irregularity which does not vitiate the decree. If the judgment is read along with the plaint, the only conclusion is that the appellate Court ordered ejectment of the petitioner from the premises in dispute. The appellate Court has also the power to amend the decree at this stage. The objection raised by the petitioner is of a technical nature and no irreparable injury would be caused to him in case the order of the executing Court is not reversed. Section 99-A also bars the jurisdiction of this Court to upset such a decision as it does not prejudicially affect the right of the petitioner.

(5) For the aforesaid reasons, I do not find any merit in these revision petitions and dismiss the same with no order as to costs.

N.K.S.

Before D. S. Tewatia and Kulwant Singh Tiwana, JJ.

SURESH CHAND and others,—*Petitioners*

versus

DIRECTOR OF PANCHAYATS, HARYANA and another,—*Respondents.*

Civil Writ No. 3084 *of* 1978

November 22, 1978.

Punjab Gram Panchayat (IV of 1953) as amended by Punjab Gram Panchayat (Haryana Amendment) Act (III of 1976)—Sections 100(2), 102(1) *and* (1A)—*Constitution of India,* 1950—*Article* 226—*Complaints made by residents of a village and an elected member of the Gram Panchayat against the Sarpanch—Sarpanch suspended under section* 102(1) *on such complaints—Such Sarpanch reinstated subsequently—Complaints challenging the order of reinstatement—Complainants—Whether have a* locus standi *to file a writ petition—Term 'injury' and 'substantial failure of justice' used in Article* 226—*Meaning of—Order suspending or reinstating a Sarpanch under section* 102(1)—*Nature of—Whether quasi-judicial—Remedy under section* 100(2)—*Whether an alternative remedy so as to bar a writ petition under Article* 226(3).

Held, that a Sarpanch presiding over the meetings of the Gram Panchayat has to take certain decisions which are administrative as

well as judicial. He is to handle the finances of the Gram Panchayat which in some cases are quite large amounts. He is to lease out the land belonging to the Gram Panchayat, manage its property and watch the interest of the Gram Panchayat as a whole. Besides this, he has to perform many other functions and holding that position to which he has been elected he is to project himself as a person to whom no suspicion, defect of character or moral turpitude or any such thing attaches by which he can while discharging his duties as a Sarpanch should feel embarrassed. Every tax payer and every member elected to this village body has a right to see that the Sarpanch is not a person against whom the conduct mentioned in section 102(1) of the Gram Panchayat Act, 1952 can be attributed with the results mentioned therein. It is in tune with the advancement of democracy that the public opinion should have a check on the proper working of the democratic institutions, especially in the rural areas where people have strong notions about moral ethics. Where a Sarpanch is suspended on complaints received from the residents of the village and elected members of the Gram Panchayat and thereafter he is reinstated, the complainants can maintain a petition against the Sarpanch to question his reinstatement. An elected member of the Panchayat can hope to act as a Sarpanch by adopting to the legal process to hold that post. Because of the suspension, a right comes to vest in him to look forward for that chance which cannot be termed as remote. The denial or refusal of that right by passing an order without proper recourse to law and the principles of natural justice, an injury which is of substantial nature, is caused to his rights and he can maintain a writ petition.

(Paras 7 and 8).

Held, that the term "substantial injury" is a relative term and has to be interpreted in the circumstances of each case. No hard and fast rule can be laid down for the interpretation of the word 'injury'. Similarly, the word 'substantial failure of justice' used in clause (c) of Article 226(1) of the Constitution of India, 1950, is also a relative term. Any order which is not in conformity with the principles of natural justice or is not in consonance with the statute under which it is passed may amount to a substantial failure of justice to a person in given circumstances. (Para 8).

