
(2013) 03 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7536 of 2011

Shri @ Siri Niwas

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2013) 03 P&H CK 0060

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Sunil Panwar, for the Appellant; Kirti Singh, DAG, Haryana for State and Mr. R.S. Mamli, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the order dated 13.5.2010 (Annexure P-4) passed by the Financial Commissioner, Haryana-respondent No. 1, whereby the order dated 14.6.2006 (Annexure P-2) passed by the District Collector, Jind and also the order dated 28.11.2008 (Annexure P-3), passed by the Commissioner, Hisar Division, appointing the petitioner as Lambardar, were set aside appointing respondent No. 4 as Lambardar. Facts first.

Consequent upon creation of a new post of Lambardar, proceedings were initiated to fill up the post in the village of the parties. As many as 20 persons applied. However, ultimately, only four candidates remained in the fray. Finally, name of the petitioner was recommended by the Assistant Collector First Grade, Safidon, vide his self contained report/order dated 2.6.2006 (Annexure P-1). The District Collector, Jind, discussed and appreciated comparative merits of all the four candidates before arriving at a judicious conclusion in favour of the petitioner, appointing him as Lambardar, vide his order dated 14.6.2006

(Annexure P-2). Dissatisfied, two appeals came to be filed before the Commissioner, Hisar Division against the above said order passed by the District Collector. The Commissioner passed a very detailed, speaking and well reasoned order dated 28.11.2008 (Annexure P-3), upholding the order passed by the District Collector.

2. Against the abovesaid order dated 28.11.2008 passed by the Commissioner, respondent No. 4 approached the Financial Commissioner by way of a revision petition and his revision was accepted vide impugned order dated 13.5.2010 (Annexure P-4).

3. Feeling aggrieved against the abovesaid impugned order passed by the Financial Commissioner, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing the impugned order.

4. On 29.4.2011, notice of motion was issued by this Court by passing the following order:-

The Collector appointed the petitioner namely Shri @ Siri Niwas as Lambardar for village Muwana, Tehsil Safidon, District Jind vide order Annexure P-2 dated 14.06.2006. Respondent no.4 filed an appeal before the Commissioner which was dismissed by the Commissioner vide order Annexure P-3 dated 28.11.2008 upholding the order passed by the Collector. The respondent carried a revision. The Financial Commissioner allowed the revision vide impugned order Annexure P-4 dated 13.05.2010 on two counts viz. that respondent no.4-Kali Ram is educationally more qualified being a Graduate whereas the petitioner was only a matriculate. On the other count, considering the demerit in the claim of the petitioner in view of his involvement in a case u/s 302 IPC, indulgence has been shown, orders passed by the Collector and Commissioner have been set aside and respondent-Kali Ram has been appointed as Lambardar.

Learned counsel for the petitioner had ably argued that the petitioner was falsely implicated at the point in time when he was still a student. There was no evidence on the record and, therefore, even statement u/s 313 Cr.P.C. was not recorded. It has, however, been admitted by learned counsel for the petitioner that the petitioner, in view of lodging of FIR, remained in jail and charge-sheet was also framed.

Learned counsel for the petitioner has vehemently argued that the respondent Civil Kali Ram does not have a good character in so much as he was involved in an electricity theft case. So much so, respondent-Kali Ram manipulated the record as would be evident from orders Annexures P-7 to P-9. The respondent is also in unauthorized possession of Gram Panchayat Land.

Notice of motion for 22.07.2011.

Operation of order passed by Financial Commissioner viz. Annexure P-4 shall remain stayed till the next date of hearing.

