

Ramchandra Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-08-1981

Reported in : 1981WLN(UC)496

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Civil Writ Petition No. 23/1979

Appellant : Ramchandra

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

S.C. Agrawal, J.

1. In this writ petition filed under Article 226 of the Constitution, the petitioner, Shri Ram Chandra, who is Up-Sarpanch of Gram Panchayat, Chirai, has challenged the validity of the orders of the State Government dated December 12, 1978, passed in exercise of its powers under Section 17(4) of the Rajasthan Panchayat Act, 1953 (here in after referred to as 'the Act'), whereby the State Government has decided to hold an enquiry into certain charges against the petitioner and has suspended the petitioner from the office of Up-Sarpanch of Gram Panchayat Chirai.

2. The petitioner had been elected as Panch of Gram Panchayat, Chirai in the year 1965, and in the year 1969, he was elected as Up-Sarpanch of the said Gram Panchayat and he continued as Up-Sarpanch of the said Gram Panchayat till 1977 when the Panchayat was dissolved. In the elections which were held in February, 1978, the petitioner was re-elected as Panch of the said Gram Panchayat and there after he was again elected as Up-Sarpanch of the said Gram Panchayat. While he was holding the office of Up Sarpanch of Gram Panchayat, Chirai the impugned orders dated December 12, 1978 were passed by the State Government. By one of those orders, an enquiry into certain charges has been initiated against the petitioner and by the other order, the petitioner has been suspended from the office of Upsarpanch of Gram Panchayat, Chirai. The charges which are the subject matter of the aforesaid enquiry relate to the earlier period prior to the re-election of the petitioner as Panch and Upsarpanch in February, 1978. Being aggrieved by the aforesaid orders dated December 12, 1978, the petitioner has filed this writ petition.

3. In the writ petition, the petitioner has challenged the validity of the aforesaid orders on the ground that the State Government does not have the power to order the removal of a Panch, Sarpanch or Upsarpanch for any misconduct or negligence etc., in connection with the affairs of the Panchayat whose term has already expired and since there is no power of removal, the State Government is not competent to suspend a Panch, Sarpanch or Up-Sarpanch during the pendency of an enquiry into charges relating to the affairs of the Panchayat whose term has already expired. In the writ petition, the petitioner has also submitted that the order directing the holding of an enquiry as well as order of the suspension of the petitioner, are vitiated by malafide and, that the allegations which are the subject matters of the charges levelled against the petitioner are completely baseless.

4. The writ petition has been contested by the State Government and in the reply to the writ petition filed on behalf of the State Government, it has been denied that the orders regarding the order of the holding of the enquiry for the suspension of the petitioner were passed malafide and it has been asserted that before passing the aforesaid orders a preliminary enquiry was conducted and the order with

regard to holding of the enquiry into the charges was passed after taking into consideration the materials on record and evidence collected during the course of the aforesaid preliminary enquiry.

5. Shri M.M. Singhvi, the learned Counsel for the petitioner has confined his submissions to the order with regard to suspension of the petitioner from the office of Up-Sarpanch of Gram Panchayat, Chirai.

6. The first contention that was urged by Shri Singhvi was that suspension of a Panch, Sarpanch or Up-Sarpanch amounts to his temporary removal from office and that since the State Government does not possess the power to order the removal of a Panch Sarpanch or Upsarpanch, in relation to any misconduct committed by him in connection with affairs of a Panchayat whose term has already expired, the State Government has no power to suspend a Panch, Sarpanch or Upsarpanch for such a misconduct. In support of his aforesaid contention, Shri Singhvi has placed reliance on the decisions of this Court in Sayarwal v. State of Rajasthan ILR 7 Raj. 889, and Shiv Raj Singh v. State of Rajasthan ILR 13 Raj. 226. The Deputy Government Advocate on the other hand has submitted that in view of the express provisions contained in proviso to Sub-section (4) of Section 16 of the Act, as enquiry into charges of misconduct or negligence in discharge of duties can be initiated against a Panch, Sarpanch or Upsarpanch even after the expiry of term of a Panchayat and that Sub-section 4A of Section 17 of the Act expressly empowers the State Government to suspend any Panch, Sarpanch or Upsarpanch against whom an enquiry has been started under the proviso to sub-section (4) of Section 17 The learned Deputy Government Advocate has further submitted that Section 17 of the Act postulates that a Panch, Sarpanch or Upsarpanch can be removed from office if he is found guilty of misconduct or negligence in the discharge of his duties or of any disgraceful conduct committed by him as a Panch, Sarpanch or Upsarpanch in the earlier term of a Panchayat prior to his re-election as a Panch, Sarpanch or Upsarpanch.

