
(1998) 01 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : R.O.R. No. 51 of 1994-95

Balwinder Singh

APPELLANT

Vs

Piara Singh

RESPONDENT

Date of Decision : 28-01-1998

Acts Referred:

Citation : (1998) 3 LLR 188 : (1998) 1 PLJ 125 : (1998) 2 RCR(Civil) 158

Hon'ble Judges : S.R.Bunger, FC.

Advocate : Mr. R.K. Gupta, Advocate, Mr. Gurcharan Singh, Advocate.,
Advocates for appearing Parties

Judgement

S.R. Bunger, FC.

1. The present is a revision petition under Section 16 of the Punjab Land Revenue Act, 1887, against the order dated 12.5.1993, passed by the Commissioner, Patiala Division, Patiala, in a Lambardari case.
2. The present case has been hanging fire for the last 16 years, and its saga began in the year 1982, when the applications were invited from the desirous persons, to fillup the vacancy of a Lambardar in village Lohari Kalan, now in Tehsil and District Fatehgarh Sahib, caused with the death of the previous Lambardar Labh Singh.
3. The candidate Piara Singh son of Surjan Singh, had submitted his application to the A.C. 2nd Grade, Sirhind on 27.7.1982, stating inter alia, that, he had passed "Matric, as well as, Patwar". The other close contestant had submitted his application on 8.9.1982, stating inter alia, that he had passed PreUniversity examination.
4. The Circle Revenue Officer cum A.C. 2nd Grade, Sirhind, after allowing the close contestants to place their evidence on record, and after listening the Ld. counsel for both the candidates, vide his report dated 23.11.1982, had recommended the name of Balwinder Singh for his appointment as Lambardar. About the other candidate Piara Singh, the A.C. 2nd Grade, Sirhind had observed,

During the course of arguments before the A.C. 2nd Grade, Sirhind, the Ld. counsel for Piara Singh, had produced a certificate from the Sarpanch of the village Panchayat, which was marked P23, to the effect that, an amount of Rs. 312.50, in respect of the Shamlat Deh land for the year 197475, was outstanding against Shri Balwinder Singh s/o Ujagar Singh. The production of this document at the stage of arguments was objected to by the Ld. counsel for Balwinder Singh, and the A.C. 2nd Grade, Sirhind had refused to entertain this document as relevant. The Tehsildar, Sirhind had agreed with the report made by the Circle Revenue Officer. The S.D.O.-cumA.C. Ist Grade, Fatehgarh Sahib as per his report dated 4.3.1983, had agreed with the report of the Tehsildar, and had recommended the name of Balwinder Singh to the District Collector, Patiala for appointment as Lambardar.

5. About Piara Singh, the A.C. Ist Grade, Fatehgarh Sahib had observed as under :

The District Collector, Patiala, after considering the comparative merits of both these contestants, while agreeing with the reports made by the three Revenue Officers below, had ordered the appointment of Balwinder Singh as Lambardar, vide his order dated 25.7.1983.

6. Aggrieved by this order, Piara singh had filed an appeal before the Commissioner, Patiala Division, Patiala, which was rejected vide Commissioner's order dated 23.1.1984. Still aggrieved by this order, Piara Singh had filed the revision petition before the Financial Commissioner, Punjab, and the Financial Commissioner Taxation, as per his order dated 9.9.1985, had accepted the revision petition by setting aside the orders, passed by the District Collector, as well as, the Commissioner, Patiala Division, Patiala, and had remanded the case to the Collector, Patiala with the directions, "that he shall specially go into the aforementioned allegations about Balwinder Singh respondent, being a defaulter in the matter of payment of lease money of the village shamlat land at the time of his filing the application for the post of a Lambardar. In case, it is established that he was such a defaulter, he shall not be appointed as Lambardar and instead, Piara Singhpetitioner, who otherwise is eligible and possesses the requisite qualifications shall be appointed as the village Lambardar." My Ld. predecessor Shri R.P. Ojha, had passed this order, in view of the certificate dated 24.10.1982 (Page 97 of Collector's File), issued by Gian Singh Sarpanch of village Lohari Kalan, mark P23.