Held, that it is apparent from the language of section 102(1A) that the suspension during enquiry does not require notice to the Panch before suspension but this is not the position in the case of suspension under section 102(1). When an information is brought to the notice of the Director about the pendency of an investigation, enquiry or trial for a criminal offence against a Panch, the order is not to flow from that authority automatically. He is to apply his mind to the nature of the accusation and the charge and then to

satisfy himself whether it is of a type which can embarrass the person accused of that charge in the discharge of his functions as a Panch or involves moral turpitude or defect of character. To reach a conclusion in favour of suspension by applying the mind, the Director has to keep in view the principles of natural justice and has to give notice to show cause to the person who is adversely affected by such an order of suspension. A close study of section 102(1) gives an insight to the intention of the legislature in enacting this provision. The nature of the order of the Director acting under section 102(1) of the Act and deciding in favour of suspension of a Panch, after such an objective satisfaction, does not simply remain executive but becomes quasi-judicial. The language of the statute calls upon the Director to act in this particular manner which is quite distinct from section 102(1A). The Director making up his mind to take a decision about the suspension of a Panch under section 102(1) of the Act has the requisites of a quasi-judicial Tribunal in the matter and satisfies some of the well recognised attributes of such an authority. The order of suspension of a Panch or the order of reinstatement is quasi-judicial in nature. There is no appeal or revision provided against these orders in the Act. As the order of suspension or reinstatement does not fall within the category of executive orders, section 100(2) of the Act is not attracted for application and there is no alternate remedy which could efficaciously be followed so as to bar a writ petition under Article 226. (Paras 10 and 11).

Petition under Articles 226/227 of the Constitution of India praying that:—

(a) *a writ in the nature of certiorari be passed quashing the impugned order Annexure P. 3 and the co-option of Respondent No. 3 to the Gram Panchayat Pipli Khera,*

(b) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case be issued.*

(c) *filing of the certified copy of Annexure P. 1 may be dispensed with.*

(d) *the entire record of the case may be called for,*

(e) *service of notice of motion on the respondents may kindly be dispensed with.*

It is further prayed that during the pendency of this writ petition, the operation of the impugned order Annexure P. 3 be stayed

and Respondent No. 3 be restrained from taking part in the proceedings of the Gram Panchayat Pipli Khera.

Bhoop Singh, Advocate, *for the Petitioners.*

A. S. Nehra, Additional A. G. Haryana, *for Respondent No. 1.*

Balwant Singh Malik, Advocate, *for respondents 2 & 3.*

JUDGMENT

K. S. Tiwana, J.

(1) Suresh Chand, Dhan Singh and Shrimati Janki Devi petitioners, residents of village Pipli Khera, Tehsil and District Sonepat, filed this petition under Articles 226/227 of the Constitution of India against the Director of Panchayats, Haryana, Ved Parkash, Sarpanch of Gram Panchayat, Pipli Khera and Shrimati Dhapo of the same village, respondents Nos. 1, 2 and 3 respectively, challenging the reinstatement of respondent No. 2 and the co-option of respondent No. 3 as a member of the Panchayat.

(2) The case set up by the petitioners is that Ved Parkash respondent No. 2, was the Sarpanch of the Gram Panchayat of village Pipli Khera in the previous term. A case under sections 406 and 420 of the Indian Penal Code,—*vide* first information report No. 59, dated 13th of February, 1973 was registered at Police Station, Sonepat, against respondent No. 2. Petitioner No. 2 moved an application to the respondent No. 1 to the effect that respondent No. 2 was involved in a case under sections 406/420, Indian Penal Code, involving moral turpitude and as such it would embarrass him in the discharge of his duties as a Sarpanch. In that application, a prayer for the suspension of respondent No. 2 was made. Respondent No. 1 accepting that prayer suspended respondent No. 2 under section 102(1) of the Gram Panchayat Act, 1952, hereinafter referred as the Act,—*vide* orders (Annexure P. 1), dated 6th of January, 1976, holding that the offence was likely to embarrass him in the discharge of his duties and involved moral turpitude. By virtue of the suspension orders, respondent No. 2 was debarred from taking part in any act or proceedings of the Panchayat of village Pipli Khera. During the continuance of the suspension, Panchayat elections were held in June, 1978, and respondent No. 2 was again elected as Sarpanch. Petitioner No. 1, who is an elected member of the Panchayat, after

