

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.14753/2001

(From the judgement and order dated 09/05/2001 in CWP 6639/01
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

AJIT SINGH & ANR.

Petitioner (s)

VERSUS

FINANCIAL COMMNR. & SECY TO GOVT. & ANR.

Respondent (s)

Date : 29/01/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Petitioner (s) Mr. Ravindra Bana,Adv.

For Respondent (s) Mr. K.P. Singh, Adv.
for Mr. J.P.Dhanda, Adv.

UPON hearing counsel the Court made the following
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Mr. Ravindra Bana, learned counsel for the petitioners, commenced his arguments at 11.15 a.m. and concluded at 11.25 a.m. Thereafter, Mr.K.P.Singh, learned counsel for the respondents, made his submissions upto 11.30 a.m.

Leave granted.
The civil appeal is allowed.
No order as to costs.

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(N. Annapurna) (Shelly Sengupta)
Court Master Court Master

(Signed order is placed on the file.)

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IN THE SUPREME COURT OF INDIA@@
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CIVIL APPELLATE JURISDICTION@@
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CIVIL APPEAL NO.825 OF 2002@@
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(Arising out of S.L.P.(C) No.14753/2001)

Ajit Singh & Anr.

....Appellant(s)

versus

Financial Commnr. & Secy. to Govt. & Anr. ...Respondent(s)

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Leave granted.

The appellants were suspended from service as Sarpanch and Panch under the provisions of Section 51(1)(a) of the Haryana Panchayati Raj Act, 1994 by an order dated 30th November, 2000 passed by the Deputy Commissioner, Mohindergarh. Section 51(1)(a) permits the suspension of a Sarpanch "where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director or Deputy Commissioner concerned 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." The provision requires, as a pre-condition, the forming of the opinion that the charge made or proceeding taken against the Sarpanch or Panch is likely to embarrass him in the ..2/-

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discharge of his duties or it involves moral turpitude or defect of character. The order of the Deputy Commissioner, Mohindergarh records no such opinion.

The appellants preferred an appeal under Section 51(5) of the Act which was dismissed by the Financial Commissioner. The order seems to proceed upon the basis that the show cause notice which had been served upon the appellants before the passing of the impugned order contained the likelihood of embarrassment in the discharge of duties because of the registration of the criminal case against the appellants. It also seemed to proceed upon the basis that mere registration of a case against them was enough. The show cause notice only required the appellants to explain why they should not be suspended. It was thereafter for the Deputy Commissioner to be satisfied that the appellants were likely to suffer embarrassment in discharge of their duties because of the registration of the criminal cases against them. The formation of that opinion, as stated above, is absent. That such an averment was made in the show cause notice is not enough.

The appellants impugned the orders aforementioned in a writ petition filed before the High Court. The High Court does not appear to have taken into account the requirements of Section 51(1)(a) and the fact that the ..3/-

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opinion that was contemplated therein as a pre-condition of suspension had not been formed.

In the circumstances, the appeal is allowed. The order under appeal is set aside. The writ petition filed by the appellants is made absolute to the extent that the orders of the Deputy Commissioner, Mohindergarh and the Financial Commissioner in appeal therefrom are set aside.

No order as to costs.

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(K.T. THOMAS)@@

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.....J.@@

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(SHIVARAJ V. PATIL)@@

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New Delhi,@@

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January 29, 2002. @@

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