

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA, AT CHANDIGARH.

Date of Decision: October 09, 2015
Letters Patent Appeal No. 99 of 2015(O&M)

Rajbir ...Appellant

Versus

State of Haryana and others ...Respondents

Letters Patent Appeal No. 535 of 2015

Om Parkash ...Appellant

Versus

State of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Sanjay Vashisth, Advocate, for the appellant
(In LPA No. 99 of 2015/Respondent No.4 in LPA No. 535 of 2015).

Shri Mani Ram Verma, Advocate, for the appellant
(In LPA No. 535 of 2015/Respondent No. 5 in LPA No. 99 of 2015).

Shri Sandeep Moudgil, Additional Advocate General, Haryana
for respondent Nos. 1 to 3.

Shri Vikram Dhakla Advocate, for respondent No.4 - Ramphal.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporter or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Mahavir S. Chauhan, J.

Responding to a proclamation inviting applications to fill up the
vacancy caused on account of demise of Tara Chand, Lambardar of village
Pali, Tehsil Narnaud, District Hisar, ten candidates submitted their
applications out of whom four, namely, Dharambir son of Tara Chand, Sajan
Singh son of Pirthi Singh, Balwant son of Mange and Jai Pal Singh son of

Rishi Lal retired from the contest and only six candidates, namely, Rajbir Singh son of Tara Chand, Ramphal son of Richhpal, Om Parkash son of Kuda Ram, Kartar Singh son of Narain Singh, Karambir son of Dhanpat and Dharambir son of Tara Chand remained in the fray. Collector, Hisar, after examining the comparative merits of the remaining six candidates and recommendations of Naib Tehsildar, Tehsildar, and Sub Divisional Officer (Civil), found Ramphal to be the most suitable candidate for the job and vide order dated 04.06.1997 (Annexure P-1) appointed him as Lambardar of the village. Om Parkash and Rajbir assailed correctness of order dated 04.06.1997 by way of separate appeals before Commissioner, Hisar who, vide order dated 02.11.1998 (Annexure P-2) appointed Rajbir as Lambardar of the village. Against the order of the Commissioner, Ramphal and Om Parkash filed revision petitions before the Financial Commissioner, which were dismissed vide order dated 20.10.1999 (Annexure P-3).

02. Om Parkash and Ramphal assailed order dated 20.10.1999 by way of Civil Writ Petition No. 15031 of 2001, Om Parkash versus State of Haryana and No. 5725 of 2000, Ramphal versus State of Haryana. While dismissing Civil Writ Petition No. 15031 of 2001, Om Parkash versus State of Haryana, the learned Single Judge, vide order dated 17.12.2014, has allowed Civil Writ Petition No. 5725 of 2000, Ramphal versus State of Haryana and by setting aside order dated 02.11.1998 (Annexure P-2) and order dated 20.10.1999 (Annexure P-3), has restored order dated 04.06.1997 (Annexure P-1) appointing Ramphal as Lambardar of the village.

03. To lay a challenge to order dated 17.12.2014 passed by the learned Single Judge, Rajbir has brought Letters Patent Appeal No. 99 of 2015, Rajbir versus State of Haryana while Om Parkash has preferred

Letters Patent Appeal No. 535 of 2015, Om Parkash versus State of Haryana, under Clause X of the Letters Patent.

04. We have heard learned counsel for the parties besides scanning the documents forming part of the record.

05. On behalf of appellant Rajbir it has been vehemently argued that Commissioner and Financial Commissioner have rightly appointed him Lambardar of the village because at the relevant time he was a young man of 30 years, having 7 acres of land and he has not committed any default whereas Om Parkash and Ramphal had criminal cases registered against them. It has also been argued that during his tenure of approximately 17 years as Lambardar of the village, there has been no complaint against him.

06. Learned counsel representing Om Parkash has also intensely asserted that he is middle pass, owns 15 acres of land, has been persuading the residents of the village to opt for the family planning scheme, is not a defaulter, and has been acquitted in the two criminal cases registered against him whereas Rajbir has no educational qualification and, therefore, his appointment by Commissioner as Lambardar of the village was against the settled principles of law as well as the requirements of Rule 15 of the Punjab Land Revenue Rules (as applicable to Haryana). It has also been contended that Rajbir has been relying upon a false middle pass certificate and has wrongly claimed himself to be Sarbarah Lambardar.

07. As regards candidature of Ramphal, learned counsel for the appellants have argued that he was also involved in a criminal case and was released on probation by the trial court and was acquitted by the appellate court but by giving him benefit of doubt which cannot be taken to mean that he was innocent.