7. On remand, the case was taken up by the District Collector, Patiala, and on the unanimous request made by both the sides, the District Collector, vide his order dated 23.5.1986, had referred this case to the S.D.O.-cumA.C. Ist Grade, Fatehgarh Sahib, for detailed enquiry and report, on the observations made by the Ld. Financial Commissioner. The A.C. Ist Grade, Fatehgarh Sahib, vide his detailed report dated 21.10.1987, had come to a very categorical conclusion that, as per the panchayat record, no panchayat land was leased out to Balwinder Singh son of Ujagar Singh for the year 197475, and for the year

197576, no amount was due to the village panchayat from Balwinder Singh son of Ujagar Singh. After considering the report submitted by the A.C. Ist Grade and while agreeing with it, the District Collector, Patiala, vide his order dated 11.2.1988 had again ordered the appointment of Balwinder Singh as Lambardar of village Lohari Kalan. Against this order, Piara Singh filed an appeal before the Commissioner, Patiala Division, Patiala, which was accepted by the Commissioner (Appeals), Patiala Division, Patiala, vide his order dated 1st February, 1991, as per which, he had set aside the Collector's order and had remanded the case to the Collector for fresh enquiry, keeping in view the remand observations of the Ld. (FCT) and also the fact of involvement of Balwinder Singh under Section 302 IPC. The operative part of this order reads as follows :

"I have heard the parties and gone through the record. It is clear that no land was taken on lease by Balwinder Singh during 197475. However, in 1975 76, Balwinder Singh took 4 kanals of land on lease at the rate of Rs. 625/ per acre. It is clear from the statement of Prem Chand, Secretary of G.P. that Balwinder Singh had cleared his arrears on 29.11.1982. This makes him a defaulter on the date of filing of the application as the arrear related to the year 197576. The Collector has not gone into this fact or shifted the same visavis the evidence of the Sarpanch. The Collector has largely based his findings on the report of A.C. Ist Grade. It would be appropriate that Collector reexamines the entire issue after taking note of the evidence on file. Besides the criminal case against Balwinder Singh is of a serious nature involving murder charge. The authority cited by the counsel for the respondent relates to revision wherein it was held that occurrence of events subsequent to final appellate order are no ground for interference. The present case, however, is not a revision petition but first appeal against order of Collector. At the appellate stage, the question of appointment is still open and it would be inappropriate not to take note of serious charges like murder, particularly when admittedly the respondent is in Jail and has not even granted bail. I, therefore, deem it fit to remand the case to Collector for fresh enquiry keeping in view of the remand observation of the learned FC(T) and also the fact of involvement of Balwinder Singh under Section 302 IPC."

8. In compliance of this order, the case was looked into afresh by the District Collector, Patiala, and vide his order dated 30.9.1991, had ordered the appointment of Piara Singh as Lambardar of village Lohari Kalan. Aggrieved by this order, Balwinder Singh had filed an appeal before the Commissioner, Patiala Division, Patiala, who vide his order dated 12.5.1993, had rejected the same by observing, "I am of the considered opinion that the appellant was the defaulter of the panchayat when he applied for the post of Lambardar, and as such, he was ineligible for appointment as Lambardar."

9. Aggrieved by this order, Balwinder Singh has filed the present revision petition on the grounds stated in the petition dated 10.10.1994.

10. The Ld. counsel for both the sides have been heard. After careful consideration of the facts and circumstances of the case, I am of the view, that

the present revision petition has merit and the same deserves to be accepted; the order dated 12.5.1993, passed by the Commissioner, Patiala Division, Patiala, and the order dated 30.9.1991, passed by the District Collector, Patiala and the order dated 1.2.1991, passed by the Commissioner (Appeals), Patiala Division, Patiala merit to be set aside, and the order dated 11.2.1988, passed by the District Collector, Patiala, needs to be upheld and confirmed.

