

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

CWP No. 1073 of 2018 (O&M)

Date of Decision: 14.05.2018

Yogesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S. Hooda, Advocate
for the petitioner.

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

Mr. M.R. Sharma, Advocate
for respondent No.4.

AVNEESH JHINGAN, J.(oral)

The present petition has been filed by Yogesh Kumar son of Gopal Krishan, Sarpanch, Gram Panchayat Nariyala Tehsil Ballabgarh, District Faridabad, for quashing the order dated 08.11.2017, Annexure P1 , passed by Principal Secretary, Government of Haryana, Development and Panchayat Department, Chandigarh.

Respondent No.1 is State of Haryana; respondent No.2 is Deputy Commissioner Faridabad; respondent No.3 is SDM Ballabgarh, District Faridabad and respondent No.4- Ram Kumar is a private party complainant in the present case.

The bare facts necessary for adjudication of the present petition are that respondent No.4 filed a complaint against the petitioner on 12.04.2017 alleging that he being the Sarpanch has misused his post and gave agricultural land of Gram Panchayat on lease by his own Will to a

Contractor for mining of sand, for Rs.20,00,000/- and has caused loss to the Gram Panchayat. The said complaint was inquired into by SDM (Civil) Ballabgarh and the report was given in favour of the petitioner. Respondent No.2 passed an order dated 22.09.2017 in which, by relying upon the inquiry report, the complaint was filed. It would be pertinent to mention here that the Deputy Commissioner passed non-speaking order Annexure P-2 without affording opportunity of hearing to the parties.

Aggrieved of the said order, respondent No. 4 filed appeal under Section 51(5) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act'). The Principal Secretary, Government of Haryana, vide order dated 08.11.2017 allowed the appeal and set aside the order passed by the Deputy Commissioner and remanded the matter back to pass a speaking order after giving opportunity to both the parties.

Learned counsel for the petitioner at the time of issuance of notice of motion relied upon the decision of this Court in **Bhagwan Singh and others Versus State of Haryana and others**, AIR 2003 P&H 23, to contend that respondent No.4 could not have filed appeal under Section 51 (5) of the Act as he was a complainant and not an aggrieved party.

At this stage, it may be mentioned that the decision of **Bhagwan Singh's case (supra)** was overruled by the Full Bench decision of this Court in case of **Darshan Singh Versus State of Haryana**, 2006 (1) RCR (Civil) 170.

The Full Bench held that the term "*aggrieved person*" in Section 51(5) of the Act is not to be given narrow interpretation. The Full Bench relied upon the earlier Full bench decision in case of **Ram Phal Vs. Financial Commissioner and Secretary to Government Haryana**

Development and Panchayats Department, 1996 (1) RRR 209 and it was held as under:

9. After taking into account the submissions made at the Bar, the Full Bench had laid down the following ratio:-

"The complainant at whose instance action is taken against a Sarpanch or Panch is entitled to file an appeal before the appellate authority and sub-section (5) of Section 102 of the act is wide enough to include the appeals both by the Sarpanch and the complainant against the order passed under Section 102 of the Act. The aggrieved party would mean not only the Panch and the Sarpanch against whom action is taken but also the complainant."

9.1 On a bare comparison of the sub-section (5) of Section 102 of the Punjab Gram Panchayat Act, 1953 as in Haryana which was interpreted by the Full Bench and the sub-section (5) of Section 51 of the Act (Haryana Panchayati Raj Act, 1994) it is clear that these provisions are in pari-materia. Therefore, the conclusion is inescapable that the ratio laid down while interpreting the Punjab Act will be good as it has been made applicable to the State of Haryana and was binding on the Division Bench in Bhagwan Singh's case (supra)."

As per the said decision, even the complainant can file appeal under Section 51 of the Act.

At this stage, learned counsel for the petitioner argued that the Principal Secretary, Governemnt of Haryana, passed the order in appeal without giving opportunity of hearing to the petitioner. Though no such pleading is there in the writ petition, still this issue need not be decided at this stage. The Appellant Authority has only remanded the matter back to the Deputy Commissioner, Faridabad, and set aside the order dated 22.09.2017, for passing a speaking order afresh after giving opportunity of hearing to both the parties.

In such circumstance, no prejudice is caused to the petitioner by

Even if his allegation is correct that appellate order has been passed without hearing the petitioner, the same stands addressed because he would also get an opportunity before the Deputy Commissioner in remand proceedings.

The writ petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

14.05.2018
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No