5. In compliance of the above said order passed by this Court, reply was filed on behalf of respondent No. 4.

6. Learned counsel for the petitioner submits that the impugned order passed by the Financial Commissioner was patently illegal because no interference was warranted at the hands of the Financial Commissioner in either of the orders passed by the District Collector or by the Divisional Commissioner. He further submits that the settled principle of law that choice of the Collector in the cases of appointment of Lambardar was final and ordinarily was not to be interfered with, has been glaringly violated by the Financial Commissioner, while passing the impugned order. Relying upon the order dated 16.8.1993 (Annexure P-5) passed by the learned Additional Sessions Judge, Jind, in the case arising out of FIR No. 43 dated 22.1.1993 u/s 302/323/34 IPC registered at Police Station Safidon, he submits that the petitioner was falsely implicated in the case. It was found to be a case which was not even worth trial. Since there was no evidence, whatsoever, against the accused, not even their statements u/s 313 Cr.P.C. were recorded and they were acquitted. Further, relying upon the documents Annexures P-6 to P-10, he submits that respondent No. 4 was not enjoying good character because he was found involved in electricity theft case, besides making encroachment on the public street. He concluded by submitting that the impugned order passed by the Financial Commissioner may be set aside and the writ petition may be allowed. In support of his contentions, learned counsel for the petitioner relies upon four Division Bench judgments and one Single Bench judgment of this Court in Nirbhey Singh Vs. Financial Commissioner, , Gurbachan Singh Vs. Financial Commissioner (Appeal-I), Punjab judgment dated 22.5.2008 passed in CWP No. 512 2008 (Inder Singh v. Financial Commissioner, Haryana and others) judgment dated 11.4.2008 passed in CWP No. 1672 of 2008 (Satbir Singh v. Financial Commissioner & others) and Kashmira Singh v. Financial Commissioner, 1983 PLJ 142.

7. Per contra, learned counsel for respondent No. 4 submits that there was no illegality in the order passed by the Financial Commissioner. He further submits that the orders passed by the District Collector and the Commissioner were contrary to the facts of the case and were rightly set aside by the Financial Commissioner. He next contended that in view of the judgment in the case of Ranjit Singh v. Financial Commissioner, Haryana and Another, 2009 (4) RCR (Civil) 350, petitioner was not entitled for appointment to the post of Lambardar. Finally, he prays for dismissal of the writ petition.

8. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned order passed by the Financial Commissioner is not sustainable and the writ petition deserves to be allowed for the following more than one reasons.

9. A bare perusal of the impugned order dated 13.5.2010 (Annexure P-4) passed by the Financial Commissioner would show that he proceeded on an erroneous

approach while allowing the revision of respondent No. 4, thereby setting aside the factually correct and legally justified orders passed by the District Collector and the Divisional Commissioner. Before setting aside the orders passed by the District Collector and the Divisional Commissioner, the Financial Commissioner did not point out any patent illegality or perversity in either of the orders passed by the lower revenue authorities. In the absence of any such findings recorded by the Financial Commissioner, there was no scope for interference in the orders passed by the District Collector as well as by the Commissioner. Thus, the impugned order passed by the Financial Commissioner cannot be sustained.

10. It is a matter of record that before arriving at a factually correct and legally justified conclusion, the District Collector considered the comparative merits of the candidates. After closely examining, considering and appreciating the merits and demerits of the contesting candidates, the District Collector rightly passed the order dated 14.6.2006 appointing the petitioner as Lambardar. The operative part of the order passed by the District Collector, reads as under:-

It is, apparent from the above that Shri Niwas candidate is a young person, educated up to 10th class and has 6 acres of land. He has also deposited an amount of Rs. Two Lacs in Small Savings Scheme and has also got his wife operated for family planning. In favour of the candidate, respectable/prominent persons of the village, including four Ex. Sarpanches, Two Lambardars and two Chowkidars have also put in appearance. Besides this, two persons who have been rewarded with President's awards have also appeared for him. Many Government Organizations including Executive Engineer, Water Services Division, Jind, Sub Divisional Engineer, Haryana Vidyut Prasaran Nigam, Safidon and many other Organizations also have awarded commendation certificates in favour of the candidate. This exhibits that candidate Shri Niwas takes interest in implementing the Scheme of the Government.

In these circumstances, Shri Niwas son of Satya Narain, Caste Brahmin, resident of Muwana is appointed as Lambardar against the post of General Category (Brahmin Caste).

Order was pronounced today on 14.6.2006, in open court. The file be consigned to record room, after compliance.

