

(2016) 08 P&H CK 0216
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4265 of 2016

Gram Panchayat Khippannwali

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Constitution of India, 1950 — Article 243, 243A, 243Q

Citation : (2017) 1 PLR 595 : (2016) 4 RCRCivil 509

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Baldev Singh Sidhu, S.K. Arora, V.K. Sandhir, Pardeep Bajaj, Ms. Monika Jalota, H.S. Dhandi, Rajinder Sharma, Baltej Singh Sidhu, J.S. Gill, S.S. Salar, D.S. Gurna, R.K. Arya, Raj Kumar Garg, Advocates, for the Appellant; J.S. Puri, Addl. A.G, Punjab, for

Final Decision : Disposed Off

Judgement

Rameshwar Singh Malik, J. (Oral) - This batch of 17 identical writ petitions, bearing CWP Nos. 4265, 4536, 4728, 4897, 5189, 6581, 6964, 7698, 7737, 8033, 8115, 8547, 9431, 11754, 12640, 13030 and 13133 of 2016, is being decided vide this common order, as the issue involved in all these writ petitions is the same. However, for the facility of reference, facts are being culled out from CWP No. 4265 of 2016 (Gram Panchayat Khippannwali v. State of Punjab and others)

2. All these writ petitions have been filed by the respective Gram Panchayats, who have been feeling aggrieved against the alleged inaction and serious omission on the part of respondent authorities, primarily for the reason that the amount of grants-in-aid was not being deposited in the Gram Panchayat fund, instead the same was being released in favour of the different executing agencies, for carrying out any development work in the village and the Gram Panchayats were being bye-passed in most arbitrary manner.

3. Notice of motion was issued in some of the cases and in compliance thereof,

written statement has been filed.

4. When the matter came up for motion hearing before this Court on 13.05.2016, following order was passed by this Court.

"In pursuance of order dated 10.05.2016, Mr. Bhupinder Singh, IAS, Secretary, Rural Development and Panchayats Department, Punjab, is present in Court.

The Secretary shall issue directions to the concerned department that wherever development works are being carried out through anyone, including PWD Department or any other department except Gram Panchayats in the Villages, the Panchayat of the concerned Village shall be associated in those works. So far as the grants are concerned, from today onwards the amount shall be deposited in the account of the concerned gram panchayat. This shall be meticulously followed by the concerned agency releasing the grants under supervision of the Department of Rural Development and Panchayats.

Adjourned to 1.6.2016.

In the meantime, Secretary and Director, Rural Development and Panchayats Department shall submit their suggestions to this Court by the adjourned date in black and white to streamline the release of grants to the panchayats."

5. In compliance of the above-said order passed by this Court, a self-contained additional affidavit dated 31.05.2016 of Shri Sukhjit Singh Bains, Director, Rural Development and Panchayats, Punjab, was filed in the Court on 01.06.2016 and thereafter, following order was passed by this court, adjourning the case for today:-

"Additional affidavit dated 31.05.2016 of Sh. Sukhjit Singh Bains, Director Rural Development and Panchayats, Punjab has been filed in Court today which is taken on record.

Learned counsel for the petitioner(s) are directed to file suggestions against the viewpoints given in the additional affidavit dated 31.05.2016 so that appropriate directions can be issued to the respondent-Department to frame guidelines.

Adjourned to 16.08.2016."

6. Learned counsel for the petitioners have not filed any suggestions against the viewpoints given in the additional affidavit dated 31.05.2016, in compliance of the above said order dated 01.06.2016.

7. During the course of hearing, learned counsel for the petitioners agreed and did not raise any particular objection to most of the view points expressed in the above-said additional affidavit dated 31.05.2016. However, thrust of the submissions made by the learned counsel for the petitioners, is that the amount of grants-in-aid coming from any source must be deposited by the State authorities in the Gram Panchayat Fund and expenditure thereof should be left at the discretion of the concerned Gram Panchayat. In this regard, reliance has

been placed on the observations made by a Division Bench of this Court in its order dated 21.08.2006 passed in CWP No.9417 of 2006 (Gram Panchayat Satauj Tehsil Sunam v. State of Punjab and others).

8. Relevant operative part containing directions issued by the Division Bench in its order dated 21.08.2006, reads as under:-

"In view of the discussion made above, it is held that the Scheme (Annexure R/1), cannot over-ride the provisions of the Act. Accordingly, it is ordered that all the grants sanctioned, whatever may be the source and Scheme, be credited to the funds of the gram Panchayat and be put at its disposal, for utilization. It is further ordered that if any expertise is needed, the same be provided by technical wing of the department of Rural Development and Panchayats, Punjab. The authorities are at liberty, if need be, to ask for prior sanction of the development work in village and approval of estimates etc. however, the officials of the department have got no jurisdiction to execute those works in a village, directly under their own supervision. They may guide the Panches and Sarpanches, if need be."

