

CWP No.15018 of 2015 (O&M)

KUMAR MANOJ
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.15018 of 2015 (O&M)

Date of Order: 08.12.2015

Sanjay

....Petitioner

Versus

Financial Commissioner, Haryana and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Rajiv Kumar Saini, Advocate for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. Pankaj Bali, Advocate for respondent No.4.

RAKESH KUMAR JAIN, J (ORAL)

The post of Lambardar (SC) of Village Mahamadpur, District Karnal fell vacant on the death of the earlier Lambardar-Lada Ram. Applications were invited to fill up the post of Lambardar. Initially, ten applications were filed but only four candidates remained in the field. The Naib Tehsildar recommended the name of one Beer Singh vide order dated 31.3.2008 whereas the SDO (Civil), Karnal recommended the name of Sarwan Kumar-respondent No.4 vide order dated 16.6.2008. The Collector, Karnal appointed respondent No.4 to the post of Lambardar vide order dated 07.07.2008.

Petitioner along with other aggrieved applicants filed appeal before the Commissioner, Rohtak Division, which was dismissed on 30.7.2009. Petitioner further filed revision before the Financial Commissioner vide ROR No.767 of 2008-2009, but the said revision was also dismissed on 07.12.2009. Aggrieved against the said order, petitioner filed a writ petition bearing CWP No.4203 of 2010, which was allowed on 27.1.2011 and the case was remanded back to the Collector, Karnal for re-

consideration of the matter after considering the merit of the candidates. After the remand, the Collector, Karnal vide order dated 10.5.2011 appointed the petitioner as Lambardar. The said order was challenged by respondent No.4 by way of appeal bearing Executive Appeal No.234 of 2011-12 filed before the Commissioner, Rohtak Division, Camp at Karnal. This appeal was allowed, order of the Collector was set aside and the case was again remanded back to him to decide the matter afresh after giving opportunity to both the sides. The Collector once again appointed respondent No.4 as Lambardar vide order dated 31.5.2012.

At that stage, something interesting had happened because the Collector has recorded in his order as follows:

“On dated 31.5.2012, Sh. Sharwan Kumar and Sh. Sanjay Kumar came present in the court and verbally asked that they want to end the litigation in future by compromise. Both the claimants deposed in writing that we have made compromise if court gives order in favour of any claimant then another candidate can not file appeal of that order in higher court”.

Learned counsel for the petitioner has admitted that because of the oral compromise between the parties, the Collector took a decision to decide the dispute between them with their consent, by Toss of a coin in which the petitioner lost but still the Collector passed the order keeping in view their merit inter se and observed that respondent No.4-Sharwan Kumar, being the grand-son of the deceased Lambardar Lada Ram had experience of Lambardari work. Besides that a criminal case under Sections 498-A/406/506 IPC was registered against the petitioner in which he has though been acquitted but is not an appropriate person as he is a man of

criminal nature. Consequently choice of the Collector fell upon respondent No.4.

Aggrieved against the order of the Collector, the petitioner filed statutory appeal before the Commissioner, Rohtak Division, which was dismissed on 19.12.2013 with the following observations:

“I have heard the arguments of both the learned counsel and carefully perused the record file. Respondent Sh. Sharwan Kumar is a young man of 41 years and is 7th class passed, whereas the matter of education is concerned when respondent submit application on dated 10.9.2007 than there is no instruction of government dated 23.7.2008 whereby there is requirement of 8th class passed. As per above instruction of government, there is no need to pass 8th class for the post of Lamberdari. Respondent had permoted the government Schemes by depositing Rs.5000/- in small saving scheme and by getting conducted two cases of family planning. Respondent grandfather was Lamberdar and he helps his grandfather in Lamberdari work and thus he have knowledge of Lamberdari work and thus he have also hereditary claim. Against appellant Sanjay Kumar a criminal case is registered under Section 498A,406/506 IPC, but he is acquitted in this case, but he is not cleanly acquitted and on this basis his conduct could not be taken as good. In this regard counsel relied upon ruling in Gurdev Singh versus Financial Commissioner (Appeal II) Punjab, Chandigarh and Nirbhay Singh Versus Financial Commissioner Haryana are fully applicable. If the court decide the matter by spin of coin in favour of one claimant, then another claimant would not file appeal in higher court against that order, but appellant had filed appeal. On this basis, order passed by Collector Karnal dated 31.5.2012 is justifiable and

there is no need to interfere. Thus there is no force in the appeal filed by the appellants and same is dismissed. File is consigned to record room after due compliance.”

The petitioner did not stop here and filed revision before the Financial Commissioner. The said revision was also dismissed on 02.3.2015 with the following observations:

“The counsel for the petitioner argued that courts below failed to consider that the petitioner is highly meritorious candidate in the comparison to the respondent. The petitioner was neither convicted nor otherwise disqualified to be appointed as Lambardar. The petitioner is fit and young man of about 35 years age. The counsel further argued that Collector has exercised his discretion in illegal, arbitrary and erroneous manner in appointing respondent as Lambardar and the Commissioner has simply affirmed the discretion exercised by the Collector without giving any findings. The courts below failed to consider the material fact that a Lambardar cannot be appointed through a toss of win, rather the appointment must be made on the merits of the case. Therefore, the courts below have travelled beyond their jurisdiction by appointing the respondent through toss of coin. The counsel also relied upon the Supreme Court ruling cited as 2005 (2) RCR (Civil) 553.

