

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(104)

CWP No. 16494 of 2016 (O&M)

Date of decision: 16.8.2016.

Harbhajan Singh Ahluwalia

...Petitioner.

Versus

State of Punjab and others

... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL

Present: Mr. H.C. Arora, Advocate for the petitioner.

S.S. SARON, J.

The petitioner Harbhajan Singh Ahluwalia in the present writ petition has made the following substantive prayers:-

“(ii) And to issue a writ of Mandamus for directing that the inquiry against the respondents be ordered to be entrusted to some independent investigation agency for thorough probe into the allegations of massive corruption having been done by the concerned respondents;

(iii) And also to issue a writ of Certiorari for quashing the orders Annexure P-5, passed by Superintendent, Department of Industry and Commerce, Punjab, deciding to shelve the inquiry report submitted by Department of Vigilance, be quashed, and also the order, Annexure P-10, vide which the SSP, Rupnagar, observed that no

cognizable case is made out for warranting any police action;”

The petitioner was Manager (Materials) in the Punjab Communication Limited (‘PCL’ - for short). He sought voluntary retirement from the PCL with effect from 31.12.2006. According to the petitioner, the subject matter of the present writ petition has its genesis in a report of physical verification of assets of the PCL as on 31.03.1992 in which pilferage of assets is sought to have been pointed out. The petitioner states that he has been struggling to get an independent probe into the entire matter by filing civil writ petitions or public interest litigations from time to time. The present petition is a culmination of the continued efforts of the petitioner for getting the culprits punished in accordance with law. The petition is stated to be maintainable.

It is submitted that in terms of the District Attorney’s report (Annexure P10), an inquiry against the officers/employees of the PCL had been shelved without giving any cogent reasons. The petitioner, therefore, prays that an inquiry be entrusted to the CBI or some other independent agency so that the serious allegations are thoroughly investigated and the culprits brought to book. According to the petitioner, the Superintendent Police, Vigilance Bureau, Phase-I, Punjab, Chandigarh vide letter dated 06.10.1997 (Annexure P1) addressed to the Chief Director, Vigilance had endorsed the D.D.A. (Deputy District Attorney) report and observed that for allegation No. 1 a criminal case under Section 409 of the Indian Penal Code (‘IPC’ – for short) against Store In-charge A.K. Bhatia and Assistant Store In-charge Sanjay Kumar

may be filed; besides, for allegations No. 2 and 5 a departmental inquiry against Material In-charge Jaswant Singh and Assistant Material In-charge Narender Pal Singh may be carried out. Allegation No. 1 relates to the physical verification, from which it was found that according to the audit report for the year 1990-91, the cost of short material was about Rs.3,93,000/- and, thus, this allegation was proved. A mention has been made to various inquiry reports and documents as also communications regarding filing of the reports. The petitioner earlier had filed a writ petition, i.e. CWP No. 7185 of 2006, *inter alia* stating that since the Director General of Police (Vigilance), Punjab had abdicated his duty by not registering a FIR against the concerned respondents, therefore, the State of Punjab be directed to hand over the inquiry to the Central Bureau of Investigation ('CBI' - for short). The said writ petition, i.e. CWP No. 7185 of 2006, was dismissed *in limini* on 11.05.2006 by passing an order which reads as follows:

“After hearing the learned counsel for the petitioner, we are satisfied that various allegations leveled by the petitioner are already under enquiry by the Director General of Police (Vigilance), Punjab.

In this view of the matter, we do not find that the petitioner has any grievance to make for handing over the aforesaid investigation to the C.B.I. In any case, we are satisfied that the petitioner has no locus standi to file the present petition.

Dismissed.”

The petitioner filed Special Leave to Appeal (Civil) No. 16970 of 2006 in the Hon'ble Supreme Court of India. The Supreme Court on 30.10.2006 passed the following order:

“Issue notice to respondent Nos. 1 to 3 returnable within six weeks. The name of respondent No. 4 is deleted from the array of parties at the request and risk of the petitioner.

