
(2000) 06 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7781 of 1997

Rajinder Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 02-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Corporation Act, 1976 — Section 36

Citation : AIR 2000 P&H 286 : (2001) 1 ILR (P&H) 13 : (2000) 126 PLR 625 : (2000) 3 RCR(Civil) 1051

Hon'ble Judges : V.K. Bali, J;M.L. Singhal, J

Bench : Division Bench

Advocate : Deepak Sibal, for the Appellant; K.S. Sivia, AAG, Rajiv Atma Ram and P.S. Patwalia, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Before we might proceed any further in this matter, we would like to mention here that both these petitions, bearing Nos. 7781 of 1997 and 188848 of 1996 were listed together from time to time and on February 3, 1999, after hearing arguments in C.W.P. No. 188848 of 1996 we had dismissed the same. Before we could, however, take up next matter in the cause list, counsel representing petitioner in C.W.P. No. 7781 of 1997, who was earlier not present, came and sought permission to address arguments. Since arguments could not be heard in C.W.P. No. 7781 of 1997 on that day, both writ petitions were adjourned by specifically observing, orally in the Court, that even though we had dictated orders in Court in C.W.P. No. 188848 of 1996, same shall also stand adjourned. In the facts and circumstances, as have been fully detailed above, typed order dated February 3, 1999 is still on records of the case with all its grammatical mistakes and naturally without signatures by us.

2. These writ petitions thereafter were being adjourned from time to time for variety of reasons, like, either the counsel representing the parties were not

available or there being a new roster, the Special Bench could meet only on Fridays. In this manner, almost a year has gone by.

3. By this order, we propose to dispose of aforesaid two writ petitions as common questions of law and fact are involved therein. Inasmuch as Mr. Sibal, learned counsel representing petitioner in C.W.P. No, 7781 of 1997 has addressed arguments on January 28, 2000, the date when judgment was reserved, brief facts for the purposes of deciding these petitions, have been taken from the said writ.

4. Rajinder Kumar, a Municipal Councillor, Municipal Council, Mandi Gobindgarh, District Fatehgarh Sahib through present petition filed by him under Article 226 of the Constitution of India, seeks issuance of writ in the nature of mandamus directing the respondents to investigate large scale financial and other irregularities being committed by the President of Municipal Council Mandi Gobindgarh in connivance with other officers, such as respondents 5 and 6, by an independent agency, like Chief Vigilance Officer, Punjab respondent No. 7 herein and to further direct the respondent-State to take action in pursuance of vigilance (sic) enquiries conducted by the Vigilance Department, Punjab. By way of interim measure, it is further the prayer of the petitioner that working of the Municipal Council, Mandi Gobindgarh be handed over to some Administrator so that irregularities which are being committed may not continue further.

5. Petitioner claims himself to be former Vice-President and present Municipal Councillor of Municipal Council, Mandi Gobindgarh. He has noticed various irregularities both financial and procedural, being committed by various members of the Council, especially the President. He also claims to have noticed that in this large scale conspiracy, various officials of the council are also involved. They are hand-in-glove with the President and crores of rupees are changing hands to the detriment of public at large. The annual budget of Municipal Council, Mandi Gobindgarh is Rs. 13.08 crores and the petitioner claims to have found that crores of rupees are going into hands of few favourites and corruption is rampant. It is then pleaded that main job of Municipal Council is to make available amenities like, water, street-light, sewerage system, roads, etc. for convenience of public. For all these things, a budget is sanctioned by the Government which is to be utilised for the public good. In the case in hand, the budget is being sanctioned and made available to the Council but unfortunately the same is going into the pockets of few favourites. Petitioner claims to have known that various modus-operandi are being adopted by concerned officials and the President to unduly enrich themselves. They are inviting tenders for a road which is to be 4" thick, meaning thereby that material with a width of 4" is to be used, The cost of project is calculated keeping in mind that the road is to be made 4" thick. The contract is given to a contractor who is in the good books of the President. The contractor then lays roads, but the thickness of road is about 3" meaning thereby the material used by him is much less in the measurement book, the officials of Municipal Council show the thickness of road after

