

**Chander Prakash Vs. State of Rajasthan and ors.**

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**Court : Rajasthan**

**Decided On : Jun-23-1999**

**Reported in : AIR1999Raj349; 1999(3)WLC563; 1999(1)WLN564**

**Judge : B.S. Chauhan, J.**

**Acts : Rajasthan Panchayat Raj Act, 1994 - Sections 38(1), 38(4) and 39(1); Rajasthan Panchayat Raj Rules, 1996 - Rules 2, 22(1), 22(2) and 336(4); [Constitution of India](#) - Article 226**

**Appeal No. : Civil Writ Petn. No. 1524 of 1999**

**Appellant : Chander Prakash**

**Respondent : State of Rajasthan and ors.**

**Advocate for Def. : Anand Purohit and; Kusum Rao, Adv.**

**Advocate for Pet/Ap. : J.P. Joshi, Adv.; M.C. Bhoot, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

ORDER

**B.S. Chauhan, J.**

1. The instant writ petition has been filed for quashing of charges dated 16-4-99 (Annex. 1) and suspension order dated 16-4-99 (Annex. 5) relating to tile petitioner, aduly elected Sarpanch of the Gram Panchayat.

2. The facts and circumstances giving rise to this case arc that petitioner was elected as a Sarpanch, Gram Panchayat, Tinwari, district Jodhpur in January, 1995. Petitioner received the charge-sheet dated 16-4-99 and the suspension order of the same date contained in Annexures 1 and 5 respectively on certain charges of irregularities/illegalties and petitioner was called upon to submit his reply on or before 30-4-99 as to why inquiry be not conducted against him in terms of Sub-rule (2) of Rule 22 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as the Rules 1996). In response to the said notice, instead of submitting a reply, petitioner demanded the statement of allegations asserting that the same had not been supplied to him along with the charges and in absence of statement ofofallegations, it was not possible for him to submit written statement. Petitioner also requested for some more time. Respondents granted him 15 days further time to submit his written statement but petitioner contends that the statement of allegations has not been supplied to him till now. Being aggrieved and dissatisfied, petitioner preferred the writ petition on 4th May, 99 for quashing of the charges as well as the suspension order. This Court issued notice for final hearing to the respondents as no interim relief was granted in favour of the petitioner. During the pendency of the writ petition, the government vide orderdated 4-6-99 appointed an inquiry officer to hold and conclude the enquiry in pursuance of the provisions of Rule 22 of the Rules, 1996.

3. Shri J. P. Joshi, learned counsel for the petitioner has given up the case against the impugned charges dated 16-4-99 (Annex. 1) and restricted his submissions only for quashing of suspension order dated 16-4-99 (Annex. 5). The relevant provisions of law involved in this case are quoted hereunder :--

Rajasthan Panchayati Raj Act, 1994

38. Removal and suspension -- (1) The State Government may, by order in writing and after giving him an opportunity of being heard and making such enquiry as may be deemed necessary, remove from office any member including a

chairperson or a deputy chairperson of a Panchayati Raj Institution,

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(4) The State Government may suspend any member including a chairperson or a deputy chairperson of a Panchayati Raj Institution against whom an enquiry has been initiated under Sub-sec. (1) or against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a Court of law and such person shall stand debarred from taking part in any act or proceedings of the Panchayati Raj Institution concerned while being under such suspension.'

Rajasthan Panchayati Raj Rules. 1996

22. Procedure of enquiry.-- (1) Before taking any action under Sub-section (1) of Section 38, where on its own motion or upon any complaint, the State Government may ask the Chief Executive Officer or any other officer to get a preliminary enquiry done and to send his report to the State Government within one month.

(2) If, upon consideration of the report received as aforesaid or otherwise, the State Government is of the opinion that action under Sub-section (1) of Section 38 is necessary, the State Government shall frame definite charges and shall communicate them in writing to the Chairperson, Deputy Chairperson or member of the Panchayati Raj Institution together with such details as may be deemed necessary. He shall be required to submit a written statement within one month admitting or denying the allegations, giving his defence, if any and whether he desires to be heard in person.'

Rule 320.-- Officer Incharge of Panchayati Raj.-- (1) Chief Executive Officer shall act as Office Incharge Panchayati Raj at the district level for general superintendence, guidance and direction of all Panchayati Raj Institutions in the district.

Rule 336.-- Other powers and functions of the Chief Executive Officer.-- In addition to the powers and duties laid down in Section 84 of the Act, the Chief Executive Officer shall assist the Pramukh in discharge of functions specified in Rule 36 and perform additional duties and exercise powers as under :--

(1) He shall act as Officer Incharge Panchayati Raj for the district and shall provide a necessary guidance and advice in the implementation of rural developmental schemes and programmes in the district.