11. While deciding the appeals against the order dated 14.6.2006, the Commissioner, Hisar Division, re-examined the whole matter going into minute details of comparative merits and demerits of the candidates. The operative part of the order dated 28.11.2008 passed by the Commissioner, Hisar Division, reads as under:-

It is clear from the above details that appellant Kali Ram is B.A. pass and he also has more land whereas, respondent in 10th Class pass and he also has less land. A penalty of Rs. 10,000/- has been imposed against appellant Kali Ram in regard to a case of electricity theft and on account of his having been caught stealing electricity, letter dated 18.7.2007 was also written for registration of FIR and due

to the mounting of political pressure, the SDO City Safidon had written letter No. 1304 dated 10.8.2007 to the Executive Engineer, (Operation Division), Safidon and had also sent copy to the District Collector, Jind, for information. The SDO city Safidon has also made a report that there is no Tubewell connection in the name of Bhana Ram. The amount of Rs. 10,000/- deposited by Bhana Ram was adjusted towards the electricity theft case of Kali Ram on the basis of the affidavit given by him. Therefore, it is not legally proper to appoint such persons as Lambardar. It is also clarified here that if there was no case of electricity theft against appellant Kali Ram, then he would be a better candidate than the other two candidates. Appellant Ram Niwas is only 8th Class pass and with regard to his being depot holder, his license has also been cancelled and complaints have also been made against him and cases have also been registered. Therefore, it is also not proper to appoint the appellant Ram Niwas as Lambardar. The ruling 2005 (2) PLR 306, produced by the counsel for appellant-Kali Ram is with regard to a criminal case and it has been stated that even if the respondent has been acquitted in the case, still his image cannot be considered to be claimed. In rebuttal to this, counsel for respondent Siri Niwas has produced photocopy of the ruling 2006 (3) RCR (Civil) 313, 22.5.2008, according to which "Moreover the judgment cited by counsel for respondent No. 4 is not relevant as the petitioner has already been acquitted by the Court and acquittal from the Court does not carry any stigma on the character of a person." With regard to the second objection of appellants Kali Ram and Ram Niwas that respondent Siri Niwas is in illegal possession of Panchayat Land, the Girdawar Halqa and Tehsildar have submitted a report according to which the respondent has not been found in illegal possession of any land. In favour of the respondent, the Assistant Collector-II Safidon and thereafter, the Assistant Collector-I, Safidon have made recommendation and then, the District Collector, Jind has appointed the respondent as Lambardar vide his order dated 14.06.2006, finding the respondent to be more meritorious and deserving. After being appointed as Lambardar, the Sub Divisional Officer (Civil) Safidon has also awarded him with appreciation/commendation certificates for the remarkable work done by him towards recovery of dues. The Collector, Jind has rightly passed the order. Therefore, the appeal of appellants Kali Ram and Ram Niwas is dismissed. Record of the Lower Court be returned. Order be communicated.

12. Once the order passed by the District Collector has been upheld by the Commissioner, Hisar Division, there was hardly any scope left for the Financial Commissioner to interfere with the orders passed by the lower authorities even if he was of a different view, present being the matter of appointment of Lambardar. The Financial Commissioner himself compared the merits and demerits of both the candidates and arrived at a different conclusion vide his impugned order dated 13.5.2010 (Annexure P-4), observing as under:-

It is obvious that the petitioner Mr. Kali Ram is educationally more qualified than the respondent being a graduate (the respondent is only matriculate). He also owns 10 acres of land as compared to 6 acres of land.

Besides, although the respondent was not convicted by the concerned court in the murder trial (under Section 302 IPC) he admittedly remained imprisoned for several months. Thus, his credibility and capacity to command respect as a lambardar of the village in view of this criminal trial has been severely eroded. The acquittal of an accused in a criminal charge such as murder on grounds of lack of evidence does not completely wash away the stigma and does impact his acceptance as a lambardar by the villagers adversely.

Therefore, it is evident that the petitioner Mr. Kali Ram was more meritorious than the respondent as he is educationally more qualified being a graduate and is a owner of larger land holding. The Divisional Commissioner obviously erred in upholding the orders of the Collector vide which the Ld. Collector concluded that the respondent Mr. Sri Niwas was more qualified than the petitioner.

In view of the above mentioned facts, the orders of the Divisional Commissioner, Hisar dated 28.11.2008 and Collector, Jind dated 14.6.2006 are set aside and the petitioner Mr. Kali Ram is appointed as a Lambardar in Village Muwana, Tehsil Safidon, District Jind.