11. The appointment of a Lambardar is made by the District Collector by considering the matters provided under Rule 15 of the Punjab Land Revenue Rules, 1909, which says that in the appointment of a headman, regard shall be had among other matters to

- (a) his hereditary claims;
- (b) The property in estate possessed by the candidate to secure the recovery of land revenue;
- (c) Services rendered to the State by himself or by his family;
- (d) his personal influence, character, ability and freedom from indebtedness;
- (e) the strength and importance of the community from which selection of a headman is to be made;
- (f) services rendered by himself or by his family in the national movements to secure freedom of India.

The District Collector, after considering the comparative merits of both the contestants, in the light of the provisions contained under Rule 15 *ibid*, had ordered the appointment of Balwinder Singh, vide his order dated 25.7.1983. The Circle Revenue Officer, Sirhind, the Tehsildar, Sirhind, as well as, the SDO-cum A.C. Ist Grade, Fatehgarh Sahib, in their concurrent recommendations, had favoured the appointment of Balwinder Singh as Lambardar, and they had not recommended the name of Piara Singh, in view of his telling a lie, that, he had passed Matric, whereas, he had passed only the 9th class and had failed in matric. Secondly, he was earlier involved in a criminal case under Section 324/34 IPC, but was acquitted later. Balwinder Singh had an unblemished record and had not made any wrong statement before the Revenue Officers. The Revenue Officers had not treated the certificate issued by the village Sarpanch (Page 97 of the Collector's file), certifying that, Balwinder Singh was a defaulter of Rs. 312.50 due to the village panchayat, in respect of the shamlat land, taken by him for the year 1974/75, as relevant and adverse to the cause and merit of Balwinder Singh.

12. The Revenue Officers had noted that Balwinder Singh was educated upto the PreUniversity; owned 14 acres of land; was aged 36 years and possessed good character, had great personal influence in the village community. About Piara Singh, it was noted that he had studied up to 9th class and had wrongly stated that he had passed matric; he owned 8 acres and 6 kanals of land; was aged 39

years; was earlier involved in a criminal case, but later acquitted that he was not a dependable person, who could tell a lie even for a very petty matter.

13. The Ld. Commissioner, Patiala Division, Patiala, had upheld the appointment of Balwinder Singh as Lambardar made by the District Collector, by rejecting the appeal filed by Piara Singh, vide his order dated 23.1.1984. However, the Ld. F.C. had accepted the revision petition filed by Piara Singh, by setting aside the orders passed by the District Collector, as well as, by the Commissioner, Patiala Division, Patiala, and by remanding the case to the Collector, with a direction to enquire that, whether or not Balwinder Singh was a defaulter in the matter of payment of lease money of the village shamlat land, at the time of his filing the application for the post of a Lambardar. The Ld. F.C. had further observed, that, in case, it was established that Balwinder Singh was such a defaulter, he shall not be appointed as Lambardar and instead, Piara singh shall be appointed as the village Lambardar. As per the observation of the Ld. F.C.T., Piara singh was otherwise "eligible" and "was possessing the requisite qualifications." In compliance of the directions, the A.C. Ist Grade, Fatehgarh Sahib had come to a very categorical conclusion, that, Balwinder Singh was not a defaulter at all, either for the land leased out for the year 197475 or for the year 197576. The District Collector, Patiala while agreeing with this report had rightly appointed Balwinder Singh as Lambardar vide his order dated 11.2.1988.

14. This shows that Balwinder Singh was appointed as Lambardar, in preference to Piara Singh, by the two different Collectors of district Patiala. The Ld. Commissioner, Patiala Division, Patiala had upheld and confirmed appointment of Balwinder Singh made for the first time, and even after remand of the case by the Ld. F.C.T. for probe of a specific issue, Balwinder Singh was reckoned to be a better candidate.

15. However, the Ld. Commissioner (Appeals), Patiala Division, Patiala, in his uncalled for and unjust order dated 1.2.1991, had set aside the Collector's order dated 11.2.1988, by opining that, Balwinder Singh had not taken any land on lease from the village panchayat for the year 197475, but had taken 4 kanals of land on lease for the year 197576, of which he was a defaulter, on the date of his submitting application as he cleared the arrears as per the receipt dated 29.11.1982.