inspection as 4". The payment is then made for substandard work for a road which is supposed to be 4" thick. This way the contractor saves lacs of rupees since the roads go into various kilometres and this money is shared by the concerned officials who help him. In the manner aforesaid, not only the public gets substandard roads and public money is wasted by making payment for substandard roads, the quality of roads because of less thickness is so bad that the same needs repair just after a week or so. Again the same contract is given to the contractor for repairing the roads. In this way, the contractor and concerned officials are doubly benefited. The matter does not rest there as office bearers of the council orally order the contractor to break the road himself and then given him the contract for repairing the same. In his capacity as Municipal Councillor, petitioner claims to have received a complaint from the members of public that various irregularities are being committed and that he being the Municipal Councillor should take the matter with higher authorities. It was reported to him by some residents that a contractor of Municipal Council was dismantling the RCC flooring roads. When enquiries were made, it came to light that Gali No, 6-A, Dashmesh Nagar was to be reconstructed and in this connection It was being dismantled. The contractor told them that he had verbal orders of Shri V. K. Setia, Assistant Municipal Engineer. When the residents approached the Council, they came to know that for this particular work, no resolution had been passed nor tenders had been invited and allotted. The residents approached the petitioner and told him that if he was unable to take note of these problems and if he was unable to take action as a Vice-president, he should submit his resignation, The petitioner took up the matter with the President and the Executive Officer of the council but all his protests fell on deaf ears and in protest he submitted his resignation from the post of Vice-President of the Council and decided to take up the matter with the higher authorities. He made a complaint to the Deputy Commissioner, Fatehgarh Sahib bringing to his notice the facts, referred to above. He also brought to the notice of Deputy Commissioner that council had admitted in its letter dated 19-7-1996 that the work in Dashmesh Nagar, Gali No. 6-A was being carried only on the basis of some oral orders given by Shri V.K. Setia. Petitioner further brought to the notice of the Deputy Commissioner that the contractor Pritam Dass was working as a Clerk in a Rolling Mill owned by wife of the President. His ESI Number was also given. Petitioner pleads that it is apparent that allotment of tenders to a mere clerk in the factory of President's wife, was a benami transaction. Other facts were also brought to the notice of the Deputy Commissioner, who in turn, marked the complaint to the Sub-Division a Officer (Civil) Amloh. SDO (Civil), Amloh conducted an enquiry in the complaint made and found that it was correct. He recorded statements of petitioner and other public spirited Municipal Councillors as also concerned officials. It was ultimately found that there was no occasion for giving contract to Pritam Dass and V.K. Setia had committed a serious Illegality. It was also found that employees of the Council did not have even correct details of work which was being done in the town. He further returned a finding that Shri V.K. Setia and Pritam Dass were the main accused in

the excess digging of roads and Municipal Engineer and Sectional Officer also could not be absolved of their responsibility in the matter since they had not taken notice of the illegal work of the contractors. Operative part of the order passed by SDO (Civil), Amloh, runs thus :--

"From the statements of the employees and contractor and as per record on the file, it becomes apparently clear that when details work of the town has already been approved by the resolution made on 12-1-1996 including the road cuts of ward No. 8 (according to the statement of Shri K.S. Bhullar, Municipal Engineer), then what was the necessity of getting the applications again annexed as Annexure "E". If this work was not included in the detailed work of the town then from where the provision was made of the repair. So, from the above said application which is only present in between President and the Assistant Engineer, Shri V.K. Setia, to allotment work to Shri Pritam Dass is the serious illegality. From the statements of the employees, it becomes clear that they do not have correct details of the work which is being done in the town. So, from this they are helpless to check the work of the contractor Pritam Dass are clearly the main accused in excess digging of the roads and the Municipal Engineer and sectional officer cannot be absolved of their responsibility in this matter. Because they have not taken notice of the illegal works of the contractor in time. In this way, the contractor without any written orders used to do excess digging and bent upon misusing the money of Municipal Council for his own benefits."

