

Before : N. C. Jain, J.

SOHAN SINGH SARPANCH,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 10261 of 1989.

20th November, 1989.

The Punjab Gram Panchayat Act, 1952—Ss. 9(1), 10(1) & 15—Acting Sarpanch—Vacation of office—Loss of confidence—Panches convening meeting to replace Acting Sarpanch elected to perform functions of absentee Sarpanch—Acting Sarpanch can be replaced by another Acting Sarpanch' by election at a meeting convened for the purpose.

Held, that the Block Development and Panchayat Officer acted within his jurisdiction in issuing notice Annexure P. 2 for convening the meeting for the purpose of electing an acting Sarpanch commanding majority and that there was nothing wrong in the way adopted by the other Panches in representing to the authorities that a meeting be convened on the basis of allegations contained in the representation made by them.

(Para 6)

Held, that, in fact, the term 'acting Sarpanch' figures nowhere in the Act and it appears that the petitioner was authorised to act as acting Sarpanch, to take the custody and maintain the record and the properties of the Gram Panchayat as no Panchayat can remain without a 'headman'. If such an acting Sarpanch is not wanted any longer either by the Panchayat or his fellowmen, surely, a meeting can be got convened through the authorities for the purpose of electing another acting Sarpanch. There is no provision of law in the Act and none has been referred to at the Bar, the reading of which could compel the court to take a view that until and unless a new Sarpanch is elected in accordance with the provisions of S. 10(1) of the Act the acting Sarpanch can continue. An acting Sarpanch can always be asked to vacate the seat he is occupying if he has lost majority or the confidence of the other Panches particularly when a Sarpanch is elected directly by the voters. In such a situation it is not incumbent upon the authorities to follow the procedure laid down in S. 9 of the Act which is meant for passing of no-confidence motion against such a Sarpanch. Moreover, the authorities can always undo its own doings or, in other words, the Panches who had put the petitioner in the seat of an acting Sarpanch can always convene a meeting for electing another acting Sarpanch till the original duly directly elected Sarpanch either comes back or till the election takes place.

(Para 6)

Held, that an acting Sarpanch elected to perform the functions of an absentee Sarpanch can always be asked to vacate the office by the other Panches if he has lost majority. No provision of law under the Gram Panchayat Act prohibits the adoption of such a course.

(Para 7)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to:—

- (i) *send for the records of the case;*
- (ii) *issue a writ of certiorary quashing the impugned order annexure P-2;*
- (iii) *issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;*
- (iv) *dispense with the service of prior notices of this petition to the respondents;*
- (v) *dispense with the filing of certified copies of the annexures;*
- (vi) *stay the operation of the impugned order annexure P-1;*
and
- (vii) *award costs of this petition to the petitioner.*

S. P. S. Chauhan, Advocate, for the petitioner.

S. K. Syal, D.A.G., for the State of Punjab.

S. S. Sahi, Advocate, for Respondents 4 to 10.

JUDGMENT

Naresh Chander Jain, J.

In this writ petition, the petitioner has challenged the legality and validity of Annexure P.2 by which the Block Development and Panchayat Officer, Mahilpur has called the meeting of the Panches for the purpose of electing an acting Sarpanch on 11th August, 1989 at 11.30 A.M. commanding majority. A brief resume of the facts giving rise to the present writ petition is necessary in order to appreciate the question involved.

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2. In the election of Gram Panchayat Panjaur held in September, 1983 one Ranbir Singh was directly elected Sarpanch of the said Panchayat along with other Panches of the Gram Panchayat to whom notice Annexure P.2 has been issued. The aforesaid Ranbir Singh Sarpanch worked as Sarpanch of the Panchayat for a few months. In November 1983, he went abroad. The Gram Panchayat before the going of Ranbir Singh abroad passed a resolution appointing the petitioner as acting Sarpanch who took over the charge of the post and the record as well as the property of the Panchayat. Ever since then he had been working as an acting Sarpanch. It is further the case of the petitioner in the writ petition that Ranbir Singh, the elected Sarpanch, came back to the village and remained there for about three years but never took interest in the affairs of the Panchayat and never asked the petitioner to hand him over the charge nor participated in the meetings of the Panchayat on his return to the village and as such the petitioner continued working as Sarpanch. Ranbir Singh again went abroad. According to the petitioner as has been stated by him in the petition no vacancy of Sarpanch has accrued as is required by Section 10(1) of the Punjab Gram Panchayat Act, 1952 (hereinafter called 'the Act'). Section 10(1) of the Act is reproduced below, at this stage, for facility of ready reference :—

