
(2011) 01 P&H CK 0400
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16251 of 2002

Ram Kanwar

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Haryana Panchayati Raj Act, 1994 — Section 53, 53(1), 53(5)

Citation : (2011) 161 PLR 359 : (2011) 3 RCR(Civil) 436

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The matrix of the facts, culminating in the commencement, relevant for deciding the instant writ petition and emanating from the record, is that in the wake of general panchayat elections held in the month of December, 1994, the Petitioner was elected as Sarpanch of Gram Panchayat of village Rai, District Sonapat, under the provisions of the Haryana Panchayati Raj Act, 1994 (hereinafter to be referred as "the Act"). Having successfully completed, his term expired in the month of March, 2000 when fresh elections were Held in the village and the seat of office of Sarpanch was reserved for ladies.

2. It was claimed that during his tenure as Sarpanch, Subha Chand and others filed a complaint against him on 7.6.1999 before the Deputy Commissioner, Sonapat, (Respondent No. 2), inter-alia on the grounds that he (Petitioner) carried out the development work in the village without approval and sanction from the competent authority and without following the due procedure. Thus, he was stated to have mis-appropriated the funds of the Gram Panchayat. The Respondent No. 2 sent the complaint to SDO (C) Sonapat (Respondent No. 3), who appointed the BDPO, Rai as Enquiry Officer and asked him to submit his report on the complaint, vide letter dated 14.10.1999 (Annexure PI). The BDPO

conducted a detailed inquiry on the complaint, recorded the statements of the complainants, Petitioner and other persons, inspected the spot and record and submitted the inquiry report dated 18.10.1999 (Annexure P2) exonerating the Petitioner from the allegations alleged against him.

3. Sequel, the Enquiry Officer (BDPO) submitted his report (Annexure P2) to the SDO (C) (Respondent No. 3), who accepted the report and found the allegations in the complaint alleged against the Petitioner, to be false and baseless and sent his report dated 30.11.1999 (Annexure P3) to the Deputy Commissioner (Respondent No. 2) in this regard.

4. Thereafter, Respondent No. 2 again asked Respondent No. 3 to examine the complaint in regard to work-wise details. Respondent No. 3 re-examined the matter, again reiterated and came to the conclusion that the complaint has been filed by the complainants due to party faction, they have not submitted any evidence in support of the allegations and it was recommended that the present complaint be consigned to the records, vide report dated 9.2.2000 (Annexure P4).

5. As strange as it may seem, but Respondent No. 3 took a somersault and again started inquiry on the same complaint and issued notice dated (Annexure P5) to the Petitioner after more than five years of filing the complaint in this regard. Although, the Petitioner replied to the notice intimating that all the allegations levelled against him have already been inquired into and were found to be false and even otherwise, no inquiry can be initiated against him u/s 53(5) of the Act but the same was not dropped.

6. In this manner, the Petitioner did not feel satisfied and filed the instant writ petition challenging the initiation of second inquiry into the same charges, by invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia, on the grounds that the second inquiry cannot be initiated once the same set of allegations were found to be false by Respondent No. 3. That too, the inquiry is barred after the expiry of his term of Sarpanch as contemplated u/s 53(5) of the Act.

7. The Respondents contested the claim of the Petitioner and filed their written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petition and locus standi of the Petitioner. According to the Respondents that as the inquiry was not finalized, therefore, Section 53 did not debar the holding of an inquiry. However, the factual matrix of holding the first inquiry by Respondent No. 3 was admitted. It will not be out of place to mention here that the Respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

8. Having heard the learned Counsel for the parties, having gone through the record and relevant legal provisions of the Act with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant petition deserves to be accepted in this context.

9. As is evident from the record that Petitioner was elected as Sarpanch in general elections held in the month of December, 1994 and his term had expired in the month of March, 2000. On 7.6.1999 a complaint of mis-appropriation of Gram Panchayat funds was filed against the Petitioner, which was duly inquired into by the Enquiry Officer (BDPO), vide his detailed report (Annexure P2). The Respondent No. 3 accepted the said report and exonerated the Petitioner, vide his report (Annexure P3), the operative part of which is as under:

In addition to this the comments of the Block Development and Panchayat Officer, Rai were called on this complaint and he submitted his report in this office after inspecting the spot and the record. The Block Development and Panchayat Officer, Rai has submitted his report vide letter No. 3245 dated 18.10.99 in this office and he has submitted his report charge-wise. According to his report, the charges levelled in the complaint are baseless. He has also stated in his report that the works got done by the Sarpanch have been got done in accordance with the rules and entries of the same have been made in the M.B. and the Stock Register. In addition to this the shamilat land which has been given on lease, the same is being given on lease in accordance with the rules and at the spot the trees are standing. The entire work of making pucca has been got done under the supervision of J.E. of the Block and SDO (P.R.).

Therefore, I am satisfied with the report sent by the Block Development and Panchayat Officer, Rai and I recommended the filing of this complaint because this complaint has been filed due to party faction and the same is baseless.

10. Not only that, the matter was again re-examined by Respondent No. 3, work-wise details as desired by Respondent No. 2, who (Respondent No. 3) reiterated his earlier findings and recorded a finding of fact that the complaint has been filed by the complainants due to party faction and recommended the filing of the same, vide report (Annexure P4). Meaning thereby, having prudently examined the entire matter, Respondent No. 3 twice came to the conclusion that the allegations contained in the complaint against the Petitioner were false and baseless. In that eventuality, re-opening of the inquiry by him on the same allegations, vide show cause notice (Annexure P5) without any fresh material or cogent evidence, is not only arbitrary but illegal as well and deserves to be dropped.

11. There is another aspect of the matter, which can be viewed from a different angle. What is not disputed here is that Petitioner was elected as Sarpanch in the month of December 1994 and his term had already expired in the month of March 2000. Section 53(1) of the Act postulates that "every Sarpanch or a Panch of a Gram Panchayat shall be liable for the loss, waste or misapplication of Gram fund or property belonging to that Gram Panchayat if such loss, waste or misapplication is a consequence of his neglect or misconduct while working as Sarpanch, Up-Sarpanch or a Panch as the case may be."

12. Likewise, Sub-section (5) of this section further posits that "notwithstanding

anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a Sarpanch or Panch as the case may be, whichever is earlier."

13. Therefore, a co-joint reading of these provisions would reveal that no inquiry can be initiated against the Petitioner after two years of expiry of his term as a Sarpanch. Thus, the impugned notice (Annexure P5) of Respondent No. 3 is against the statutory provisions of the Act and cannot legally be maintained as well.

14. In the light of the aforesaid reasons and thus seen from any angle, to me, the initiation of second inquiry on the same allegations by virtue of notice (Annexure P5) particularly when the Petitioner was exonerated from the same charges, vide report (Annexure P3) and that too against the statutory provisions of Section 53(5) of the Act is not only arbitrary, but illegal as well and cannot be sustained in the eyes of law in the obtaining circumstances of the case.

15. In the light of the aforesaid reasons, the instant writ petition is accepted and the impugned notice (Annexure P5) is hereby set aside being illegal.