6. Deputy Commissioner is stated to have considered the report and addressed a letter to the Director, Local Government Department, Punjab. After considering the report of the Magistrate, the Deputy Commissioner recommended that Pritam Dass be blacklisted since everything had been done by him with a mala fide intention and that record of at least one year be checked by a special checking team so that the quality of work could be checked. It was further mentioned in the letter that checking be done as soon as possible and the same should be date bound as also that records of the Council should be confiscated immediately so that there was no possibility of tampering with it. Accordingly, a Vigilance team was sent by the Chief Vigilance Officer to conduct an enquiry into the working of the Council. It conducted the enquiry and found that works of repairs of roads were always allotted to Pritam Dass. Vigilance team also found, that Pritam Dass was not even a registered contractor and that allotment of work to him was against rules. It was also found that in street No. 6 and 6-A flooring had been unnecessarily dismantled so that the repaired could be allotted to the contractor. Other observations made by the Vigilance team have also been set out in the writ petition. The petitioner further pleads that despite the kind of findings, as have been detailed above, no action is being taken. On the contrary, Shri V.K. Setia, who was Assistant Municipal Engineer, has since been promoted as Municipal Engineer. Another Vigilance enquiry was conducted and in the said enquiry it was found that the allegations against President Nand Kumar were not proved because partnership deed to the factory in which Pritam Dass was a worker, was not made available. It was further mentioned that since Pritam Dass

was not related to the President, the charges against Nand Kumar were not proved. The petitioner pleads that this finding of the vigilance officer is not correct and the same has been made to save the President. The Executive Officer of the council was, however, found responsible for the irregularities pertaining to accounts. Petitioner further pleads that a charge sheet has been filed against the erring officials on January 2, 1997 but no action is being taken against them so far. It is then pleaded that other irregularities have also come to the notice of petitioner that President of the Council owns about three acres of land in New Shashtri Nagar, Mandi Gobindgarh. This land did not have sewerage system and thus the price of land was considerably low. During the tenure of the President, for this three acres of land, sewerage system was provided, apparently with a view to favour the President so that price of the land is enhanced. Another irregularity has been found by the petitioner that when goods were purchased by the council through various dealers, the same were never checked so as to find from where the dealer had purchased the goods. No bills were produced before the Council and no sales tax was obviously paid.

7. The aforesaid irregularities committed by the office bearers of the Municipal Council, Mandi Gobindgarh and, in particular, its President, in connivance with the officials, is stated to have put the exchequer to a great deal of loss and inconvenience to the public and it is for this precise reason that a prayer has been made to hold an enquiry by an independent agency like respondent No. 7.

8. Pursuant, to notice issued by this Court, three written statements, one on behalf of respondents 1, 2 and 7, other by respondents No. 4 and yet another by respondent Nos. 5 and 6, have been filed. It has, inter alia, been pleaded by respondents 1, 2 and 7 that respondent No. 7 through his Senior Vigilance Officer and Vigilance Officer conducted the enquiry on August 22, 1996 with reference to letter received from Minister of Finance and Local Government dated August 14, 1996. Enquiry report was submitted by respondent No. 7 to the Government on Sept. 17, 1996, as a result of which disciplinary action was initiated against under-mentioned officers/officials of Municipal Council, Gobindgarh :--

1. Shri K.S. Bhullar, Municipal Engineer,
2. Shri V.K. Setia, Municipal Engineer,
3. Shri Harmail Singh, Sectional Officer,
4. Shri Surinder Singh, Sectional Officer,
5. Shri Gurmeet Singh, Sectional Officer,
6. Shri D.S. Channa, Sectional Officer.

9. In defence, reply was submitted by the aforesaid persons. Same was considered and case was sent to respondent No. 2 for appointing Enquiry Officer vide letter dated June 20, 1997. Subsequently, respondent No. 1 decided to hold

regular enquiry against the aforesaid officials and appointed Shri Surjit Singh, PCS, Regional Deputy Director, Local Government, Patiala, as enquiry officer. On the basis of enquiry conducted by the Vigilance team of Local Government department on August 22, 1996, the charge-sheets against erring officials were served on January 2, 1997 and subsequently enquiry officer has been appointed by respondent No. 1 to hold regular enquiry as already mentioned. The vigilance team of respondent No. 7 also conducted further enquiry on Nov. 4, 1996 and after scrutiny of estimates, MBs. and site checking measurement sheets, discrepancies noticed were earmarked against the various officers/officials as shown in Annexure attached with enquiry report of respondent No. 7. The case is stated to be in process with the Government.