the new election, moved an application against respondent No. 2, for his suspension before respondent No. 1 on the same grounds. Again,—*vide* orders (Annexure P. 2), dated 30th of June, 1978, Respondent No. 1 suspended Respondent No. 2 from the office of the Sarpanch and Panch on the ground that this offence is likely to embarrass him in the discharge of his duties and involves moral turpitude and debarred him from taking part in any act or proceedings of the Panchayat of village Pipli Khera during the period of suspension. *Vide* orders (Annexure P.3), dated 18th of July, 1978, respondent No. 1 reinstated respondent No. 2 as Sarpanch of village Pipli Khera holding that the criminal case registered against respondent No. 2 is not likely to embarrass him in the discharge of his duties as a Sarpanch. The petitioners allege that respondent No. 2, who is an influential man, moved an application before the Chief Minister of Haryana on 17th of July, 1978 and because of his influence managed to get the orders of his reinstatement passed. The orders were obtained with a view to co-opt respondent No. 3 as a member of the Gram Panchayat. The order of reinstatement has been challenged on the ground that it is a non-speaking order passed in a *mala fide* manner, to facilitate the co-option of respondent No. 3, without notice of the complainants and without application of mind on the part of respondent No. 1.

(3) The order of reinstatement was defended on behalf of respondent No. 1, the Director of Panchayats, on the ground that it was not passed at the instance of anybody but on hearing of respondent No. 2.

Respondents Nos. 2 and 3 in their written statements raised preliminary objections that in the face of alternative remedy by way of revision under section 100(2) of the Gram Panchayat Act available, the petition was not competent and that there was no substantial injury to the petitioners nor was there any failure of justice. The suspension and reinstatement were not disputed and the act of *mala fide* as alleged was denied.

4. The learned counsel for the petitioners did not press the challenge against the co-option of Shrimati Dhapo, respondent No. 3, as a member of the Panchayat.

(5) Mr. B. S. Malik, learned counsel for respondent No. 2 raised two preliminary objections : (1) that the petitioners have no *locus*

standi to file the present petition; and (2) that in the face of alternative remedy available to the petitioners to approach the Government under section 100(2) of the Act, the writ could not be filed because of the bar created by clause (3) of Article 226 of the Constitution of India.

(6) Regarding *locus standi*, the objection of the learned counsel for respondent No. 2 is that by passing order Annexure P. 3 reinstating respondent No. 2 as Sarpanch, no right of the petitioners No. 1 and 2 has been violated and no substantial injury has been caused to them; nor the order Annexure P. 3 has resulted in causing of any substantial damage to the petitioners. According to Shri Malik, none of the petitioners is a Sarpanch nor they represent the Panchayat to claim the infringement of any right. At the most, they can be said to be suppliers of information leading to the passing of the two orders of suspension, Annexures P. 1 and P. 2. No civil rights flow, which can be said to be violated by the reinstatement order and the petitioners, who are motivated because of their strained relations with respondent No. 2 they cannot be said to have suffered any injury or damage. Shri Malik has further urged that the words, "substantial injury" and "substantial failure of justice" in clauses (b) and (c) of Article 226 of the Constitution of India respectively have a meaning which have to be strictly construed on the premises of the case. Unless these two ingredients are found to exist, the petitioners cannot approach this court in exercise of its extraordinary writ jurisdiction. He has reclined for support on *The Government of India and others* v. *The National Tobacco Co. of India Ltd., Calcutta* (1).

(7) Respondent No. 2 is holding an elected office as a Sarpanch of the Gram Panchayat of his village, which is an executive body. The petitioners are residents of village Pipli Khera and pay taxes like house tax, Chulha tax etc., which are levied by the Gram Panchayat. Besides this, petitioner No. 1 is an elected member of the same Gram Panchayat, of which respondent No. 2 is the Sarpanch. A Sarpanch presiding over the meetings of the Gram Panchayat has to take certain decisions, which are administrative as well as judicial. He is to handle the finances of the Gram Panchayats, which in some cases are quite large amounts. He is to lease out the land belonging to the Gram Panchayat, manage its

(1) AIR 1977 Andhra Pradesh 250.