7. For a proper appreciation of the aforesaid contentions urged by Shri Singhvi and the Deputy Government Advocate it would be necessary to set out the

provisions contained in Section 17 of the Act as it stood on the date of the passing of the impugned orders. Section 17 of the Act provided as under:

Section 17 : Vacation of Seats and removal of Panchas - (1)(a) If any Panch, Sarpanch or Up-Sarpanch, who is not qualified for election or appointment as such under this Act, has been elected or appointed to a Panchayat, or

(b) If any Panch, Sarpanch or Up-Sarpanch after having been elected or appointed as aforesaid becomes disqualified during the term of his office for such election or appointment,

his seat shall be declared by the State Government, after giving him an opportunity of being heard, to have become vacant.

(2) If any Panch, Sarpanch or Up-Sarpanch during the term of his office absents himself from five consecutive meetings of the Panchayat without giving information in writing to the Panchayat he shall cease to be such Panch, Sarpanch or Upsarpanch and his seat shall become vacant.

(3) If any Panch or Sarpanch fails to make the prescribed oath or affirmation of his office within three months from the date of notification under Section 14, his seat shall be declared by the State Government to have become vacant.

(4) The State Government may, by order, in writing and after giving him an opportunity of being heard and making such inquiry as may be deemed necessary, remove any Panch, Sarpanch or Upsarpanch who:

(a) to act or becomes incapable of acting as such, or

(b) in the opinion of the State Government has been guilty of misconduct or neglect in the discharge of his duties or of any disgraceful conduct:

Provided that any such inquiry as is referred to in this Sub-section may be initiated even after the expiry of the term of a Panchayat or if already initiated before such expiry, may be continued thereafter & in any such case, the State Government shall, by order in writing record its finding on the charges levelled against a Panch, Sarpanch or Up-Sarpanch of the Panchayat during its term of office.

(4A) The State Government may suspend any Panch, Sarpanch or Up-Sarpanch against whom an enquiry has been started under sub-section (4) or the proviso there to, or against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a court of law, and debar him from taking part, in any act or proceedings of the Panchayat while under suspension.

(4B). A Panch, Sarpanch, or Up-Sarpanch who has been removed under Sub-section (4) or against whom findings have been recorded under the proviso to that Sub-section shall not be eligible for re-election under this Act for a period of five years from the date of his removal or, as the case may be, from the date on which such findings are recorded,

Provided that if any such Panch, Sarpanch, or Up-Sarpanch against whom the findings have been recorded is holding an-elective office or appointed to hold such office under the provisions of this Act or the Rajasthan Panchayat Samities and Zila Parishads Act, 1959 at the time of such recording of findings shall be considered to have become qualified to hold such office under Sub-section (1) of Section 11.(5) The decision of the State Government on any matter arising under this Section shall subject to any order made under Section 70B be final and shall not be liable to be questioned in any court of law.

8. A perusal of Section 17 of the Act shows that the seat of a Panch, Sarpanch or Upsarpanch can be declared to be vacant by the State Government under Sub-section (1) of Section 17 in cases where the Panch, Sarpanch or Upsarpanch was not qualified for election or for appointment as such under the Act at the time of his election or his appointment, and incases where, after having been so elected or appointed, he has become disqualified during the term of his office for such election or appointment. Sub-section (2) provides for the seat of a Panch, Sarpanch or Up-sarpanch falling vacant in cases where a Panch, Sarpanch, or Upsarpanch, during the term of his office, absents himself from five consecutive meetings of the Panchayat without giving information in writing to the Panchayat. Under Sub-section (3), the seat of a Panch, Sarpanch or Up-sarpanch can be declared by the State Government to have become vacant, in cases where Panch, Sarpanch or Up-Sarpanch fails to make the prescribed oath or affirmation of his

