IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3254 of 2014
Date of Decision: **23.02.2015**

Amarjit Singh **…Petitioner**

Versus

Punjab Mandi Board and ors. **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.R.K. Garg , Advocate
for the petitioner.

Mr.Nitin Kaushal, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

The petitioner is employed as Mandi Supervisor -cum-Fee Collector with Market Committee Bilga. He impugns order dated 20.11.2013 (Annexure P-9), whereby, recovery of principal amount of Rs.30,68,647/- alongwith interest @ 12% p.a. has been ordered against him for causing financial loss to Market Committee Ludhiana.

The petitioner was appointed as Auction Recorder at Market Committee Bilga. He was promoted as Mandi Supervisor-cum-Fee Collector in the year 1986. He was taken on deputation by Market Committee Ludhiana as Mandi Supervisor and worked there from 1995 to 1999. During the deputation period at

Ludhiana, he was alleged to have committed some irregularities. A vigilance enquiry was initiated on 27.09.2001. The Vigilance Bureau examined the accounts of Market Committee, Ludhiana from 1990 to 2000 and submitted its report on 11.1.2002. It recommended that proceedings under the Prevention of Corruption Act, 1988 be initiated against the delinquent officials. In furtherance of the recommendations of the Vigilance Bureau, charge sheets were issued against the petitioner and five other delinquent officials pertaining to allegations of mis-conduct and embezzlement of public funds. As more than two officials were charge-sheeted under Rule 8 of the Punjab State Agricultural Marketing Service (Punishment and Appeals) Rules, 1988, (in short “1988 Rules”), disciplinary action was commenced by way of common proceedings by the Secretary, Mandi Board under the provisions of Rule 12 of 1988 Rules. The Chairman of the Board being the Competent Authority in respect of the highest charged official i.e. the Secretary, Market Committee, appointed Shri S.S. Lamba, (IAS retired) as Enquiry Officer, who submitted his enquiry report dated 1.7.2005, wherein, it was concluded that the allegations against the petitioner stood proved. It was recommended that an amount of Rs.30,68,647/- alongwith interest @ 12% p.a. should be recovered from the petitioner. Thereafter, recovery notice dated 8.12.2006 (Annexure P-2) was issued calling upon the petitioner to deposit an amount of Rs.54,22,072/-

(Principal amount of Rs.30,68,647/- + Rs.23,53,425/- being interest @12% p.a. for six years) in the account of Market Committee Bilga.

The petitioner filed CWP No.1308 of 2007 challenging the vires of Rule 5(iii) of the 1988 Rules which provides that recovery of any amount would be a minor penalty. He also challenged the notice /order dated 8.12.2006, vide which, he had been directed to deposit the amount of Rs.54,22,072/-. In the written statement filed by the respondents in the aforesaid writ petition, it was stated that the impugned notice of recovery was given to the petitioner under Section 29 of the Punjab Agricultural Produce Markets Act, 1961. (for short 'the 1961 Act"). However, it was conceded that before issuing the notice the procedure under section 29 of the 1961 Act had not been followed. The Counsel for the respondent-Board stated before the Court that they would provide an opportunity of hearing to the petitioner and follow the procedure as prescribed under Section 29 of the 1961 Act and thereafter, if any recovery is to be made, a speaking order would be passed for recovery against the petitioner. In view of the statement, the petition was disposed of with a direction to the respondents that the petitioner would appear before the authority and file his reply to the notice dated 8.12.2006 and thereafter, after following procedure the order of recovery, if any, be passed. It was also observed that if any adverse order was passed, it will be open for either the party to challenge the same in accordance with law.

Pursuant to the directions of the Court, the Additional Director of respondent No.1 addressed a letter dated 12.3.2010 to respondent no.2 to initiate proceedings against the petitioner under Section 29 of the Act, 1961 and pass a speaking order after giving personal hearing to the petitioner. It was directed that the proceedings be finalized by 19.3.2010 and the matter be reported to the Head Office by 22.3.2010. Accordingly, the Chairman of respondent No.2 issued a notice under section 29(1) of the 1961 Act, calling upon the petitioner to appear for personal hearing on 6.4.2010. The Chairman, Market committee, Bilga after hearing the petitioner and examining the record, passed an order dated 19.7.2010 (Annexure P-7) concluding that a financial loss of Rs.82,628-40 as market fee and Rs.81,655-04 as RDF, total amounting to Rs.1,64,283-08 had been caused. Therefore, a sum of Rs.1,64,283-08 alongwith interest @ 12% p.a. amounting to Rs.3,25,280-49 (total amounting to Rs.4,89,563-57) was recoverable from the petitioner under section 29 of the 1961 Act. A resolution approving the order of Chairman, Market Committee, Bilga was passed by respondent No.2. A copy of the same was sent to respondent No.1 for necessary action. Respondent No.1 vide office order dated 27.8.2012 (Annexure P-8) annulled the resolution passed by respondent No.2. Thereafter, the Secretary of respondent No.1 constituted a committee of three members comprising the Chief General Manager, DGM and Additional Director Administration (F&A) Jalandhar to decide the case. The Committee in its report dated 20.11.2013 (Annexure P-9) concluded that the petitioner is liable for recovery of principal amount 30,68,647/- alongwith interest @12% p.a., amounting to Rs.23,53,425/- for causing financial loss to Market Committee Ludhiana. The Secretary, Mandi Board sent a copy of the report to the Secretary, Market Committee Bilga for making recovery from the petitioner and to deposit the same in the account of Market Committee Ludhiana. Acting on this, monthly deduction from the salary of the petitioner was initiated from the month of January, 2014.