property and watch the interest of the Gram Panchayat as a whole. Besides this, he has to perform many other functions, which are not possible to be recounted here. Holding that position to which he has been elected, he is to project himself as a person to whom no suspicion, defect of character or moral turpitude or any such thing attaches, by which he can while discharging his duties as a Sarpanch, should feel embarrassed. Every tax-payer and every member elected to this village body has a right to see that the Sarpanch is not a person about whom anything of the type as mentioned in section 102(1) of the Act is attached. Section 102(1) of the Act, which will be reproduced at a later stage in this judgment, was added for the first time when the Act was amended in 1976. All the persons from whom the taxes come to the coffers of the Gram Panchayat, and the members because of their election to its managing body, have a right to see that the Sarpanch is not the person against whom the conduct mentioned in section 102(1) of the Act can be attributed with the results mentioned therein. It is in tune with the advancement of democracy that the public opinion should have a check on the proper working of the democratic institutions, especially in the rural areas, where people have strong notions about moral ethics. On the basis of objections as are urged by Shri B. S. Malik, learned counsel for respondent No. 2, the irregularities or mal-functioning of such institutions resulting from the orders not in conformity with law cannot be perpetuated by denying interference on these hypertechnical objections of *locus standi*. The ambit of the writ jurisdiction in this country has considerably widened after the introduction of the Constitution, with a purpose to give redress to the people.

(8) After re-election, respondent No. 2 was suspended from the office of Sarpanch on 30th of June, 1978,—*vide* order Annexure P. 2, on the complaint of petitioner No. 1 and this order was despatched for information to him from the office of respondent No. 1 on 5th of July, 1978. After suspension, he was reinstated. In such a situation, petitioner No. 1 being the complainant can maintain a petition against respondent No. 2 to question the reinstatement. Support for this view is drawn from *Mange Ram* v. *The State of Haryana and others* (2). The facts of that case were that Shri Rajinder Singh, respondent No. 3, was the Chairman of the Panchayat Samiti, Ganaur Block, District Rohtak. On a complaint of serious irregularities by the

(2) 1968 P.L.R. 307.

majority of the members of the Samiti, Rajinder Singh was suspended. He challenged his suspension through a writ petition, which was withdrawn on the ground that the order of suspension was withdrawn by the concerned authorities. Mange Ram challenged the order of reinstatement in this Court through a writ petition where his *locus standi* to file the writ petition was questioned by way of a preliminary objection. It was observed in that case as under:—

> "In view of the fact that the petitioner as member of the Samiti had complained against the misconduct of respondent No. 3, its Chairman, and in consequence of which he was rendered to be suspended, the petitioner in presenting a writ petition praying that the order suspending respondent No. 3 had been erroneously withdrawn, cannot be said to have no legal right or that he is without *locus standi*. The preliminary objection raised on behalf of respondent No. 3, is, therefore, rejected."

As a consequence of suspension, the office of Sarpanch became vacant after 5th of July, 1978, when the order Annexure P. 2 had been conveyed to respondent No. 2 and the other concerned officers of the Department. Petitioner No. 1, who is an elected member of the Panchayat, can hope to act as a Sarpanch, by adopting to the legal process to hold that post. Because of the suspension, a right had come to be vested in him to look forward for that chance, which cannot be termed as remote. The denial or refusal of that right by passing an order Annexure P. 3 without proper recourse to law and the principles of natural justice, an injury which is of substantial nature, has been caused to his rights. *Government of India and others* v. *The National Tobacco Co. of India Ltd., Culcutta* (supra), which judgment dealt mainly with the amplitude and scope of section 58 of the Constitution (42 Amendment) Act, has dealt with this question generally. In para 14 of the judgment, the learned Judges of the Full Bench observed:—

> "What is 'injury of a substantial nature' and what is 'a substantial failure of justice' have been considered by the Supreme Court and different High Courts in several cases in the context of the grievances placed before them.

Whether there was an injury of a substantial nature or whether there was substantial failure of justice will have to be decided on the facts of each case. It is neither possible nor desirable to define these expressions."

In para 15 of the judgment, the learned Judges discussed the scope of the injury by giving an example that a small incident may result into an injury to a person of a lower strata of the society, which may appear to be very small in the case of a person belonging to a high position in the society and may be easily ignored, but that may be a substantial injury to the man of the former class. Even on the analogy of this case, the term, 'substantial injury', is a relative term and has to be interpreted in the circumstances of each case. No hard and fast rule can be laid down for the interpretation of the word, 'injury'. Similarly, the word, 'substantial failure of justice' used in clause (c) of Article 226(1) of the Constitution of India is also a relative term. Any order which is not in conformity with the principles of natural justice or is not in consonance with the statute, under which it is passed, may amount to a substantial failure of justice to a person in given circumstances. The case reported in A.I.R. 1977 Andhra Pradesh 250 does not extend any help to the counsel for respondent No. 2. In the coming paras of the judgment, this aspect that the order is not in conformity with the language of section 102(1) and the purpose with which this provision was introduced and that the principles of natural justice have been violated, will be discussed. The impugned order Annexure P. 3, in my view, attracts clauses (b) and (c) of Article 226(1) of the Constitution of India, and the petitioner No. 1 for the reasons stated above, has a *locus standi* being a person aggrieved by the order, to approach this Court in the exercise of its extraordinary jurisdiction on the writ side.

