Section 175 is not attracted to the present case because the said Explanation relates to failure to pay arrears due to Panchayati Raj Institutions and the said Explanation has nothing to do with the encroachment of Panch upon the panchayat land. The impugned order clearly reads that the reply filed by the appellant was found by the respondent to be unsatisfactory. Therefore, the argument to the effect that the respondent did not even examine the preliminary objections taken by the appellant in his reply has no merit."

11. In our opinion, the order of petitioner's removal from the post of Panch is liable to be quashed on the ground that the main charge, which constituted the foundation of the show cause notice Annexure P-3 and the order Annexure P-5, was not the subject matter of enquiry held by respondent No. 3 and it is a settled principle of law that a person cannot be punished on the basis of the finding recorded on a charge which is not subject matter of the enquiry. A perusal of the enquiry report shows that respondent No. 3 held the petitioner guilty of having connived with-his brothers and allowed them to occupy the panchayat land measuring 5 marlas situated in Khasra No. 126. He further held that family of the petitioner and his brothers was joint and, therefore, charge of illegal occupation of panchayat land is proved against him. Admittedly, this charge was not subject-matter of the enquiry entrusted to respondent No. 3 and the petitioner did not get the opportunity to defend himself against the said charge. Notwithstanding this, respondent No. 2 relied upon the findings recorded by respondent No. 3 and ordered his removal. In our opinion, this action of respondent No. 2 will have to be treated as violative of the principles of natural justice,

12. We are further of the view that the finding recorded by respondent No. 3 about the petitioner's connivance with his brothers in facilitating their illegal occupation of panchayat land is liable to be quashed being perverse because no evidence was produced by the Department to prove that the petitioner was living in a joint family with his brothers and he had taken any active part in their alleged illegal taking of

possession of the panchayat land. In fact, the demarcation report Annexure P-7 totally belies the finding recorded by the respondent No. 3 about the petitioner's connivance with his brothers. Therefore, on this ground also, the finding recorded by respondent No. 3 on charge No. 1 merits rejection.

13. As regard charge No. 2, it is sufficient to observe that none of the witnesses produced by the Department had deposed that the petitioner had cut the trees standing on the panchayat land. The file of the Forest Department produced during the enquiry revealed that the trees had been cut about two years ago but this was not attributed to the petitioner. Therefore, simply on the basis of spot inspection, respondent No. 3 could not have recorded the finding that the trees standing on the panchayat land have been cut by the petitioner. The approach adopted by respondent No. 2 in dealing with this aspect of the matter can at the best, be termed as casual inasmuch as, she approved the finding recorded by respondent No. 3 without even adverting to the objection raised by the petitioner in this respect. In our opinion, the finding and conclusion recorded by respondents No. 3 and 2 in respect of charge No. 2 is based on no evidence and on that count, it is liable to be nullified.

14. The appellate order must be held as vitiated due to non-application of mind by respondent No. 1 to the points raised by the petitioner in the memo of appeal. A bare reading of the appellate orders shows that respondent No. 1 has done nothing except to approve the perverse findings recorded by respondent No. 3 and respondent No. 2. He has not, at all dealt with the issue of violation of natural justice in the absence of evidence to substantiate the allegations levelled against the petitioner. Therefore, the order dismissing the petitioner's appeal cannot be-sustained in the eyes of law.

15. For the reasons mentioned above, the writ petition is allowed and the orders Annexure P-5 and P-6 are declared illegal and quashed. However, it is made clear that if the petitioner has not been elected in the fresh elections held to the Gram Panchayat, then he shall be to re-enter in the office of Panch.

16. Petition allowed.