It is the aforesaid orders (Annexures P-9 and P-10) that have been challenged in the present writ petition.

The primary contention of learned counsel for the petitioner is that the procedure as prescribed under Section 29 of the Act, 1961 has not been followed. This procedure requires giving the employee an opportunity by way of written notice to show cause as to why he should not be required to make good the loss, which to the satisfaction of the Board has been caused as a direct consequence of his neglect or misconduct in the performance of his duties. It is contended that no doubt hearing was given by the Chairman of the Market Committee Bilga before submitting his report (Annexure P-7). However, the said report and the resolution based thereon were annulled by the respondent-Board vide Annexure P-8. Thereafter, three member committee was constituted to examine the case and determine if any amount was payable by the petitioner. The petitioner was not associated with the proceedings of the Committee, which submitted its report (Annexure P-9) recommending recovery of Rs.30,68,647/- alongwith interest @ 12% p.a., amounting to Rs.23,53,425/- for causing financial loss to Market Committee Ludhiana. He states that no written notice to show cause as required under section 29 of the 1961 Act has been given to the petitioner by the respondent Board as to why recovery as determined by the Committee should not be made. Thus, there is violation of the provisions of Section 29 of the 1961 Act and also the directions of this Court in CWP No.1308 of 2007.

To the contrary, the Learned counsel for the respondents has emphasized that the Enquiry Officer Shri S.S. Lamba in his detailed enquiry report dated 1.7.2005 had clearly established that the petitioner had caused financial loss to Market Committee, Ludhiana. The Chairman, Market Committee Bilga had no authority to re-inquire into the case already enquired into by Shri S.S. Lamba. He contends that the Chairman, Market Committee Bilga erroneously conducted a fresh enquiry and wrongly concluded that the petitioner was liable only for a recovery of an amount of Rs.4,89,563.57 (principal and interest included). The resolution of the Market Committee Bilga embodying this recommendation was forwarded to the Secretary, Market Committee Ludhiana and the DGM Jalandhar Circle and their comments were sought. Both of them recommended that the petitioner is liable to pay the amount as stated in the enquiry report submitted by Sh.S.S. Lamba. Thereafter, the resolution of the Market Committee Bilga was annulled in exercise of the power under section 33 (4) of the 1961 Act. Due to the complexity of the case and to ensure complete transparency in the decision making process, the Secretary, Mandi Board vide office order dated 7.3.2013 appointed a three member committee to examine the case and determine the amount that the petitioner was liable to pay. The Committee after examining the entire record and the comments of the Secretary, Market Committee Ludhiana, Secretary Market Committee, Bilga and DGM Jalandhar Circle recommended that the petitioner is liable for recovery of principal amount of Rs.30,68,647/- alongwith interest @12% p.a., amounting to Rs.23,53,425/- for causing financial loss to Market Committee Ludhiana. Reference has also been made to COCP No.1165 of 2014 filed by the petitioner alleging violation of the order dated 9.7.2009 passed in CWP No.1308 of 2007. It is stated that the contempt petition was dismissed as the Court was satisfied that opportunity of hearing as mandated by Section 29 of the 1961 Act had been given.

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

As the controversy centres around the requirement of Section 29 of the 1961 Act, it would be necessary to reproduce the same:-

*"29. **Liability of member or employee of Committees or the Board:(1)** Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a Committee, if such loss, waste or misapplication is proved to the satisfaction of the Board to be the direct consequence of his neglect or misconduct in the performance of duties as a member or an employee of the Committee, and he may, after being given an opportunity by a written notice to show cause why he should not be required to make good the loss, be surcharged with the value of such property or the amount of such loss by the Board, and if the amount is not paid within one month from the expiry of the period of appeal prescribed by sub-section (3) it shall be recoverable as arrears of land revenue:-*

Provided that no such person shall be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or misapplication or after the expiry of two years from the time of his ceasing to be a member or an employee, whichever expires first.

(2) Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to the Board, if such loss, waste or misapplication is proved to the satisfaction of the State Government to be the direct consequence of his neglect or misconduct in the performance of duties as a member or an employee of the

Board, and he may, after being given an opportunity by a written notice to show cause why he should not be required to make good the loss, be surcharged with the value of such property or the amount of such loss by the State Government and if the amount is not paid within one month from the expiry of the period of appeal prescribed by sub-section (3) it shall be recoverable as arrears of land revenue:

Provided that no such person shall be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or misapplication or after the expiry of two years from the time of his ceasing to be a member or an employee, whichever expires first.

(3) The person against whom an order under sub-section (1) or sub-section (2) is made may, within one month of the service of such order, appeal to the State Government which shall have the power of confirming, modifying or disallowing the surcharge."