(9) The other objection raised by the learned counsel for respondent No. 2 is about the maintainability of the petition in view of the alternative remedy provided by section 100(2) of the Act. Section 100 of the Act is as follows:—

"100(1) Government may call for and examine the record of proceedings of any Gram Panchayat for the purposes of satisfying itself as to the legality or propriety of any executive order passed therein and may confirm, modify, or rescind the order.

(2) Government may, at any time, call for and examine the record of any executive order made under this Act for the purposes of satisfying itself as to the legality and propriety of such order and may confirm, modify or rescind such order."

(10) Section 102 of the Act, as referred earlier, was amended in the year 1976. The learned counsel for the respondent cited cases decided by this Court prior to the amendment of section 102 of the Act to show that no notice was required to be served on the Panch prior to his suspension and argued that the order of reinstatement of respondent No. 2 passed by respondent No. 1 was only an executive order, which could be modified or rescinded by the State Government after calling for the record and satisfying itself about the legality and propriety thereof. The learned counsel for the petitioner, on the other hand, has contended that the order which is passed under section 102(1) of the Act, as it stands now, is not an executive order, but is a quasi-judicial one, which the authority mentioned in the section has to pass after weighing the material placed before it and objectively satisfying itself about the existence of material in favour or against the ingredients mentioned in section 102(1) (amended) of the Act. In order to appreciate the rival contentions, it will be appropriate to reproduce section 102 of the Act as it stood before the amendment and after the amendment.

Before amendment:—

"102(1) The Deputy Commissioner may during the course of an enquiry, suspend a Panch and debar him from taking part in any act or 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) * * * *

(3) * * * *

(4) * * * *"

After amendment:—

"102(1) The Director may suspend any Panch where a case against him in respect of any criminal offence is under

investigation, enquiry or trial, if, in the opinion of the Director, the charge made or proceeding taken against him is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character.

(1A) The Director or the Deputy Commissioner may during the course of an enquiry, suspend a Panch for any of the reasons for which he can be removed.

(IB) A Panch suspended under this section shall not take part in any act or proceedings of the Panchayat during the period of suspension and shall hand over the records, money or any other property of the panchayat in his possession or under his control to the person authorised by the Deputy Commissioner in this behalf.

* * * * *"

Section 100(2) will apply only if the order is of executive nature. Therefore, it becomes necessary to see whether an order, as is impugned in this case, is an executive or is quasi-judicial in nature. The suspension under section 102(1) (old) is equivalent to section 102(1A)(new). Section 102 (1A) has been newly added. Previously, there used to be a suspension of only one type as is apparent from section 102(1)(old) and that was during the course of enquiry. After the amendment, the suspension is now of two types; one is as provided in section 102(1) where a Panch can be suspended in respect of a criminal offence against him under investigation, enquiry or trial, if the charge made or the proceedings taken are likely to embarass him in the discharge of his duties or involve moral turpitude or defect of character, and the other is during the course of enquiry. It is apparent from the language of section 102 (old) and section 102 (1-A) that the suspension during enquiry does not require notice to the Panch before suspension and this view has been pronounced in a number of judgments of this Court, out of which reference can be made to *Rajinder Singh* v. *The Director of Panchayats, Punjab, Chandigarh* (3), *Ratti Ram* v. *The Deputy Commissioner, Patiala* (4) and *Gurdial Singh* v. *State of Punjab etc.* (5). But, that is not the

(3) 1963 P.L.R. 1085.
(4) 1965 P.L.R. 529.
(5) 1971 P.L.J. 417.

