

CWP No.14828 of 2017

[1]

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

**CWP No.14828 of 2017
Date of decision:21.08.2017**

Munish Mahajan

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. Onkar Singh Batalvi, Advocate, for the petitioner.

Ms. Deepali Puri, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The petitioner is running a chemist shop, under the name and style of S.K.M. Medicos, adjacent to Civil Hospital, Mukerian, District Hoshiarpur. He has alleged that the Civil Hospital, Mukerian is at G.T. Road and has two gates, i.e. the main gate and the other one on the rear side called "charakhari gate", which is 3' wide. The Civil Surgeon, Hoshiarpur, vide his letter dated 22.09.2011, addressed to the Secretary, Department of Health, recommended for opening of the charakhari gate. The said recommendation was accepted by the Government of Punjab on 21.10.2011.

On the other hand, there was agitation by the members of the Panchayat, Municipal Councillors and the general public against the opening of the charakhari gate, for which as many as five MLAs, namely, Sangat Singh Gilzian, MLA, Urmar, Rajnish Kumar, MLA, Mukerian, Dr. Raj Kumar, MLA, Chabbewal, Pawan Kumar Adla, MLA, Sham Churasi and Arun Dogra, MLA, Dasuya represented to the Government for closing the charakhari gate,

which was allegedly opened unauthorizedly. CWP No.20435 of 2012 titled as “Satnam Singh vs. State of Punjab and others” was also filed against the opening of the charakhari gate, which was allegedly opened for giving benefit to some private persons. In the said writ petition, it was observed by this Court that in such matters, the subjective satisfaction of the local administrative authorities like Deputy Commissioner would be good enough to resolve the controversy and, thus, the writ petition was disposed of with a direction to the Deputy Commissioner, Hoshiarpur to look into the grievance of the petitioners and decide the matter accordingly. The order dated 20.02.2017 passed in CWP No.20435 of 2012 reads as under:-

“The grievance of the petitioner is that Ciivl Hospital, Mukerian situated at G.T. Road has two gates. In order to give benefits to some private persons, the gate on the back side is used which is against the sanctioned plan.

Without expression of any opinion, at this stage, on merits, the maintainability of the writ petition is debatable, as no enforceable legal right having been violated is alleged in the petition.

I am of the considered opinion that in such maters, the subjective satisfaction of the local administrative authorities like Deputy Commissioner would be good enough to resolve the controversy. The petitioner appears to have filed a detailed representation Annexure P-1 to the Deputy Commissioner, Hoshiarpur.

This petition is disposed of with a direction to the Deputy Commissioner, Hoshiarpur to look into the grievance of the petitioner, taking into consideration the public convenience and general good. It will be appreciated, in case, the petitioner is communicated the decision after considering all the circumstances, within a period of three months, after the receipt of certified copy of this order.”

Thereafter, another writ petition bearing CWP No.22207 of 2015

titled as “Ajay Kumar vs. State of Punjab and another” was filed by the same counsel who had filed the present writ petition on behalf of the petitioner and made the same prayer. The said writ petition was disposed of on 20.02.2017 with the following order:-

“Being covered by the order of even date passed in CWP no.20435 of 2012, this petition is disposed of in the similar terms.”

Moreover, the petitioner has filed CWP No.7412 of 2017 titled as **Munish Mahajan vs. State of Punjab and others**”, which was disposed of vide order dated 07.04.2017, with the following order:-

“Through instant writ petition, the petitioner seeks a writ in the nature of certiorari for quashing the recommendation Annexure P-15 which has been made by respondents No. 5 to 9, the MLAs of five different constituencies requesting the Health and Family Welfare Minister of Govt. of Punjab to close down the Chakri gate, opened in an unauthorized manner in Civil Hospital, Mukerian, District Hoshiarpur.

With the assistance of learned counsel for the petitioner, I have considered Annexure P-15 which does not appear to contain any recommendation by any authority or Minister.

Apprehending that closure of Chakri gate at Civil Hospital, Mukerian, District Hoshiarpur will be prejudicial to the petitioner, present petition has been filed.

A similar petition had earlier been filed by the petitioner which was decided on 30.03.2017 with following orders:

“The petitioner has sought a direction to respondent No.2 not to entertain and consider representation(Annexure P-10) , which has been submitted by an MLA of Mukarian and the Sarpanches of the Gram Panchayats.

I have heard counsel for the petitioner and gone through representation (Annexure P-10), in which a request has been made to the Deputy Commissioner, Hoshiarpur to close the Chakri Gate at Civil Hospital, Mukarian. The petitioner claims that he is running a

medical store adjacent to the Civil Hospital, Mukerian and the closing of the gate would adversely affect his business.

