

which the application for amendment was given. Parties are directed to appear before the trial Court on 17th May, 1971, on which date Rs. 200, the costs awarded, would be paid. If the costs are paid, the amendment, as prayed, shall be allowed. Time will be given to the plaintiff to put in the amended plaint and thereafter time will be given to the defendant to put in the written statement. Fresh issues will be settled and with the consent of the parties the evidence already led may be treated as evidence in the case. Parties will be given an opportunity to lead evidence on the new issues that may arise in the case. The case will be decided expeditiously. Records of the trial Court were not sent for. A copy of this judgment will be sent to the trial Court immediately. There would be no order as to costs.

K. S. K.

CIVIL MISCELLANEOUS.

..... .. Before A. D. Koshal. J.

KARTAR CHAND BHALLA,—Petitioner.

versus.

THE STATE OF PUNJAB ETC.,—Respondents.

Civil Writ No. 2743 of 1970.

April 23, 1971.

*Punjab Gram Panchayat Act (IV of 1953)—Sections 10, 15 and 102—Simultaneous suspension of a Sarpanch and enquiry against him directed by a single order—Whether legal—Successor to a suspended Sarpanch—Whether can be appointed under section 15.*

*Held*, that no doubt it is only during the course of an enquiry envisaged by sub-section (2) of Section 102 of the Punjab Gram Panchayat Act, 1952, that the Deputy Commissioner may exercise his power of suspension of a Sarpanch and that if no such enquiry has been ordered, occasion for the exercise of the power of suspension by the Deputy Commissioner under sub-section (1) of section 102 of the Act, would not arise. This, however, has no application to a case in which the enquiry and the suspension are covered by directions contained in a single order of the Deputy Commissioner. Such an order must be read as a whole. Thus where the suspension and the enquiry are simultaneous and directed by a single order, it cannot be said that when

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the direction regarding suspension is given, no enquiry is pending or that the suspension is not made "during the course of an enquiry" as envisaged by sub-section (1) of section 102 of the Act. Such an order is perfectly legal.

(Para 4).

*Held*, that it is true that section 10 of the Act makes no provision for the filling of a vacancy created by the suspension of a Sarpanch during the course of an enquiry under section 102 of the Act, but section 15 of the Act does contemplate the filling of the vacancies caused otherwise than by the death, resignation or removal of a Panch or Sarpanch. The phrase "in his absence" in section 15 is wide enough to embrace any situation in which a Sarpanch becomes incapable of acting. This phrase cannot be interpreted so as to be given a restricted meaning with reference to the provisions of section 10. If it was the intention of the legislature that the phrase shall cover only those cases which related to vacancies arising by reason of the death, resignation or removal of a Sarpanch, it would not be there at all. The use of the phrase actually employed by the legislature indicates that its intention was to widen the scope of section 15 so that it may cover not merely cases of vacancies arising in the manner stated in section 10 but all cases in which a Sarpanch becomes incapable of acting including one of the suspension of a Sarpanch. Hence a successor to a suspended Sarpanch can be validly appointed under section 15 of the Act. (Para 5).

*Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ order or direction be issued quashing the impugned order of Respondent No. 2 dated 12th August, 1970 along with its transliterated copy in English and also praying that an ad-interim order be issued directing the respondents not to take any further action and taking over the charge from the petitioner be stayed during the pendency of this writ petition.*

H. S. SANGHA, ADVOCATE, for the petitioner.

O. P. HOSHIARPURI, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB) for the respondents.

### JUDGMENT

Koshal, J.—(1) By this judgment I shall dispose of three petitions under Articles 226 and 227 of the Constitution of India, being Civil Writs Nos. 2743, 2776 and 3941 of 1970, in each one of which the petitioner is the Sarpanch of a Gram Panchayat constituted under the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act) and seeks the issuance of a writ quashing the order passed by the Deputy Commissioner concerned directing his (the petitioner's) suspension from the office of Sarpanch under sub-section (1) of section 102 of the Act. In each of the petitions the impugned

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order is attacked on various grounds of which only the following have been urged before me at the bar :

- (a) No suspension could legally be ordered except so as to take effect during the course of an enquiry envisaged by sub-section (2) of the section above mentioned. The impugned order directs firstly, the suspension of the petitioner and, secondly (in its concluding portion) that an enquiry be held against the petitioner in respect of specified charges. The direction regarding suspension having preceded that relating to the enquiry, the former contravenes the provisions of sub-section (1) *ibid*.
- (b) There is no provision in the Act which authorises the Government to appoint someone who has not been elected as a Sarpanch to act as such during the time of suspension of a Sarpanch. That being so, no Sarpanch can be suspended inasmuch as his suspension would leave the Panchayat concerned without a Sarpanch and this is a situation which could not have been intended by the legislature to prevail. The provisions of sub-section (1) *ibid*, therefore, come into conflict with and cannot take precedence over the other provisions of the Act.
- (c) A Sarpanch being an elected representative of the people of the village cannot be summarily suspended by the Deputy Commissioner. There is no contractual relationship between him and the Government, much less that of master and servant. And if that be so, the Government or the Deputy Commissioner could have no power to suspend him.