08. *Per Contra*, on behalf of Ramphal it has been contended that he is a postgraduate, was 40 years of age at the relevant time, owns 7 acres and 2 kanals of land, has ten cases of family planning to his credit, was having Rs 2.78 lacs in his saving account the time of his appointment as Lambardar by the Collector, and he remained Panch of the village from 1988 to 1991 which indicates his popularity in the village community. It has also been argued that choice of the Collector cannot be lightly interfered with.

09. No other or further point has been urged on either side.

10. Choice of the Collector fell on Ramphal because he was found to be most suitable candidates as he possessed postgraduate degree, owned land measuring 7.5 acres, in view of his age being forty one years and being healthy would be available to serve the village community for quite long time, was not a defaulter, was very popular in the village, and had been acquitted by the appellate court in the criminal case. Other candidates were found to be far less meritorious. Observations of the Commissioner, as affirmed by the Financial Commissioner, to the effect that acquittal by giving benefit of doubt does not prove innocence of Ramphal, is ex facie fallacious because acquittal in a criminal case means that charge against him could not stand the test of proof beyond reasonable doubt and his innocence stood re-affirmed.

11. Learned Single Judge after comparing the merits of the candidates observed as under:

“So far as registration of one case against Ramphal wherein he was released on probation and two cases against Om Parkash wherein he is stated to have been acquitted is concerned, it is settled principle of law that once the person is acquitted same cannot be taken as a disadvantage against that person. It is common that once the persons are involved in such activities, their past record is seen, although they stand acquitted of the

accusation. In these circumstances, the Court has to compare the comparative merits leaving aside the limited part of acquittal. In the present case, I find that Ramphal is certainly having edge over all the candidates i.e. his qualification is more, at that point of time he was of reasonable age of 40 years, was having 7 acres and 2 kanals of land and has persuaded ten persons of the village for opting the family planning scheme. Besides this, his popularity can be taken into consideration as he remained Panch of the village from 1988 to 1991. In view of Rule 15 there are certain things which are to be taken into consideration. So far as extent of property is concerned, Ramphal is having property which is sufficient as a security for collecting revenue. Although, Om Parkash is having more land but it does not override the other merits of Ramphal.

So far as condition of service rendered by the candidate to the State is concerned, none of these persons has rendered any service to the State except persuading the villagers for family planning. Another condition which is to be taken into consideration is the personal influence of the candidate, character, ability and freedom from indebtedness. So far as case of Ramphal is concerned, his personal influence can be weighed from the fact that he had been elected as Panch of the village, his character has been found to be good by the authorities. So far as freedom from indebtedness is concerned, there is no loan against Ramphal rather he has money in saving account whereas Om Parkash and Rajbir at one or the other point of time had been defaulters. Rajbir had been defaulter of Punjab National Bank and State Bank of Patiala and Om Parkash had been defaulter of State Bank of India, which they paid subsequently after the initiation of process for selection/appointment of Lambardar. Another condition as per Rule 15(g), is services rendered by the candidate to the community and development programmes. Ramphal has certainly rendered services to the community when he has been able to persuade ten persons to opt for family planning scheme whereas Om Parkash has only two cases to his credit. Thus, Ramphal has edge over all the candidates.

*Besides this, Ramphal has been appointed by the Collector. It is a settled principle of law that the choice of the Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. This view of mine is supported by the law laid down by Hon'ble the Supreme Court of India in the case of **Mahavir Singh Vs. Khiali Ram & others, 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1995 Lahore Law Times-29** followed by Division Bench of this Court in the case of **Phool Kumar Vs.***

State of Haryana and others, 2010(2) RCR (Civil) 819.
In Mahavir Singh's case (supra) the Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. Against the settled law, choice of the Collector has been wrongly upset by the Commissioner and Financial Commissioner without recording any finding of perversity in this regard. Therefore, the impugned orders passed by Commissioner and Financial Commissioner are illegal, arbitrary and against the settled principles of law.

So far as plea of learned senior counsel for Rajbir that he is acting as Lambardar of the village for about 15 years, therefore, writ petitions be dismissed is concerned, same cannot be accepted as any benefit derived during the pendency of the writ petition cannot be taken into consideration.”

12. Learned counsel for the appellants have not been able to persuade us to take a different view. We may reiterate that choice of the Ramphal as Lambardar by the Collector, as affirmed by the learned Single Judge, is based on sound reasoning and, as such, order dated 04.06.1997 (Annexure P-1) appointing Ramphal as Lambardar of the village, has been rightly restored by the learned Single Judge.

13. In view of the above, the appeals fail and are dismissed.

14. In the peculiar facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

October 09, 2015
adhikari