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(4) Take action for removal of member or conduct preliminary enquiry in case of disqualification coming to his knowledge and conduct special meeting when no confidence motion is received against Panch/Sarpanch, Pradhan/Up-Pradhan.'

4. Shri Joshi has submitted that the statement of allegations etc. had not been served upon the petitioner along with the impugned charge-sheet and suspension order, thus he could not file an effective written statement/reply; provisions of Section 38 (1) of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act, 1994') contemplate a condition precedent that an enquiry under Rule 22 (2) can be held only after completing all legal requirements, which include holding a preliminary enquiry by the State Government; considering the report; preparing the charges and serving the same on delinquent for filing his written-statement; considering his written statement and giving an opportunity of being heard to him; preliminary enquiry referred to above can be held only by the State Government and none else can initiate it; preliminary enquiry had been conducted by the Chief Executive Officer suo motu without any requisition of the State Government and thus the enquiry contemplated under Rule 22 (1) has never been held; the Chief Executive Officer can hold the enquiry only if he is asked to do so by the State Government, but he has no power to hold it suo motu; the State Government was incompetent to take any action on such a report; as the State Government has passed the impugned orders on the basis of the inquiry report submitted by the Chief Executive Officer suo motu, the same are not in consonance with law.

5. On the contrary, respondents have placed reliance on the provisions of Rule 320 of the said Rules, which provides that the Chief Executive Officer shall be an overall in-charge of the administration and shall have power of general superintendence over all Panchayats in the district; Rule 336 (4) empowers him to take action for removal of a member and thus he was competent to hold the

preliminary enquiry against petitioner-Sarpanch and submit his report to the government and the Government was competent to consider the said report for passing the impugned orders as law provides that upon consideration of the report prepared under Sub-rule (1) of Rule 22 or 'otherwise' the Government can form the opinion that the action under Section 38 (1) of the Act, 1994 was required to be taken, Thus, it is the word 'otherwise' on the basis of which the government was also competent to take into consideration any material before it submitted by any person and to form an opinion whether any action under Sub-section (1) of Section 38 was required to be taken and on that basis, if the government formed the opinion that initiation of action was warranted, the State Government was competent to frame the charges and also to pass the suspension order because forming the opinion to hold regular inquiry is the terminus a quo when the State Government can pass the order of suspension and thus no fault can be found with the impugned order of suspension; in preliminary enquiry conducted by the Extension Officer, petitioner was given a fair opportunity to disprove the allegations levelled against him, thus, he cannot have any grievance whatsoever.

6. I have considered the rival submissions 'made by the learned counsel for the parties.

7. The factual narration made by the respondents in their reply remained unrequited as petitioner has chosen not to file rejoinder affidavit and the same clearly provides that on receiving the complaints from some Panchas on 1-5-98, the Chief Executive Officer, appointed Shri Chotu Singh, Panchayat Extension Officer, Zila Parishad, Jodhpur vide order dated 11-5-98 to enquire into the complaints. Extension Officer summoned the entire record of the Gram Panchayat, examined it and recorded the statements of various persons including the complainants and also the statement of the petitioner himself. Petitioner defended himself effectively denying the allegations levelled against him and tried his level best to disprove the same. He actively participated in the preliminary enquiry and submitted large number of documents in his defence and cross-examined the witnesses examined by the preliminary enquiry officer. The enquiry officer submitted a detailed report to the Chief Executive Officer giving parawise finding on each point of allegations and observed that the allegations made against the

petitioner were full of substance and required a regular enquiry.

8. It has further been submitted that petitioner was given 15 days further time to file the written statement/reply and asked to take the statement of allegations from the office, if he had not received the same earlier. Petitioner did not submit any reply to the said charges and the government had no option but to pass the order dated 4-6-99 to appoint as Enquiry Officer to hold and conclude the regular enquiry under Rule 22 (2) of the Rules, 1996. They have further denied that the charges served upon petitioner on 16-4-99 had been prepared by the Chief Executive Officer. In fact, the Chief Executive Officer vide his letter dated 12-4-99 had submitted the enquiry report along with the allegations, on which the preliminary enquiry was held by the Extension Officer and the findings recorded by him, as is evident from the said letter contained in Annex. R/6. Some documents, particularly the Government letters dated 28-5-99 and 2-6-99 containing (Annex. R/10 and R/11) have also been filed explaining that the Chief Executive Officer was competent to hold the preliminary enquiry under Sub-rule (4) of Rule 336 and submit his report to the Government to initiate action for removal of Sarpanch and further explaining that the petitioner was given sufficient time and opportunities to submit the written statement to the charges, but he did not submit any reply at all and thus, no fault can be found with the impugned suspension order passed under Sub-section (4) of Section 38 of the Act,