office within three months from the date of notification under Section 14. Sub-section (4), provides for the removal of any Panch, Sarpanch or Up-Sarpanch by the State Government in cases where a Panch, Sarpanch or Up-sarpanch refuses to act or becomes incapable of acting as such, or in cases where in the opinion of the State Government he has been guilty of misconduct or neglect in the discharge of his duties or of any disgraceful conduct. But before passing an order for removal of a Panch, Sarpanch or Up-sarpanch under Sub-section (4), the State Government is required to give an opportunity of being heard to the Panch, Sarpanch or Up-Sarpanch concerned and to make such enquiry as may be necessary. The Proviso to Sub-section (4) provides for holding of an enquiry into charges levelled against a Panch, Sarpanch or Up-sarpanch even though the term of the Panchayat has expired and for recording of a finding on the said chargeS. Sub-section (4A) provides for suspension of a Panch, Sarpanch or Up-sarpanch against whom an enquiry has been started under Sub-section (4) or against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a court of law. Sub-section (4B) imposes disqualification for election on a Panch, Sarpanch or Up-sarpanch who has been removed under Sub-section (4) or against whom findings have been recorded under the proviso to Sub-section (4).

9. Section 17 of the Act, as originally enacted, did not contain the proviso to Sub-section (4) and Sub-sections (4A) and (4B). The said provisions have been introduced subsequently by way of amendment. The position under the provisions of Sub-section (4), as originally enacted, was that it was not open to the State Government to make an enquiry under Sub-section (4) of Section 17 against a Panch, Sarpanch or Up-sarpanch in respect of anything which he may have done as a member of the previous panchayat and in a case where enquiry was pending at the time when the term of the Panchayat came to an end, the said enquiry could not be continued because the Panch, Sarpanch, or Up-sarpanch concerned was no longer such Panch, Sarpanch or Up-Sarpanch on account of the expiry of the term of the Panchayat. In order to deal with a situation where misconduct had been committed by a Panch Sarpanch, or Up-Sarpanch and before the enquiry could be initiated in charges of misconduct against him or before the said enquiry could be concluded, the terms of the panchayat of which he was a member,

expired, an express provision was made by introducing the proviso to Sub-section (4) of Section 17 by Rajasthan Act No. 37 of 1959. The aforesaid provision expressly empowered the initiation of an enquiry referred to in Sub-section (4) even after the expiry of the term of the Panchayat as well as the continuance of such an enquiry if already initiated before such expiry. The said proviso as originally enacted, provided that the State Government shall, by an order in writing, only record its finding on the charges levelled against a Panch, Sarpanch or Upsarpanch of a Panchayat during the term of his office. Rajasthan Act No. 37 of 1959, which introduced the proviso in Sub-section (4) of Section 17 had also inserted Sub-sections (4A) and (4B) in Section 17 of the Act. Sub-section (4A), as inserted by Act No. 37 of 1959, provided that the State Government may during the course of an enquiry under Sub-section (4) suspend a Panch, Sarpanch or Upsarpanch against whom enquiry had been started under Sub-section (4) or against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a court of Law, and debar him from taking part in any act or proceeding of the Panchayat while under such suspension. By Sub-section (4B), it was provided that a Panch, Sarpanch or Up-sarpanch who had been removed under Sub-section (4) or against whom findings have been recorded under the proviso to that Sub-section, shall not be eligible for election under the Act for a period of three years from the date of his removal or, as the case may be, from the date on which such findings were recorded.

10. In *Shivraj Singh v State of Rajasthan* (supra), a Division Bench of this Court, after taking into consideration the provisions contained in Sub-sections (4) and (4A) of Section 17 of the Act, as they stood at that time, held that the State Government had no power to suspend a Panch, Sarpanch or Upsarpanch who had been found guilty of misconduct or neglect etc., on an enquiry held under the proviso to sub Section (1) of Section (4), if the misconduct or neglect etc., concerns the affairs of a Panchayat whose term had already expired, for the reason that suspension involves temporary removal from office and since the State Government did not have the power to order the removal of a Panch. Sarpanch or Upsarpanch for any misconduct or neglect etc., in connection with the affairs of a Panchayat whose term has already expired, it could not pass an order for his suspension during the pendency of an enquiry into charges relating to

aforesaid misconduct or neglect etc. in connection with the affairs of a Panchayat whose term had already expired. In taking the aforesaid view, this Court laid emphasis on the words, 'only record its finding on the charges levelled against a Panch, Sarpanch or Up-Sarpanch of the Panchayat during its term of office', contained in proviso to Sub-section (4) and has observed that in a case where the misconduct or neglect etc, pertains to the affairs of a Panchyat which has ceased to exist, no power had been conferred on the State Government to remove a Panch, Sarpanch, or Upsarpanch who is found guilty of misconduct or neglect etc, in connection with the affairs of the Panchyat of which he was a member for the time being.