After hearing counsel for the petitioner and going through the facts and circumstances of the case, I am of the opinion that it will not be appropriate for this Court to enter into the disputed questions of fact and the rights of the various Gram Panchayats, as claimed before the Deputy Commissioner, Hoshiarpur. In the interest of justice, a direction is issued that before passing any order for closing of the Chakri Gate, the grievance of the petitioner will be taken into consideration by the Deputy Commissioner, Hoshiarpur. All pleas raised in this petition, may be raised before the Deputy Commissioner, Hoshiarpur. In case the petitioner submits any objections before the Deputy Commissioner, Hoshiarpur, the same would be considered along with the application/representation, filed by any rival contender.”

The petitioner appears to have submitted a representation to the Deputy Commissioner, Hoshiarpur on 03.04.2017. Copy of the said representation has not been appended with the petition, however, it has been brought to the notice of this Court.

I have considered the facts and circumstances of the case and this petition appears to be pre-mature.

This petition is disposed of as pre-mature. In case, the petitioner has already moved the requisite application, he may approach the Deputy Commissioner, Hoshiarpur for adjudication of the same expeditiously. In case, any such request is made, the Deputy Commissioner, Hoshiarpur shall make earnest endeavour to consider the representation fairly and would pass speaking order within a period of one month after filing of any such request.”

During the course of hearing, the Deputy Commissioner, Hoshiarpur passed the order allegedly on 21.07.2017. The said order is reproduced as under:-

“Sub: The order of the Hon'ble Punjab and Haryana High Court regarding Charkri Gate, Civil Hospital, Mukerian.

The Hon'ble Punjab and Haryana High Court has passed

orders in different CWPs namely CWP No.20435 of 2012 and 22207 of 2015 filed by Satnam Singh and Ajay Kumar and respectively another petition No.7412 of 2017 filed by Munish Mahajan.

“This petition is disposed of with a direction to the Deputy Commissioner, Hoshiarpur to look into the grievance of the petitioner taking into consideration the public convenience and general good, it will be appreciated, in case the petitioner is communicated the decision considering all the circumstances, within a period of three months, after the receipt of certified copy of this order.

The main issue in this reference

The main issue in these petitions was opening and closing of small gate, Charakhri gate, which was opened at the backside of a Civil Hospital, Mukerian falling in Mukerian town, district Hoshiarpur. This hospital is located on the National Highway passing through the town having main entrance on this side. The gate was opened in the year 2011 as per the order of the Secretary Health Government of Punjab vide orders no.21/10/2010-3C-07/3184 dated 28.10.2011 in the interest of public on the basis of recommendation of the Civil Surgeon, Hoshiarpur vide there letter No.Steno 2011/special-100 dated 22.02.2011.

In the one petition, the prayer was of closing this gate. The petitioners main arguments were that this gate was opened to give some benefits to real estate traders to sell lands at high rate converting this agriculture land into a commercial land. They say that several plots were carved out without getting changed the land use. They also alleged that this was done to give some commercial benefits to some particular person having political backgrounds. They also mentioned that there is no provision of such gate in hospital building plan as passed by the local govt. department. They also expressed their apprehension that it is also not proper from the security point of view of the hospital.

On the contrary, the other petitioner has stated that the gate was opened to give safe free access to pedestrian patients coming from localities behind the hospital. They also mentioned that entering from main gate is risky as it is located on the very busy national highway having huge traffic flow. Besides it, a patient has

to cover a longer distance.

For considering the matter a committee was constituted under the Chairmanship of A.D.C. (General) comprising of Civil Surgeon, Deputy Medical Commissioner, SDM Mukerian and DSP, Mukerian as members. The committee visited the spot and gave its report recommended therein to close the gate. The committee view point is that though this gate provides some easy access to patients coming from the backside of the gate but they expressed their apprehension from the security point of view. The reason being that only two or three guard outsourced through a PESCO agency deployed in the hospital at a time. They are neither well equipped nor sufficiently trained to look the security aspect. If the gate is not closed it might endanger security of the people present in the hospital. Moreover, a single entry in a premises is always better as it could be monitored well.

I fully agree with the views expressed by the members in the report that though this gate provides some facility to the common people yet the security concerns mentioned in the aforesaid committee report still persists. The perusal of the Civil Surgeon file about this matter reflects that the Civil Surgeon officer did not brought this aspect in the notice of the competent authority while recommending the case for installing this small gate. In view of the facts explained above, I recommend that the case of this gate be referred to the Secretary, Health for reviewing his decision dated 28.10.2011 conveyed vide letter No.21/10/2010-03C7/3184 in light of the above facts. The Civil Surgeon is directed to take up the matter with the Secretary Health for reviewing the aforesaid decision. The copy of this order be supplied to the petitioners concerned.”

Since this Court had directed the Deputy Commissioner to take the initiative in respect of passing the order, therefore, the Deputy Commissioner passed the aforesaid order and recommended the case to the Secretary Health for reviewing its decision dated 28.10.2011.

Since the matter is already under consideration of the Government, therefore, instead of pursuing this writ petition before this Court,

the petitioner may pursue his remedy before the Government as the matter has been referred by the Deputy Commissioner, Hoshiarpur to the Secretary Health for re-consideration/review.

With these observations, the present petition is disposed of.

August 21, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No