“Section 10(1)—*Filling of casual vacancies*,—(1) Whenever a vacancy occurs by death, resignation or removal of—(a) a Sarpanch, a new Sarpanch shall be elected in the manner prescribed;

(b) a Panch, the vacancy shall be filled up by the Gram Panchayat by co-option in the prescribed manner from amongst the members of the Sabha who are eligible to be elected as Panches :

Provided that where a vacancy occurs as a result of the election or, co-option of a Panch having been set aside under section 13-O the vacancy shall be filled by election or co-option, as the case may be in the prescribed manner.

(2) * * * *

The petitioner has further stated in the petition that the Block Development and Panchayat Officer directed the petitioner to appear in his office with the Panchayat's records on 14th July, 1989 who on

petitioner's appearance seized the entire record of the Panchayat from him without assigning any reason. It has further been stated that on 1st August, 1989 the Block Development and Panchayat Officer, Mahilpur issued a notice to the petitioner and the Panches for holding meeting of Panchayat on 11th August, 1989 at 11.30 A.M. under the Chairmanship of Social Education and Panchayat Officer, Mahilpur for electing new acting Sarpanch. As has been noticed above, it is the legality and the validity of this notice Annexure P.2 which is the subject matter of challenge in this writ petition.

(3) While issuing notice of motion, the operation of Annexure P.2 was stayed. Two separate written-statements to the writ petition have been filed on behalf of the Block Development and Panchayat Officer as well as the members of the Gram Panchayat. In the written statement filed by the Panches, it has been averred therein on a point of fact that the petitioner was not performing the duties of the office of Sarpanch in accordance with the provisions of the Act and, therefore, they have lost confidence in him. They have averred that the petitioner sold away the trees to the extent of Rs. 500 without their consent and without any receipt. According to them the petitioner was not rendering any accounts to them. A copy of the representation filed by respondent Nos. 4 to 8 to hold the meeting for the election of acting Sarpanch who enjoys majority has been attached with the written-statement filed by respondents No. 2 and 3. It is on the basis of the representation that the meeting has been ordered to be convened as per Annexure P.2. Apart from this factual position, it has been urged in the written statement that the petitioner could not be described to be elected Sarpanch as he never took oath of the office as required by Section 9(1) of the Act which reads as under :

“Section 9. *Oath and terms of office of Panches and Sarpanch and no confidence motion against Sarpanch.*—(1) Before entering upon the duties of his office, a Panch as well as a Sarpanch shall take an oath in the form specified in Schedule IV.

(2) A Sarpanch or a Panch shall hold office for a period of five years :

Provided that an outgoing Sarpanch or a Panch shall, unless Government otherwise directs, continue to hold office, until his successor takes oath.

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Provided further that the Sarpanches and Panchayats holding office as such on the commencement of the Punjab Gram (Panchayat) Amendment Act, 1982 shall hold office only until their respective successors, elected by virtue of a direction issued under the proviso of Sub-section (3) of Section 95-A take oath.

- (3) An application regarding intention to move a motion of no-confidence against a Sarpanch may be made to the Block Development and Panchayat Officer by a two third of the total number of members of the Gram Sabha concerned :

Provided that no such application shall be made unless a period of two years has elapsed from the date on which the Sarpanch assumed his office.

“(4) The Block Development and Panchayat Officer shall, within a period of fifteen days of the receipt of application under sub-section (3), convene a meeting of the Gram Panchayat, by giving seven clear days notice, for discussing and taking decision on the no-confidence motion.