As per Section 29(1) of the 1961 Act where the loss, waste or misapplication is of the money or property of the Committee, and if such loss, waste or misapplication is proved to the satisfaction of the Board to be the direct consequence of the neglect etc. of an employee of the Committee, then after being given an opportunity by a written notice to show cause, such employee may be surcharged with the value of the property or amount of loss by the Board.

Section 29(2) deals with loss, waste or misapplication of money or property of the Board. In that case satisfaction required is of the State Government and show cause notice is to be issued by the State Government and the employee may be surcharged with the value of property or the amount of loss by the State Government.

Thus, as per this section, the satisfaction is to be of, and show cause notice is to be issued by the Board or the State Government according as the person causing loss is an employee of the Committee or the Board. Whether for recording satisfaction or for issuing show cause notice or surcharging the employee for the loss etc. the Committee does not figure in the scheme of Section 29.

Pursuant to the directions of the Court in CWP No.1308 of 2007, the Additional Director of respondent No.1 wrote a letter dated 12.3.2010 to respondent no.2 to initiate proceedings against the petitioner under Section 29 of the 1961 Act and pass a speaking order after giving personal hearing to the petitioner. The Chairman, Market committee, Bilga after hearing the petitioner and examining the record, passed an order dated 19.7.2010 (Annexure P-7) concluding that a financial loss of Rs.82,628.40 as market fee and Rs.81,655-04 as RDF, total amounting to Rs.1,64,283-08 had been caused. Therefore, Rs.1,64,283-08 alongwith interest @ 12% p.a. amounting to Rs.3,25,280-49 (total amounting to Rs.4,89,563-57) was recoverable from the petitioner under section 29 of the 1961 Act. A resolution approving the order of Chairman, Market Committee, Bilga was passed by respondent No.2. A copy of the same was sent to respondent No.1 for necessary action. Respondent No.1 vide office order dated 27.8.2012(Annexure P-8) annulled the resolution passed by respondent No.2. Thereafter, the Secretary of respondent No.2 constituted a committee of three members comprising the Chief General Manager, DGM, Additional Director Administration (F&A) Jalandhar to decide the case. The Committee in its report dated 20.11.2013 (Annexure P-9) recommended that the petitioner is liable for recovery of principal amount 30,68,647/- alongwith interest @12% p.a., amounting to Rs.23,53,425/- for causing financial loss to Market Committee Ludhiana. Based on this report vide order dated 28.1.2014 (Annexure P-10), the Market Committee, Bilga was directed to recover the amount from the petitioner and consequently recovery in installments from the monthly salary of the petitioner was initiated.

It is not disputed that pursuant to the recommendations of the three member committee in its report Annexure P-9 no written notice to show cause was issued to the petitioner calling upon him to explain as to why he should not be required to make good the loss as determined by the Committee. It is also not disputed that the petitioner was not associated with or heard by the three member Committee before finalizing its report. As that report is the basis of the satisfaction by the Board that loss was caused to

Market Committee Ludhiana as the direct consequence of the neglect or misconduct of the petitioner, as per the mandate of Section 29(1), the petitioner was required to be given an opportunity by a written notice to show cause as to why he should not be required to make good the loss and be surcharged with the amount of loss. This admittedly has not been done. Thus, there is non-compliance with the requirements of Section 29(1). Accordingly the order Annexure P-10, directing recovery from the petitioner having been passed in violation of the mandate of Section 29(1) of the 1961 Act is illegal and is liable to be quashed.

The personal hearing granted to the petitioner by the Chairman, Market Committee, Bilga would not constitute compliance with the requirements of Section 29(1) as the report/ resolution of the Market Committee was not accepted by the Board, rather it was annulled by the Board. Thereafter, a three member Committee was constituted by the Board, which admittedly did not associate the petitioner. And it was the report of the three member Committee which formed the basis of the action for recovery.

The order in COCP No.1165 of 2014 would also, in my opinion, not conclude the issue in favour of the respondents. It was with reference to the order dated 21.7.2010, which was passed by the Chairman Market Committee that the Court in contempt proceedings concluded that the exercise as directed in CWP

No.1308 of 2007 was conducted and an opportunity of hearing was given to the petitioner which was the mandate of Section 29 of the 1961 Act. The order of annulment of the resolution of the market Committee was not on record. The Court consequently did not opine on the reasons for the annulment, the effect of the annulment and whether the subsequent order dated 20.11.2013 of the three member Committee and the recovery directed pursuant thereto vide order dated 28.1.2014 could be said to be in compliance with the requirements of Section 29(1) of the 1961 Act.

Resultantly, this writ petition is allowed to the extent that the order dated 28.1.2014 (Annexure P-10) is quashed. However, it would be open to the respondents to proceed further as per the requirements of Section 29 of the 1961 Act by issuing a written show cause notice to the petitioner as to why he be not required to make good the loss etc. as per the report of the three member Committee dated 20.11.2013 (Annexure P-9).

(HARINDER SINGH SIDHU)
JUDGE

February 23, 2015
Atul