10. Respondent No. 4 Nand Kumar Gupta, President of Municipal Council, in his separate written statement, by way of preliminary objections pleads that the present petition has been filed by petitioner as public interest litigation and in fact it is not so. It has been filed due to political rivalry between the petitioner and respondent No. 4. This is not the first writ which has been filed alleging the same allegations. On earlier occasions as well, writ petition No. 15319 of 1996 was also filed alleging the same allegations as have been alleged in this writ. Same was dismissed. Thereafter, another writ bearing No. 18848 of 1996 was filed on the same allegations and stay was also obtained. After filing reply, correct position was brought to the notice of this Court and stay that tenders invited should not be finalised, was vacated by this Court. Present one is the third writ which has been filed now by petitioner, who was instrumental in filing earlier two writs as well. Petition is stated to have been filed for settling personal disputes and, therefore, cannot be treated to be public interest litigation. It has also been pleaded that time and again same allegations are being levelled against the Municipal Council as well as respondent No. 4. Same very allegations that Pritam Dass is not contractor but works with respondent No. 4 had been made in the earlier writ petitions which were dismissed. Further, petitioner has himself admitted that vigilance enquiry was actually conducted against respondent No. 4 with regard to the fact that Pritam Dass was working in his factory and was not an approved contractor and same was found to be incorrect. Allegation that Pritam Dass was given verbal orders to dismantle the public road and thereafter repair it, has also been denied. In this regard, it has been pleaded that these works were got done by respondents 5 and 6. It is stated to be in the knowledge of respondent No. 4 that road was dismantled in order to given sewerage connections to certain residents. Even if it is assumed that road was dismantled more than the required, it is stated, no payment was made to Shri Pritam Dass with regard to dismantling and then repairing of the road. In the vigilance enquiry, petitioner had placed all the material and ultimately the Vigilance Officer exonerated respondent No. 4 of all the charges which were being now alleged against him. By way of present petition, petitioner is trying to reopen the issue. It is only after the petitioner ceased to be Vice-President of the Council that he started political propaganda against respondent No. 4 to defame

him. The allegations that respondent No. 4 and some other officials of the municipal council have unduly enriched themselves, have been termed to be baseless and, thus, denied. It is pleaded that contracts were not given to persons who were in good books of respondent No. 4 but were given to contractors who were approved ones. It has also been denied that any road which used to be 4" thick was laid about 3" thick. Insofar as allegation of petitioner that with a view to benefit the President, sewerage system was provided to his three acres land, it is pleaded by respondent No. 4 that sewerage system was laid keeping in view the resolution of the Committee and funds were allotted by the State of Punjab for laying down the sewerage system.

11. In a separate written statement filed on behalf of respondents 5 and 6, it has been pleaded by way of preliminary objections that they have already been served with a charge-sheet and they have also filed their reply to the said charge-sheet. Even Enquiry Officer has also been appointed by the State of Punjab to investigate the allegations Which were similar as made by the petitioner in this petition. Prayer of the petitioner has already been accepted by the Government and matter is under investigation. No further orders are, thus, called from this Court. It is then pleaded that petitioner, in order to settle his score with respondent No. 4 is, also implicating respondents 5 and 6 and it is not for the first time that he has done so. Two writ petitions were earlier filed with the same allegations. Whereas, the first writ has since already been dismissed, other one was fixed for Nov. 3, 1997. Baseless and frivolous allegations had been made against the respondents. There are some other preliminary objections as well and the matter has been contested on merits. Various allegations made by the petitioner, as detailed above, have been denied.