16. It may be observed, that, the observation made by the Ld. Commissioner (Appeals), is rather unfortunate. As per the certificate dated 24.10.1982, issued by Gian singh sarpanch, mark P23, Balwinder Singh was defaulter of Rs. 312.50 for the year 197475. On the basis of this certificate, the Ld. counsel for Piara Singh, had pressed before the A.C. 2nd Grade, Sirhind, that this be treated as disqualification of Balwinder Singh for appointment as Lambardar, and the Revenue Officers had ignored this certificate as not relevant.

17. However, the Ld. F.C.T. had accepted the revision petition filed by Piara Singh, on the basis of this very certificate alone; and had remanded the case to

the District Collector, for a fresh probe, by giving overriding importance to this certificate, to decide the fate of Lambardari. As per the order dated 9.9.1985, passed by the Ld. F.C.T, this certificate was made the pivotal point, around which, the case was made to revolve, and, it has been revolving for a period of nearly 13 years by now. As per the order of the Ld. F.C.T., only the certificate dated 24.10.1982 was required to be gone into afresh. The A.C. Ist Grade, Fatehgarh Sahib in his report dated 21.10.1987, to which the District collector, Patiala had also fully agreed, had categorically concluded that Balwinder Singh was not a defaulter for the year 197475 at all, because, no panchayat land was leased out to him during the year 197475. Not only that, he had even gone further, and had come to the conclusion that, even for the year 197576, Balwinder Singh was not a defaulter at all. In view of this thorough probe and enquiry, there was no occasion or justification for the Commissioner (Appeals) to set aside the Collector's order dated 11.2.1988. The Ld. Commissioner (Appeals), appears to have set aside the Collector's order, without proper application of mind.

18. The certificate dated 24.10.1982, issued by Gian Singh Sarpanch, mark P 23, states that, an amount of Rs. 312.50 is outstanding against Balwinder Singh for the year 197475. There is another certificate dated 27.11.1982 (Page 104 of the Collector's file), again issued by Gian Singh Sarpanch (exhibit AY) stating that, nothing is due to the village panchayat from Balwinder Singh son of Ujagar Singh. It has been claimed that Balwinder Singh had cleared the amount due from him to the village panchayat, for the land leased to him for the year 197576, on 29.11.1982. If, as per the certificate given by the Sarpanch, which is dated 27.11.1982 nothing was due from Balwinder Singh to the village panchayat, then one may wonder, as to what kind of arrears he had cleared as per the receipt dated 29.11.1982. It appears, that, the then Sarpanch Gian Singh, who had deposed in favour of Piara Singh candidate, had connived with Piara Singh candidate to help his cause, by creating some evidence, to set up a disqualification for Balwinder Singh, in his appointment as Lambardar. With that in view, he had first issued a certificate dated 24.10.1982, stating, that the amount was due for the year 197475, and had later issued another certificate dated 27.11.1982, stating that nothing was due from Balwinder Singh. This appears to have been done to show, that, Balwinder Singh was a defaulter on the date of his making application for the post of Lambardar, and had cleared the arrears subsequently, by issuing another certificate dated 27.11.1982, certifying that nothing was due from him. In the process of fabricating the evidence, they could not have a foolproof approach, and in the process, they lost sight of the receipt dated 29.11.1982.

19. The Ld. Commissioner (Appeals), had also referred to the registration of a case under Section 302 IPC against Balwinder Singh in his order dated 1.2.1991.

20. In this regard, it may be pointed out that during the course of arguments before me, it was admitted that a criminal case was no doubt registered against

Balwinder Singh, as, a person was run over, while he was driving a tractor, Later on, the case was converted under Section 304A of the IPC, and Balwinder Singh stands acquitted in this case finally. In view of this, the registration of a criminal case during the pendency of the proceedings and in view of his acquittal, will have no bearing on the merits of the present case.