9. On analytical examination of the statutory provisions contained in the Act and the Rules it becomes clear that under the Rajasthan Panchayat Act, 1953 (hereinafter referred to as 'the Act, 1953'), suspension order of a duly elected officer could have been passed under Sub-section (4-A) of Section 17 only when an enquiry had been initiated against him under Sub-section (4) of Section 17, which could have been done only by the State Government by order in writing and after giving the office-bearer an opportunity of being heard and making such enquiry as may be deemed necessary. Rule 20 of the Rajasthan Panchayat (General) Rules, 1961 (hereinafter called 'the Rules, 1961') provided for the preliminary enquiry. The Collector either on his own motion or upon the requisition of the State Government was competent to initiate preliminary enquiry under Sub-section (4) of Section 17 against any Sarpanch. Under Rule 21 of the Rules, 1961,

a final enquiry could have been made only by the State Government and that too after considering the report of the preliminary enquiry held under Rule 20. The District Collector or the State Government and no other officer could have conducted the preliminary enquiry. But provisions of Rule 22 (2) of the Rules, 1996 provide for a clear departure as the same stipulate that the State Government may initiate the enquiry on the basis of the report of the preliminary enquiry conducted under Sub-rule (1) of Rule 22 or 'otherwise'. The word 'otherwise' has been purposely introduced in the Rules, 1996 by the competent Legislature consciously to serve some useful purpose. The word 'otherwise' had not been there in the Act, 1953 and/or the Rules, 1961. Holding that the State Government can take action only on the report of the preliminary enquiry initiated by it, would render the word 'otherwise' otiose AND such an interpretation is not permissible in law:

10. The word 'otherwise' is defined in Standard Dictionary to mean 'in a different manner, in another way'. In Webster's Dictionary, it is defined to mean 'in a different manner, in other respects.'

11. In S.R. Bommai v. Union of India, (1994) 3 SCC 1 : (AIR 1994 SC 1918), the Hon'ble Supreme Court-considered the meaning of 'otherwise' as existing in Article 356(1) of the [Constitution of India](#), which provides for exercise of emergency powers if the President of India is satisfied that a grave emergency exists threatening the security of India or any part thereof or the constitutional machinery has failed, but the power is to be exercised on receipt of a report from the Governor of the State concern, or 'otherwise'. The Court observed that the expression 'otherwise' literally means 'in a different way' and is of a very wide import and cannot be restricted to material capable of being tested on principles relevant to admissibility of evidence in Court of Law and it would also be difficult to predicate as what should be the nature of such a material.

12. In International Airport Authority of India v. Grand Slam International, (1995) 3 SCC 151, the Hon'ble Supreme Court dealt with the word 'otherwise' contained in Section 45 of the Customs Act and observed as under :--

'The expression 'otherwise dealt with', therefore, widens the ambit of the restriction placed on the custodian. It places complete embargo on the IAAI of CWC to deal

with the imported goods placed in the custody in any manner. The two restrictions that is prohibition to remove goods and dealing with it in any manner otherwise completely debar the custodian from exercising any right or control except with the permission of the proper officer of Customs Department. No discussion is needed to explain the expression that the custodian of the goods shall not be entitled to remove the imported goods but it appears necessary to explain the scope of expression 'otherwise dealt with'. How it has to be understood in the context in which it has been used? That would obviously depend on the nature of functions of the custodian in respect of imported goods.'

13. Thus, the context, in which a particular phrase has been used, is also of paramount importance.

14. No word in a Statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced as a 'dead letter' or 'useless lumber. An interpretation which renders a provision an exercise in futility, should be avoided, otherwise it would mean that enacting such a provision in subordinate legislation was 'an exercise in futility' and the product came as a 'purposeless piece' of legislation and provision had been enacted without any purpose and entire exercise to enact such a provision was 'most unwarranted besides being uncharitable'. (Vide *M. V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd.*, AIR 1993 SC 1014 and *Institute of Chartered Accountants of India v. Price Water House*, (1997) 6 SCC 312 : (AIR 1998 SC 74); *Martin Bura Ltd.v. Corporation of Calcutta*, AIR 1966 SC 529; *Chunibhai Deojibhai v. Narayanrao Jambekar*, AIR 1965 SC 1457; *Sultana Begum v. Prem Chand Jain*,(1997) 1 SCC 373 : (AIR 1997 SC 1006); *State of Bihar v. Bihar Distillery Ltd.*, AIR 1997 SC 1511; and *South Central Railway Employees Co-operative Credit Society Employees Union, Secunderabad v. Registrar of Cooperative Societies*, (1998) 2 SCC 580 : (AIR 1998 SC 703).