12. Records of the case would reveal that petitioner produced some additional documents during pendency of this writ petition and reference of Annexure P-6, stated to be partnership deed dated April 1, 1981, needs a mention. It is stated during the course of arguments that Smt. Maya Devi, one of the partners in M/s. Swastika Steel Works, Mandi Gobindgarh, is none other than wife of respondent No. 4 Nand Kumar. It is in this concern, namely, M/s. Swastika Steel Works that contractor Pritam Dass was a clerk.

13. We have heard learned counsel for the parties at considerable length and gone through the records of the case. After considering the whole matter, we are, however, of the view that there is no merit in either of these writ petitions and the same deserves to be dismissed. It may, however, be recalled at this stage that when we had dictated orders on Feb. 3, 1999, we had primarily dismissed CWP No. 18848 of 1996 on the ground that earlier two writ petitions with the same allegations had since been dismissed and, therefore, there was no occasion to file yet another writ petition with the same allegations. It has, however, been clarified to us that out of two writs, referred to above, only one was dismissed whereas other is connected one, which is being disposed of with this writ. Insofar as earlier writ which, was dismissed, is concerned, same was

directed against acceptance of tenders in favour of contractor Pritam Dass, even though, some of allegations made in the said writ, have also been made in the present writ petition.

14. Prayer of the petitioner, as noted above, is to direct the official respondents to investigate large scale irregularities being committed by the President of Municipal Council, Mandi Gobindgarh in connivance with other officials, such as respondents 5 and 6, by an independent agency, like, respondent No. 7. It is strange that even though prayer is to hold enquiry by respondent No. 7, it has yet been pleaded in writ petition itself that enquiry has been conducted by the same very respondent. Pleadings of the parties do clearly reveal that insofar as officials/officers attached to the Council are concerned, quite a few of them, pursuant to an enquiry conducted by respondent No. 7, have not only been held, *prima facie*, guilty but appropriate action is also in the offing against them. They have been served show cause notices and after receipt of their replies. Enquiry Officer has been appointed and departmental enquiry against the persons, mentioned in earlier part of the judgment, is pending. It is rather strange to note that the petitioner, insofar as official respondents are concerned, is only clamouring for early disposal of enquiries pending against them but insofar as respondent No. 4 is concerned, he is praying for an enquiry *de novo*, being not satisfied with the findings returned in favour of the said respondent. If it was the case of petitioner that findings of respondent No. 7 insofar as respondent No. 4 is concerned, are not correct, we are of the opinion that it is the report of the said respondent No. 7 that ought to have been challenged, if permissible under law. It was not fair for the petitioner, in the facts and circumstances of the case, to still pray for an enquiry by respondent No. 7, which, as mentioned above, had not only been initiated but culminated into the findings against official respondents and in favour of respondent No. 4. Ordering yet another enquiry and that too by respondent No. 7 into the same very allegations, that have been subject matter of enquiry against respondent No. 4, does not appear to be justifiable nor any fresh grounds have been pleaded in the writ petition, The Court in matters of the kind, can at the most be, concerned to hold an enquiry. Surely, if findings of the enquiry are to the disliking of the petitioner, yet an other enquiry cannot be asked for. If such a prayer is to be accepted, there will be no end to this kind of litigation. To illustrate, if second enquiry is also ordered and same also turns in favour of respondent No. 4, can petitioner ask for third enquiry ? In our view, answer to the question aforesaid has to be in negative. As mentioned above, insofar as officials/officers attached to the Council and against whom also allegations were made by the petitioner, are concerned, they have since already been charged-sheeted and are facing departmental enquiry. The complaint made by the petitioner with regard to various irregularities, as mentioned in the writ petition, has, thus, culminated into proper proceedings and nothing more requires to be done. We find no merit in either of these writ petitions and dismiss the same.

15. Before we may part with this order, we would only like to mention that the

State of Punjab would do well if the enquiry initiated against the officials/officers of Municipal Council, as detailed in the written statement filed by respondents 1 and 2, is concluded as expeditiously as possible and preferably within six months from the date of copy of this order is received by it.

16. Parties are, however, left to bear their own costs.