According to the petitioner since 1997, no action has been taken against the officials who were responsible for corruption as mentioned in the complaint of the petitioner and the subsequent findings of the officer of Accountant General (Audit, Punjab). The respondents No. 1 to 3 are directed to submit status report within six weeks from today.”

In consequence of the above-said order, it is submitted that Shri Des Raj, PPS, DSP, Vigilance Bureau, Economic offences Wing, Punjab, Chandigarh, submitted status report (Annexure P6/1) by way of an affidavit.

The Supreme Court in the aforesaid SLP on 22.02.2008 passed the following order:-

“This Special Leave Petition has been preferred against the order dated 11.5.2006 passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh, by which writ petition was disposed of holding that since the allegations made by the petitioner were

already under enquiry by the Director General of Police (Vigilance), Punjab, the prayer for investigation by the C.B.I. shall stand rejected.

Since the Director General of Police (Vigilance), Punjab is already inquiring the matter and the order of the High Court was passed on 11th May, 2006, we are of the view that if the Enquiry Report has not yet been submitted, the same must be submitted within two months from this date. In the event the Report has already been submitted, it will be open to the petitioner and others to take steps in respect of the Report in accordance with law.

With this direction the Special Leave Petition is disposed of. In view of the order passed in the SLP, the application for impleadment also stands disposed of.”

In the status report (Annexure P6/1), it is mentioned that an inquiry was conducted by Shri Rohit Chaudhary, IPS, Superintendent of Police, Vigilance Bureau, Economic Offences Wing, Punjab, Chandigarh, who in his report stated that there was shortage of goods amounting to Rs.3,54,000/-. This was with reference to the audit report of 1994-95. The PCL did not look into the said shortage and neither was the responsibility of any officer/employee fixed by it. However, the Vigilance Bureau, Punjab, Chandigarh had asked the PCL to name those persons/officers who were responsible for the shortage. The PCL, however, did not intimate the persons/officers responsible for the shortage. The PCL informed that it was difficult to fix the responsibility

as it could not be established during which period and at what point of time the articles were missing. There were 900 workers in the Company (PCL) and many of them had been handling the goods in the Company (PCL). Therefore, the responsibility of specific person (s) could not be fixed. The other explanation given by the PCL was that there would be panic amongst the workers which would affect the working and financial position of the Company (PCL). No worker would be ready and willing to work for the PCL and its work would suffer.

The enquiry officer did not agree with the clarification given by the PCL. A report was accordingly made by the Vigilance Bureau, Punjab, Chandigarh to the Secretary, Government of Punjab, Vigilance Department, Punjab, Chandigarh vide letter dated 06.11.2001. Registration of FIR for the offences under Section 409 and 120-B IPC was suggested. The Government vide its letter dated 20.08.2002 referred the matter to the Department to take appropriate action at their own level. Besides, in case the Administrative Department wanted to take criminal action, then the case be sent back to the Vigilance Bureau, Punjab, Chandigarh.

The Vigilance Bureau, Punjab, Chandigarh enquired from the Administrative Department, Chandigarh, vide letter dated 30.09.2002, regarding the action taken on this matter. The Administrative Department vide memo dated 11.10.2002 informed that it had already intimated the Government (Vigilance Department) regarding the action taken on that matter. In that action taken report, it was intimated that keeping in view the position as mentioned therein, the office had decided

that the amount of Rs.3.50 lacs could not be recovered as the same had already been written off by the Punjab State Electronics Development Corporation. So, it was recommended that the inquiry report may be shelved.