- (5) If the no-confidence motion is carried in the meeting which shall be presided over by the Block Development and Panchayat Officer or an Officer not below the rank of an Extension Officer authorised by the Block Development and Panchayat Officer in this behalf, by (two third) majority of the total number of Panches of the Gram Panchayat concerned, the Sarpanch shall be deemed to have been removed from his office, whereupon a new Sarpanch shall be elected in that very meeting :

Provided that if no-confidence motion is lost, another such motion shall not be moved against that Sarpanch during the remaining term of his office.”

It has been further stated that the petitioner could not be described to be acting as Sarpanch as he only took over the charge of the office of the Sarpanch in the absence of Ranbir Singh who continues to be an elected Sarpanch of the Gram Sabha.

(4) The learned counsel for the petitioner Mr. S. P. S. Chohan while reiterating his averments contained in the petition has forcefully argued that once the petitioner has been authorised to act as

acting Sarpanch under Section 15 of the Act, he would continue to act as such until and unless a new Sarpanch is elected by holding election under Section 10 of the Act. For appreciating the argument advanced by the counsel, it is necessary to have a look at the provisions of Section 15 of the Act which is reproduced below :

“Section 15. *Custody and maintenance of Panchayat records and other properties.*—(1) The Sarpanch and in his absence the Panch authorised by the Gram Panchayat or by the Block Development and Panchayat Officer in this behalf shall be responsible for the custody of the movable property of the Gram Panchayat and such of its records as may be prescribed and the immovable property belonging to or vested in the Gram Panchayat shall also remain in his charge, and the Panchayat Secretary shall be responsible for the custody of the other records of the Gram Panchayat and he shall also maintain up-to-date all the records of the Gram Panchayat whether in his custody or in the custody of the Sarpanch or the Panch referred to above.

Provided that :—

- (i) the Sarpanch or the Panch, as the case may be, shall before filing his nomination paper for election as Panch, hand over complete charge of such records and property to the Panchayat Secretary or the person authorised by the Block Development and Panchayat Officer in this behalf and shall also do so immediately on the vacation of his office due to any cause whatsoever; and
 - (ii) any person having in his custody or charge such records or property on the date of commencement of the Punjab Gram Panchayat (Amendment) Ordinance, 1978, shall hand over the same to the Panchayat Secretary or the officer authorised by the Block Development and Panchayat Officer in this behalf within a period of fifteen days of the date of such commencement.
- (2) If any person fails to hand over such records or property in the manner and within the period specified under subsection (1), the Block Development and Panchayat Officer

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may apply to an Executive Magistrate within whose jurisdiction the Sabha area is situated for securing from such records or property, as the case may be.

- (3) On receipt of an application under sub-section (2), the Magistrate may, by an order, authorise any police officer not below the rank of a Sub-Inspector to enter and search any place where such records or property are believed to be kept, and to seize them; and property so seized shall be handed over as soon as possible to the Panchayat Secretary.
- (4) Notwithstanding anything contained in this Act, whoever, in contravention of the provisions of this Section, wilfully evades the handing over of such records or property shall, on conviction by a Judicial Magistrate of the 1st Class, be punishable with imprisonment of either description which may extend to three years or with fine or with both."

(5) Learned counsel for the petitioner has also argued that notice Annexure P.2 amounts to passing of a vote of no-confidence which could not be done without resorting to the provisions of Section 9 of the Act. The learned counsel cites *Vatoo Ram v. State of Haryana* (1), in support of his argument.

(6) Having given my thoughtful consideration to the entire matter, I am of the view that respondent No. 3 has acted within his jurisdiction in issuing notice Annexure P.2 for convening the meeting for the purpose of electing an acting Sarpanch commanding majority and that there was nothing wrong in the way adopted by the other Panches in representing to the authorities that a meeting be convened on the basis of allegations contained in the representation made by them. This Court is further of the considered view that the present case is not covered by any provision from which the petitioner's counsel can derive support. A perusal of the relevant provisions of the Act make it clear that Section 10(1) of the Act prescribes the filling up of a vacancy by election in the case of death, resignation or removal of a Sarpanch. Whenever any of the contingencies mentioned in Section 10(1) arises, a new Sarpanch shall be elected or co-opted. Proviso to Section 10 of the Act deals with a case where a vacancy has occurred on account of the setting aside of an election as a result of the filing of an election petition under Section 13-O of the Act. In view thereof, no help can be derived from Section 9 of