15. Therefore, the language of Sub-rule (2) of Rule 22 the Rules, 1996 make it crystal clear that even if the State Government is in possession of some material or has received/secured/procured by it 'otherwise' than report of the preliminary enquiry as contemplated under Rule 22( 1), it can consider the same and form the opinion whether action under Section 38(1) of the Act was warranted and if it forms the opinion to proceed with it, the State Government is to take recourse to the procedure provided therein and can also pass the suspension order under Sub-section (4) of Section 38 of the Act, 1994.

16. Rule 320 of the Rules, 1996 provides that the Chief Executive Officer shall act as an Officer Incharge of Panchayat Raj at the administration level for general superintendence and therefore, in view of the said provisions, he cannot be said to be a persona non-grata. The statutory Rules have to be given an effective meaning for the purpose of proper working of the administration of Gram Panchayats. The provisions of Sub-rule (4) of Rule 336 provide for three eventualities in which the Chief Executive Officer can exercise his powers, which are as under:--

(a) take action for removal of member; or

(b) conduct preliminary enquiry in case of disqualification coming to his knowledge; and

(c) conduct special meeting when no confidence motion-is received against Panch, Sarpanch etc.

17. Thus, the first ingredient makes the Executive Officer competent to take action for removal of the member. Rule 2(xiii) of the Rules, 1996 defines 'member' as means and include a Sarpanch also. Thus, it cannot be said that his report against any Sarpanch is prepared suo motu, cannot be considered by the State Government for the purpose of initiation of regular inquiry, even under the head 'otherwise.'

18. Thus, in view of the above, it become totally irrelevant to consider whether the powers of the Chief Executive Officer under Rule 336(4) can also be resorted to

hold preliminary enquiry in a case like the instant, as the language of Rule 22(2) makes it clear that the Government can consider any material in its possession, irrespective of any source from which it has been received. Undoubtedly, the information/ document(s) should be worth placing reliance and the Government should be satisfied about the genuineness of the same. There is also no need to go into the controversy whether such powers of the Chief Executive Officer under Sub-rule (4) of Rule 336 are limited to the case of disqualification, which falls within the ambit of provisions of Section 39 read with Section 19 of the Act, 1994, or it can also be resorted to in the case like the instant.

19. Whatever may be the legal position, the facts remain that the Chief Executive Officer had held the preliminary enquiry through the Panchayat Extension Officer on various allegations levelled against the petitioner by the Panchas in their complaints. In the preliminary enquiry, petitioner had been told all the charges/allegations against him and had been given full opportunity to defend himself and petitioner has availed the opportunity. He also filed a large number of documents to disprove the allegations against him. The report was sent to the State Government. If the Government had considered it proper to apply its mind on the said material and came to the conclusion that an action for removal of the petitioner be initiated, the issues raised by the respective counsel are not required to be gone into for the reason that even if the Chief Executive Officer, under Rule 336(4) of the Rules, 1996, is not competent to hold preliminary enquiry, the report/documents filed by him would fall in the category of having the information 'otherwise'.

20. Undoubtedly, there is substance in the submissions made by Shri Joshi that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. Vide *Taylor v. Taylor*, (1875) 1 Ch D 426; *Nazir Ahmad v. King Emperor*, AIR 1936 PC 253; *Deep Chand v. State of Rajasthan*, AIR 1961 SC 1527; *Patna Improvement Trust v. Lakshmi Devi*, AIR 1963 SC 1077; *State of Uttar Pradesh v. Singhara*

Singh, AIR 1964 SC 358; Nike Ram v. State of Him. Pra., AIR 1972 SC 2077; Ramchandra Keshav Adke v. Govind Joti Chavare, AIR 1975 SC 915; Chettiam Veetil Ahmadv.Taluk Land Board, AIR 1979 SC 1573; State of Bihar v. J.A.C. Saldanna, AIR 1980 SC 326; A. K. Roy v. State of Punjab, (1986) 4 SCC 326 : (AIR 1986 SC 2160), State of Mizoram v. Biakchhawna, (1995) 1 SCC 156 : (1995 AIR SCW 1497) and J. N. Ganetra v. Morvi Municipality Morvi, (1996) 9 SCC 495 :(AIR 1996 SC 2520). But in the instant case, it cannot be said that the State Government has not followed the procedure or not acted in the manner as provided under the statutory provisions.