According to the petitioner, the inquiry report did not deal with the allegations raised by the petitioner against the accused. He submitted a representation dated 19.08.2010 (Annexure P7) to the Director General of Police (Vigilance), Punjab (respondent No.2) requesting him to reopen the matter and the allegations made by him be thoroughly investigated. The Joint Director Administration-cum-Public Information Officer, Vigilance Bureau, Punjab, Chandigarh vide letter dated 10.11.2010 informed the petitioner that his representation (Annexure P7) was duly considered and forwarded to the Superintendent of Police, Vigilance Bureau (EOW), Branch-II, Punjab, Chandigarh for taking necessary action as per law. The latter, however, according to the petitioner, did not hold any inquiry. The Chief Director, Vigilance Bureau, Punjab, Chandigarh vide letter dated 20.05.2011 (Annexure P8) informed the Secretary to Government of Punjab, Vigilance Department, Chandigarh that the fresh complaint filed by the petitioner did not contain any new facts. However, the complaint and other connected documents were being sent for necessary action. The Chief Director was asked to be informed about any action being taken by the Government of Punjab, Vigilance Department.

The grievance of the petitioner has been that despite serious allegations of corruption having been made against the officers of the

Company (PCL), no effective and meaningful inquiry had been conducted and only lame excuses were being made to shield the accused. A reference has been made to the status report dated 08.08.2007 (Annexure P5) submitted by Shri Des Raj, PPS, DSP, Vigilance Bureau. In fact, Annexure P5 contains comments/recommendations of the Department of Industries and Commerce, Government of Punjab with respect to regular enquiry No.7 dated 06.02.1997 District Ropar against officers/employees of the PCL. In view of the position submitted therein, it was decided that the amount of Rs.3.5 lacs could not be recovered as the same had already been written off by the Punjab State Electronics Development Corporation. So, it was recommended that the inquiry report may be shelved. In any case, according to the petitioner, Shri Des Raj, PPS, DSP, Vigilance Bureau did not himself conduct the inquiry and he simply prepared the status report on the basis of an inquiry conducted by Shri Rohit Chaudhary, IPS, Superintendent of Police, Vigilance Bureau, EOW, Punjab, Chandigarh, who had confined his inquiry only with regard to one item of physical verification. The whole report of Mr. Chaudhary, according to the petitioner, is contrary to the audit report dated 05.12.1992. The said audit report reads as under:-

“In our opinion, the Company is maintaining proper record showing particulars including quantitative details and situation of fixed assets. The Management has certified having conducted physical verification at the year end and during which certain items were found missing. But on subsequent verification the same items were reported to be

available with the Company except equipments worth Rs.3,93,757/- (written down value as on 1.4.1991). On our enquiry from the Management the reason for the items found not available at the time of first verification were not explained satisfactorily.”

According to the petitioner, Shri Des Raj, PPS, DSP, Vigilance Bureau did not refer to various aspects as had been highlighted in the petition. A reference is also made by the petitioner to the letter dated 16.03.1998 (Annexure P9) addressed by the Registrar of this Court to the Chief Secretary, Punjab for taking necessary action relating to the complaint made by the petitioner wherein it is mentioned as under:-

“I am directed by Hon’ble the Chief Justice and Judges to refer you on the subject cited above and to forward herewith a copy of complaint for necessary action and take such action as you deem fit.”

A further reference has been made to the report dated 17.10.2000 (Annexure P10) by the District Attorney Legal which had been approved by the SSP, Rupnagar. In terms of the said report, it was recorded by the District Attorney that the Superintendent of Police (Detective), Ropar, had concluded that the complainant, i.e. the petitioner, was making such complaints in his self-defence as a criminal case had already been got registered by the PCL against him for the offences under Sections 409, 379 and 406 IPC and that no cognizable offence was made out in this case. It was further mentioned in the said

report that the inquiry conducted in this behalf was quite exhaustive and the complaint did not warrant any police action.

It is submitted by the petitioner that the said report of the District Attorney Legal was highly incorrect and biased, besides, being prepared without application of mind. It has been highlighted that the petitioner was falsely involved in the criminal case in which he was acquitted by the learned Sub Divisional Judicial Magistrate, Kharar vide order dated 19.08.2002. The learned Magistrate had observed that the prosecution had filed false case against the accused (petitioner) in order to harass him as he had lodged some complaints against them before the Vigilance Department, Punjab. There was no truth in the prosecution version and the prosecution had failed to prove any of the charges against the accused (petitioner).

