

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

**CWP No.2189 of 2018 (O&M)
Decided on : 27.09.2018**

Rajeev Kumar

....Petitioner

Versus

Financial Commissioner, Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Munfaid Khan, Advocate, for
Mr.Amit Kumar Jain, Advocate, for the petitioner.

Mr.P.K.Ganga, Advocate, for respondent No.4.

G.S. SANDHAWALIA, J. (Oral)

Petitioner seeks quashing of the order dated 14.05.2015 (Annexure P-4) whereby the Commissioner remanded the matter to the District Collector, for giving fresh opportunity of hearing on allegations to both the parties and to decide the case on merits. Challenge has also been raised to the order passed by the Financial Commissioner dated 27.03.2017 (Annexure P-5) who has failed to exercise jurisdiction vested under law on the ground that the case has not been decided finally and it is only in the interest of law that the matter has to be re-looked.

Mr.Ganga had filed power of attorney on the last date of hearing and has tried to justify the orders which are under challenge.

The alleged reason of remand by the Commissioner exists in his findings, which are as under:

“5. Appellant, however, added that respondent is still using electricity meter of Shri Mani Ram and he has purchased the same land from Shri Mani Ram.

6. After hearing both parties and perusing the record, it appears the candidates. A clear cut finding is required on these

allegations. The Lambardar cannot be selected unless he is clear of all the allegations. If the Collector found that nobody is suitable, then he is free to order fresh munadi.

7. Therefore, I remit this case to the District Collector for giving opportunity of hearing on allegations to both the parties and thereafter, deciding the case on its merit. Parties are directed to appear before District Collector on 10.07.2015. The file may be consigned to record room. Lower court's record is returned.”

Mr.Khan, counsel for the petitioner, is well justified to submit that before the Collector, a report of the Block Development Panchayat Officer had been called for and no unauthorized possession of the Panchayat land had been found and the naksha nambardari of the candidates had also been called for. The Collector, after comparing the merits of the candidates, had chosen to give the responsibility to the petitioner, keeping in mind the fact that petitioner was 25 years old and younger candidate, owning 12 kanals 15 marlas of land and had done his 10+2. He had deposited Rs.10,39,000/- in the small saving schemes and also persuaded villagers for family planning and got 10 cases of family planning. Apart from this, he had actively participated in social works and made aware the people about tree plantation and was not a defaulter. The argument, as such, that he was in unauthorized possession of the Panchayat land was also rejected on the ground that there was no evidence available to show that he was in unauthorized possession of the Panchayat land. Relevant part of the Collector's order dated 07.05.2013 (Annexure P-3) read as under:

“7. Today, candidates alongwith their counsels were heard at

length and all the documents available on file are perused and after hearing the candidates along with their counsel and after perusing all the documents available on the file, I came to the conclusion that candidate Rajiv Kumar is 10+2 pass and is a young man of 25 years of age and has helped of Rs.10,39,000/- in small saving schemes and also persuaded villagers for family planning and got 10 cases of family planning. Used to actively participate in social works and also used to aware the people about tree plantation, cleaning campaign and stoppage of female feticide and he is not in unauthorized possession over panchayat/govt. land and is not defaulter of any bank/institution. He has good relations in village and has not participated in politics. Respectable of the village have got recorded statement in his favour. He is having 12 kanals 15 marla of land which is sufficient for village taxes. This candidate fulfills all the conditions for nambardari. Thesildar Tohana and SDP (C) Tohana has also recommended the name of Rajiv s/o Jagmal for appointment as nambardar of village Parta. Whereas, counsel for candidate Nafe Singh during his arguments have said that candidate Rajiv Kumar is in unauthorized possession of panchayat Land but there is no evidence available on file in this regard to show that candidate Rajiv Kumar is in unauthorized possession of panchayat land.

So, in the facts narrated above and in agreement with the report of tehsildar Tohana and SDO (C) Tohana I appoint candidate Rajiv Kumar s/o Sh. Jagmal Singh as permanent nambardar in schedule caste category of village Parta. File be consigned to record room.”

The Commissioner, as noticed above, without even referring to any material which were on record, remanded the matter on the ground that the candidate had to get over all the allegations and also given the liberty to the Collector to order fresh munadi.

It is settled principle that the order of the Collector is not to be interfered without any justification and only on perversity, the same is to be done. The Financial Commissioner also failed to examine this aspect in the revision filed by the petitioner, only on the ground that the matter was to be looked into again. Once the order of the Commissioner also was without any valid reason and can be termed as a non-speaking order, this Court is of the opinion that the interference in the well reasoned order of the Collector was without any justification.

The principle of law is settled that interference in the appointment of Headman, which in the present case was of Village Parta, ought to have been done if there was any perversity in the order. The Appellate Authority and the Revisional Authority are not to go into the decision making aspect. Interference, thus, could have been on some material aspect which had come on the record and which the Appellate Authority would have to consider and find reasonable before passing an order of remand, since the valuable interests of the parties were involved. In the absence of any reasons, as such, in the order of the Commissioner and the Financial Commissioner, this Court is of the opinion that the same cannot be justified, in any manner.

Mr.Ganga has mainly tried to argue that it is only an issue of remand and therefore, no prejudice has been caused to the petitioner.

This Court has already recorded the reasons for setting aside the impugned orders which suffer from absence of reasons and therefore, petitioner's appointment, which was after considering the merits of both

the parties, could not have been lightly interfered with by the Commissioner, as has been done in the present case.

Counsel for the petitioner has also brought to the notice of this Court that even as per Annexure P-6, the information sought under the Right to Information Act, 2002, there was a report of the Tehsildar in favour of the petitioner that his possession could not be verified over the rooms in which one electricity meter was installed in the name of one Mani Ram. The verification had been done in the case of *Sunita Vs. Rajiv Kumar*. A certified copy of the order dated 12.05.2016, in the said case, has now been placed on record, which would show that the proceedings have also been withdrawn by Sunita against the petitioner.

In such circumstances, the present writ petition is allowed and accordingly, the orders of the Commissioner dated 14.05.2015 (Annexure P-4) and that of the Financial Commissioner dated 27.03.2017 (Annexure P-5) are quashed.

27.09.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No