13. A combined reading of all the above three orders would show that the Financial Commissioner fell into serious error of law while passing the impugned order. He has not recorded any finding which was mandatory before reversing the orders of the lower revenue authorities, that either of the orders passed by the District Collector or by the Commissioner were based on misrepresentation of facts or were found to be suffering from any patent illegality or perversity or jurisdictional error. Since no such finding has been recorded by the Financial Commissioner, he had no jurisdiction to set aside the choice of the District Collector which was upheld by the Commissioner. Thus, the order passed by the Financial Commissioner is liable to be set aside for this reason also.

14. The judgment relied upon by learned counsel for respondent No. 4 is of no help to him because the same was rendered in a different set of circumstances, thus, distinguishable on facts. On the other hand, the judgment relied upon by the learned counsel for the petitioner are closer to the facts of the present case and law laid down therein, is fully applicable in favour of the petitioner. The Division Bench of this Court in Nirbhey Singh's case (supra) has held that mere equal or higher educational qualification, in the absence of any minimum qualification prescribed in the rules, is immaterial. It was further observed that even an illiterate person can be appointed as Lambardar in the given circumstances. Once the Collector finds all the candidates suitable, his choice was to be respected and the orders of the Commissioner and the Financial Commissioner were quashed. Likewise, in Gurbachan Singh's case (supra), the Division Bench of this Court held that mere pendency of a criminal case was not enough to oust the candidate from the zone of consideration, until finding of guilt has been recorded against him. It was further held that power to select and appoint village headman vests primarily with the Collector.

15. Similarly, in the case of Inder Singh (supra) and Satbir Singh (supra) two Division Benches of this Court, set aside the orders of the Commissioner as well as the Financial Commissioner because they have upset the choice of the Collector without recording any finding to the effect that order passed by the Collector was found suffering from patent illegality or perversity. Exactly, same is the position in the present case. Thus, the impugned order passed by the Financial Commissioner cannot be sustained.

16. The order passed by the learned Additional Sessions Judge, Jind, dated 16.8.1993 (Annexure P-5) shows that there was no evidence, whatsoever, against the petitioner. The relevant part of the order dated 16.8.1993 reads as under:-

Faced with this situation, Ld. PP made a statement that since the alleged eye witnesses of the occurrence have failed the prosecution in toto, no useful purpose would be served in recording the statements of remaining official witnesses.

Since there was not an iota of evidence against the accused, so their statements u/s 313 Cr.P.C. were not recorded.

In the absence of any evidence connecting the accused with the crime, they are acquitted of the offence for which they have charged with. File be consigned to the record-room.

17. Further, once the petitioner has been acquitted about 20 years back, coupled with the given circumstances of the present case, involvement of the petitioner in the criminal case cannot stand in his way by any stretch of imagination. It is so said in view of the peculiar fact situation of the present case. Thus, the impugned order passed by the Financial Commission non suiting the petitioner on account of his involvement in the criminal case is based on erroneous approach and the order is not sustainable for this reason, as well.

18. So far as the merit of respondent No. 4 is concerned, learned counsel for the petitioner has rightly pointed out referring to the documents Annexures P-6 to P-10 that the petitioner was having a clear edge on respondent No. 4. Respondent No. 4 has been indicted in electricity theft case and fine of Rs. 10,000/- was imposed. This aspect was duly considered and rightly appreciated by the Collector as well as Commissioner, Further, order Annexure P-10 would also show that respondent No. 4 has encroached upon a public street. Both these important aspects of the matter speak volumes about undesirability to appoint respondent No. 4 as Lambardar. Having said that, this Court feels no hesitation to conclude that the Financial Commissioner has proceeded on a misconceived and erroneous approach while passing the impugned order, thereby illegally setting aside the legally justified orders passed by the Collector and the Commissioner.

No other argument was raised.

19. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned order dated 13.5.2010 (Annexure P-4) passed by the Financial Commissioner cannot be sustained, being illegal, and the same is ordered to be set aside. Thus, the orders dated 14.6.2006 (Annexure P-2) passed by the District Collector and 28.11.2008 (Annexure P-3), passed by the Commissioner, Hisar Division, are ordered to be restored. Resultantly, the instant writ petition stands allowed.