(2) In Civil Writ No. 3941 of 1970 an additional contention has been raised on behalf of the petitioner. One of the two charges in respect of which the impugned order directs an enquiry against him reads :

“That by misusing his office he is preventing the State Government from exercising its legal rights over the mines, although the Court has already decided in favour of the State Government in the matter.

(3) The contention is that this charge is intended to coerce the petitioner into giving up a claim made by him as Sarpanch of the

village to the effect that certain mineral rights vest in that Panchayat and not in the Government — a claim which is the subject-matter of an appeal pending in the Supreme Court of India.

(4) In support of ground (a) learned counsel for the petitioners have relied upon *Shri Ujagar Singh (v) State of Punjab and others* (1) in which it was held on an interpretation of sub-section (1) and (2) *ibid* that it is only during the course of an enquiry envisaged by sub-section (2) that the Deputy Commissioner may exercise his power of suspension and that if no such enquiry has been ordered, occasion for the exercise of the power of suspension by the Deputy Commissioner under sub-section (1) would not arise. This authority has no application to the facts of the cases before me in each one of which the enquiry and the suspension in question are covered by directions contained in a single order of the Deputy Commissioner which, in order to be properly interpreted, must be read as a whole. Thus, viewed the suspension and the enquiry in each case are simultaneous. And if that be so, it cannot be said that when the direction regarding the suspension was given, no enquiry was pending or that the suspension was not made “during the course of an enquiry” as envisaged by sub-section (1) *ibid*. Consequently I find no force in ground (a).

(5) In support of ground (b) learned counsel for the petitioners have invited my attention to the provisions of section 10 and sub-sections (1) and (2) of section 15 of the Act and the same are quoted below for facility of reference : —

“10. Whenever a vacancy occurs by the death, resignation or removal of a Panch or a Sarpanch, a new Panch or Sarpanch, as the case may be, shall be elected in such manner as may be prescribed, and the person so elected shall hold office for the unexpired portion of the term for which the person in whose place he was elected would have otherwise continued in office.”

15. (1) The Sarpanch and, in his absence the Panch elected by the Panchayat for the purpose, shall be responsible for the maintenance of all prescribed records and registers and other property belonging to or vested in the Sabha or the Panchayat and, on the vacation of his office, the outgoing Sarpanch or Panch shall hand them over to the Sarpanch or

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to such other Panch as may be authorised in this behalf by the Deputy Commissioner.

- (2) If on a requisition made in this behalf by the Executive Officer of the Panchayat Samiti, any person within a period of ten days of such requisition fails under sub-section (1) to hand over the prescribed records and registers and other property belonging to or vested in the Sabha or the Panchayat to the Sarpanch or Panch referred to in that sub-section, the Executive Officer of the Panchayat Samiti shall apply to an Executive Magistrate of the first class within whose jurisdiction the Sabha area is situated for securing from such person such records, registers and other property."

It is argued that section 10 does not contemplate the suspension of a Sarpanch inasmuch as it makes no provision for the filling of a vacancy created by such suspension. That is no doubt true but then section 15 does contemplate the filling of vacancies caused otherwise than by the death, resignation or removal of a Panch or Sarpanch. The phrase "in his absence" is wide enough to embrace any situation in which a Sarpanch becomes incapable of acting as such and that phrase can certainly not be interpreted so as to be given a restricted meaning with reference to the provisions of section 10. If it was the intention of the legislature that the phrase shall cover only those cases which related to vacancies arising by reason of the death, resignation or removal of a Sarpanch, it would not be there at all and instead we would find used something like the words "in cases covered by section 10" or "when a vacancy has been filled up under section 10" or "when a new Sarpanch has been elected on the death, resignation or removal of a Sarpanch". The use of the phrase actually employed by the legislature indicates that its intention was to widen the scope of section 15 so that it may cover not merely cases of vacancies arising in the manner stated in section 10 but all cases in which a Sarpanch became incapable of acting including one of the suspension of a Sarpanch. This was also the opinion expressed by Narula, J. in *Vatoo Ram v. The State of Haryana etc.* (2). In this view of the matter I find no substance in ground (b) either.

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(6) The basis of ground (c) are the following observations of their Lordship of the Supreme Court in *Sub-Divisional Officer, Sadar, Faizabad v. Shambhoo Narain Singh*, (3), which was a case under the U.P. Panchayat Raj Act (26 of 1947) :

“A pradhan cannot be considered as a servant of the Government. He is an elected representative. There is no contractual relationship between him and the Government much less the relationship of master and servant. As mentioned earlier his rights and duties are those laid down in the Act.”

