IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2417-2017 (O&M)
Date of decision : 25.10.2018

Mange Ram

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

Mr. S.K. Saini, AAG, Haryana.

Mr. Sumit Sangwan, Advocate,
for respondent No.4.

JITENDRA CHAUHAN, J.

By way of the instant writ petition filed under Article 226 of the Constitution of India, for issuance of a writ in the nature of Certiorari, *inter alia,* for quashing impugned order dated 30.12.2013 (Annexure P-5), passed by respondent No.3, whereby, the petitioner has been directed to deposit an amount of ₹2,39,580/- for the financial loss caused by him to the Gram Panchayat; order dated 21.04.2015 (Annexure P-6), passed by respondent No.2, whereby, the appeal preferred by the petitioner has been dismissed; and order dated 26.10.2016 (Annexure P-7), passed by respondent No.1, vide which the revision petition filed by the petitioner also stands dismissed.

Challenge has been laid to the impugned orders (Annexures P-5 to P-7) on the ground that the petitioner ceased to be the Sarpanch in the month of June, 2010, whereas, the impugned recovery notice (Annexure P-5) was issued on 30.12.2013, clearly beyond two years from the date of relinquishing the post. It is, therefore, argued that the action of the respondents is not maintainable in view of the provisions of Section 53(5) of the Haryana Panchayati Raj Act, 1994 (for short, the 'Act'). Cites ***Gram Panchayat, Shahpur Vs. Financial Commissioner and Principal Secretary, 2009(2) R.C.R. (Civil) 599 (P&H)(DB).*** No other point has been raised.

On the other hand, learned State counsel submits that the proceedings to recover the amount were initiated within the period of limitation i.e. within two years from the cessation of the post of Sarpanch. Cites ***Gram Panchayat, Village Jatuwas Vs. Financial Commissioner and Principal Secretary to Government of Haryana and others (P&H)(DB), 2011(54) R.C.R. (Civil) 209.***

It is further submitted that the first complaint was filed against the petitioner on 27.09.2010 (Annexure R-4/1). Thereafter, the Chief Secretary, Haryana, sent a letter on 16.11.2010 (Annexure R-4/3)to the concerned Financial Commissioner for taking necessary action on the complaint. Similarly, Deputy Commissioner, Bhiwani, also wrote a letter to the concerned Block Development and Panchayat Officer, Badhra on 16.12.2010 (Annexure R-4/4) to enquire into the matter. Besides, Sub Divisional Officer (Civil) Loharu also directed the BDPO, Badhra, to conduct preliminary enquiry vide letter dated 22.12.2010 (Annexure R-4/5). Therefore, it is contended that the stand of the petitioner that the show cause notice (Annexure P-2) issued by respondent No.3 on 22.11.2013 beyond two years is against the record.

Heard.

Before delving further, it would be apposite to refer to the provisions of Section 53 of the Act, which read as under:-

> ***"Liability of Sarpanch****, or a Panch.-*
>
> *(1) Every Sarpanch, or a Panch of a Gram Panchayat shall be liable for the loss, waster or mis-application of Gram Fund or property belonging to that Gram Panchayat if such loss, waste or misapplication is a consequence of his neglect or misconduct while working as Sarpanch, Up-Sarpanch or a Panch as the case may be.*
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> *(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.*
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> *(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 stand of the respondent-State is that the complaint against the petitioner was moved by respondent No.4-Ishwar Singh, on 17.03.2011, i.e. within two years of the petitioner's relinquishing the office. However, the same remained pending consideration with the respondent-authority. In the meantime, respondent No.4 preferred CWP-9260-2011 before this Court, which was decided on 24.05.2011, thereby directing the Deputy Commissioner, Bhiwani, to decide the matter within a period of one month.