11. After the aforesaid decision of this Court in *Shivraj Singh v. State of Rajasthan* (supra) the provisions contained in the proviso to sub-section (4) of Section 17 were amended by the Rajasthan Act No. 9 of 1966 whereby the word, 'only' preceding the expression, 'record its finding on the charges levelled against a Panch, Sarpanch or Up-sarpanch of a Panchayat during its terms of office', was deleted. By the aforesaid amendment Act of 1966, Sub-section (4A) of Section 17 was also amended and in the amended proviso to Sub-section (4A) it was expressly provided that the State Government may suspend any Panch, Sarpanch or Up-Sarpanch against whom an enquiry has been started under the proviso to Sub-section (4). In other words, an express power has been conferred on the State Government to suspend a Panch, Sarpanch, or Upsarpanch against whom an enquiry into charges of misconduct neglect etc, in connection with the affairs of a Panchayat of which he was a member for time being, had been initiated and was pending on the date of the expiry of the term of the Panchayat or against whom such an enquiry was initiated after the expiry of the term of the Panchayat.

12. The question as to whether Panch, Sarpanch or Upsarpanch who had been found guilty of misconduct, neglect etc, in connection with the affairs of a Panchayat whose term has already expired, on the basis of an enquiry held under the proviso to Sub-section (4A) of Section 17 could be removed from his office, came up for consideration before this Court in *Magh Raj v. State of Rajasthan* 1968 RLW 552. In the said case, a learned Single Judge of this Court (Kan Singh J.,) held that on the reading of the provisions contained in Sub-sections (4A) and

(4B) of Section 17 of the Act harmoniously, the recording of a finding under the proviso to Sub-section (4) of Section 17 of the Act could not result in the removal of Panch, Sarpanch, or Up-sarpanch from the office which he might be holding for the time being, and that the only consequence of the said finding was that the Panch, Sarpanch, or Upsarpanch would not be eligible for re-election for a period of three years from the date on which such finding was recorded. The aforesaid view of the learned Single Judge in *Maghraj v. State of Rajasthan* (supra) was affirmed by a Division Bench of this Court in *Mangilal v. State of Rajasthan* 1971 R.L.W. 80 where in this Court taking into consideration the provisions contained in Section 17 of the Act as it stood prior to its amendment Rajasthan Act No. 9 of 1966, has laid down that the intention of the legislature was that if the charges relate to the current term, the Sarpanch, to be removed from his office, but if the charges related to the previous term only a finding was to be recorded against him and the consequence of recording of this finding was given in sub-section (4B), namely, that he shall not be eligible for re election for a period of three years from the date on which such findings were recorded. In *Mangilal v. State of Rajasthan* (supra), this Court has observed : 'It is no doubt a little anomalous that a Sarpanch who commits misconduct in his previous term is allowed to continue as Sarpanch in the current term despite the proof of such misconduct. But a penal provision has to be strictly construed.' The anomaly referred to by this Court in *Mangilal v. State of Rajasthan* (supra) was sought to be removed by this Legislature by amending Sub-section (4B) of Section 17 of the Act by Rajasthan Act No. 7 of 1970, whereby a proviso has been inserted in sub-section (4B). By the aforesaid proviso, it has been provided that if any Panch, Sarpanch or Up-Sarpanch against whom findings have been recorded, is holding an elective office or appointed to hold such office under the provisions of the Act or the Rajasthan Panchayat Samities and Zila Parishads Act, 1959 at the time of such recording of findings, he shall be considered to have become disqualified to hold such office under sub-section (1) of Section 11 of the Act. By the aforesaid amendment Act of 1970 Sub-section (4B) of Section 17 was also amended and the period of disqualification for re-election prescribed there in was increased from three years to five years. It may be pointed out that the Rajasthan Act No. 7 of 1970 was published in the Rajasthan Gazette dated 30th April, 1970 and the judgment in *Mangilal v. State of Rajasthan*

(supra) was pronounced on 1st May, 1970. The aforesaid amendment introduced in Sub-section (4B) of Section 17 of the Act by the Rajasthan Act No. 7 of 1970 was not noticed by this Court while deciding MangilaVs case (supra).

