

Raghibir Singh Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 21, 2012

Acts Referred: Penal Code, 1860 (IPC) â€” Section 427, 452
Prevention of Damage to Public Property Act, 1984 â€” Section 3
Punjab Panchayati Raj Act, 1994 â€” Section 20

Citation: (2013) 1 RCR(Civil) 527

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: N.P.S. Mann, for the Appellant; Yatinder Sharma, DAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ranjit Singh, J.

The Director, in this case, apparently has acted beyond his jurisdiction to suspend the Sarpanch, who is the petitioner

before this Court and has approached through the present petition to challenge his suspension. It is sad to notice that despite opportunity to the

Director to reconsider the issue in the light of legal provision as contained in Section 20 of the Punjab Panchayati Raj Act, the Director has

remained adamant even to see reasons. The suspension order, apparently and prima facie, was found to have been passed without application of

mind. Still, the Director has refused to mend himself or correct the wrong done to the petitioner. The facts noticed in brief are noticed hereinafter:-

That in election of the Gram Panchayat village Paddi Khutti (Paddi Khushi), 5 members of the Panchayat were elected. One of which was

subsequently elected as Sarpanch. The petitioner was elected as Panch. On the report of the District Development and Panchayat Officer, DDR

No. 16 dated 28.05.2010 and FIR No. 32 dated 30.03.2011 u/s 3 of Prevention of Damage to Public Property Act, 1984 (hereinafter referred

to as "Act") and u/s 427 IPC was registered against the petitioner. On the basis of inquiry report given by the office of respondent No. 2, the

Director issued show cause notice to the petitioner on 31.05.2011. He was required to file reply within 10 days. The petitioner filed detailed reply

refuting the allegations and terming them to be totally wrong and false. The Director, thereafter, passed an order on 12.07.2011 suspending the

petitioner from the post of Panch on the allegation that DDR and FIR referred to above had been registered against him.

2. The petitioner filed an appeal before respondent No. 1 against this suspension order which was also dismissed. As per the petitioner, the appeal

was dismissed without considering the documentary evidence on record. The petitioner pleads that the order is totally illegal. The petitioner

thereafter has filed this present petition to impugn the order passed by the Director as well as the Secretary dismissing his appeal.

3. The reply has been filed on behalf of Block Development and Panchayat Officer (respondent No. 4). In the Preliminary submissions made, it is

stated that the petitioner is in the habit of taking law into his hands and the person is of offensive nature. Reference is made to the FIR registered

against him u/s 452 IPC at Police Station Garhshankar, District Hoshiarpur. This, however, was amicably settled, as is stated, in the reply itself. It

is then alleged that the petitioner demolished wall of Dharmshala. He later feeling sorry, got constructed the wall after making payment from his

own pocket. In this regard, copy of the report, is annexed with the reply. As per the reply, these facts are referred to urge that the petitioner is of

offensive nature and undisciplined attitude for which his dismissal is warranted from the post.

4. It is also stated that the petitioner has misled this Court about his misdeeds. It is then alleged that the Sarpanch of the village had cut down 75

trees instead of approved 54 trees. The inquiry was conducted in this regard and it was found that the Sarpanch had no role to play in cutting of

excess trees. The FIR was lodged against guilty Contractor. Further reference is also made to photographs to show that internal wall of the

Dharamshala was demolished by the petitioner for which loss of Rs. 2920/- was assessed by the concerned officer of the Panchayat. For these

allegations, the petitioner was placed under suspension and his appeal has also been dismissed.

5. When the case came up for hearing before this Court on 01.03.2012, this Court had summoned BDPO to remain present in person before the

Court to explain his preliminary submissions and the source from where these averments terming the petitioner as of having offensive nature are

made. Obviously, the manner in which respondent No. 4 had made these allegations, terming the petitioner of offensive nature, was not

appreciated by the Court. Respondent No. 4 could not be expected to take sides in this manner and the contents of reply revealed his involved

attitude in the case. Perhaps, he was stating so, as otherwise there were no worth while allegations against the petitioner to place him under

suspension.

6. When the case came up for hearing on 03.08.2012, the counsel for the petitioner had referred to the DDR as well as FIR in detail. The

allegations made in the DDR would not virtually reveal allegation against the petitioner. Only allegation is that the petitioner with his mistake had

tried to make the atmosphere of the village tense, and with the intervention of police on the spot, no untoward incident had happened. This

allegation pertains to the petitioner having raised objection to the Contractor cutting trees in excess. For this, the FIR was lodged against the

Contractor. The action perhaps had followed only when the petitioner raised hue and cry. As a Panch, it was his duty to watch the interest of

villagers. There is nothing on record that Sarpanch had taken any action in this regard. The petitioner, accordingly, was justified in alleging

connivance on his part. Registering a case against the Contractor for cutting trees in excess would show that the petitioner was fully justified in

raising his objection. Was the petitioner required to be suspended for doing his duties well? Where are any allegation in the DDR which can invite

suspension of elected Panch. Suspension or removal of an elected representatives by executive in this whimsical and arbitrary manner would erode

the democracy at grass root level. It is a serious issue which has been taken so lightly by the Director who even has refused to see reason when

given chance to correct his action. The petitioner had objected to the conduct of the Contractor in cutting more trees, which he was duty bound to

object. Obviously, the official respondents including the DDPO has connived with Sarpanch and had unnecessarily put the petitioner into trouble.

7. Let us now take the allegation in the FIR, which is the second ground to place the petitioner under suspension. The allegations are for having

caused a loss of Rs. 900/- for demolishing the wall of Dharamshala. The offence u/s 3 of the Act is so registered, which is stated to be a cognizable

offence. However, offence u/s 427 IPC is causing mischief and is only punishable with fine. These trivial allegations have been viewed to place the

petitioner under suspension. The petitioner has objected to the activities of the Contractor and in the bargain this case has been unnecessarily

foisted on him. The Contractor, who was accused of theft has managed to get DDR recorded. The allegations are that the petitioner has made the

atmosphere tense. The petitioner is a Scheduled Caste Panch. He is accused of demolishing wall of Dharamshala, which is for Scheduled Castes.

He has denied the allegations. As per him, all the walls are intact. Besides this, the attention of the Director was invited to Section 20 of the Punjab

Panchayati Raj Act, which lays down certain conditions, which are required to be considered, before placing any elected representative under

suspension. This Section clearly provides that merely on the registration of FIR, the elected representative like Panch or Sarpanch cannot be

placed under suspension. The Director, in addition, has also to opine that the charge made or proceeding taken against Panch etc. is likely to

embarrass him in discharge of his duties or offence is such, which involves moral turpitude or the offence is such which shows defect of character.

The order reveals that no such opinion is expressed by the Director in the impugned order. The offence as alleged against the petitioner u/s 3 of the

Act and Section 427 IPC prima facie cannot be such, which would be covered under the definition of offences involving moral turpitude and these

would also be not offences, which would embarrass the petitioner to discharge the duties. The petitioner rather is being punished for performing his

duties as an elected Panch and has invited order of suspension. Despite giving opportunity, the Director has not preferred to perform his duty in

accordance with law. The impugned order, therefore, cannot be sustained. The same is set aside. The order rejecting the appeal of the petitioner is

also set aside.

The writ petition is allowed with costs, which is quantified Rs. 10,000/-. The cost shall be equally shared by respondents No. 2 to 4.