

(2013) 12 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 26787 of 2013

Malkiat Singh (Sarpanch)	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 175 PLR 104

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner has challenged validity of the order dated 28.11.2013 by which respondent No. 3 has appointed respondent No. 5 as the Administrator of the Gram Panchayat of village Gaggar Sarai, allegedly in violation of the provisions of Section 200 of the Punjab Panchayati Raj Act, 1994 (here-in-after referred to as the "Act"). In brief, the petitioner is the elected Sarpanch of the Gram Panchayat Gaggar Sarai. Respondent No. 3 served a notice upon the petitioner and other Panchayat members u/s 200 of the Act in which it was averred that the Block Development and Panchayat Officer, Ghaghar, vide his letter dated 08.11.2013, has written that due to party faction in the Gram Panchayat, the quorum is not complete in the meetings because of which the development works have come to a standstill. Sh. Jaswant Singh, Sh. Nachhattar Singh, Sh. Sewa Singh, Smt. Geeta Rani and Smt. Rajwinder Kaur, members of the Panchayat, have given in writing to respondent No. 3 that for completing certain works, they required a government employee as the Manager. In view thereof, a notice was issued to start the work within 15 days and if the Sarpanch or the Panchayat commits any negligence, then senior authorities are to be written for initiating disciplinary proceedings against them. The petitioner gave reply to the notice in which he alleged that Panchayat members Nachhattar Singh and Geeta Rani have encroached upon the Panchayat land against whom he had filed application u/s 7 of the Punjab Village Common Land and

(Regulations) Act, 1961. It is also alleged that there is no progress in the development works because of the party faction in the Panchayat. After taking the reply into consideration, the impugned order dated 28.11.2013 has been passed by respondent No. 3 and made the following observations:--

In this regards, the Block Development and Panchayat Officer, Ghanaur, vide letter No. 3205 dated 27.11.2013, has written that all the Sarpanch/Panch of Gram panchayat Ghaghar Sarai are not taking any interest in the development works for which the development works have been stopped. Despite acknowledgment of notice issued u/s 200 of the Punjab Panchayati Raj Act, 1994, vide this letter No. 2214-15 dated 08.11.2013 the Gram Panchayat has not started the development works. From which it seems that all the Sarpanch/Panch Gram Panchayat Ghaghar Sarai are lingering on to start the development work of the village and are not taking any interest. Therefore, for the completion of stopped work of Gram Panchayat Sarai like Rs. 2700/- salary of the sweeper, Rs. 13,500/- depositing as C.S. Wages, Rs. 40,000/- for the construction of drains of streets and Rs. 20,585/- for misc. works are lying balance for expenditure. Therefore, in order to start the above works Shri Jaswinder Singh Panchayat Officer (Charge) is hereby recommended to be appointed as Manager, Government Employee.

Therefore, keeping in view the above for making the expenses for development works like Rs. 2700/- salary of the sweeper, Rs. 13,500/- depositing as C.S. Wages, Rs. 40,000/- for the construction of drains of streets and Rs. 20,585/- for misc. works, Shri Jaswinder Singh Panchayat Officer (Charge) is hereby appointed as Manager Government employee for 60 days and he is directed to ensure the compliance of rules and instructions issued by the Government for completing the above work.

2. Counsel for the petitioner has submitted that 4 Panches, namely, Jaswant Singh, Nachhattar Singh, Geeta Rani, Rajwinder Kaur belong to the ruling party of the State and are not cooperating in the development works for which the petitioner should not be penalized. He has further stated that the erring Panches are required to be taken to task for the negligence and misconduct of their duties in terms of the provisions of the Act.

3. I have heard learned counsel for the petitioner and perused the record.

4. Before I proceed further, it would be relevant to refer to Section 200 of the Act, which reads as under:--

200. Default of duties by the Panchayats (1) Where a Panchayat makes a default in the performance of any duty other than a judicial function imposed upon it by or under this Act or under any other law for the time being in force, -

(i) in the case of a Gram Panchayat, District Development and Panchayat Officer; and

(ii) in the case of a Panchayat Samiti or a Zila Parishad, the Director;

may by an order in writing fix the period, for the performance of the duty and if it is not performed within the period so fixed, he may appoint any other person to perform the duty and direct that the expenses arising from, and incidental to, its performance shall be paid by the Gram Panchayat.

(2) If, in the opinion of the Director a Panchayat has failed or is otherwise incompetent to administer its property, movable or immovable, in the best interests of the Panchayat, the Director, after giving an opportunity to the concerned Panchayat of being heard may appoint a person to administer such property for or on behalf of the concerned Panchayat.

Provided that the Director may at any time terminate such arrangement and thereupon the administration of the property shall be resumed by the concerned Panchayat.

(3) A person appointed under sub-section (2) shall exercise all such powers of the concerned Panchayat under this Act, other than the judicial powers conferred upon it, or under any other law for the time being in force, as may be necessary for the management of the property and shall be entitled to receive such remuneration as may be fixed by the Director.

(4) The income from the management of the property referred to in Sub-section (2) shall be credited to the fund of the concerned Panchayat and all expenses arising from and incidental to the administration of such property, including the remuneration payable to the person appointed under Sub-section (2), shall be met out of the concerned Panchayat Fund.

(5) If the expenses referred to in sub-section (1) are not paid-

(i) in the case of a Gram Panchayat, the District Development and Panchayat Officer, and

(ii) in the case of a Panchayat Samiti or a Zila Parishad, the Director;

may make an order directing the person having custody of the fund of the Panchayat concerned, to make the payment in whole or in part from such fund and if such a person does not comply with the order, recover the amount from the fund of the Panchayat as arrears of land revenue.

5. According to the aforesaid provision, where a Panchayat makes a default in performance of its duties other than a judicial function imposed upon it, the D.D.P.O. may, in writing, fix the period for the performance of the duty and if it is not performed within the period so fixed, he may appoint any other person to perform the duty and direct that the expenses arising from, and incidental to, its performance shall be paid by the Gram Panchayat. This provision has been enacted to meet a situation where the Panchayat, as a whole, is not in a position to perform the duties under the Act or any other law for the time being in force and before taking any action, grace period is granted in writing by the District Development and Panchayat officer to perform the said duty and in case it is not

performed, only then a person is appointed for the purpose of performance of that duty. In the present case, on a complaint made by the Block Development and Panchayat Officer, the District Development and Panchayat Officer gave a notice and fixed the time for performance of certain works of the Panchayat and when the said work was not performed within the time fixed, appointed the Administrator for a period of 60 days for the purpose of performance of the said work. As a matter of fact, the order is passed not against the Sarpanch individually but against the entire Panchayat and that too for a short span of time. If the Sarpanch is aggrieved against the misconduct and negligence of the elected Panches who are not supporting him, he may file a complaint against them in accordance with law to the Competent Authority and if said complaint is made, insofar as the present case is concerned, I direct that those complaints made at the instance of the Sarpanch be dealt with by the Competent Authority expeditiously, in accordance with law. Insofar as the impugned order is concerned, it cannot be said that it has been passed in violation of Section 200 of the Act and thus, the present petition is hereby dismissed.