13. At this stage, it would be appropriate to note that Section 11 of the Act provides for the qualification of Panchas and in Clauses (a) to (m) of Section 11 are enumerated the various disqualifications for election or appointment as a Panch. Sub-section (j) of Section 11 lays down the following disqualification:

isfor the time being ineligible for election under Sub-section (4B) of Section 17 of this Act or under Sub-section (3) of Section 40 of the Rajasthan Panchayat Samitis & Zila Parishads Act, 1959.

14. The object of the proviso to Sub-section (4B) of Section 17 appears to be to impose the disqualification under Sub-section (j) of Section 11, on a Panch, Sarpanch or Up-sarpanch against whom findings have been recorded, under the proviso to Sub-section (4) of Section 17. The effect of the imposition of such a disqualification under Sub-section (j) of Section 11 would be that the provisions of Section 17(1)(b) would be attracted because as a result of the aforesaid findings the Panch, Sarpanch, or Upsarpanch concerned, should be treated to have become, dis-qualitied after his having been elected or appointed as Panch, Sarpanch, or Upsarpanch, for such an election or appointment and it would be open to the State Government to declare the seat of the Panch, Sarpanch or Up-Sarpanch to have become vancant after giving him an opportunity of being heard.

15. The submission of Shri Singhvi was that even after the insertion of the proviso in Sub-section (4B) of Section 17 a Panch, Sarpanch or Up-Sarpanch, against whom a finding has been recorded under the proviso to Sub-section (4), cannot be removed and the only consequence of recording of such a finding is that he is disqualified for being re-elected or appointed as a Panch. In support of his aforesaid submission, Shri Singhvi has pointed out that the proviso to Sub-section (4B) only imposes the disqualification referred to Sub-section (j) of Section 11 and that Sub-section (j) of Section 11 only provides for inelegiblity for election. In view, the aforesaid contention of Shri Singhvi cannot be accepted. The recording of a finding under the proviso to Sub-section (4) of Section 17 leads to the following

consequence:

(a). Under the main part of Sub-section (4B) the Panch, Sarpanch or Upsarpanch, against whom the findings have been recorded, shall not be eligible for re-election for a period of five years from the date on which such findings are recorded ; and

(b) such a Panch, Sarpanch. or Upsarpanch shall be deemed to have been disqualified to hold the office under Sub-section (j) of Section 11.

16. Since the aforesaid disqualification comes into force after his having been elected or appointed as a Panch, Sarpanch or Up-Sarpanch, the provisions of clause (b) of Sub-section (1) of Section 17 would be attracted and the seat can be declared vacant by the State Government after giving the Panch, Sarpanch or Up-sarpanch concerned, an opportunity of being heard. If the contention of Shri Singhvi is accepted the result would be that the proviso to Sub-section (4B) of Section 17 would be rendered otiose and redundant. It is a settled principle of statutory construction that redundancy should not be attributed to the Legislature. In my opinion, there is no scope for the construction canvassed by Shri Singhvi and on a plain reading of the proviso to sub-section (4B) read with Sub-section (j) of Section 11 it must be held that a Panch, Sarpanch or Up-Sarpanch against whom an enquiry had been initiated in respect of charges concerning the affairs of a Panchayat whose term has already expired and against whom findings have been recorded under the proviso to Sub-section (4), is a person who, after having been elected or appointed as Panch, Sarpanch or Up-Sarpanch, has become disqualified during the term of his office for such an election or appointment and, therefore, in accordance with the provisions contained in Clause (b) of Sub-section (1) of Section 17 of the Act his seat can be declared vacant by the State Government after giving him an opportunity of being heard. This would mean that a Panch, Sarpanch or Up-saryanch who is found guilty of misconduct, neglect etc., concerning the affairs of a Panchayat whose term has already expired, can be removed from his office by the State Government in exercise of its power under Section 17(1)(b) of the Act, and the main reason given by this Court in Shiv Raj Singh's case (supra) for holding that the State Government is not competent to suspend a Panch, Sarpanch or Up-sarpinch during the pendency of an enquiry-

into charges of misconduct negligence etc , concerning the affairs of a Panchayat whose term has already expired, no longer subsists after the insertion of the proviso in sub-section (4B) of Section 17 of the Act by Rajasthan Act No. 7 of 1970. It must, therefore, be held that the State Government is competent to suspend a Panch, Sarpanch or Up-Sarpanch during the pendency of an enquiry into charges of misconduct, negligence etc., levelled against him in connection with the affairs of a panchayat whose term has already expired.

