
(1993) 11 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 540 of 1993

Nigahia Ram

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Gram Panchayat Act, 1952 — Section 105(2)

Citation : (1994) 106 PLR 264

Hon'ble Judges : S.K. Jain, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Suvinder Dhall, for A.S. Tewatia, for the Appellant; P.S. Kadian, D.A.G. for Respondent Nos. 1 to 3 and J.S. Duhan, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia and S.K. Jain, JJ.—The petitioner, who is an Ex-Sarpanch of Gram Panchayat Pega, Tehsil and District Jind, has challenged the appellate order passed by the commissioner and Secretary to Government, Haryana Development and Panchayat Department, Chandigarh, dated September 29, 1992, dismissing his appeal against the order of the District Development and Panchayat Officer, Jind, dated January 10, 1992, in this petition under Articles 226/227 of the Constitution of India.

2. The Block Development and Panchayat Officer, Alewa, District Jind served a notice dated November 6, 1991, on the petitioner calling upon him to explain as to how 10,000 bricks and 60 cement bags were used by him when he was Sarpanch of the Gram Panchayat, Pega. He directed the petitioner to credit the amount of Rs. 14,000/- towards cost of 10,000 bricks and 60 bags of cement in the account of Gram Panchayat. Aggrieved by the said order, the petitioner preferred appeal before the District Development and Panchayat Officer, Jind, which was dismissed on January 10, 1992. After hearing the petitioner, the District Development and Panchayat Officer directed that action be taken against

the petitioner for recovery of Rs. 14,000/- towards the cost of bricks and cement. The petitioner unsuccessfully challenged the order of the District Development and Panchayat Officer in appeal before the Commissioner and Secretary to Government, Haryana.

3. Learned counsel for the petitioner submits that the Block Development and Panchayat Officer, on an application moved by the Gram Panchayat, can assess the amount due from a Member of the Gram Panchayat and that he can fix the liability of a Member of the Panchayat for the loss, waste or mis-application of any money or property of the Gram Panchayat after affording the member an opportunity of hearing to explain his position. He submits that in the instant case no such opportunity was afforded to the petitioner before fixing the liability on him. Section 105(2) of the Punjab Gram Panchayat Act, 1952 (for short, the Act) as applicable to the State of Haryana, reads thus :-

"105. Liability of members. - -

(1) xxx xxx xxx xxx

(2)The Block Development and Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise and after giving the member concerned an opportunity to explain, assess by order in writing the amount due from him on account of such loss, waste or mis-application."

Sub-section (1) of the Section 105 of the Act says that every member of a Gram Panchayat shall be liable for the loss, waste or misapplication of any money or property belonging to that body if such loss, waste or misapplication is a consequence of his neglect or misconduct while a member. Sub-section (2) of Section 105 envisages that the Block Development and Panchayat Officer can assess the loss occasioned as a result of misapplication of any money or property of the Gram Panchayat, after giving an opportunity of hearing to the concerned member of the Gram Panchayat. The petitioner, who is an Ex-Sarpanch, has been held liable for the loss caused to the Gram Panchayat to the tune of Rs. 14000/-. The records does not indicate as to how the Block Development and Panchayat Officer came to the conclusion that the petitioner had caused the loss to the Gram Panchayat as alleged.

4. When this factual position was brought to the notice of the learned Deputy Advocate General, Haryana, he very fairly stated at the Bar that no opportunity was afforded to the petitioner as enjoined u/s 105(2) of the Act. In view of the fairstand of the learned Deputy Advocate General, the notice dated November 6, 1991 and the subsequent orders passed by the District Development and Panchayat Officer and the Commissioner and Secretary to Government, Haryana, Development and Panchayat Department, Chandigarh, cannot be sustained. The same are accordingly quashed. However we leave it open to the authorities to proceed against the petitioner, if so advised, in accordance with law.

5. For the reasons stated above, the writ petition succeeds and the same is

allowed.