

Tirloak Chander
Sharma
v.
The State of
Punjab
and others

Grover, J.

Under these circumstances, there seems no reason why the petition should not succeed and the entire election set aside. I would, accordingly, allow this petition and quash the election to the Municipal Committee of Malerkotla. In the circumstances of the case, however, I make no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before Prem Chand, Pandit, J.

MADAN LAL,—*Petitioner.*

versus

THE DIRECTOR OF PANCHAYATS, PUNJAB,—*Respondent.*

Civil Writ No. 1913 of 1964.

1965

February, 2nd.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 6(5)(c)—Whether ultra vires Article 14 of the Constitution—S. 102—Conviction for offences under sections 225 and 332 I.P.C.—Whether make the panch or sarpanch unfit to hold that office—Enquiry to be made—Nature and manner of—Whether to be determined by the Government.

Held that section 6(5)(c) of the Punjab Gram Panchayat Act, 1952, is not *ultra vires* Article 14 of the Constitution of India. It cannot be said that there are no rules or principles for the guidance of the Government or the officer to whom it has delegated its power of removal under section 6(5)(c) of the Act. In this very clause, it has been clearly stated by the Legislature that the order by a criminal Court should imply a defect of character of *such a nature which might make him unfit to be a Sarpanch or Panch of a Panchayat.*

Held, that according to section 6(5)(c) of the Punjab Gram Panchayat Act, 1952, the order by a criminal Court in the opinion of the Government should imply a defect of character unfitting him to be a Sarpanch or Panch. In the present case, the order of the learned sessions Judge convicting the petitioner under sections 225 and 332 of the Indian Penal Code clearly implied a defect of character, which made him unfit to be a Panch or Sarpanch of any Panchayat. The satisfaction in this respect has to be of the Government or of the officer to whom the Government delegates its power of removal. The removal on the ground that the continuance of the petitioner in the

office of Sarpanch was undesirable in the interest of the public is covered by section 102(2)(c) of the Act

Held, that section 102(2) of the Act clearly lays down that the "Government may, after such enquiry *as it may deem fit*, remove any Panch" on any of the grounds mentioned in that sub-section. The nature and the manner of the enquiry had thus to be determined by the Government. In view of the judgment of the Magistrate and that of the learned Sessions Judge on appeal, there hardly appeared to be any need for a further enquiry.

Petition under Article 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus, prohibition or any other suitable writ, order or direction be issued quashing the impugned order of the respondent (Director of Panchayat, Chandigarh) dated 25th August, 1964.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

M. R. AGNIHOTRI, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

ORDER

PANDIT, J.—This petition under Articles 226 and 227 of the Constitution has been filed by Madan Lal, challenging the order, dated 25th of August, 1964, passed by the Director of Panchayats, Punjab, respondent, removing him from the office of Sarpanch of Gram Panchayat, Pansara, Tehsil Jagadhri, District Ambala, under the provisions of section 102(2) (a), (d) and (e) of the Punjab Gram Panchayat Act, 1952.

Pandit, J.

On 31st of January, 1964, the petitioner was convicted by the Court of Magistrate 1st Class, Jagadhri, and sentenced to six months' rigorous imprisonment under each of the three sections 225, 332 and 506 of the Indian Penal Code (the sentences to run concurrently), for assaulting the Naib Tehsildar (Recovery), while the latter was on duty. On the basis of this conviction, the respondent on 14th of March, 1964, in exercise of the powers conferred on him by section 102(1) of the Gram Panchayat Act, suspended the petitioner from the office of the Sarpanch and debarred him from taking part in any act or proceedings of the Gram Panchayat, during the period of his suspension. He was further asked to explain his position within fifteen days

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as to why action should not be taken against him under section 102(2) and (3). In response to this show-cause notice, the petitioner submitted his representations, the first some time before 14th of May, 1964, the second on 14th of May, 1964, and the third on 10th of August, 1964. In the first, he submitted that as an appeal against his conviction was pending in the Court of the Sessions Judges, Ambala, and the matter was sub-judice, the order of his suspension might be cancelled. In the others, he stated that on 6th of April, 1964, the Sessions Judge, Ambala, had reduced his sentence to two months' rigorous imprisonment and a fine of Rs. 400 under section 332 of the Indian Penal Code and to one month's rigorous imprisonment under section 225 of the Indian Penal Code, while he had been acquitted of the charge under section 506 of the Indian Penal Code. It was also submitted that since these offences did not involve either moral turpitude or any defect of character, he could not be suspended. It was not every conviction for which such an action could under the law be taken. After considering these representations, the following impugned order, removing him from the office of Sarpanch was passed:—