17. It may further be observed that under Sub-section (4A) of Section 17, as amended by the Rajasthan Act No. 9 of 1966, an express power has been conferred on the State Government to suspend a Panch, Sarpanch or Up-Sarpanch against whom an enquiry has been started under the proviso to Sub-section (4) of Section 17. In view of the aforesaid express provision contained in Sub-section (4A) of Section 17, there is no scope for the argument that the State Government was not competent to pass the order dated December 12, 1978 suspending the petitioner from the office of the Sarpanch in view of an enquiry having been initiated against him into charges of misconduct, concerning the affairs of Gram Panchayat, Cherai, relating to the period prior to his re-election as Panch in February, 1978. The decisions of this Court in *Shivraj Singh v. State of Rajasthan* (supra) and *Mangilal v. State of Rajasthan* (supra), on which reliance has been placed by Shri Singhvi can have no application in view of the amendments introduced in the proviso to Sub-sections (4) of Section 17 of the Act by Rajasthan Act No. 5 of 1966 and by the insertion of the proviso to Sub-section (4B) of Section 17 of the Act by Rajasthan Act No. 7 of 1970.

18. The next contention, that was urged by Shri Singhvi was that it was incumbent to give an opportunity to the petitioner to show cause against the proposed action before an order with regard to his suspension could be passed and that the impugned order with regard to the suspension having been passed without affording such an opportunity, was null and void. In support of his aforesaid submission, Shri Singhvi has placed reliance on the decision of the full Bench of the High Court of Punjab and Haryana in *Kashmirilal v. Dy. Commissioner Sonapat and Ors.* , In my view, there is no force in the aforesaid contention. Suspension of a person from an office during the pendency of an enquiry into

charges of misconduct against him, is in the nature of a protective measure to prevent such a person from misusing his office to cause further harm till suitable action can be taken against him. Thus by its very nature suspension pending enquiry presupposes immediate action. The giving of a show cause notice to the person sought to be suspended before exercising the power of suspension would result in postponement of the exercise of the said power and would rob the power of its object and efficacy. Moreover, the giving of the show cause notice to the person sought to be suspended would only involve duplication of the process of enquiry because the charges which would form the basis for the order of suspension, are also the subject matter of the enquiry that is being conducted against the person to be suspended. In my opinion, therefore, there is no scope for the applicability of the principle of audi-alteram partem at the stage of passing of an order of suspension during the pendency of an enquiry and such a requirement cannot be read into the provisions contained in Sub-section (4A) of the Act where by the State Government has been empowered to suspend a Panch, Sarpanch or Up-Sarpanch, against whom an enquiry has been started under Sub-section (4).

19. A perusal of the decision of the High Court of Punjab and Harayana in Kashmirila's case (supra) shows that the said decision does not lend support to the contention of Shri Singhvi and on the other hand, it negatives the said contention. In the said case, the High Court was dealing with the provisions contained in Section 102 of the Punjab Gram Panchayat Act, 1953. Sub-section (1) of Section 102 of the said Act empowers the Director of Panchayat to 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. Sub-section (IA) of Section 102 of the said Act, empowers the Director of Panchayat or the Deputy Commissioner to suspend a Panch during the course of an enquiry for any of the reasons for which he can be removed.

20. In Kashmirila's case (supra) the learned Judges of the High Court of Punjab and Harayana have drawn a distinction between an order of suspension passed under Sub-section (1) and an order of suspension passed under sub Section (IA).

In so far as an order of suspension passed under Sub-section (IA) was concerned, the learned Judges have affirmed the earlier judgments of the said Courts where in it has been held that suspension during an enquiry does not require giving of notice to the Panch before passing an order of suspension. As regards suspension of a Panch under Sub-section (1) the learned Judges have observed that in such a case the Director of Panchayats is required to apply his mind to the nature of the accusation and the charge and then to satisfy himself that prima facie things exist which may call for an action of suspension and that in order to reach a conclusion in favour of suspension the Director has to keep in mind the principles of natural justice and has to give a notice to show cause to the person who is adversely effected by such order of suspension. In the present case, we are concerned With an order of suspension which is similar to one passed under Sub-section (IA) of the Punjab Gram Panchayat Act, 1953, viz., during the pendency of enquiry into charge of misconduct, and even according to the decision of the High Court of Punjab and Harayana in Kishmirila's case (supra), the petitioner cannot claim that he should have been given an opportunity to show cause before an order suspending him from the office of Up-Sarpanch could be passed.

