IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.20475 of 2014
Date of Decision: 18.09.2015

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Amar Singh

. . . .Petitioner

Versus

Financial Commissioner, Department of Revenue and others

. . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: Mr.Arun Yadav, Advocate,
for the petitioner.

Mr.Pradeep Prakash Chahar, DAG, Haryana.

Mr.Kulbhushan Sharma, Advocate,
for respondent No.5.

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RAKESH KUMAR JAIN, J.

The petitioner has challenged the order of the Financial Commissioner dated 26.3.2014 (Annexure P-9).

In short, after the death of Nand Lal, Harizan Nambardar of Village Lisan, Tehsil and District, Rewari, on 12.5.2008, the Collector, Rewari, vide his order Sr. No.223/Peshi dated 21.4.2009, granted permission to initiate the proceedings for filling up the said vacant post. Thereafter, the office of Assistant Collector, 2nd Grade-Naib Tehsildar, Rewari issued a letter Sr. No.106/Reader dated 9.6.2009 for proclamation through munadi in the village prescribing the last date as 29.6.2009 for submitting the application form. After the munadi conducted on 9.6.2009, nine candidates filed their applications, out of which 7 candidates did not show any interest to pursue their application. one candidate withdrew from the contest and ultimately, the petitioner was allegedly appointed as Nambardar. It is alleged that respondent No.5 made a complaint that the proclamation was made only on 29.6.2009 which was the last date for submitting the application form. This complaint was dismissed by the Collector, Rewari on 31.3.2010 giving liberty to challenge the order dated 21.7.2009 passed by AC, 2nd Grade. The said order was challenged by way of appeal, though it was mentioned as 27.7.2009 instead of 21.7.2009. The appeal was dismissed on 30.11.2010 by the Collector, Rewari and the revision petition filed against the said order dated 30.11.2010 was dismissed by the Commissioner, Gurgaon Division, Gurgaon on 29.9.2011. In the meantime, the petitioner was appointed as Nambardar by the Collector. The revision petition filed against the order dated 30.11.2010 passed by the Deputy Commissioner and order dated 29.9.2011 passed by the Divisional Commissioner, has been allowed by the Financial Commissioner on 26.3.2014.

Learned counsel for the petitioner has submitted that even though the Financial Commissioner has observed that the munadi was not conducted on 9.6.2009 rather it was conducted on 29.6.2009 only and the impugned orders passed by the Collector and Commissioner, respectfully were set aside and the case was remanded back to the Collector, Rewari, for fresh proclamation yet the order passed by the Collector, appointing the petitioner as Nambardar on 30.10.2012 has not been set aside.

On the other hand, learned counsel for the respondents has submitted that the appointment of Nambardar by the Collector on 30.10.2012 is during the pendency of the proceedings, initiated by respondent No.5, challenging the proceedings of the appointment of the Nambardar, which has been set aside in its entirety, therefore, the said order which is stated to have survived has also been set aside impliedly.

I have heard learned counsel for the parties and perused the record.

The facts narrated hereinabove are not in dispute. The findings recorded by the Financial Commissioner, regarding the proclamation are as under: -

> *"(i) The 'Parwana' for effecting the proclamation, addressed to Kanungo was prepared by the Tehsil Staff on 9.6.2009, as is clear from the date given under initials of the official. Assistant Collector 2nd Grade has not given any date while signing. However, his signature can only be obtained earliest on 9.6.2009, but it could actually be on a date later as well.*
>
> *(ii) Kanungo's office is at Dahina which is quite far away from Rewari and the Patwari's office is in the village is further away from Dahina. It is extremely difficult, to get the 'parwana' crossed though all these channels so as to reach the village patwari and also get the munadi effected on the same day. There is no record of the movement of the movement of this letter in the official register or dak delivery book etc.,*

which further strengthens the doubt, and confirms the allegations.

(iii) Patwari has not obtained the signatures of Sarpanch and other panches on the munadi report, despite the fact that in 'parwana' he was given directions in this regard. Chowkidar Sadhu Ram, who has signed the report of munadi, has given affidavit stating that munadi was done on 29.6.2009 in the morning, and not on 9.6.2009. This is a vital evidence which has not been considered by the Revenue Officers.

(iv) Sarpanch Sher Singh, and other panches namely, Sish Ram and Mahavir, have also given affidavits and representations to this effect stating that munadi was done on 9.6.2009 at 10:00 AM, when candidates who had applied for the post, has already gone to Tehsildar Office. A large number of other respectable persons have also represented in writing. Only a few persons have supported the official version.

(v) All the nine candidates have filed their applications on 29.6.2009 itself, which further substantiates the version of complaints. Scrutiny of their applications also creates doubt as many of these applications are similarly worked and typed.

vi) Out of these 9 candidates, 5 absented immediately after filing applications, 2 absented after getting the statements recorded and the last one withdrew in favour of Amar Singh. Finally, he remained the only candidate for the appointment without any competition. This looks absurd as to why all the other 8 candidates, *disappeared so conveniently without any valid ground and it also substantiates the version of the complaints that all these candidate were Amar Singh's person, who acted on his dictates to first show a good competition, and then leave the field open for him."*

The Financial Commissioner has further passed the following order: -

"Keeping in view the above stated facts and evidence, I am of the considered view that the version of the petitioner is correct and munadi has not been carried out in the village on 9.6.2009. Instead, there is every evidence to show that it has been done on 29.6.2009 only, and Assistant Collector 2nd Grade and District Collector have committed serious error in not considering this issue properly despite their numerous representations supported by affidavits. The orders passed by them in this regard are completely non-speaking and have been passed without any application of mind. The conduct of the Revenue Officials involved at the Tehsil and Village level, is also highly objectionable and unbecoming of public servants. Disciplinary action should be initiated against them after getting an inquiry conducted at the level of Collector in which petitioner and other complaints be also associated. In view of these facts and circumstances, finding merit, the revision petition filed by the petitioner, is accepted, orders passed by Collector and learned Commissioner, are set aside and the case is

> *remanded to Collector, Rewari for passing the order of appointment after getting the fresh proclamation made in the village ."*

The Financial Commissioner has not only set aside the orders passed by the Collector and Commissioner, respectively but also ordered for taking disciplinary action against the revenue officials involved in the process of appointment of Nambardar at the tehsil and village level, by the Collector directing that the petitioner and other complainants be also associated.

I am satisfied with the findings recorded by the Financial Commissioner and find no error in his approach in setting aside the entire proceedings and remanding the case back to the Collector, Rewari for passing the order of appointment after getting the fresh proclamation made in the village. Hence, the present petition is found to be without any merit and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

18.09.2015
Vivek

VIVEK PAHWA
2015.09.23 14:43
I attest to the accuracy and
authenticity of this document