

(2011) 05 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3935 of 2010

Baldip Pal Singh and another	Vs	APPELLANT
Financial Commissioner and Secretary, Punjab Govt. and others		RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 163 PLR 50 : (2011) 4 RCR(Civil) 26

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The conspectus of the facts, culminating in the commencement, relevant for the limited purpose of deciding the

core controversy involved, in the instant writ petition and emanating from the record, is that in the wake of general Gram Panchayat elections,

Manjinder Kaur (respondent No.3) was elected as a Sarpanch of Gram Panchayat of village Raja Kalan, District Hoshiarpur, in view of the

provisions of The Punjab Panchayati Raj Act, 1994 (hereinafter to be referred as ""the Act""). Petitioners Baldip Pal Singh and Pakhar Singh,

Lambardar (complainants) moved a complaint (Annexure PI) against her, with regard to misappropriation of bricks and causing loss to the Gram

Panchayat amounting to Rs. 21,340/-. In pursuance thereof, the Block Development and Panchayat Officer (for brevity ""BDPO"") has directed

respondent No.3 to deposit the indicated amount in the account of Gram Panchayat. The matter was got enquired by the BDPO and the Sarpanch

was found guilty of causing mis-appropriation of panchayat funds. He submitted

his report dated 4.6.2009 (Annexure P5) to the District

Development and Panchayat Officer (for short ""DDPO""), recommending action against her in this regard.

2. The petitioners claimed that the Director, Rural Development and Panchayat-respondent No.2 (for brevity ""Director"") marked the regular

enquiry to Additional Deputy Commissioner (D), Hoshiarpur (in short ""ADC""), by virtue of letter/order dated 7.7.2009 (Annexure P6). The ADC

submitted his report dated 29.9.2009 (Annexure P8) to the Director. Taking cognizance of the report of regular enquiry conducted by the ADC,

the Director removed respondent No.3 from the post of Sarpanch, by way of order dated 17.11.2009 (Annexure P9).

3. Dissatisfied with the order (Annexure P9), Manjinder Kaur respondent No.3 filed the appeal, without impleading the petitioner-complainants as

parties and the Financial Commissioner and Secretary, Department of Rural Development and Panchayats, Punjab (respondent No. 1) (for short

appellate authority"") accepted her appeal, without issuing any notice or providing opportunity of being heard to them (complainants) and reinstated

her on the post of Sarpanch, by means of impugned order dated 14.12.2009 (Annexure P10).

4. The petitioner-complainants did not feel satisfied and preferred the present writ petition, challenging the impugned order (Annexure P10),

invoking the provisions of Articles 226 and 227 of the Constitution of India, That is how I am seized of the matter.

5. After hearing the learned counsel for the parties, going through the record with their valuable assistance and after deep consideration over the

entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

6. As is evident from the record, that in pursuance of the complaint (Annexure PI) of the petitioner-complainants, the inquiries were conducted by

the BDPO, DDPO and ADC. Ultimately, in the wake of report of regular inquiry, the Director removed respondent No.3 from the post of

Sarpanch, vide order (Annexure P9).

7. Aggrieved by the order (Annexure P9), respondent No.3 filed the appeal, without impleading the complainants as parties. The appellate

authority accepted the appeal of respondent No.3, without issuing any notice or

affording opportunity of being heard to the complainants, by virtue of impugned order dated 14.12.2009 (Annexure P10), the operative part of which is as under:-

After hearing both the parties, keeping in view the records submitted, I have come to the conclusion that the Junior Engineer of the Block had informed to the Panchayat vide letter no.10.11008 that the Govt., has to make pacca road therefore, due to this purpose the bricks of the street are to be digged. The balance stock was entered in the register. Regarding the maintenance of the record, the panchayat secretary has been held responsible by the inquiry officer. Therefore, the allegations against her are not proved. Therefore, the appeal is accepted and appellant is reinstated to the post of Sarpanch.

8. As is clear that the appellate authority has not adhered to the actual grounds of removal mentioned in the order (Annexure P9) of the Director based on the report of regular inquiry (Annexure P8) of ADC. The appellate authority just ignored this aspect of the matter in a very casual and routine manner and did not decide the real controversy between the parties. He passed a non-reasoned and non-speaking order, which is the result of non-application of mind in this respect.