21. At this stage, it would also be pertinent to take note of the decision of the Division Bench of this Court in *State of Rajanhan v Pukhraj* 1970 RLW 125, where in this Court has taken note of the relevant provisions contained in the Act and the Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961, prescribing the procedure to be followed in the matter of initiating an enquiry against a Panch, Sarpanch or Up Sarpanch under Sub-Rule (4) of Rule 17 and has laid down:

While we are zealous to see that a Panch or Sarpanch should not be lightly suspended or removed, we cannot as a matter of law interpret Sub-section (4A) of Section 17 of the Act in the manner that the State Government has no power to suspend a Sarpanch even after it is satisfied after holding a preliminary inquiry that a prima facie case against him has been made out. This will be restricting the supervisory power of the State Government in a manner not warranted by the language of the statute. It must not be forgotten that the institution of Panchayats in Rajasthan requires careful, though paternal supervision. The suspension of a Sarpanch under particular circumstances of a case may be considered necessary

or desirable to save the Panchayat and its funds from ruin. In such circumstances, the power of the State Government to suspend a Panch, Sarpanch or Up-Sarpanch must not be looked with an eye of suspicion. The State Government is not expected to act malafide in passing the order of suspension otherwise its action will be struck down on that ground. A preliminary report by Collector is a safeguard against whimsical, capricious or malafide exercise of the power of suspension by the State Government. After such preliminary report has been submitted and there is a prima facie case made out against the delinquent elected officer the State Government should be left free to exercise its control and if the circumstances do warrant a temporary removal of such an incumbent then to suspend him after a careful scrutiny of the preliminary report submitted before it.

22. From the aforesaid observations it is clear that there are adequate safeguards in the Act and the Rules against whimsical, capricious and malafide exercise of power of suspension by the State Government.

23. More-over, in the present case, it is not disputed that by his communication dated 7th August, 1978 the Additional Secretary (Enquiries) to the Government of Rajasthan had sent the memo of allegations (charges) to the petitioner. The respondents have stated that till the passing of the impugned order of suspension dated 12th December, 1970, the petitioner had not submitted any explanation with regard to the said allegations and that the typed unsigned pages purporting to be a reply to the aforesaid allegations were received on 28th August, 1979. The petitioner has not controverted the aforesaid averment in the reply filed on behalf of the respondents by filing a rejoinder. In the circumstances, it cannot be said that the petitioner was not afforded an opportunity to show cause before the passing of the impugned order of suspension. The second contention urged by Shri Singhvi is, therefore, rejected.

24. Shri Shinghvi has lastly contended that it was necessary for the State Government to have passed a speaking order giving reasons and, that the impugned order for suspension of the petitioner is not speaking order and is, therefore, invalid. In support of his aforesaid submission, Shri Singhvi has placed reliance on the decision of the Supreme Court in Mahindra and Mahindra Ltd v.

Union of India and Anr. AIR 1979 SC 798. In my view, the decision in Mahindra & Mahindra Ltd , 's case (supra) has no application to the present case. In the said case, the Supreme Court was dealing with an order passed by the Monopolies and Restrictive Trade Practices Commission during the course of an enquiry under Section 37 of the Monopolies and Restrictive Trade Practices Act, 1969 and the Supreme Court has observed that the Commission ought to have given reasons which weighed with the Commission in giving directions under Section 37 of the said Act. In the said case, the Monopolies and Restrictive Trade Practices Commission was exercising judicial powers and an appeal lay against the said order passed by the Commission and in these circumstances, it was held that it was incumbent upon the Commission to have passed a speaking order giving its reasons. In the present case, the State Government, while exercising its powers under Section 17(4A) of the Act cannot be said to have been exercising any judicial or quasi-judicial function. The impugned order for suspension of the petitioner was an administrative order as laid down by the High Court of Punjab and Haryana in Kashimirilal v. Dy. Commissioner Sonapat (supra). The impugned order of suspension of the petitioner cannot, therefore, be challenged on the ground that it is not a speaking order and that it does not contain any reasons. The last contention urged by Shri Singhvi cannot, therefore, be accepted.

25. Thus none of the contentions urged by Shri Singhvi merits acceptance. The writ petition is thus devoid of merit and it is, therefore, dismissed. There would be no order as to costs.