(7) These observations are unexceptionable but I do not see how they help the case of the petitioners. In the U.P. Panchayat Raj Act no specific power to suspend a Pradhan pending enquiry into the charges levelled against him has been conferred on the State Government and this was conceded before their Lordships who noted that the power to suspend which section 95(1) (g) of that Act confers on the Government is a power to *punish*. It was contended before their Lordships that the power to suspend must be deemed to be inherent in the Government. This contention was repelled with the observation :

“The Gaon Sabha is the creature of a statute. Its powers and duties as well as the powers and duties of its officers are all regulated by the Act. Hence no question of any inherent power arises for consideration—see *Sm. Hira Devi v. District Board*, (4). Shahjahanpur.”

(8) It will be of advantage to note here the provisions of subsection (1) of section 102 of the Act. They are :

“102. (1) The Deputy Commissioner 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 and 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.”

(3) A.I.R. 1970 S.C. 140.

(4) (1952) S.C.R. 1122—A.I.R. 1952 S.C. 362.

(9) This sub-section confers a specific power on the Deputy Commissioner to suspend a Sarpanch pending an enquiry into the charges levelled against him — a power which the U.P. Panchayat Raj Act, as already stated, did not specifically confer on the Government. For that reason no assistance can be derived by the petitioners from *Sub-Divisional Officer, Sadar, Faizabad v. Shambhoo Narain Singh* (3), (supra) in which the observations made by their Lordships clearly indicate that if the U.P. Panchayat Raj Act contained a provision similar to sub-section (1) *ibid* the decision of their Lordships would have been different. The Act having specifically conferred the power to suspend a Sarpanch on the Government and the conferment of such a power not having been shown to be beyond the legislative authority of the State Legislature, ground (c) must also be repelled.

(10) The additional contention of learned counsel for the petitioners in Civil Writ No. 3941 of 1970 appears to have force. The facts leading to charge No. 2 contained in the order impugned therein are not disputed before me and are these. The Panchayat of which the petitioner is the Sarpanch claimed to be the owner of certain mines which according to a counter-claim made by the Government belonged to the latter. A dispute thus having arisen between the Panchayat and the Government regarding the ownership of the said mines, the Panchayat filed a writ petition seeking to negative the claim of the Government but the same was dismissed *in limine*. The property in dispute being of the value of more than Rs. 20,000, this Court granted the Panchayat leave to appeal to the Supreme Court of India in accordance with the provisions of Article 133 of the Constitution of India. The Panchayat filed the necessary appeal which is still pending.

(11) These being the facts I do not see how the petitioner could be said to be misusing his office if he prevented the State Government from exploiting the mines. On the other hand, he must be held to be protecting the rights of the Panchayat if he stood in the way of the Government exploiting the mines. The charge is thus not covered by any of the provisions of sub-section (2) of section 102 of the Act which are exhaustive of the grounds on which an enquiry into charges against a Sarpanch may be based. The impugned order is, therefore, liable to be quashed in so far as it directs an enquiry to be held against the petitioner in respect of charge No. 2.

M/s. Panesar Mechanical Works (P.) Ltd. v. Employees' State Insurance Corporation (Sandhawalia, J.)

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I order accordingly. Civil Writ No. 3941 of 1970 is accepted only to that extent and fails for the rest. The other two petitions are dismissed in their entirety. There shall be no order as to costs in any of the three cases.

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B.S.G.

APPELLATE CIVIL

Before S. S. Sandhawalia, J.

M/S. PANESAR MECHANICAL WORKS (P) LTD.,—*Appellant.*

*versus*

EMPLOYEES STATE INSURANCE CORPORATION,—*Respondent.*

**First Appeal From Order No. 193 of 1965.**

April 29, 1971.

*Employees' State Insurance Act (XXXIV of 1948)—Sections 73-A, 73-B and 75—"Special Contribution" payable by a principal employer—Liability and quantum of—Insurance Court—Whether can adjudicate upon.*

*Held*, that the provisions of section 73-B(1) of Employees' State Insurance Act, 1948, are clear and unequivocal. In unqualified language it is laid down that any question or dispute in the context of the Employers Special Contribution is to be determined by the two forums specified therein. These two forums are in express terms the Employees' Insurance Court having jurisdiction and in its absence such authority as the Central Government may specify. The plain language of the section namely "*If any question or dispute arises in respect of the Employer's Special Contribution*" is obviously of the widest amplitude. Such language would fully cover the question both of the liability in principle of the employer to pay as also the quantum that may be assessed in this regard. The Special Contribution is levied and assessed under the provisions of section 73A which falls within Chapter VA of the Act. The moment there is either a total refusal to pay the Special Contribution or a challenge as to the amount thereof it would clearly raise a question or dispute in respect of the Employers' Special Contribution which is payable or recoverable under the provisions of Chapter VA. The Statute, therefore, proceeds further and provides that such a question, or dispute can be agitated