

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

CWP No. 25089 of 2015 (O&M)

Date of Decision: 16.11.2017

DILDAR MOHAMMAD AND ANOTHER

...Petitioners

VS.

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Navjot Singh, Advocate
for the petitioners.

Mr. Suveer Sheokand, Addl. A.G., Punjab.

Mr. Avnish Mittal, Advocate,
for respondent No. 4

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed by two *Panches* of Gram Panchayat, Village Mulepur, Tehsil and District Fatehgarh Sahib, who have challenged the enquiry report dated 02.11.2015 in which they were proceeded *ex-parte* and the notice dated 09.11.2015 by which they have been asked to file reply as to why they should not be removed from the post of *Panches*.

After preliminary enquiry was held on 10.09.2015, show cause notice was issued to the petitioners for 11.09.2015 to which reply was filed by them on 16.09.2015 and thereafter, regular enquiry was ordered on 17.09.2015. The regular enquiry was initially marked to the Divisional Deputy Director Panchayat, Patiala. However, the said enquiry was shifted to Directorate of Rural Development and Panchayat at Mohali on 05.10.2015 and Sanjiv Garg, Deputy Director (E.P.) was appointed as new Enquiry Officer. However, on 06.10.2015, Divisional Deputy Director, Rural Development and Panchayat, Patiala issued a notice to the petitioner, which was received by them on 08.10.2015, to appear before him on 16.10.2015.

Accordingly, they appeared before Deputy Director, Patiala on 16.10.2015.

The case of the respondents is that the petitioners were again served notice on 08.10.2015 and 21.10.2015 by newly appointed Enquiry Officer at Mohali but they refused to accept the notice and did not join the enquiry which was held on 02.11.2015. Thus, they were proceeded *ex parte* and enquiry report was prepared by the Enquiry Officer on the same day. After the enquiry was over and the petitioners were found negligent in discharge of their duties as *Panches*, show cause notice was issued to them on the same day i.e. on 02.11.2015 for 09.11.2015 to file reply as to why they should not be removed from the post of *Panches* in terms of Section 20 (1) of Punjab Panchayati Raj Act, 1994.

Aggrieved against the aforesaid action of the respondents i.e. the *ex parte* enquiry report and the show cause notice, the present petition has been filed in which at the time of issuing of notice of motion, status quo was ordered to be maintained and is continuing since December 2005.

Learned counsel for the petitioners has submitted that they were not served either on 08.10.2015 nor on 21.10.2015, of the notice purported to have been issued by the new Enquiry Officer at Mohali. Rather, they had appeared on 16.10.2015, before Divisional Deputy Director, Rural Development and Panchayat, Patiala in terms of the previous notice. It is thus submitted that if the petitioners were not interested in joining the enquiry then they would not have appeared even before Divisional Deputy Director, Rural Development and Panchayat, Patiala on 16.10.2015 for the purpose of recording their statements. It is further submitted that the respondents have procured the report of refusal of notices for the purpose of proceeding *ex parte* against the petitioners in the enquiry in order to remove them from the posts of *Panches*.

On the other hand, learned counsel for the respondents have submitted that no doubt that the enquiry was initially handed over to the Divisional Deputy Director, Rural Development and Panchayat, Patiala who had issued notice on 06.10.2015 and before that the Enquiry Officer was changed and the enquiry was shifted from Patiala to Mohali and that the petitioners had appeared before the Divisional Deputy Director, Rural Development and Panchayat, Patiala on 16.10.2015 but still they did not appear before the new Enquiry Officer pursuant to the notice dated 08.10.2015 and 21.10.2015. Therefore, they have rightly been proceeded against *ex parte* in the enquiry held on 02.11.2015.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the fact that the petitioners had appeared before the Divisional Deputy Director, Rural Development and Panchayat, Patiala on 16.10.2015 pursuant to the notice dated 06.10.2015 speaks about their *bona fides* that they were not avoiding the enquiry and were interested to join the same and there is no cogent evidence about the refusal on the part of the petitioners of summons dated 08.10.2015 and 21.10.2015 purported to have been served at the instance of new Enquiry Officer at Mohali. Therefore, they have wrongly been proceeded against *ex parte* in the enquiry held on 02.11.2015. The petitioners who have been elected democratically and were working as *Panches* would not take the risk of not joining the enquiry as they know that in case of not joining the enquiry, the enquiry could go against them which may result in their removal from the post of *Panches*.

Thus, keeping in view the facts and circumstances, I am of the considered opinion that the petitioners deserves to be associated in the enquiry

which is to be carried out again so that the petitioners can present their case before the Enquiry Officer. Therefore, enquiry report dated 02.11.2015 is hereby set aside and as a result thereof show cause notice issued to the petitioners is also set aside and the respondents are given liberty to hold the regular enquiry afresh in which petitioners would also join. The petitioners are directed to appear before the Enquiry Officer i.e. Deputy Director (E.P.) at Mohali on 18.12.2017. It is needless to mention that the Enquiry Officer should make all endeavours to complete the enquiry as early as possible preferably within a period of one month.

With these observations, the petition is disposed of.

November 16, 2017

Suresh Kumar

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned :	☒	Yes	/	No
Whether Reportable :	☐	Yes	/	No