9. Meaning thereby, the impugned order (Annexure P10) is a non-speaking order in this behalf. Appellate authority ought to have discussed the material on record relatable to the grounds of removal and was legally required to record valid reasons for arriving at a correct decision in the right perspective. Such statutory appellate authority, exercising the powers under the Act, should act independently. It is now well settled principle of law that every action of such authority must be informed by reasons. The order must be fair, clear, reasonable and in the interest of justice and fair play. Every order must be confined and structured by rational and relevant material on record because the valuable democratic rights of the parties are involved in the lis.

10. Exhibiting the importance of passing speaking and reasoned order, the Hon"ble Apex Court in case Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, has held (para 8) as under:-

The purpose of disclosure of reasons, as held by a Constitution Bench of this

Court in *S.N. Mukherjee v. Union of India*, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

11. There is another aspect of the matter, which can be viewed from a different angle. What is not disputed here is that in view of the complaint

(Annexure PI) made by the petitioner-complainants and on the basis of inquiry reports (Annexures P5 & P8), the Director removed respondent

No.3 from the post of Sarpanch. She filed the appeal, which was decided by the appellate authority, without impleading the petitioner-

complainants as parties. That means, since the petitioner-complainants were the aggrieved parties, so the appellate authority slipped into a legal

error in accepting the appeal of respondent No.3, even without issuing notice to them (petitioners), who were the necessary parties, in view of law

laid down by a Full Bench of this Court in case *Darshan Singh v. State of Haryana and others*, 2006 (1) R.C.R. (Civil) 170 , *Ram Phal Vs.*

Financial Commissioner and Secretary to Govt. Haryana Development and Panchayat Department and Others, and again reiterated by this Court

in case *Guddu and Others Vs. State of Punjab and Others*, . Thus, the appellate authority ought to have issued notice and provided adequate

opportunity of being heard to the petitioner-complainants before deciding the appeal against them in view of the doctrine of *audi alteram partem*.

This matter is not *res Integra* and is well settled.

12. An identical question came to be decided by this Court in CWP No. 22278 of 2010 titled as "*Ajit Singh v. State of Punjab and others*

decided on 6.4.2011. Having considered the relevant legal provisions, it was ruled that such impugned order (Annexure P10) cannot legally be

sustained in this relevant behalf.

13. *Ex-facie*, the argument of learned counsel for contesting respondent No.3 that since the review application (Annexure P11) filed by the

petitioner-complainants was dismissed, by means of subsequent order dated 8.2.2010 (Annexure P12), so, they would be deemed to be parties in

the appeal, is not only devoid of merit but misplaced as well. To me, a single line order passed on review application that ""Review application is not liable to be accepted, therefore, it is dismissed"" cannot possibly be termed to be a proper adjudication of rights of the complainants in the appeal. The scope of hearing of regular appeal is entirely distinct than that of regime of review application. The ambit of review is very limited as compare to the field of appeal. The appellate authority hearing the appeal possesses the wider jurisdiction as compare to decide the review application in exercise of limited review jurisdiction, even if both the matters are heard by the same person.

14. Therefore, the contrary arguments of learned counsel for the respondents ""*stricto sensu*"" deserve to be and are hereby repelled as the law laid

down in the aforesaid judgments ""*mutatis mutandis*"" is applicable to the instant controversy and is the complete answer to the problem in hand.

Hence, it is held that the impugned order (Annexure P10) passed at the back of the petitioner-complainants cannot legally be maintained in the

manner indicated hereinabove, in the obtaining circumstances of the case. To my mind, it would be in the interest and justice would be sub-served

if the matter is remitted back to the appellate authority for its fresh decision.

15. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the

course of subsequent hearing of the appeal, the instant writ petition is accepted. The impugned order (Annexure P10) is hereby set aside. The case

is remitted back to respondent No.1 (appellate authority) to decide the appeal afresh, after impleading and affording an opportunity of being heard

to the petitioner-complainants as parties and by passing a speaking order, in view of aforesaid observations and in accordance with law.

16. The parties through their counsel are directed to appear before the appellate authority (respondent No.1) on 2.6.2011 for further proceedings.

17. Meanwhile, the parties are directed to maintain status-quo with regard to the functioning of the post of Sarpanch.

18. Needless to state that nothing recorded herein above would reflect on the merits of the case, in any manner, as the same has been so observed

for a limited purpose of deciding the instant petition.