9. In fact, the above-said directions issued by the Division Bench of this Court are based on the Constitutional mandate, as contained in Article 243 of the Constitution of India and there can not be any dispute in that regard.

10. It seems that the respondent authorities have also now realized that the Gram Panchayat enjoys an autonomous status, which can not be taken away nor the authority of the Gram Panchayat can be undermined, including in the matters of spending the money out of Gram Panchayat's fund. However, to avoid the scope of any confusion in future in this regard and also to ensure that the State authorities may not try to back out from their stand taken herein, it would be appropriate to refer to the specific averments taken in the affidavit dated 31.05.2016.

11. Para 2 of the affidavit, which contains 11 sub-paras, read as under:-

"2. That to streamline the release of grants to the panchayats, it is suggested as under:-

1) That in distribution of grants to the rural areas from various sources, no discrimination shall be made and a uniform procedure applicable to all the Gram Panchayats should be followed across the State of Punjab. However, those Gram Panchayats which are earning income of more than Rs. 50-00 lacs per year from their own sources, their cases shall be examined by the Department of Rural Development and Panchayats for taking a decision whether or not such Gram Panchayats need any grant from the state.

2) That in future when the grants for the development of rural areas/villages are released by the different departments/sources, the same should be credited in the Gram Panchayat fund of the concerned Gram Panchayat without any discrimination or bias.

3) That however, when the purpose of the grants is such that it relates to more than one village i.e. construction of rural link roads, constructions of water works, suvidha centre etc., the grant need not to be credited to the fund of any particular panchayat.

4) That normally the works are executed by the Gram Panchayat concerned. However, when the execution of works involves complex procedures of calling open tenders of allotment of works and of architectural structural safety, the State Government or the Department of Rural Development and Panchayats shall be at liberty to get these executed through specialized agencies of the State. In such cases, as these, the Gram Panchayat will release 50% of the grant to the concerned agency within one week of its receipts so that the latter starts the works without any delay of uncertainty or availability of funds with it. Remaining 50% of the grants shall be released by the Gram Panchayat after immediate completion of the work as determined by the executing agency.

5) That it is submitted that the Department of Rural Development and Panchayats has full fledged Engineering Department which at present is involved in assisting and guiding the Gram Panchayats in the works which are carried out by them. It is suggested that in case there emerges a need to get the work executed through the specialized agency then the Engineering Wing of Rural Development and Panchayats should be preferred. The obvious logic is it being under the exclusive control of the department and is expected to more accountable and panchayat friendly.

6) That in cases as contained in para 4 above, the executing agency shall involve the panchayat/panchayats fully during the course of implementation. The ultimate responsibility of quality safety standard etc. shall, however be of the executing agency of the concerned.

7) That the Gram Panchayats are constituted for the development of the villages and their size varies from village to village. However in certain cases, the Gram Panchayats may express their unwillingness to execute the work due to any reason. In that situation the work will be got executed from other executing agency after the approval from the Department of Rural Development and Panchayats through a reasoned order in this regard.

8) That under the on going development works of Mukh Mantry Pendu Vikas Yojna (Punjab Rural Mission) various development works have been initiated in the villages. They range from single brick paving of village streets to laying of sewerage lines. In some villages due to the technical complications involved, the technical agencies of the State like PWD (B&R), Engineering Wing of the Department of Rural Development and Panchayats and Punjab Mandi Board etc. have already allotted the works following the due procedure of allotment of works. More than 40% of the works have been reported to be completed by these agencies. In case such as these the remaining work should be completed by that very agencies. Any changes in this regard at this point of time will lead to

avoidable delays and wastage of funds. However, these agencies shall associate the Gram Panchayat during the process of execution.

9) That the ultimate concern of the government is the development of the village and in this regard choosing the executing agency in view of the size of the work is very vital. It has also been felt that the resources of the Gram Panchayats are very limited and all the Gram Panchayats are not fully capable of executing big development works. Therefore in such cases, such work should be executed through a technical executing agency which will execute the development work after associating the Gram Panchayat.

10) That in future all departments of the State must be instructed that where grants are given for the development of rural area, the funds must be credited in the accounts of Gram Panchayat concerned and where the executing agency is not the Gram Panchayat the latter shall release the amount to the former within 7 days of its receipts so that no delays are caused and there is a complete certainty regarding availability of funds with the executing agency. The latter of course shall involve and associate the Gram Panchayat during the course of implementation of the work.

