

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

CWP-575-2010(O&M)
Date of decision : 23.04.2018

Mitter Sen

...Petitioner(s)

Versus

Secretary to Government of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jatinder Singla and Mr. Tarun Singla, Advocates,
for the petitioner.

Ms. Sudeepti Sharma, Addl.AG, Punjab.

Mr. G.S.Harika, Advocate,
for respondent Nos.2 and 3.

JITENDRA CHAUHAN, J.

By way of the present writ petition filed under Article 226/227 of the Constitution of India, the petitioner has sought issuance of a writ in the nature of certiorari for quashing order dated 24.09.2008 (Annexure P-7) passed by respondent No.2, whereby, a recovery of Rs.45,627/- has been ordered against the petitioner.

It is the case of the petitioner that on 13.02.2003, the officials of the Electricity Board checked the electricity load of Sabzi Mandi, Mansa and found the load at 24.193 KW against the sanctioned limit of 8.750 KW. Ultimately, the Market Committee was directed to deposit an amount of Rs.82,365/-. However, on the request made by the Committee and upon

deposit of one third of the amount of fine, the matter was referred to the Dispute Settlement Committee. The matter was fixed for 18.08.2004 and Surinder Pal Singh, Accountant, was directed to attend the proceedings but he failed to do so. The matter was adjourned to 14.09.2004 for which date Manjit Singh, Auction Recorder was directed to attend the proceedings but he also failed to attend the same. Ultimately, the matter was adjourned to 12.10.2004. The petitioner marked letter No.2537 dated 05.10.2004 issued by the Electricity Department to Manjit Singh, Auction Recorder with a direction to pursue the case on behalf of the Market Committee on the adjourned date. However, the latter again failed to do the needful. Consequently, the Dispute Settlement Committee decided the case *ex parte* against the Market Committee and directed the Committee to deposit the amount of fine with the Electricity Board.

It is further the case of the petitioner that on the date of checking the load of electricity i.e.13.02.2003, the petitioner was not holding any post in the Market Committee, Mansa. He remained posted as Secretary from 01.06.2004 to 21.06.2005 and during the said period, the petitioner had been on sanctioned medical leave from 02.12.2004 to 17.12.2004 (Annexure P-1). He also remained under suspension from 14.12.2004 to 20.06.2005. It is also pertinent to mention that on 14.02.2005, the amount of Rs.82,365/- was deposited by the Market Committee with the Electricity Board. Further the Market Committee, Mansa vide resolution dated 07.02.2005 (Annexure P-2) found Surinder Pal Singh, Accountant and Manjit Singh, Auction Recorder, negligent and responsible for causing loss

to the Committee and it was resolved to recover Rs.82,365/- along with interest of Rs.7,462/- from the said officials.

The grouse of the petitioner is that vide order dated 24.09.2008 (Annexure P-7), a recovery of Rs.45,627/- has been ordered to be effected from the petitioner.

It is contended that neither at the time of checking of the load, nor at the time of depositing the amount, the petitioner was posted in Market Committee Mansa. It is further submitted that in discharge of his official duties, the petitioner had directed Surinderpal Singh, Account and Manjit Singh, Auction Recorder to pursue the case on behalf of the Committee, but they failed to do so. Even otherwise, vide order dated 20.08.2007 (Annexure P-3), the said officials have already been held guilty, therefore, the action of the Board in holding the petitioner responsible for the lapse is illegal.

On the other hand, learned counsel for the respondents contend that the petitioner being Secretary of the Market Committee, was duty bound to attend the proceedings under the 'Dispute Settlement Committee' in person. Even if he had delegated his authority, it was his duty to ensure that the Committee is properly represented before the Dispute Settlement Committee. The petitioner also did not ensure filing of appeal against the ex parte decision of the Dispute Settlement Committee.

Heard.

Some facts are not in dispute. The petitioner remained posted as Secretary, Market Committee, Mansa, from 01.06.2004 to 21.06.2005. It

is also not disputed that during his tenure, he had deputed Surinder Pal Singh, Accountant and Manjit Singh, Auction Recorder, to attend the proceedings before the Dispute Settlement Committee. On 14.02.2005, the amount of Rs.82,365/- was deposited by the Market Committee with the Electricity Board. Thus, in the event of failure of Surinder Pal Singh and Manjit Singh in discharging their duties duly assigned to them, the petitioner, being Secretary of the Market Committee cannot be held liable for their inaction.

Even otherwise, Market Committee, Mansa vide resolution dated 07.02.2005 (Annexure P-2) held Surinder Pal Singh, Accountant and Manjit Singh, Auction Recorder, negligent and responsible for causing loss to the Committee and it was resolved to recover Rs.82,365/- along with interest of Rs.7,462/- from the said officials. The said resolution was affirmed by order dated 11.09.2007 (Annexure P-4), passed by District Marketing Officer, Mansa. Instead of taking action against the two officials named above, show cause notice was issued against the petitioner and ultimately, vide impugned order dated 24.09.2008, a recovery of Rs.45,627/- has been ordered to be effected from the petitioner, whereas, the officials who were solely held responsible for the lapse, have only been issued warning.

Admittedly, the petitioner was not at the helm of affairs on the date of payment of the fine imposed, thus, there was no occasion for him to ensure filing of appeal before the higher authority.

In this view of the matter, this Court is of the considered

opinion that order dated 24.09.2008 (Annexure P-7) is illegal and perverse and the same is therefore, set aside. Respondent No.3 is directed to take appropriate action as per law against the then Secretary i.e. on the date of checking, Market Committee, Mansa.

Petition is allowed.

23.04.2018
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(JITENDRA CHAUHAN)
JUDGE

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