

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.16018 of 2017
Date of Decision: 08.08.2017

Rajpal

....Petitioner

Vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Aman Pal, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

This petition is filed in order to challenge the order of suspension dated 8.6.2017 passed by the Deputy Commissioner, Yamunanagar and order dated 13.7.2017 passed by the Appellate Court by which appeal filed by the petitioner has been dismissed.

The petitioner was elected as Sarpanch of the Gram Panchayat Darwa, Tehsil Chhachhrauli, District Yamunanagar from the reserved category. On account of a complaint of the petitioner, preliminary enquiry was conducted in which the petitioner was found guilty on two accounts, namely, (i) grant has been demanded by the Sarpanch vide resolution No.1 dated 10.04.2017 and (ii) for the construction of Nala from the house of Mahinder upto the house of Rishi Pal son of Babu Ram, he has started construction of the aforesaid Nala without getting/receipt of amount from the government and without getting technical approval by digging the same (2 ½ to 3 feet) and 3 feet to 4 feet wide by demolishing the CC street with

Pursuant thereto, *show cause notice* was given to him on 8.5.2017 to which reply was filed by the petitioner on 22.5.2017. After taking into account the reply and the report of the preliminary enquiry, the Deputy Commissioner found that since the charges were of serious nature, which have been *prima facie* found in the preliminary enquiry, therefore, he decided to hold a regular enquiry and during the said period, while exercising his powers under Section 51 of the Haryana Panchayati Raj Act, 1994 [for short 'the Act'], placed him under suspension. The petitioner filed appeal against the order of suspension under Section 51(5) of the Act, which was dismissed by the Appellate Court recording the following reasons: -

"I have heard the counsel for the parties and perused the case file. Local politics and differences over digging of the drain seem to at the heart of the matter which could be solved amicably by the member of village community. However, the Sarpanch has been suspended on the basis of technical ground of taking up a work without technical approval or estimates or funds. The Sarpanch took the plea that the construction work of drain has been started after seeking the prior technical approval and after preparing estimates of the work. He presented updated signed estimates alongwith the resolution dated 24.04.2017.

Whereas, report dated 19/20.4.2017 of Dub

Divisional Officer, (PR), Chhachrauli says that the construction work has been started without seeking prior approval from the technical wing of the department. A reading of the resolution dated 24.04.2017 shows that the Gram Panchayat decided to make a request for the estimates etc. Therefore, till 24.04.2017 no estimate or site plan had been got prepared by the appellant. The appellant also contended that the gram Panchayat vide its resolution dated 10.04.2017 requested the government to provide funds for the construction of drain in dispute and in pursuant thereto, an amount of Rs.2,10,727/- has been received under FFC Scheme. Whereas, the photocopy of the pass book of bank account of Gram Panchayat, Darwa produced by the appellant shows that an amount of ₹2,10,727/- was already lying in the account of Gram Panchayat on 30.03.2017. These facts shows that appellant started the construction work of drain without seeking any funds from the government and without any technical approval of the department. Appellant also stated that as per compromise, the drain was

to be dug out in the absence of appellant. In order to take the benefit of this fact opposite party dug out the drain in his absence and got action initiated against him. However, the copy of compromise available on record on page 35 as A-2 and compromise available on record on page 61 as A-6 shows that the compromise effected between the appellant and Anil Kumar and others does not mention any thing about the drain. If the drain was dug by Anil Kumar and others than the appellant should have made a complaint before the higher authorities against the complainant regarding the digging of drain. He has produced the affidavits to this effect given by Sh. Raghuvir Kumar S/o Sh. Badhu Ram, Sh. Bhopal Singh Bhatti s/o Sh. Ram Ji Lal, Sh. Sandeep Kumar S/o Sh. Mahipal, Sh. Sudev Kumar S/o Sh. Hukum Singh, Sh. Dalvinder S/o Sh. Baldev, Sh. Rattan Singh S/o Hem Raj, Sh. Mahipal, Advocate S/o Sh. Narsingh and Sh. Balinder S/o Sh. Sandhu Ram. The Sub Divisional Officer, (PR), Chhachrauli report dated 19/20.04.201 says that the work was started as per statement of Sarpanch keeping in mind, exigencies of

water disposal. Which clearly also shows that estimate/technical approval was not there on 19/20.4.2017 with the Panchayat. As a Sarpanch, if the drain had been dug causing a loss to the street. He should have lodged an FIR. There is no evidence apart from affidavits to suggest that the drain was dug by Anil Kumar with JCB except the affidavit signed much later. The Deputy Commissioner, Yamunanagar duly considered the reply to the show cause notice and heard the appellant personally before passing the impugned suspension order. Keeping in view of the above, I find no merit in the present appeal as the same is dismissed. However, the Deputy Commissioner, Yamunanagar is hereby directed to complete the regular enquiry pending against the appellant within a period of one month and to pass a detailed speaking order in accordance with the provisions of law from the date of receipt of copy of this order.”

Learned counsel for the petitioner has failed to deny that the technical approval was taken by the petitioner or estimate was prepared of the work before starting the same, therefore, there is no error on the part of

the respondents to place the petitioner under suspension for the purpose of conducting regular enquiry in the allegations which have been *prima facie* found against him in the preliminary enquiry.

Thus, in view thereof, there is no merit in the present petition and the same is hereby dismissed.

08.08.2017

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*