
(2010) 08 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18492 of 2001

Kewal Singh Ex-Sarpanch

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Corruption Act, 1988 — Section 3(2), 7
Punjab Panchayati Raj Act, 1994 — Section 216

Citation : (2011) 1 RCR(Civil) 175

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Judgement

Alok Singh, J.—Present petition is filed under Article 226 of the Constitution of India seeking writ in the nature of certiorari challenging the order dated 18.7.2001 passed by Director-cum- Special Secretary, Punjab Government, Rural Development and Panchayat Department as well as order dated 14.12.1999 passed by Respondent No. 2.

2. The brief facts of the present case are that Petitioner remained Sarpanch of village Kabarwachha w.e.f. January 1993 to March 1998. After the change of political scenario, certain complaints were filed against the Petitioner that Petitioner has misappropriated the funds of Rs. 3,72,000/- given to him under Unnat Gram Scheme. Petitioner failed to lay down the streets and embezzled entire amount and further Petitioner has embezzled Rs. 1,00,000/- given to the him as Sarpanch under Jawahar Rojgar Yogna. An enquiry was conducted against the Petitioner and B.D.P.O. vide Annexure P-2 dated 27.5.1999 has found that Petitioner has not embezzled any amount and has opined that no action is required to be taken u/s 216 of the Punjab Panchayati Raj Act, 1994. Thereafter, new Block Development and Panchayat Officer Sh. Gurbachan Singh with ulterior motive has passed impugned order against the Petitioner that Petitioner as embezzled the amount granted to him under two schemes mentioned above.

3. Learned Counsel for the Petitioner vehemently argued that at the first instance after due enquiry Petitioner was not found guilty of any embezzlement, vide order dated 27.5.1999. Learned Counsel for the Petitioner further argued that new Block Development and Panchayat Officer namely Sh. Gurbachan Singh after joining on transfer again sent a notice to Sh. Amrik Singh, present Sarpanch of the Village and directed him to produce the record with ulterior motive. Sh. Gurbachan Singh, the new Block Development and Panchayat Officer demanded Rs. 5000/- as a bribe from the Petitioner to submit the report in favour of the Petitioner. Petitioner reported the matter to the Vigilance Cell of the Punjab Vigilance Bureau Ferozepur who registered case FIR No. 40 dated 29.10.1999 at Police Station Vigilance Bureau u/s 7, 3(2) of the Prevention of Corruption Act, 1988 against Sh. Gurbachan Singh, Block Development and Panchayat Officer. Learned Counsel further argued that Sh. Gurbachan Singh was arrested and taken into custody and was placed under suspension on 8.12.1999. Learned Counsel further argued that Sh. Gurbachan Singh despite having placed under suspension on 8.12.1999 passed the impugned order dated 14.12.1999 in the purported exercise of powers not vested in him under law. Learned Director-cum-Special Secretary has failed to take into consideration that Gurbachan Singh was not authorized to pass order against the Petitioner and his order was biased.

4. I have carefully perused the record. It appears from the perusal of the record that earlier Block Development and Panchayat Officer vide Annexure P-2 dated 27.5.1999 has reported that Petitioner has not embezzled any amount of grant and he has carried out works legally. It also appears that earlier Block Development and Panchayat Officer in his report dated 27.5.1999 suggests that no action is required to be taken u/s 216 of the Punjab Panchayati Raj Act, 1994.

5. Undisputedly Sh. Gurbachan Singh, the new Block Development and Panchayat Officer after joining the duties on transfer on 20.9.1999 issued notice to Amrik Singh, the present Sarpanch of the Village calling for the record. It also appears from the perusal of the record that Petitioner has lodged FIR against Gurbachan Singh, Block Development and Panchayat Officer on 29.10.1999 through Punjab Vigilance Bureau, Ferozepur u/s 7, 3(2) of the Prevention of Corruption Act, 1988. It also appears from the record that Sh. Gurbachan Singh was placed under suspension on 8.12.1999. it also appears from the record that while under suspension Sh. Gurbachan Singh reported the matter against the Petitioner on 14.12.1999.

6. In the opinion of this Court, when Gurbachan Singh was under suspension he was having absolutely no jurisdiction to pass order dated 14.12.1999 against the Petitioner. Order dated 14.12.1999 seems to be out come of ulterior motive and bias against the Petitioner. In the opinion of this Court once enquiry was validly done by the earlier Block Development and Panchayat Officer, there was no occasion for Gurbachan Singh to open the enquiry once again. In the opinion of this Court, Petitioner was not offered any opportunity of being heard and entire measurement was done by Sh. Gurbachan Singh in the absence of the Petitioner.

Orders impugned do not stand in the scrutiny of law.

7. Petition is allowed.

8. Orders impugned are quashed.