“Whereas I am satisfied after enquiry that Shri Madan Lal, Sarpanch, of Gram Sabha Pansara, Tehsil Jagadhri, district Ambala, has been convicted and sentenced to six months' rigorous imprisonment under sections 225-B, 332 and 506 (later part) of the Indian Penal Code on 31st of January, 1964, by Magistrate 1st Class, Jagadhri, and on appeal, the sentence has been reduced to two months and a fine of Rs. 400 under section 332, Indian Penal Code, and to one month's rigorous imprisonment under section 225, Indian Penal Code, by the Sessions Judge, Ambala,—*vide* his order, dated 6th of April, 1964.

Shri Madan Lal, Sarpanch, has confessed this fact. Hence he is not entitled to continue as Sarpanch, under section 6(5) (b) and (c) of the Gram Panchayat Act, 1952, (amended), read with section 102(1) and 102(2) *ibid*.

Therefore, his continuance in the office of Sarpanch, is undesirable in the interest of the Public.

Therefore, in exercise of the powers contained in section 102(2) (a), (d) and (e) of the Gram Panchayat Act, 1952 (amended), read with Punjab Government Notification No. 11508-LB-53/10558, dated the 6th May, 1954, I, Net Ram, Director of Panchayats, Punjab, hereby remove Shri Madan Lal, from the office of Sarpanch of Gram Panchayat Pansara, Tehsil Jagadhri, district Ambala.

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This led to the filing of the present writ petition on 8th of September, 1964.

Learned counsel for the petitioner raised three contentions before me.

- (1) The offences under sections 225 and 332 of the Indian Penal Code neither involve moral turpitude nor do they denote a defect of character and, therefore, the respondent had no jurisdiction to remove the petitioner from the office of Sarpanch on the basis of such a conviction;
- (2) that section 6(5) (c) of the Gram Panchayat Act, 1952, is *ultra vires* Article 14 of the Constitution as it vests uncanalised and unfettered powers in the executive authority. There are no principles or rules for the guidance of the Government for determining whether an order by a criminal Court implies a defect of character or not; and
- (3) No enquiry was made by the Government, as contemplated by section 102(2) of the Gram Panchayat Act, before the impugned order was passed, and no opportunity whatsoever was given to the petitioner to explain his position before his removal was ordered.

Before dealing with these contentions, it would be proper to set down the relevant sections of the Act.

6(5) No person, who is not a member of the Sabha and who,

(a) * * * * *

(b) has been convicted of any offence involving moral turpitude unless a period of five years has elapsed since his conviction; or

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(c) has been subjected to an order by a criminal court and which order in the opinion of Government or of the officer to whom Government has delegated its powers of removal, implies a defect of character unfitting him to be a Sarpanch or Panch, unless a period of five years has elapsed since the date of order; or * * * * *
* * * * *
shall be entitled to stand for election as, or continue to be a Sarpanch or Panch. * * * * *

102(1) The Director 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 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) 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) ** ** ** ** ** ** ** ** **

(c) ** ** ** ** ** ** ** **

(d) who in the opinion of Government or of the officer to whom Government has delegated its power of removal, has been guilty of misconduct in the discharge of his 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.

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 subsection (2) may be disqualified for re-election for such period not exceeding five years as Government may fix."

