
(2010) 10 SHI CK 0150
High Court of Himachal Pradesh
Case No: CWP No. 4665 of 2009

Swaran Singh

APPELLANT

Vs

State of H.P. and
Others

RESPONDENT

Date of Decision: Oct. 22, 2010

Acts Referred:

Constitution of India, 1950 – Article 226#Himachal Pradesh Panchayati Raj Act, 1994 – Section 148

Citation: (2010) 10 SHI CK 0150

Hon'ble Judges: Kuldip Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kuldip Singh, J.

The petitioner in the petition has prayed for quashing of order, dated 4.12.2009, Annexure P-3 and allowing him to

continue as Pradhan of Gram Panchayat, Takka, Tehsil and District Una.

2. The case of the petitioner is that he was elected as Pradhan of Gram Panchayat, Takka in the year 2005. On the change of Government, the

respondents at the instance of the political bosses started unnecessary harassing the petitioner and created hindrance in the functioning of the

petitioner as Pradhan. A show cause notice was issued to petitioner, which was challenged by him in CWP No. 1563/2008. On 4.4.2008, this

Court had stayed the show cause notice. On 21.3.2009 again a show cause notice was issued to the petitioner mala fide. This show cause notice

was also assailed by the petitioner in CWP No. 929/ 2009 and on 1.4.2009 this Court had passed the interim order.

3. The respondents have not stopped their acts. On 29.4.2009 by overstepping the jurisdiction, another show cause notice was issued to the

petitioner. This was challenged by the petitioner in CWP No. 1457/2009 by pleading that Pradhan of Gram Panchayat has no concern with the

functioning of Gram Sabha. The allegations are with respect to functioning of Gram Sabha regarding the names of persons of IRDP/BPL families.

The petitioner is not involved in the matter even remotely. In CWP No. 1457/2009 interim order was passed by this Court. On 12.10.2009,

CWP No. 1457 of 2009 was dismissed by this Court observing that writ against show cause notice is generally not maintainable. The petitioner

filed a review petition No. 57 of 2009 for reviewing the judgment dated, 12.10.2009, but, the same was dismissed in default on 4.11.2009. The

petitioner had filed an application for recalling the order, dated 4.11.2009, which was allowed on 17.12.2009. However, the review petition was

not pressed and accordingly dismissed on 12.3.2010.

4. The further case of the petitioner is that he had filed a reply to show cause notice and, thereafter, office order, dated 4.12.2009, Annexure P-3,

was passed by respondent No. 3 without considering his reply. The petitioner as Pradhan of Gram Panchayat has no concern with the selection

process of IRDP/BPL families and the Secretary of the Gram Panchayat is required to prepare the same, which is to be checked by the Inspector.

The Pradhan of Gram Panchayat has no duty under the Himachal Pradesh Panchayati Raj Act, 1994 (in short, the Act) and rules to issue ration

cards or select IRDP/BPL families, which is solely in the domain of Gram Sabha and, therefore, no liability can be fastened on the petitioner for

selecting IRDP/BPL families.

5. It has been alleged that the order, dated 4.12.2009 is illegal and arbitrary. The petitioner has got the remedy of appeal, but said remedy has not

been availed inasmuch as the result of the appeal is obvious. The petitioner will not be allowed to continue as Pradhan of Gram Panchayat for

remaining term when respondents are already bent upon to remove the petitioner. The petitioner will not get justice in appeal and, therefore, the

petitioner has filed the writ petition. The impugned order has been passed by overstepping the jurisdiction. The petitioner had attended the meeting

of Gram Sabha as its member. The impugned order is the result of non- application of mind.

6. The respondents No. 1 to 4 have filed a joint reply, in which preliminary objections of maintainability, locus-standi, necessary parties and

concealment of material facts have been taken. On merits, it has been alleged that work of the petitioner was always under suspicion. He with mala

fide intention gave undue advantage to some persons whom he liked. The petitioner also gave undue advantage to his mother to construct a house.

There are many complaints against the petitioner. The petitioner is not entitled to any relief. All other members of Gram Panchayat Takka

requested the petitioner to reform his wrongful and illegal activities, but the petitioner did not care for the request of the Gram Panchayat members.

It has been denied that Pradhan of Gram Panchayat has no responsibility regarding the meetings record and register. The tampering of the record is

visible from naked eyes. The petitioner has committed serious offence. It has been denied that the respondents have overstepped the jurisdiction. It

has been denied that Pradhan of Gram Panchayat has no concern with the functioning of Gram Sabha. It has been denied that respondents have

acted at the instance of political bosses. It has been denied that the petitioner has no concern with the process of selection of IRDP/BPL families.

The ration cards are also issued in the village under the seal and signatures of Pradhan, Gram Panchayat. The petitioner himself committed the

offence to give the undue benefit to the persons and families of his own choice. The respondents have prayed for dismissal of the petition.

7. I have heard the learned Counsel for the parties. The learned Counsel for the petitioner has reiterated the stand taken by the petitioner in the

petition. In the writ petition itself, the petitioner has stated that there is remedy of appeal available to him, but in the peculiar facts and

circumstances of the case, he has not filed the appeal, he is well within his right to assail the impugned order, dated 4.12.2009 in this Court by

invoking extraordinary jurisdiction under Article 226 of the Constitution of India. In support of this contention, the learned Counsel for the

petitioner has relied upon Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,

8. The petitioner has levelled vague allegations against the respondents. In the writ petition, there is no specific allegation against the appellate

authority before whom, the appeal would lie against the order, dated 4.12.2009. It has been submitted on behalf of the petitioner that order, dated

4.12.2009 has been passed by overstepping the jurisdiction, but even this contention can be looked into in the appeal. In Whirlpool (supra), it has

been held that alternative remedy is no bar for invoking jurisdiction under Article 226 of the Constitution of India if there is violation of fundamental

right or there is violation of principles of nature justice or where the order or proceedings are wholly without jurisdiction or the vires of the Act has

been challenged. In the present case, it cannot be said that the order, dated 4.12.2009 is without jurisdiction or is in violation of principles of nature

justice. The violation of fundamental right is not involved in the petition nor vires of the Act has been challenged, hence Whirlpool (supra) is not

applicable in the facts and circumstances of the present case.

9. In CWP No. 1687 of 2010 Sheela Devi v. State of H.P. and Ors., decided on 24.7.2010, it has been held that there is effective alternative

remedy of appeal u/s 148 of the Act and, therefore, writ petition is not maintainable. In the present case also, even as per the case of the petitioner

remedy of appeal is available, but he has not invoked the remedy of appeal. The petitioner has failed to bring his case for invoking extraordinary

jurisdiction of this Court under Article 226 of the Constitution of India in presence of alternative remedy of appeal provided under the Act.

10. In view of above discussion, the petition is dismissed. Interim orders, dated 16.12.2009 and 29.3.2010 stand vacated. All pending

applications, if any, also stand disposed of.