position in the case of suspension under section 102(1) (new).. When an information is brought, to the notice of the Director about the pendency of the investigation, enquiry or trial for a criminal offence against a Panch, the order is not to flow from that authority automatically. He is to apply his mind to the nature of the accusation and the charge and then satisfy himself whether it is of a type, which can embarrass the person accused of that charge in the discharge of his functions as a Panch or involves moral turpitude or defect of character. All the criminal offences under investigation, enquiry or trial may not embarrass a Punch in the discharge of his duties or may not involve moral trupitude or defect of character. Take for example a charge under sections 304-A, 323, 326 etc. of the Indian Penal Code. These may not cause any of the problems to any Panch as mentioned in section 102(1). These are not exhaustive and are given only for the purpose of illustration. An offence involving moral turpitude may possibly in each case cause embarrassment of the nature envisaged in section 102(1),(new) but all the offences causing embarrassment may not involve moral turpitude. The authority has to analyse the material placed before it critically to arrive at a conclusion and all the three ingredients of section 102(1)(new) have to be considered disjunctively. The Director has to satisfy himself that *prima facie* things exist, which may call for an action of suspension or may not call for such an action by him. He can arrive at this conclusion only if he applies his conscious mind and is satisfied objectively. If after such an application of mind he comes to a conclusion that there is no *prima facie* case for the suspension of the Panch, he may not suspend him. If, on the other hand, his objective satisfaction is to the effect that the nature of the offence under investigation, enquiry or trial is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character, then the word 'may' in section 102(1)(new) has the compulsive force of 'shall' and he has no option but to suspend the man complained against. The Director may act *suo motu* on learning things or on the information provided by some one. In some cases, the information supplied might be self-contained and on its basis the Director may arrive at a positive conclusion. Cases may not be wanting when the information may be incomplete and the Director may feel the necessity of a further probe into the matter, for which he may require the assistance of the complainant. In that case, he will have to hear the person supplying the information. That envisages the hearing of the complainant before the passing of the order of suspension. Such an application of the mind is not an

attribute of executive order. Such an application of mind, which is the requirement of section 102(1) (new) is not postulated by section 102(1-A) or section 102(1) (old). To reach a conclusion in favour of suspension under section 102(1)(new), by applying the mind in the manner discussed above, the Director has to keep in view the principles of natural justice and has to give a notice to show cause to the person, who is adversely affected by such order of suspension. He can, if given an opportunity, satisfy the Director that the accusation or the criminal offence, which is the subject matter of investigation, enquiry or trial, neither amounts to moral turpitude or defect of character nor is in any way likely to embarrass him in the discharge of his duties as a Panch. A close study of section 102(1)(new), also gives an insight to the intention of the legislature in enacting this provision. So far as suspension is concerned, it existed in old section 102(1). If, such an application of mind was not required, then there was no necessity for enacting section 102(1), after amendment, in this language. The amendment has a purpose behind it which is that the suspension in cases, where there is no enquiry, should not be automatic or mechanical. The Director should apply his mind and make an objective study of the accusation and then take a decision. When this is the position, the nature of the order of the Director acting under section 102(1)(new) and deciding in favour of suspension of a Panch, after such an objective satisfaction, does not simply remain executive, but becomes quasi-judicial. The language of the statute calls upon the Director to act in this particular manner, which is quite distinct from the old provision re-enacted in the form of section 102(1-A).

(11) The quasi-judicial authorities have some attributes which distinguish them from the executive authorities. This nature of the authorities has to be judged from the statutory provisions, under which it is required to act. Some of the attributes of such an authority are that when an issue arises between the parties, it has to be determined according to a procedure and the parties adversely affected by the order to be passed are to be heard after notice. The order passed by such an authority has to contain reasons. When an issue arises between the parties and both the sides claim interpretation of the effect of the accusation in their favour, the authority has to apply its mind to assess the effect of the nature of the accusation. In a given case it may require some material to base its conclusions. The observations of the Supreme Court as to what constitutes a quasi-judicial body, recorded in *Province of Bombay* v. *Khushaldas*

S. Advani (6) were followed in *Board of High School and Intermediate Education* v. *Ghanshyam Das Gupta and others* (7) are:—

"The principles, as I apprehend them are:—

(i) that if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and *prima-facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will *prima-facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

The case in hand squarely falls within the observations contained in (ii) in *Khushaldas's case* (supra) quoted above. An issue has arisen between the parties in this case and both sides claim the effect of the issue in their favour and the same authority has pronounced in favour of the parties at different occassions. The Director making up his mind

(6) A.I.R. 1950 S.C. 222.