21. As a followup on the uncalled for order dated 1.2.1991, passed by the Commissioner (Appeals), Patiala Division, Patiala, the District Collector, Patiala, vide his order dated 30.9.1991, had unjustly ordered the appointment of Piara Singh as Lambardar, by ignoring the claim of Balwinder Singh. The operative part of this order reads as follows :

"I have given very thoughtful consideration to the evidence on record and the arguments of the learned counsel for the parties. The evidence on record conclusively proves that Balwinder Singh did not get any panchayat land in the year 197475 but he obtained panchayat land on lease in the year 197576 as is evident from entries in EX.CW1/1 and C.W. 1/2 on the Auction Register which bears the signatures of Balwinder Singh. Balwinder Singh has failed to produce any proof that he had paid the auction money of Rs. 312.50 at the time of auction. His plea that one of the auction conditions was that the lease money should be paid there and then and therefore, it should be assumed that he had also paid the lease money is not at all convincing as it is well known that in a large number of cases, lease money is not paid at the spot and arrears remain outstanding for a number of years. Similarly, the plea that in the absence of execution of lease deed the lease should be considered as null and void also does not hold water, as it is an irregularity which does not vitiate the auction. Payment of lease money in 1982 is proved by the photostat copy of counterfoil of receipt No. 70 dated 29.11.1982 at page 136 of the file and also entry in the Cash Book of the panchayat, photocopy of which is Ex.CW1/4. The counsel for Balwinder Singh has not denied the payment of lease money in 1982 but made a feeble attempt to explain it away by saying that Balwinder Singh might have made the payment to escape arrest for recovery of this amount as arrears of land revenue. As for the fact that in the certificate of the Sarpanch at page 97 of the file as well as in the counterfoil of receipt and entry in the Cash Book, the arrears are shown as pertaining to the year 197475, it appears that after a lapse of a number of years neither Sarpanch nor the party properly checked up about the year to which the arrears pertained. I am, therefore, of the firm conclusion that Balwinder Singh was defaulter of the panchayat when he applied for the post of Lambardar and was, therefore, ineligible for appointment as Lambardar."

22. About this, I would like to observe, that the conclusion drawn is highly untenable, and the reasons advanced highly illogical, presumptive being based on conjectures and surmises; and this smacks of the fact, that, the Collector's mind was not free from prejudice qua Balwinder Singh.

23. The appeal filed by Balwinder Singh against this order was dismissed in limine, very suavely and facilely, by the Commissioner, Patiala Division, Patiala,

vide his order dated 12.5.1993, without passing a speaking order, and by jumping to the conclusion, that, "the appellant (Balwinder Singh) was the defaulter of the panchayat when he applied for the post of Lambardar, and as such, he was ineligible for appointment as Lambardar." This order does not satisfy one's good conscience, and does not stand the scrutiny of law. In view of this, this order needs to be demolished.

24. After very close scrutiny of the record, and after thorough perusal of the orders, passed by the Revenue Officer below, I am of the considered view, that, Balwinder Singh was not a defaulter at all of the Gram Panchayat, at any stage. The District Collector, Patiala, had passed a very just, well reasoned, appropriate and speaking order, while appointing Balwinder Singh as Lambardar, vide his order dated 11.2.1988. There was no justification to set aside this order and to pass a different order. As such, this order needs to be upheld and confirmed, and all subsequent orders deserve to be quashed.

25. As mentioned earlier, Balwinder Singh was not a defaulter of the village panchayat at any stage. In my considered view, whether Balwinder Singh was a defaulter of the village panchayat or not, it was a nonissue. However, my Ld. predecessor Sh. R.P. Ojha, the then F.C.T. had given overriding importance to this fact and had made this a sole deciding factor for the appointment of a Lambardar in this case, vide his order dated 9.9.1985.

26. The above mentioned order, passed by the Ld. F.C.T. raises a very pertinent question, as to whether, a candidate who owes some amount to a local body, pertaining to the period, which is more than 10 year old, can be called a "defaulter" in the strict sense of the term, and can that candidate be declared as disqualified for the appointment of a village Lambardar, on that ground alone, despite the fact, that, one may possess a better merit, as compared to the rivals. If yes, under what provisions of law ?

27. This needs discussion and analyses of the relevant provisions of law. As per the Collins Cobuild English Dictionary, a "defaulter" is some one who does not do something that one is legally supposed to do; such as, make a payment at a particular time, or appear in a court of law. To be a "defaulter" of some amount per se is not a disqualification for the appointment of a new Lambardar; and, what is required under rule 15(d) of the rules *ibid*, is that, the candidate should be free from indebtedness.

