

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

Civil Writ Petition No. 22561 of 2013

Date of Decision: 17.8.2016

Yatinder Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

Civil Writ Petition No. 6676 of 2013

Yatinder Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Parveen Sharma, Advocate for
Mr. Arvind Singh, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

Mr. Narender Pal Bhardwaj, Advocate
for respondent No.6.

RAMESHWAR SINGH MALIK J. (ORAL)

These two identical writ petitions bearing CWP Nos. 6676 and
22561 and 2013 filed by the same petitioner, raising similar issues are being

Amit Kumar
I attest to the accuracy and
authenticity of this document

decided together vide this common order. However, for the facility of reference, facts are being culled out from CWP No. 22561 of 2013.

Feeling aggrieved against the impugned orders contained in Annexures P-22 to P-24, passed by Lokayukta, Haryana-respondent No.2, petitioner has approached this Court by way of these two writ petitions under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari.

Notice of motion was issued and further proceedings before the Lokayukta, Haryana-respondent No.2 were stayed.

Heard learned counsel for the parties.

While issuing notice of motion vide order dated 23.10.2013, a detailed order was passed by this Court, which deserves to be noticed here, and the same reads as under:-

“Counsel for the petitioner submits that petitioner was Sarpanch of Gram Panchayat Mehra, Tehsil Ladwa, District Kurukshetra for the term 2005-2010. Although he has again been elected as Sarpanch for the term 2010-2015, but complaint has been filed against him alleging some embezzlement of funds of the Gram Panchayat during his previous tenure. It is submitted that number of enquiries have been held against the petitioner in which he is exonerated, in-as-much as, the writ petition filed by the complainants, namely, Nirmal Singh through his attorney Hari Singh as well as Sube Singh (respondent No. 6) have been dismissed by this Court. The writ petition filed by Nirmal Singh has been dismissed with costs of

Rs.20,000/- and LPA is dismissed with costs of Rs.50,000/-.

*Besides this, counsel for the petitioner has submitted that the matter is now being looked into by Lokayukt Haryana under the Haryana Lokayukta Act 2002 and Haryana Lokayukt Rules 2008 as the complaint filed on the same set of allegations, has been sent by respondent No. 2 to the SDO Civil for the purpose of enquiry. It is submitted that had it been a complaint referred to the Lokayukt in terms of Section 8(1), the enquiry could have been held by Lokayukt, by calling upon the person against whom the complaint is made. But in case complaint is made by a private person, the proceedings have to be carried out under Section 8 (2) of the Act which provides opportunity against whom the complaint is made to file his reply and action could be taken by the Lokayukt. However, in the present case while proceedings, respondent No. 2 has not followed the mandate of Section 8(2). In this regard, he has relied upon decision of this Court in the case of **Jai Bhagwan V/s. Lokayukta, Haryana and others 2013(3) RCR (Civil) 706**. It is also argued by counsel for the petitioner that in case of embezzlement of Panchayat funds, the action could have been taken against the Sarpanch for the purpose of recovery etc. only for the period of 2 years as provided under Haryana Panchayati Raj Act, 1994. However, in the present case, action has been taken against the petitioner after expiry of 3 years and half*

months. Therefore, no action can be taken against the petitioner as it was barred by limitation.

Notice of motion for 02.12.2013.

In the meantime, further proceedings before the Lokayukt shall remain stayed.

Section 53 (5) of the Haryana Panchayati Raj Act, 1994 ('the Act' for short), which is relevant for the purpose of decision of these writ petitions, deserves to be referred here and the same reads as under:-

XX XX XX XX

(5) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or mis-application or after the expiry of two years from his ceasing to be a Sarpanch or Panch, as the case may be, whichever is earlier.”

During the course of hearing, when learned counsel for the State as well as learned counsel for respondent No.6 were confronted with the abovesaid provisions of law, coupled with the material fact as to how action could have been initiated against the petitioner after expiry of a period of more than three years, which was beyond the abvoesaid statutory period in both these writ petitions, they had no answer and rightly so, it being a matter of record.

It is also a matter of record that respondent No.6-Nirmal Singh in CWP No. 6676 of 2013 and respondent No.6-Sube Singh in CWP No. 22561 of 2013 had been pursuing numerous frivolous litigation

against the present petitioner, including the present one, as recorded by this Court, in its notice of motion order dated 10.4.2013 passed in CWP No. 6676 of 2013, which reads as under:-

“Learned counsel for the petitioner submits that exactly on the same complaint having been filed by three persons, three writ petitions were filed at different points of time, which were dismissed by this Court. Particulars of those writ petitions are: CWP No.7276 of 2012 (Hari Singh Vs. State of Haryana and others), present petitioner being respondent No.4 therein, was dismissed vide order dated 4.9.2012 (Annexure P-13). CWP No. 12138 of 2012 (Sube Singh Vs. State of Haryana and others), present petitioner being respondent No.6 therein, was dismissed vide order dated 04.9.2012 (Annexure P-14) and CWP No. 868 of 2012 (Nirmal Singh Vs. State of Haryana and others), present petitioner being respondent No.4, was dismissed vide order dated 14.9.2012 (Annexure P-15). He further submits that having failed up to this Court, respondent No.6 had no locus standi to re-agitate the matter before the Lokayukta, Haryana. In such a situation, filing one after the other complaints against the petitioner is not justified in law.