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The prosecution case against the petitioner for which he was convicted under sections 225 and 332 of the Indian Penal Code by the learned Sessions Judge was that on 20th of February, 1963, Shri Rampal Singh, Naib Tehsildar (Recovery), Jagadhri, had gone to village Pansara, for the recovery of an amount due to the State. One Singh Ram, (who was also challaned along with the petitioner) was in arrears to the extent of Rs. 152.43. Ali Sher and Prem Singh, peons were sent to summon him. When Singh Ram, appeared, he was required to pay the amount due as *taccavi* loan, but he expressed his inability to make the said payment. On this, a warrant under section 69 of the Land Revenue Act, was issued and he was put under arrest. In the meantime the petitioner, with whom Singh Ram, was working on farm, came there and asked as to who had detained him, (Singh Ram). When he was informed that the Naib Tahsildar had done so in connection with the recovery of the *taccavi* loan, the petitioner caught hold of Singh Ram's, arm with a view to take him away and also remarked that he had seen many Naib Tehsildars and that few days back a Tahsildar had been assaulted at Amritsar and further that he also belonged to the same district, meaning thereby that he would also assault the Naib Tahsildar. When Shri Rampal Singh, reminded the petitioner not to take Singh Ram, away as he was in custody, the petitioner caught hold of the Naib Tahsildar from his neck and hit him with a shoe on his face. The petitioner was, however, pushed away by the peons. He then left along with Singh Ram. Before leaving, he threatened the Naib Tahsildar saying that he would send for his pistol and shoot him. The Naib Tahsildar then went to the hospital and got himself medically examined. Subsequently he made a report at the office of the Sub-Divisional Officer, on the basis of which a case was registered, resulting in the conviction of the petitioner.

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According to the return filed by the respondent, the petitioner was a member of Gram Panchayat, Aurangabad, at the time of occurrence. As laid down in section 3(1) of the Gram Panchayat Act, a Panch is a public servant as defined in section 21 of the Indian Penal Code. He is supposed to help the administration and co-operate with the public servants in the discharge of their duties. By assaulting the Naib Tehsildar, who had come to the village to recover *taccavi* loan, the petitioner had behaved in a highly irresponsible and improper manner. Not only did he not fail in his duty, but on the other hand he caught hold of the Naib Tehsildar by the neck, hit him on his face with a shoe and threatened to shoot him with a pistol. Under these circumstances, the respondent rightly came to the conclusion that the petitioner was not a desirable person to hold the important office of the Sarpanch of a Gram Panchayat and his continuance in office was undesirable in the interests of the public.

As regards the first contention of the learned counsel for the petitioner, according to section 6(5) (c) of the Act, the order by a criminal Court in the opinion of the Government should imply a defect of character unfitting him to be a Sarpanch or Panch. In the present case, the order of the learned Sessions Judge, convicting the petitioner under sections 225 and 332 of the Indian Penal Code clearly implied a defect of character, which made him unfit to be a Panch or Sarpanch of any Panchayat. It is noteworthy that the satisfaction in this respect was of the Government or of the officer to whom the Government had delegated its power of removal, namely, the respondent in the instant case. This apart, in the impugned order the respondent has definitely stated that the continuance of the petitioner in the office of Sarpanch was undesirable in the interest of the public. This ground of removal would be covered by section 102(2)(e) of the Act.

Coming to the second contention, it cannot be said that there are no rules or principles for the guidance of the Government or the officer to whom it has delegated its power of removal under section 6(5) (c) of the Act. In this very clause, it has been clearly stated by the Legislature that the order by a criminal Court should imply a defect of character of *such a nature which might make him unfit to be a Sarpanch or Panch of a Panchayat*. It may also be

mentioned that in the writ petition no objection was taken to the constitutionality of section 6(5) (b) or section 102(2) (e) of the Act, under which also action was taken against the petitioner in the present case.

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So far as the third contention is concerned, there is no merit in the same as well. According to the return filed by the respondent, sufficient opportunity was given to the petitioner to explain his position as to why action should not be taken against him under section 102(2) and (3) of the Act. The petitioner submitted his representations, as mentioned above, and they were duly considered and scrutinised before his removal was ordered. Section 102(2) clearly lays down that the "Government may, after such enquiry as it may deem fit, remove any Panch" on any of the grounds mentioned in that sub-section. The nature and the manner of the enquiry had thus to be determined by the Government. In view of the judgment of the Magistrate and that of the learned Sessions Judge on appeal, there hardly appeared to be any need for a further enquiry.

In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I leave the parties to bear their own costs.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

H. U. DEUTLER,—*Appellant.*

versus

MOHINI BALWANT SINGH,—*Respondent.*

S.A.O. No. 211-D of 1964.

Delhi Rent Control Act (LIX of 1958)—S. 14(1)(e)—Bona fide requirement of the landlord—Landlord acquiring temporary accommodation on rent from a person promising to vacate when that person requires him to do—Whether destructive of the bona fide requirement.

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Held, that the need of a landlord does not, by the mere fact of having taken a residential accommodation, even a suitable one on