(7) A.I.R. 1962 S.C. 1110.

to take a decision about the suspension of a Panch under section 102(1) of the Act has the requisites of a quasi-judicial Tribunal in the matter and satisfies some of the well recognised attributes of such an authority. The order of suspension of a Panch or the order of reinstatement is quasi-judicial in nature. There is no appeal or revision provided against these orders in the Act as is the case in the Act applicable in the State of Punjab. As the order of suspension or reinstatement does not fall within the category of executive orders, section 100(2) of the Act is not attracted for application and there is no alternate remedy, which could efficaciously be followed by the petitioners. The writ petition under Article 226 of the Constitution of India is the only remedy which can be availed of by the petitioners.

(12) The decision of the preliminary objections brings us to the merits of the impugned order. The order Annexure P. 2 passed by the respondent No. 1 on 30th of June, 1978 contains the grounds of suspension in these words: "whereas the offence is likely to embarrass him in the discharge of his duties and involves moral turpitude". These words show that the satisfaction of the respondent No. 1 for suspension was based on these two grounds, that is embarrassment in the discharge of duties and involvement of moral turpitude. While recalling this order,—*vide* Annexure P. 3, respondent No. 1 recorded, "since the criminal case registered against Shri Ved Parkash is not likely to embarrass him in the discharge of his duties as Sarpanch, he is reinstated with immediate effect". The order Annexure P. 3 does not cover the field of moral turpitude. The respondent No. 1 had not vacated the order of suspension on that ground. This would mean that the involvement of moral turpitude of respondent No. 2, because of the offence under investigation, enquiry or trial, still subsists. This shows that the respondent No. 1 had not bestowed the requisite attention while passing the reinstatement order. Annexure P. 3 also does not contain any reason why within 18 days of the passing of Annexure P. 2, the respondent No. 1 came to a different conclusion that the offence under trial against respondent No. 2 would not embarrass him in the discharge of his duties. In such cases, the authorities are required to give reasons for coming to the conclusions, when the orders passed by them are in contradiction of the earlier order. Annexure P. 3 thus illustrates its passing without proper consideration of the matter involved. This has the character of a non-speaking order, which is not expected to flow from quasi-judicial authorities. On

these grounds, this order requires to be quashed. There is yet another ground justifying the quashing of this order, that is, it was on the complaint of petitioner No. 1 that respondent No. 2 had come to the conclusion as recorded in Annxure P. 2. When the respondent No. 1 was to differ with Annexure P. 2 so soon after its passing, the exigency of the situation and principles of natural justice and the principle laid down in *Mange Ram's case* (supra) required that petitioner No. 1 should have been heard against the proposed order. Order Annexure P. 3 is, therefore, quashed for the above reasons.

(13) As the order Annexure P. 3 has been quashed, on the grounds mentioned above, the argument that the quasi-judicial authority has not been given power under the Act to review the order, does not arise.

(14) During the course of the arguments, Shri B. S. Malik, voiced his apprehension that in case Annexure P. 3 was quashed, then respondent No. 2 may have come to this court to seek the quashing of order Annexure P. 2,—*vide* which he was suspended, as he was not given any notice about it nor it contains any material to show if the respondent No. 1 had applied his mind to the material before him at the time of its passing. Annexure P. 2 also suffers from the same defect as Annexure P. 3 as the opportunity was not given to respondent No. 2 before his suspension on the grounds mentioned in the order. Although there is no challenge by any party to the quashing of this order, but, in exercise of the inherent powers under Articles 226 of the Constitution of India and in order to avoid the multiplicity of litigation, we quash Annexure P. 2 also.

(15) The net result of the quashing of orders Annexures P. 2 and P. 3 is that the respondent No. 1 now shall reconsider the complaint of petitioner No. 1 against respondent No. 1 in view of section 102(1), (new) of the Act and decide it in view of the observations made in this judgment.

(16) The writ petition is, therefore, accepted with no order as to costs.

N.K.S.