Notice of motion for 13.5.2013.

Process dasti also.”

In fact, there are numerous orders available on record whereby number of writ petitions filed by both the abovesaid respondents had been decided against them and in favour of the present petitioner. CWP No.

12049 of 2013 was dismissed by this Court vide order dated 29.5.2013 with costs of ₹20,000/- because the said writ petition was found to be a frivolous litigation. Still not satisfied, Nirmal Singh filed LPA No. 1754 of 2013 which also came to be dismissed by a Division Bench of this Court with costs of ₹50,000/- vide order dated 8.10.2013.

The relevant observations made by the Division Bench in its order dated 8.10.2013, read as under:-

“After considering the submissions made by learned counsel for the appellant and going through the orders passed by the authorities under the Act as well as the order passed by the learned Single Judge, we do not find any merit in the instant appeal. We agree with the observations of the learned Single Judge that the appellant is pursuing the frivolous litigation with ulterior motive. The appellant has already gone to Canada and his attorney is pursuing the cases against the Sarpanch of the Gram Panchayat of the village. A resident of the village has a right to make a complaint against the Sarpanch of the Gram Panchayat, but once his complaint has been considered by the competent authority and has been dismissed considering the same to be frivolous and baseless, then he has to pursue the complaint further with a sense of responsibility and not with an ulterior motive to harass the Sarpanch and to cause hindrance in the development work of the Gram Panchayat. In the present case, the Appellate Authority as well as the learned Single Judge had considered the fact that the

appellant is pursuing the baseless and frivolous complaint, pertaining to the previous term of respondent No.3 as Sarpanch of the Gram Panchayat, with an ulterior motive. In these circumstances, in our opinion, the learned Single Judge has rightly dismissed the writ petition filed by the appellant with costs. In our opinion, the instant appeal has also been filed to pursue the frivolous litigation with an ulterior motive. We do not find any illegality in the order passed by the learned Single Judge. Hence, this appeal is dismissed with costs, which are quantified at ₹ 50,000/-, to be deposited with the Haryana Legal Services Authority.”

Despite having filed repeated petitions before this Court, respondent No.6 still kept on misusing the process of law. This time, he approached the Lokayukta, Haryana-respondent No.2 by moving one or the other frivolous complaints. In fact, respondent No.6 has been pursuing different litigations simultaneously before different courts and authorities. This was the reason that abovesaid CWP No. 12094 of 2013 filed by respondent-Nirmal Singh was dismissed by this Court with costs of ₹20,000/- and LPA filed by him also came to be dismissed on 8.10.2013 with costs of ₹50,000/-.

Learned counsel for respondent No.6 as well as learned counsel for the State could not deny the most material aspect of the matter that action against the petitioner, was sought to be initiated after expiry of the statutory period provided in Section 53 (5) of the Act of 1994, referred to hereinabove. Having said that, this Court feels no hesitation to conclude that in view of the abovesaid undisputed fact situation, no complaint at the

hands of respondent No.6 in both these writ petitions would be maintainable before Lokayukta, Haryana, as well.

Provisions of Section 53 of the Act of 1994 have already been interpreted by Division Bench of this Court in **Gram Panchayat, Shahpur Vs. Financial Commissioner and Principal Secretary to Government Haryana Development and Panchayat Department and others, 2009 (2) RCR (civil) 599**. It was held by the Division Bench of this Court in **Gram Panchayat, Shahpur's case** (supra), that any action initiated against the Sarpanch beyond abovesaid statutory period of two years would be unsustainable in law.

Once as per the abovesaid provisions of law contained in Section 53 (5) of the Act of 1994 and interpretation thereof by the Division Bench of this Court in **Gram Panchayat Shahpur's case** (supra), no authority of the State would be entitled to initiate action against Sarpanch beyond a period of two years, from his ceasing to be a Sarpanch or Panch, as the case may be, it does not appeal to reason as to how any such complaint would be maintainable before the Lokayukta-respondent No.2.

Since the abovesaid undisputed fact situation as well as provisions of Section 53 (5) of the Act of 1994, besides the judgment of Division Bench of this Court in **Gram Panchayat Shahpur's case** (supra), were neither examined, nor appreciated in correct perspective, orders passed by respondent No.2, impugned in both these writ petitions, have resulted in miscarriage of justice. Further, the impugned orders passed by Registrar to the Lokayukta, Haryana, would be orders without jurisdiction and the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders Annexures P-22 to P-24 passed by respondent No.2 have been found suffering from patent illegality, the same cannot be sustained. Similarly, impuned orders contained in Annexure P-16 to P-20 in CWP No. 6676 of 2013 are unsustainable, being the patently illegal orders. Consequently, all the orders passed by respondent No.2, impugned in both these writ petitions, are hereby set aside. Both the writ petitions deserve to be accepted.

Resultantly, with the abovesaid observations made, both these writ petitions stand allowed, however, with no orders as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

17.8.2016

Ak Sharma

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No