21. The issue involved herein was considered by the Full Bench of this Court in an identical' case, i.e. Bhura Lal v. State of Rajasthan, (1988) 1 Raj LR 945, wherein the erring Sarpanch had been served with the suspension order along with the charges. After considering the legal provisions and large number of judgments of various Courts, the Full Bench came to the conclusion that where suspension order is passed as a punishment, the principles of natural justice would be attracted, but if the suspension order is passed as an interim measure considering the administrative exigency, the requirement of being heard is not attracted. The Court concluded by observing that the elected office-bearer can be put under suspension the moment the State Government takes a decision to hold regular enquiry against him. The Full Bench observed as under:--

'The State Government has power to suspend a .....Sarpanch when it is satisfied, after carefully considering the report of the preliminary enquiry when it found a prima facie case made-out against the delinquent elected officer, the State Government decides not to drop the proceedings but a statement of charges, prima facie made-out against him, is drawn up specifically such details as may be considered sufficient for him to understand the nature of the charges..'

On the basis of the material placed on the record of the preliminary enquiry and the report of such enquiry, the State Government issued a notice to the erring .....Sarpanch .....to show cause in writing why the charges should not be inquired into and such notice is accompanied by a copy of statement of charges. At such stage, the enquiry contemplated under Sub-section (4(A) of Section 17

must be taken to have started.'

22. The instant case is squarely covered by the Full Bench judgment. Issuing show cause with the copy of charges by the State Government to the erring Sarpanch provides for terminus a quo for the regular enquiry. However, if the delinquent furnishes an explanation/reply to the charges, the Government is under an obligation to consider whether regular enquiry is required to be dropped. If no reply is filed or filed but no satisfactory explanation is given, the Government has to appoint an Enquiry Officer to proceed with and conclude the enquiry. Thus, relevant point of time, when regular enquiry commences, is the decision of the Government based on report of preliminary enquiry or 'otherwise' to hold the regular enquiry and charges are reduced in writing to be sent to the erring Sarpanch etc., for submitting his written statement. Therefore, in view of the above, no fault can be found with the impugned suspension order dated 16-4-1999 (Annexure 5). The decision to hold regular enquiry is sine qua non for passing a suspension order and certainly not the decision to continue with the enquiry after considering the written statement to the charges submitted by the erring elected Sarpanch etc.

23. There is a catena of decisions of this Court laying down the law that an elected representative should not be suspended putting him at the par of a Government employee, for the simple reason that in a democratic set up, the duly elected officer is to be considered entirely on a different pedestal than that of the Government employee and gravity of the charges should be of high magnitude warranting suspension of the erring elected officer. Vide *Bajrang Lal v. State of Rajasthan*, 1981 WLN 32 : (AIR 1981 Raj 298); *Radhey Shyam Sharma v. State of Rajasthan*, 1985 (2) WLN 210 : (AIR 1985 Raj 65) and *Nand Lal v. State of Rajasthan*, 1996 (2) WLC 497 : (1996 AIHC 1818). In the instant case, the gravity of the charges against the petitioner is really of very high magnitude. Charge No. 1 relates to the loss of Rs. 9,300/- caused by the petitioner by irregularity and misuse of power. Charge No. 4 relates to the loss to the tune of several lacs, which has been caused because of the illegal grant of 'pattas' of land by the petitioner in favour of several persons. Charge No. 5 relates to favouritism of particular persons and charge No. 6 relates to the manipulation with the office

record, which makes him punishable under the provisions of the Indian Penal Code and in furtherance thereof, the criminal prosecution has also been launched against the petitioner. Thus, it cannot be said that the charges in the instant case did not warrant the exercise of powers to the State Government for putting the petitioner under suspension.

24. In the instant case, as the respondents had adopted the course of law properly and petitioner had been given full opportunity to meet all the charges even during the course of preliminary enquiry, though it was not warranted under the law, and the report prepared in the preliminary enquiry had been taken into consideration by the State Government and petitioner was further asked to file written statement to the charges and he has not chosen to do the same, the appointment of Enquiry Officer vide order dated 4-6-99 implies that the Government has taken the decision to continue with the final enquiry against the petitioner. Had petitioner filed the reply, the Government could have applied its mind as to whether the enquiry required to be dropped even at that stage. Looking to the gravity of the charges, as explained above, it is not warranted that the writ jurisdiction should be resorted to in the aid and assistance of the petitioner.

25. The petition is accordingly dismissed. There shall be no order as to costs. However, in the facts and circumstances of the case, the respondents are directed to conclude the enquiry and pass appropriate order strictly in accordance with law within a period of two months from today.