On the other hand, counsel for the respondent argued that the respondent is 42 years old, having good health and is 7th Class pass. The respondent has deposited Rs.5,000/- in small saving scheme and has encouraged two cases of family planning. Earlier, the grandfather of the respondent was Lambardar. He further submitted that the petitioner is a man of criminal background. The counsel also argued that the then Commissioner had remanded the case vide order dated 03.02.2012 to the Collector, Karnal with the direction that case may be decided on merits.

Thereafter, a compromise took place between the parties. It was also agreed that no party will file an appeal or revision against the order of Collector.

I have heard the counsel of both the parties and perused the records available on the file. It is evident from the orders of Collector dated 31.05.2012 that respondent was appointed as Lambardar on merit & not by spin of coin. Nowhere in the orders of the Collector dated 31.05.2012, it has been mentioned that the appointment was made by toss of coin. Rather, there is specific mention of compromise between both the parties whereby they wanted to end the protracted litigation in the matter. It was also agreed between them that no party will file an appeal or revision against the order of Collector. However, both the parties made joint statement before the Collector, Karnal wherein a mention of toss of coin has been made. Therefore, the petitioner has no claim to go back from the written agreement between them. Hence, I don't find any illegality or material irregularity in the orders of court below. The orders of Collector were based on merit. The revision petition is accordingly dismissed being devoid of any merit.”

Learned counsel for the petitioner has submitted that since the petitioner has been acquitted of the criminal case, therefore respondent No.4 should not have been given an edge over him for the purpose of appointment as Lambardar and secondly the Collector has erred in deciding their fate by toss of coin. He has relied upon a Division Bench judgment of this Court reported as **Tirath Singh Vs. State of Punjab and Others, 2015 (2) Law Herald 1765** and also a judgment of Hon'ble Supreme Court reported as **Gurnam Ran Vs. Financial Commissioner, Coop, Punjab and Others 2005 (2) RCR (Civil) 553**.

Learned counsel for the respondents in the reply has submitted that the courts below have taken into account the decision rendered in the case of Gurdev Singh, wherein it has been held that even if other candidate has been acquitted in criminal case, the shadow would still follow him and he cannot be considered to be an appropriate candidate for the office of Lambardar. In respect of the toss of coin, it is submitted that it was conceded by the petitioner himself before the Collector that he would not go further in appeal, in case he loses the Toss of coin and once he has lost, he has no moral ground to challenge the order of Collector before the higher courts, though he has been a loser throughout thereafter.

I have heard learned counsel for the parties and examined the record with their able assistance.

There is no doubt that respondent No.4 is the grand-son of deceased Lambardar Lada Ram and initially his name was recommended by the SDO (Civil), Karnal for his appointment and the Collector, vide its order dated 07.07.2008, appointed respondent No.4 as Lambardar. The said order, however, did not survive as it was set aside in the writ petition No.4203 of 2010 when the matter was remanded back. Thereafter the Collector appointed the petitioner vide order dated 10.5.2011 but the said order was immediately set aside by the Commissioner and again the case was remanded back to the Collector for decision afresh. In the third round, the Collector again appointed respondent No.4 vide order dated 31.5.2012 and before that court, a statement was suffered by the petitioner that he was fed up with the litigation as it was third round of litigation for him and in an oral agreement, he stated before the Collector that, in case, he loses before him, he would not go in appeal. It is also not disputed that at the instance of

the parties, the Collector resorted to the Toss of coin on their asking because both the parties were tired of this litigation in which, the petitioner unfortunately lost, but still he did not keep his words and challenged the order of Collector in appeal. The Commissioner did not allow his appeal on the ground that he is morally bound by the statement made before the Collector and similar treatment was given to him by the Financial Commissioner.

There is a difference of opinion by this Court in regard to the registration of criminal case wherein said Lambardar has been acquitted. I would not go into that aspect nor I am going into the aspect of Toss of coin, which was subject matter in **Gurnam Ran's case (supra)** decided by Hon'ble Supreme Court as in the third round of litigation before the Collector, where choice has to be respected by the court until and unless there is perversity, both the parties put themselves into the hands of the Collector to decide their fate with toss of coin and with the consent of both the parties, the said procedure was adopted, in which, the petitioner lost and in my considered opinion, he had no moral ground to challenge the order thereafter and should have accepted the order of the Collector in the sportsman spirit, for which he had consented to.

Thus, in view of the aforesaid discussion, I do not find any merit in this petition.

Dismissed.

December 08, 2015
manoj

(RAKESH KUMAR JAIN)
JUDGE