28. As summed up in the paras *supra*, Balwinder Singh was not a defaulter of the panchayat at any stage; however, hypothetically speaking, if, for a moment, it is believed, that, he owed Rs. 312.50 to the Grampanchayat for the shamlat land, which he had taken on lease in the year 1974/75/1975/76, even then, the situation did not demand that Balwinder Singh should be disqualified for the post of a Lambardar. If we examine the case of Balwinder Singh, in the light of the definition of a "defaulter" as mentioned above, one may see that Balwinder Singh was not a defaulter. If Balwinder Singh really owed Rs. 312.50 to the Gram

Panchayat as arrears of lease money, for the shamlat land taken by him for the 197576, then, the Gram Panchayat should have taken the necessary steps to recover this amount from him. The panchayat lands are leased on year to year basis, under certain terms and conditions, and, it was incumbent on the part of the panchayat, to make the necessary efforts to recover this amount; and, in the case of nonpayment, should have taken the things to the logical conclusions. There is nothing forthcoming from the record, as to the steps, taken by the village panchayat to recover this amount if it was due from Balwinder Singh. The dubious certificate dated 24.10.1982, issued by the village Sarpanch Gian Singh, which has been proved false and wrong after scrutiny, was treated as the sole determining factor for deciding this case, and with due regard to my Ld. predecessor, it may be observed, that, this was unfair and uncalled for.

29. If a candidate for Lambardari, owes some amount to any private individual, institution or to the Govt. and for that matter to any person, it will be very unfair to disqualify that person for the post, until and unless, it is proved, that, the amount payable is so heavy, that, it can be construed as being not free from indebtedness. If it cannot be covered under the term indebtedness, there will be no justification to treat the nonpayment of such an amount, as a ground for disqualification.

30. Balwinder Singh owned 14 acres of land; was having a sound financial position; and by no stretch of imagination, it could be presumed, that, he was a "defaulter". In such a situation, to treat the person, like Balwinder Singh, as a defaulter, would be stark abuse of the provisions of law, which should not be allowed. Thus, I am of the considered view, that, even if Balwinder Singh owed Rs. 312.50 to the Gram Panchayat for the year 197576, it was inconsequential and irrelevant, for his appointment as village Lambardar, because, it neither reflected of his being under a debt, nor it was a poor reflection on his character or ability. I think, it is a high time, that, we see the legal provisions regarding the appointment of a Lambardar in proper perspective and do not remain hamstrung to the trivials and trifles, so as to attract the suitable persons for the post.

31. In the light of the above discussion, I would even like to review the order dated 9.9.1985, passed by Shri R.P. Ojha, the then Financial Commissioner Taxation, by observing, that it was not proper to treat Balwinder Singh as a defaulter, in view of the certificate dated 24.10.1982, issued by the village Sarpanch of the Gram Panchayat and the revision petition filed by Piara Singh should have been rejected.

32. Further, it may be observed, that, none of the Revenue Officers had found Piara Singh as a suitable candidate for the post of Lambardar, and, it was not proper to certify him as "eligible" and "possessing the requisite qualification for the post of village Lambardar," as was done vide order dated 9.9.1985, because, it is debatable, whether Piara Singh could be declared as eligible for the post, in view of his making a false claim, that, he had passed matric, whereas, he had failed in matric and had passed only 9th class, thus telling a lie. The Circle

Revenue Officer Sirhind, the Tehsildar Sirhind and the SDO-cumA.C. Ist Grade, Fatehgarh Sahib had specifically condemned Piara Singh for this, in their reports.

33. In the light of the above, the present revision petition is accepted; the order dated 12.5.1993, passed by the Commissioner, Patiala Division, Patiala, the order dated 1.2.1991, passed by the Commissioner (Appeals), Patiala Division, Patiala and the order dated 30.9.1991, passed by the District Collector, Patiala are hereby set aside and the order dated 11.2.1988, passed by the District Collector, Patiala, ordering the appointment of Balwinder Singh as Lambardar, is hereby upheld and confirmed.