

Punjab-Haryana High Court

Shivpal Singh vs State Of Haryana And Others on 21 November, 2008

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Writ Petition No.4822 of 2008

Date of Decision: 21.11.2008

Shivpal Singh

Petitioner

Versus

State of Haryana and others

Respondents

CORAM:- HON'BLE MR. JUSTICE T.S.THAKUR, CHIEF
JUSTICE

HON'BLE MR. JUSTICE JASBIR SINGH

Present: Mr.Manohar Lall, Advocate for the petitioner
Mr.Rameshwar Malik, Addl. A.G. Haryana
for respondent Nos.1 to 4
Mr.Jaivir Yadav, Advocate

Jasbir Singh, J.

Petitioner, by filing this writ petition under Articles 226/227 of the Constitution of India, has prayed that respondent No.2 be directed to take disciplinary action, under Section 51(3) of the Haryana Panchayati Raj Act, 1994, for removing the respondent Nos.5 and 6 from the posts of Sarpanch and Panch respectively, of village Dahina, Tehsil and District Rewari. It is further prayed that action be taken against some other Panches also, against whom allegation of misuse of power has been levelled.

Respondent Nos.5 and 6 were elected as Sarpanch and Panch of village Dahina in the year 2005. Against them, it was allegation of the petitioner that they had mis-conducted in the discharge of their official duties, got passed some resolution without issuance of notice for meeting to many Panches and also that respondent No.5 has used inferior quality of material for executing various development works in the village. When representations made, for the above said purpose failed to yield any result, the petitioner came to this Court by filing CWP No.16709 of 2007, which was disposed of on 31.10.2007, by issuing directions to the official respondents therein, to complete

regular enquiry against respondent Nos.5 and 6 within eight weeks, from the date of passing of above said order. When nothing was done, petitioner was compelled to file COCP No.207 of 2008, for initiating contempt proceedings against the Deputy Commissioner, Rewari for showing willful disobedience to the order passed by this Court on 31.10.2007. However, subsequent thereto, during pendency of this writ petition, it appears that above said contempt petition was disposed of by this Court. In this writ petition also, the petitioner has reiterated the allegations which he had levelled against respondent Nos.5 and 6 in his earlier writ petition, as referred to above.

Upon notice, reply has been filed by Rajinder Singh, Block Development and Panchayat Officer, Jatusana, District Rewari, wherein it has been submitted that to enquire into the allegations levelled against respondent Nos.5 and 6, a regular enquiry was instituted under an order passed by respondent No.2. On receipt of enquiry report, notice was issued to respondent Nos.5 and 6, asking them to show cause as to why action be not taken against them under relevant provisions of the Act.

On receipt of reply and after giving personal hearing, respondent No.2, the Deputy Commissioner, Rewari, directed them to remain careful in future. A copy of the enquiry report has been brought on record as Annexure R-1 along with the affidavit dated 16.9.2008, filed by Block Development and Panchayat Officer, Jatusana.

Counsel for the parties heard.

Mr.Manohar Lall, Advocate, appearing for the petitioner has vehemently contended that the enquiry conducted, is not satisfactory. The authorities have failed to take action against respondent Nos.5 and 6, despite mis-conduct and embezzlement committed by them. He argued that fresh departmental enquiry be ordered and after ascertaining the facts, respondent Nos.5 and 6 be removed from the posts of Sarpanch and Panch respectively, as per law.

Prayer made has vehemently been opposed by Shri Rameshwar Malik, Additional Advocate General, Haryana. He, by making reference to the enquiry report (Annexure R-1), stated that the allegations against respondent Nos.5 and 6 were not very serious. He has further stated that as per record, demarcation was ordered with regard to encroachment, stated to have been made by respondent No.6 and if after demarcation, it is found so, action as per law, will be initiated. Counsel further argued that once after enquiry, respondent No.2 has warned respondent No.5 to remain careful in future, no further action is necessary. He prayed that writ petition be dismissed.

After hearing counsel for the parties, this Court is satisfied that no further action needs to be taken in this writ petition.

Record reveals that against respondent Nos.5 and 6, regular departmental enquiry was conducted to look into the following charges against them:-

"1. That the Sarpanch has held the auction of Shamlet land plots on 28.5.2005 and 8.6.2005 in the absence of the Extension Officer. Besides it, the auction which has been conducted by the Sarpanch on 15.6.2005, its receipt for a sum of Rs.10,800/-

has been issued on 23.8.2005, whereas after receiving the total amount of auction at the spot, it was to be deposited in the Bank. In this way the Sarpanch by holding the auction of the Shamlet land plots in the absence of the Extension Officer, and by not receiving the amount of auction at the spot, has violated the Rules.

2. That the Block Development and Panchayat Officer had written to the Sarpanch vide letter No.704 dated 1.5.06 and No.1031 dated 30.6.06 and he was also told verbally, that you may supply the requisite copies of the Gram Panchayat recorded to Shri Sheo Pal Singh son of Shri Mukh Ram, resident of Dahina under the Information Act. But the Sarpanch by not supplying the requisite copies has committed negligence in performance of his duties and violated the orders of the higher officers.

3. That by not taking action of removal of encroachment against Shri Rameshwar Panch who has constructed a Pucca house, over the land in his illegal possession, in Khasra No.458, the Sarpanch has committed negligence in performance of his duties."

It is apparent from the records that there was no charge of embezzlement against respondent No.5. It was only alleged that he was negligent in conducting the auction in the absence of representative of the department and further that he failed to collect money from the lessees on conclusion of the auction proceedings. In that regard, it has come on record that Sarpanch of the Gram Panchayat has deposited entire auction amount, along with the interest, in the account of the Gram Panchayat. In view of that, this Court is convinced that he was rightly exonerated of the charge framed against him.

With regard to second charge of non-supply of copies of the record of the Gram Panchayat, it has come on record that copies were handed over to the departmental officials and thereafter were further transmitted to the petitioner. Against respondent No.6, it has come on record that with regard to his alleged encroachment over the Gram Panchayat's land, on asking of respondent No.5 and under order passed by the Deputy Commissioner, demarcation has been ordered. Counsel for respondent No.5 has stated that in case any encroachment is found after demarcation of property, action will be initiated against respondent No.6. It is not in dispute that respondent No.2, the Deputy Commissioner, after looking into record of the enquiry and replies filed by respondent Nos.5 and 6, found them only careless in the discharge of duties and accordingly, respondent No.5 was asked to remain careful in future and perform his duties as per rules. It has further been ordered that on receipt of measurement report, if need be, proceedings for removal of encroachment made by respondent No.6, be initiated. This Court is satisfied that the findings given by respondent No.2 are perfectly justified.

Counsel for the petitioner has further contented that the authorities have failed to rely upon reports made by an expert (Annexures P- 6 and P-7) with regard to use of inferior quality of bricks and other material in executing the development works. Perusal of documents mentioned above, clearly indicates that the finding with regard to use of inferior quality of material has been given by a private expert. Counsel for the petitioner has failed to show us that inspection of material was made in the presence of the private respondents and officers of the department. It is also coming out from

the record that finding with regard to quality of the material was given without getting the material analyzed from any recognized Laboratory. Taking note of the above said fact, department has rightly said in affidavit filed by Block Development and Panchayat Officer, Jatusana dated 16.9.2008 that those reports cannot be taken into consideration. This Court does not find any fault with the stand taken by the official respondents.

In view of facts mentioned above, no case is made out for interference.

Dismissed.

(JASBIR SINGH)
JUDGE

21.11.2008
gk

(T.S.THAKUR)
CHIEF JUSTICE