
(2013) 07 P&H CK 0900
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24386 of 2011

Jagdish Chander Sarpanch

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 172 PLR 183 : (2013) 4 RCR(Civil) 351

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Sanjiv Gupta, for the Appellant; Nitin Kaushal, AAG, Haryana and Mr. S.K. Jain, Advocate for the Respondent Nos. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The petitioner is Sarpanch of Gram Panchayat of village Khai Shergarh, District Sirsa, who has challenged the order dated 19.12.2011 passed by Deputy Commissioner, Sirsa, u/s 51(3) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the "Act"), ordering regular inquiry against him and order dated 20.12.2011 addressed to the BDPO, for registration of FIR against the petitioner. In brief, the facts of the case are that 100 Sq. Yds. Plot were to be allotted to the weaker section of the society, including the Scheduled Caste and other landless persons who were not having a house in the village, under the Mahatma Gandhi Gramin Basti Yojna. A committee of 5 members was constituted for securitization of applications and allotment of plots to the deserving candidates. 79 deserving candidates were found out to whom 51 plots of 100 Sq. Yds. each were allotted. The left over 28 plots could not be allotted but the allegation against the petitioner is that he had, on his own, allotted pots to 39 ineligible candidates and gift deeds were also executed in their favour. Respondent Nos. 5 and 6 made a complaint about the irregularity committed by the petitioner on the basis of which a regular enquiry was ordered which was conducted by DDPO, Sirsa, who, vide his inquiry report dated 29.09.2011 (Annexure P-2) recommended that Om Parkash, Social Education and Panchayat

Officer, Block Baragudha, and the petitioner were remiss in performing their duties while executing the gift deeds in favour of 39 ineligible persons intentionally. He recommended that it will be appropriate to take action against the petitioner under the provisions of Section 51 of the Act. On the basis of the aforesaid report, a show cause notice dated 13.10.2011 was served upon the petitioner by respondent No. 2 as to why action may not be taken against him to which he filed his reply on 24.10.2011. Ultimately, respondent No. 2, who is the punishing authority of the petitioner, passed the order on 31.10.2011 to the following effect:-

On the subject cited above, in response to your reply to the Show Cause Notice dated 24.10.2011 on careful and sympathetic consideration, the same is filed and you are hereby warned in future that such type of mistake may not be repeated in future.

2. The things did not stop there because respondent Nos. 5 and 6 again made a complaint on 08.11.2011 against the petitioner on the same set of allegations, on the basis of which the impugned order has been passed by the respondent No. 2 on 19.12.2011 for holding a regular inquiry against the petitioner as well as, vide order dated 20.12.2011, for registration of a criminal case against him.

3. Counsel for the petitioner submits that once the petitioner has been exonerated vide order dated 31.10.2011, as the inquiry report has been filed, a second regular enquiry cannot be initiated on the same set of allegations. In support of his submissions, he has relied upon a judgment of this Court in the case of Mewa Singh, Sarpanch, Gram Panchayat, Chhatar Block, Uchana Vs. Secretary, Development and Panchayat Dept., Government of Haryana and others, He also draws the attention of the Court to Section 51(1)(a) of the Act in support of his contention.

4. Counsel for respondent Nos. 5 and 6, however, vehemently argued that the irregularities committed by the petitioner are writ large which have been found in the earlier enquiry report as he had executed, in connivance with their SEPO, gift deeds of 100 Sq. Yds. plots in favour of 39 ineligible candidates and he cannot be allowed to go scot free. He also very fairly submitted that the aforesaid 39 gift deeds have been got cancelled by the petitioner himself by way of a resolution dated 07.08.2011.

5. I have counsel for the parties and perused the record with their able assistance.

6. It is an admitted case of the parties that the petitioner was remiss in the discharge of his duties as a Sarpanch inasmuch as he was instrumental in executing the gift deeds in favour of 39 ineligible persons. In the inquiry conducted by the DDPO, Sirsa, on 29.09.2011, the petitioner and SEPO have been indicted and the matter was referred to the Punishing Authority who, after giving a show cause notice to the petitioner, was satisfied by the cause shown by him and ultimately ordered the filing of the matter after taking sympathetic

consideration and warned the petitioner to be careful in future and not to repeat the same again. It is also not in dispute that the error committed by the petitioner has already been corrected by way of resolution dated 07.08.2011 by which 39 gift deeds executed by him have been annulled.

7. The question, thus, arises is as to "whether a complaint against the petitioner can be entertained by the official respondents again on the same set of allegations".

8. In this regard, it would be relevant to refer to Section 51(1)(a) of the Act which provides that the Director/Deputy Commissioner concerned may suspend any Sarpanch or a Panch, as the case may be, against whom a case is under investigation, enquiry or trial. The argument of counsel for the petitioner is further strengthened by the law laid down by this Court in Mewa Singh, Sarpanch's case (supra) in which it has been held that only one enquiry is contemplated under the Act, though the Court was referring to Section 102(2) of the Gram Panchayat Act, 1952, in that case.

9. Counsel for respondent Nos. 5 and 6 has very fairly again stated that there is no provision of second inquiry in the Act.

10. Even otherwise, it violates the principle of natural justice if a person, against whom earlier an inquiry has been held and no action has been taken by the competent authority except for extending warning, is again summoned to hold the second regular enquiry against him especially when the second inquiry is not contemplated under the statute. The second enquiry is, thus, a sheer abuse of process of law at the hands of respondent No. 2. Not only that, once the error committed by the petitioner has been knocked down by way of resolution, there was hardly any ground to proceed under the provisions of the Indian Penal Code. In view of the aforesaid discussion, the present writ petition is hereby allowed and the impugned orders dated 19.12.2011 (Annexure P-11) and dated 20.12.2011 (Annexure P-12) are hereby quashed.