11) That where due to lack of quorum or some other reasons, normal functions of the gram Panchayat is suspended, the Block Development and Panchayat Officer shall ensure that the funds once credited are duly released to the executing agencies where applicable."

12. Most of the above-said viewpoints expressed in the affidavit dated 31.05.2016, seem to be justified. However, some clarifications are required, as suggested by the learned counsel for the petitioners. Following the Constitutional mandate and also the above-said directions already issued by a Division Bench of this Court, it deserves to be reiterated here that the respondent authorities shall deposit all the grants-in-aid, irrespective of the fact from which source they are coming, directly in the Gram Panchayat Fund. It needs to be emphasized that there would be no exception in this regard.

13. Thereafter, it will be left to the Gram Panchayat to spend any amount out of the Gram Panchayat fund, for carrying out any development work, irrespective of the executing agency, whether it is engineering wing of the Rural Development and Panchayats Department or it is a private executing agency. Each and every penny, out of Gram Panchayat fund, shall be spent only by the Gram Panchayat. No agency of the State Government or authority of the State Government, including Block Development and Panchayat Officer would be entitled to spend any amount, out of the Gram Panchayat fund, without concurrence of the Gram Panchayat and also without associating the Gram Panchayat.

14. Authorities of the respondent-State will have no jurisdiction to issue any particular direction to the Gram Panchayats to spend any amount out of Gram Panchayat fund in a particular manner or to release amount in favour of any particular agency, unless the Gram Panchayat passes an appropriate resolution to

release any fund in favour of any executing agency, who might have carried out any particular development work, in accordance with law. However, the Gram Panchayat shall be at liberty to get executed any development work from any Government agency, including that of engineering wing of the Department of Rural Development and Panchayats, PWD (B&R) or Mandi Board or any other public sector undertaking.

15. It also goes without saying that each and every development work sought to be executed through any particular agency, at the hands of Gram Panchayat, shall be carried out under the direct supervision of Officers of the Department of Rural Development and Panchayats including the engineering wing thereof. Further, the Gram Panchayat shall be under legal obligation to ensure that if any particular amount is received by way of grant-in-aid under any particular scheme or for a particular development work, said amount shall be spent accordingly only for that particular work or under that very scheme, as the case may be. The Government department giving grant-in-aid shall also be entitled to ask the Gram Panchayat to spend the amount only for that particular development work for which it was granted. Any amount shall be spent by the Gram Panchayat diligently, it being the public money.

16. At this stage, as rightly pointed out by the learned counsel for the State, whatever development works are already in progress cannot be disturbed, because any such interference at the hands of this Court, qua such development works, shall not only hamper further progress of the development works but can also cause avoidable delay and wastage of public time as well as money. In this regard, it is made clear that the above-said directions issued by this Court shall be applicable for future only and will not disturb any on going development work. Whatever development works are already in progress, shall be allowed to be completed by the same executing agency, as per the terms and conditions of allotment of work.

17. It is also clarified that if after spending any particular amount on any particular completed development work, some unspent amount is still available with the Department of Rural Development and Panchayats, said unspent amount, after completion of the work, shall be immediately deposited in the Gram Panchayat fund, with complete details of amount spent to the Gram Panchayat. Every department of the government including its executing agency, carrying any development work in the village, spending money from Panchayat fund shall maintain complete transparency and give all the minute details of the money spent, to the Gram Panchayat.

18. These directions are being issued keeping in view the legislative intent and object thereof in bringing the seventy third amendment in the Constitution of India, inserting Part IX thereto, containing Article 243 and 243-A to 243-O, so as to ensure that the Constitutional mandate is followed in its true letter and spirit. Authorities of different departments of the State are expected to give highest regard to the provisions of law contained in Part IX of the Constitution. This

Court hope and trust that all the concerned authorities of the State shall ensure strict compliance of the above-said mandatory provisions of law.

19. No other argument was raised.

20. Considering the peculiar facts and circumstances of these cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that all these writ petitions deserve to be disposed of in the above-said terms. Disposed of accordingly.

21. Let the Chief Secretary, State of Punjab, issue appropriate instructions to all the departments of the State, keeping in view the stand taken on behalf of the State vide above-said affidavit dated 31.5.2016, the observations made and directions issued hereinabove and above all in accordance with the Constitutional mandate contained in Part IX of the Constitution of India, at an early date and in any case within a period of six weeks. Thereafter, he shall file his own affidavit along with action taken report. However, it is made clear that before and after issuance of the appropriate instructions by the Chief Secretary, concerned authorities of all the departments shall ensure strict compliance of the above-said directions.

22. List only one case bearing CWP No. 4265 of 2016 on 21.10.2016, for compliance.