

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.3625 of 2017
Date of decision:08.03.2017

Chander Shekhar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arvind Singh, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL J. (Oral)

The petitioner is aggrieved of the impugned order dated 02.02.2017 (Annexure P-4), whereby, as per the report of Gurnam Singh, Gram Secretary, an amount of ₹8,43,358.04 on account of cash in hand since May 2015 being lease money of *shamlat land* and as well as on account of list submitted on the basis of stock register, a notice has been issued to him.

The contention of Mr. Arvind Singh, learned counsel for the petitioner is that the aforementioned notice has been issued on the basis of the report of Gurnam Singh, Gram Secretary which is in violation of provisions of Section 53(5) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as “1994 Act”). In fact, no enquiry has been held. He is ready to face the enquiry but the aforementioned notice is without giving

any opportunity of hearing to the petitioner, much less totally without jurisdiction.

This Court, on 23.02.2017 had issued notice of motion. Though service is complete, despite that no reply has been filed. I deem it appropriate to dispose of the present writ petition on the premise that since there is a defiance to the provisions of Section 53 of 1994 Act, which read as under :-

“53. (1) Every Sarpanch or a Panch of a Gram Panchayat shall be liable for the loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat if such loss, waste or mis-application is a consequence of his neglect or misconduct while working as Sarpanch or a Panch, as the case may be.

(2) The Block Development and Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise, for loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat and after giving adequate opportunity to Sarpanch or Panch, as the case may be, to explain, assess by order in writing the amount due from him on account of such loss, waste or mis-application of such Gram Fund or property and take necessary steps for its recovery.

(3) Any person aggrieved by an order under sub-section (2) may, within one month of the date of such order apply to the Director to have it set aside and the Director may suspend, vary or rescind such order upon such terms as to costs, payment into court or otherwise, as he thinks fit, but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.

(4) Notwithstanding anything contained in sub-section (3) the

Government may, either on its own motion at any time or an application received in this behalf within a period of sixty days from the date of the order, call for the records of any proceedings in which the Director has passed an order under sub-section (3) for the purpose of satisfying itself as to the legality or propriety of such order and may pass such order in relation thereto as it thinks fit :

Provided that the Government shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

(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.

(6) The amount assessed as due from Sarpanch or Panch, as the case may be, may after his death be recovered from his legal heirs to the extent of property inherited by them.”

The amount sought to be recovered against the petitioner for the tenure he remained as a Sarpanch of Gram Panchayat Kotra, is null and void, much less cannot be recovered. There has to be an adequate enquiry conducted by the BDPO after affording opportunity of hearing to the petitioner. There is violation of the principles of natural justice, much less the order under challenge, in my view, suffers from gross illegality, perversity and arbitrary in manner. The authorities below should be careful in future in initiating the action but not in the manner and mode as indicated above.

I intended to impose costs upon the BDPO for not taking action on the receipt of the report. However, I deem it appropriate to dispose of the present writ petition with a warning to the Gram Secretary and BDPO to be careful and wary in future.

Resultantly, the impugned order is hereby quashed. Accordingly, the writ petition stands allowed.

Liberty is granted to the respondents to take action, if need be, in accordance with law as indicated above.

(AMIT RAWAL)
JUDGE

March 08, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No