

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

CWP No.10191 of 2014
Date of decision : 27.01.2017

Balvir Kaur

...Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Jagjeet Singh, Advocate for
Mr. N.P.S. Mann, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

Mr. Vivek Chauhan, Advocate for respondent No.7.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned order dated 30.01.2014 (Annexure P-8), passed by the respondent No.2, whereby respondent No.4-BDPO has been directed to complete the proceedings under Section 216 of Punjab Panchayati Raj Act 1994 against the petitioner within 60 days and also challenge to the order dated 12.03.2014 (Annexure P-9) passed by respondent No.4 vide which the petitioner has been directed to deposit the alleged amount of Rs.43,24,116/-.

Learned counsel appearing on behalf of petitioner submits that aforementioned order has been passed without making any assessment and without giving any opportunity to explain.

He submits that proceedings could not have been initiated under Section 216 of the Punjab Panchayati Raj Act as in May, 2003, the petitioner was elected as Sarpanch of Gram Panchayat Lakhna, Block Valtoha, District Tarn Taran and completed her term in the year 2008. During all this period, various development works were initiated. All the proceedings arisen under Section 216 of Punjab Panchayati Raj Act was without jurisdiction in view of Clause 4 of Section 216 of Punjab Panchayati Raj Act, 1994. The aforementioned provisions of law have not been taken care of and, therefore, there is gross illegality and perversity.

Respondent Nos.2 and 4 have not taken into consideration the exact record of the Panchayat to establish the alleged measurement report. The petitioner was never associated with the alleged measurement. The authorities failed to consider as to how the petitioner left the charge of Gram Panchayat and can be held liable for loss of record in 2013. Measurement Report has not seen the light of the day. Even, order Annexure P-9 passed by BDPO asking for the payment of the amount is not backed by any reasons, thus, order is liable to be set aside.

Ms. Monica Chhibber Sharma, learned Deputy Advocate General Punjab, submits that after the petitioner's period as Sarpanch was over, son of the petitioner was appointed as Sarpanch and he submitted complaint to the police of having lost entire record. The resident of the village approached the Chief Parliament Secretary, Government of Punjab, who in April, 2012, forwarded the matter to BDPO, resulting into conducting of enquiry and passing of impugned orders (Annexures P-8 and P-9). The orders cannot be said to be barred by law of limitation as matter

was initiated in the year 2012, thus, all the proceedings cannot be said to be without jurisdiction or beyond period of limitation and thus urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book.

Section 216 of Punjab Panchayati Raj Act envisages the imposition of the liability of members of the Panchayat but as per the provision of Sub-Section 4, which start with non-obstante clause prescribes that no person can be called into regarding the loss after expiry of four years from the occurrence of the loss.

For the sake of brevity, Sub-Section 4 of Section 216 of Punjab Panchayati Raj Act, reads as under:-

“(4) 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 four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a member, whichever is later.”

The conceded position on record is that term of the petitioner as Sarpanch was over in 2008. The alleged measurement as per the impugned order (Annexure P-8) was conducted in the year 2013. In my view, it was beyond period of 4 years, therefore, entire exercise purported to have done under Section 216 was barred in law. Even date of occurrence is conspicuously silent/absent.

In my view, proceedings initiated by BDPO for holding the petitioner liable and asking for refund of the amount is not sustainable in the

eyes of law. Right to recover has been lost in view of the provision of Sub-Section 4 of Section 216, *ibid*.

All these factors have not been taken into consideration.

Thus, impugned orders are not sustainable in the eyes of law and it is fit case for judicial review.

Resultantly, impugned orders are hereby quashed being without jurisdiction.

Accordingly, present writ petition stands allowed.

27.01.2017

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No