After recounting the facts and circumstances of the case, it is appropriate to notice that the primary grievance of the petitioner is for lodging criminal prosecution against the accused relating to misappropriation/embezzlement committed at the PCL.

It may be noticed that in fact the SSP, Ropar has endorsed the report dated 17.10.2000 (Annexure P10) of the District Attorney Legal that no police action is warranted. In case, the petitioner has any grievance against the same, the remedy is not that of filing a writ petition in this Court. The petitioner has remedy of approaching the Illaqa Magistrate or the Area Magistrate of the concerned police station for registration of a case.

In **Sakiri Vasu v. State of U.P.** (2008) 2 SCC 409 it was held by the Hon'ble Supreme Court that if a person has a grievance that the police station is not registering his FIR under Section 154 of the Code of Criminal Procedure ('Cr.P.C.' - for short), then he can approach the Superintendent of Police under Section 154 (3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is not registered or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) Cr.P.C. is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made.

In **Aleque Padamsee v. Union of India** (2007) 6 SCC 171, information was given to the police regarding commission of a cognizable offence. The accused, it was alleged, had made speeches likely to disturb communal harmony. No action was taken by the police. It was held that in such a case the proper remedy is to lay the complaint before the Magistrate concerned who is given power under Section 190 read with Section 200 Cr.P.C. to inquire into the complaint as provided in Chapter XV Cr.P.C. A writ petition in such a case, it was held, is not maintainable.

In the circumstances, it is for the petitioner to avail other remedies available in law and the petition as filed for registration of FIR and investigation thereof is clearly not maintainable. As regards, the

letter dated 16.03.1998 (Annexure P9) addressed by the Registrar of this Court to the Chief Secretary, Punjab for taking necessary action relating to the complaint made by the petitioner, it is to be noticed that the said letter was issued on the administrative side on a complaint that may have been made by the petitioner. The same being on the administrative side does not confer any legally enforceable right to the petitioner by representing it to be an order of the High Court on the judicial side.

It may also be noticed that the petitioner had earlier filed CWP No.16339 of 2009, which was dismissed as withdrawn on 27.10.2009 with the following order:-

“After arguing the matter at some length, Mr. Arora seeks leave to withdraw this petition reserving liberty for the petitioner to apply for a copy of the enquiry report in R.E. No.7 of 1997 submitted by the Vigilance Bureau, Punjab to the Vigilance Department in terms of the former’s letter No.21924/Vigilance Bureau, S-5, dated 29.7.1998 and to seek appropriate redress after the same is furnished to him.

The petition is accordingly dismissed as withdrawn with the liberty prayed for.”

The petitioner then filed CWP No.17464 of 2012, which was dismissed in terms of order dated 27.01.2016 (Annexure P13). In the said petition, the petitioner had sought quashing of orders dated 07.06.2002 (Annexure P5 in the present writ petition) and dated 17.10.2000 (sic 17.10.2010) (Annexure P10 in the present writ petition). The order dated 07.06.2002 in fact are the comments given by the

Government of Punjab, Department of Industries and Commerce in regular enquiry No. 7 dated 06.02.1997, District Ropar, against officers/employees of the PCL, Mohali, District Ropar. In the said comments, it has been mentioned that the amount of Rs.3.50 lacs could not be recovered as the same had already been written off by the Punjab State, Electronic Development Corporation. So, it was recommended that the inquiry report may be shelved. The order dated 17.10.2000 (sic 17.10.2010) is in fact the report of the District Attorney Legal, which as already noticed is to the effect that the District Attorney had submitted that the Superintendent of Police (Detective), Ropar had concluded that the complainant was making such complaints in his self-defence as a criminal case had already been got registered by the PCL against him under Sections 409, 379 and 406 IPC and no cognizable case was made out in the present case. The learned Single Judge, vide order dated 27.01.2016 (Annexure P13) dismissed the petition by passing the following order:-

“Prayer in the present writ petition is for quashing of orders dated 7.6.2002 (Annexure P-4) and 17.10.2000 (sic 17.10.2010) (Annexure P-10).