the Act either which prescribes the procedure to be followed in the case of passing of a no-confidence motion against a Sarpanch. The petitioner cannot in law be described to be a Sarpanch who has been elected by the members of the Gram Sabha directly. The petitioner was required to take custody and maintain the record and the properties of the Panchayat in the absence of a duly elected Sarpanch on account of his not functioning as the duly elected Sarpanch had gone abroad. In fact, the term 'acting Sarpanch' figures now here in the Act and it appears that the petitioner was authorised to act as acting Sarpanch, to take the custody and maintain the record and the properties of the Gram Panchayat as no Panchayat can remain without a 'headman'. If such an acting Sarpanch is not wanted any longer either by the Panchayat or his fellowmen, surely, a meeting can be got convened through the authorities for the purpose of electing another acting Sarpanch. There is no provision of law in the Act and none has been referred to at the Bar, the reading of which could compel the court to take a view that until and unless a new Sarpanch is elected in accordance with the provisions of Section 10(1) of the Act the acting Sarpanch can continue. An acting Sarpanch can always be asked to vacate the seat he is occupying if he has lost majority or the confidence of the other Panches particularly' when a Sarpanch is elected directly by the voting. In such a situation it is not incumbent upon the authorities to follow the procedure laid down in Section 9 of the Act which is meant for passing of no-confidence motion against such a Sarpanch. Moreover, the authorities can always undo its own doings or, in other words, the Panches who had put the petitioner in the seat of an acting Sarpanch can always convene a meeting for electing another acting Sarpanch till the original duly directly elected Sarpanch either comes back or till the election takes place.

(7) *Vatoo Ram's* case (supra) has not absolutely no application to the facts of the instant case, as the perusal of the facts in that case would show that the orders of suspension of the Sarpanch were sought to be challenged in the reported case and which challenging the orders of suspension, it was sought to be argued that even if valid power of suspending a Sarpanch was there, no power was vested in any authority to appoint any one else to discharge the functions of the Sarpanch during the period of suspension. The precise questions raised in *Vatoo Ram's* case (supra) do not arise in the present case. In the present case, the petitioner has not been brought as an acting Sarpanch on account of suspension of the previous Sarpanch. He is not a suspended Sarpanch himself either. In

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view thereof, neither on facts nor on point of law, any *ratio* laid in *Vatoo Ram's* case (supra) can be said to be applicable to the present case. In view thereof, it can be unambiguously and unreservedly held that an acting Sarpanch elected to perform the functions of an absentee Sarpanch can always be asked to vacate the office by the other Panches if he has lost majority. No provision of law under the Gram Panchayat Act prohibits the adoption of such a course.

(8) In the light of the observations made above, the arguments raised by the learned counsel are found to be devoid of any merit and consequently the writ petition is ordered to be dismissed with no costs.

R.N.R.

Before : J. V. Gupta, A.C.J. & M. S. Liberhan, J.

BRIJ PAL SINGH,—Appellant.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 544 of 1988.

10th April, 1990.

The Punjab Government National Emergency (Concession) Rules, 1965—Rls. 1(3) & 2—Benefit of military service is not available to person serving in the General Reserve Engineering Force (GREF).

Held, that the Punjab Government National Emergency (Concession) Rules, 1965 provide a specific type of service rendered by providing a deeming definition of a military service which clearly provides that only that service shall be deemed to be military service which is undergone while being enrolled or commissioned in any of the three wings of the Indian Armed Forces including the service as a warrant officer and it is only the service rendered during the period of Proclamation of Emergency made by the President on October 26, 1962 which will be considered to be military service. In the alternative, any such other service which may be declared to be military service for the purpose of these rules shall be deemed to be a military service. No other service can be considered to be a military service. GREF may be an integral part of the Army but undisputably it cannot be said that Sukhdev Singh Gill was either enrolled or commissioned in any of the three wings of the Indian Armed Forces or he served as a warrant officer.

(Para 10)