In compliance thereof, the enquiry was conducted by Deputy CEO, Zila Parishad, Bhiwani. On the basis of said enquiry report, the Deputy Commissioner Bhiwani directed the BDPO, Badhra to recover the embezzled amount from the petitioner. A complaint was moved by respondent No.4 before learned Lokayukta Haryana bearing No.177 of 2012. In compliance of order of learned Lokayukta, Haryana, an enquiry was conducted by the City Magistrate, Bhiwani, who submitted his report on 28.12.2012, indicting that the petitioner had made embezzlement to the tune of ₹2,39,580/-. On the basis of the enquiry report, learned Lokayukta, Haryana, vide order dated 16.09.2014, directed the petitioner to deposit the embezzled amount of ₹2,39,580/- within 10 days. Simultaneously, the competent authority was also directed to get a criminal case registered against the petitioner in case of non-deposit of the amount in question. However, the petitioner failed to comply with the orders passed and a criminal case bearing FIR No.257 dated 19.08.2015 was got registered against the petitioner. It has also been brought to the notice of this Court that during the hearing of bail petition, the petitioner has tendered the amount of recovery subject to outcome of the proceedings.

Learned counsel for the petitioner has referred to Section 53(5) of the Act, which provides that *"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."*

However, from the perusal of above sequence of events, it is clearly established that the cognizance of complaint dated 27.09.2010 filed by respondent No.4 against the petitioner had been taken well within the prescribed period of two years after his ceasing to be a Sarpanch. The constitutional validity/vires of Section 53(5) of the Act was upheld by the First Division Bench of this Court, in Gram Panchayat, Village Jatuwas' case (supra), by holding thus:-

> *"Under sub-section 2 of Section 53, the concerned Authority named therein, after giving an opportunity to explain to the Sarpanch or the Panch, as the case may be, is empowered to make an assessment of the amount of the loss caused in respect of the property of the Gram Panchayat and thereafter take necessary steps for recovery. Sub-Section (3) deals with the revisional powers of the Director whereas Sub-Section (4) provides for the suo moto revisional powers of the State Government. Sub-Section (5) introduces a kind of limitation of six years after the occurrence of the incident of loss or two years from the date that a person had ceased to be a Sarpanch or Panch. The limitation that has been provided by Sub-Section (5) is with regard to the initiation of the process of determination of the question as to whether there has been any loss, waste or mis-application caused to the property of the Gram Panchayat. This is made clear by the use of the words in Sub-Section 5 to the effect that "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. Sub-Section (5), therefore, does not bar the eventual steps for recovery that may follow the determination of loss, waste or mis-application, as may be. The bar imposed is only with regard to the initiation of the process by asking upon the delinquent to explain. If Sub-Section (5) of Section 53 is construed in the above manner, there is no infirmity in the said provisions of the Act.

The challenge with regard to the validity of Sub-Section 53 (5) having been answered in the above manner, we are of the view that it will only be proper for us to refer this matter to the learned Single Judge for a decision on the merits of the revisional order dated 19.01.2010 (Annexure P-12) passed by the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department, Chandigarh."

To the contrary, the case cited by learned counsel for the petitioner is clearly distinguishable on facts of the present case. In the cited case, notice for recovery was issued much after the petitioner had ceased to be in office. Whereas, in the instant case, the complaint on the basis of which subsequent recovery has been ordered to be effected was made on 27.09.2010, a few months after the petitioner had relinquished office in the month of June, 2010, although, it has not come on record as to why finality could not be accorded to the said complaint. When the complaint was duly lodged and registered with the respondents within the period prescribed under Section 53(5) of the Act, the subsequent issuance of notice of recovery cannot be said to be bad in law. Public money cannot be permitted to be misappropriated by taking aid of the technicalities of law. Law cannot permit a person to grab the hard-earned money of tax payers. The Court feels that where technicalities of law and merit of the case are pitted against each other, in such eventuality, substantial justice and merit alone must prevail.

In view of the above discussion, this Court does not find any irregularity or illegality in the impugned orders (Annexures P-5 to P-7) and therefore, the same are upheld. As a consequence, the instant petition is, hereby, dismissed.

However, respondent No.1 is directed to look into the matter and take appropriate action against the then officer(s)/official(s) who did not take appropriate prompt action on the complaint dated 27.09.2010 (Annexure R-4/1) and the private respondent had to approach this Court for redressal of his grievance vide CWP-9260-2011.

25.10.2018 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No