Vide Annexure P-4, the Government decided to close the inquiry pertaining to sale of certain items. Vide Annexure P-10, a complaint made by the petitioner was filed by the police warranting no action.

Learned counsel for the petitioner claims that the petitioner is a whistle blower of the scam running into Rs.22

crores. He was an ex-employee of the Punjab Communication Limited. He had earlier raised the issue. The matter went up to Hon'ble the Supreme Court, which was disposed of on 22.2.2008 giving liberty to the petitioner to take appropriate steps in terms of report to be submitted by Director General of Police (Vigilance) Punjab. He further submitted that the Comptroller and Auditor General in its report submitted in the year 1997 opined that there was a scam. The definite stand of the petitioner is that the petition in hand has not been filed in public interest.

The prayer in the present petition merely suggest that the petitioner is seeking quashing of only two orders Annexures P-4 and P-10 dated 7.6.2002 and 17.10.2000 (sic 17.10.2010), respectively. The present petition has been filed in September, 2012. It is the admitted case of the petitioner himself that he had earlier raised the issue. The matter went up to Hon'ble the Supreme Court, where it was disposed of on 22.2.2008 giving liberty to the petitioner to avail of his appropriate remedy after submission of report by the Director General of Police (Vigilance), Punjab. However, the fact remains that the orders which are now sought to be challenged, were available at the time when the petitioner earlier approached this Court and the matter was finally disposed of by Hon'ble the Supreme Court. Beyond quashing of the impugned orders, there is no other prayer

made in the petition. The petition has not been filed in public interest.

Considering the aforesaid facts, no case for interference is made out in the present petition at this stage.

Dismissed.”

Learned counsel for the petitioner has also submitted that the inquiry report submitted by Director General of Police (Vigilance), Punjab is not in accordance with law. He further submits that the report which is referred to in the order dated 22.02.2008 (Annexure P6/2) passed by the Hon’ble Supreme Court has not been supplied to him.

It may, however be noticed that in para 13 of the petition, the petitioner had referred and reproduced the order dated 22.02.2008 passed by the Hon’ble Supreme Court then in the very next paragraph, i.e. para 14, it is stated that since the inquiry report did not deal with the allegations raised by the petitioner against the accused, the petitioner sent a representation to the Director General of Police (Vigilance), Punjab (respondent No.2) requesting that the matter be reopened and all the allegations made by the petitioner be thoroughly investigated and copy of the representation dated 19.08.2010 (Annexure P7) has been submitted with the present petition.

Therefore, the stand of the petitioner that the inquiry report had not been made available to him is not sustainable in view of the fact that it is specifically averred by the petitioner that the inquiry report did not deal with the allegations levelled by the petitioner against the accused. In case the inquiry report was not available it would be difficult

for the petitioner to say that the allegations made by him were not dealt with. Therefore, it is quite evident that the inquiry report was available with him. Even otherwise, if it is not available, it was for the petitioner to obtain the same by resort to the Right to Information Act, 2005.

A perusal of the representation (Annexure P7) dated 19.08.2010 for reopening R.E.7-97 (Ropar) against M/s Punjab Communication Limited, S.A.S. Nagar, Mohali, shows that a detailed representation had been made for reopening the inquiry. However, for reasons best known, the petitioner has not submitted the inquiry report. Besides, it is not shown as to whether he applied for said inquiry report under the Right to Information Act.

In the circumstances, the petitioner, if so advised, may avail other remedy/remedies available to him in law. However, the present petition is not maintainable and the same is accordingly dismissed.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

16.08.2016
Ramesh

Whether speaking/reasoned Yes

Whether Reportable Yes