

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

**L.P.A.No.253 of 2015 (O&M) in
C.W.P.No.887 of 2014
Date of Decision: July 09, 2018**

Babita

...Appellant

Versus

State of Haryana & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL
HON'BLE MR.JUSTICE AMIT RAWAL**

**Present: Mr. Ram Avtar Sheoran, Advocate,
for the appellant.**

**Mr. Ankur Mittal, Addl.A.G.Haryana,
for respondent Nos.1 to 3.**

**Mr. Vikram Singh, Advocate,
for respondent No.4.**

AMIT RAWAL, J.

CM No.488-LPA of 2015

For the reasons mentioned in the application, which is supported by an affidavit, delay of 42 days in filing the appeal is condoned.

CM stands disposed of.

LPA No.253 of 2015

Appellant impugns the order dated 1.12.2014 passed by the learned Single Judge of this Court, whereby Civil Writ Petition No.887 of 2014 preferred by respondent No.4 against the order dated 9.1.2014 (Annexure P-3) rendered by the Financial Commissioner setting-aside his

appointment as Lambardar, has been allowed.

The post of Lambardar fell vacant in Village Teent, District Rewari on the demise of Raghubir Singh Lambardar. Steps were taken to fill up the said post. After completing the formalities, Assistant Collector 2nd Grade recommended name of the appellant Babita wife of Rattan Singh and forwarded her case to the Assistant Collector 1st Grade, who submitted recommendation in favour of Ramesh Kumar-respondent No.4 to the Collector. Vide order dated 29.7.2010, Collector-respondent No.3 appointed respondent No.4 as Lambardar against the post finding him meritorious. The aforementioned order was assailed by the appellant by filing an appeal before the Commissioner, Gurgaon Division. Vide order dated 14.7.2011, the Commissioner dismissed the appeal. Revision petition, i.e., ROR No.19 of 2011-2012 was preferred before the Financial Commissioner by invoking the provisions of Section 16 of the Punjab Land Revenue Act, 1887. The Financial Commissioner, on the basis of the material on record, found that respondent No.4 was defaulter of electricity bill of ₹ 25,734/- and, this being one of the disqualifications, he could not have been appointed as Lambardar, hence, set-aside the orders of the Collector and the Commissioner. As noticed above, the aforementioned order was assailed by respondent No.4 being writ petitioner. The writ petition, as indicated above, has been allowed and, hence, the present Letters Patent Appeal.

Mr. Ram Avtar Sheoran, learned counsel representing the appellant, in support of the grounds of appeal, raised the following submissions:-

- a) Husband of the appellant had served in BSF, whereas her co-brother (Jeth) is also serving in BSF and she is the

daughter-in-law of deceased Lambardar;

b) Appellant is having the property, whereas respondent No.4 was not having any property;

c) On the date when the applications were invited, respondent No.4 was defaulter of electricity bill to the tune of ₹25,734/- and on 27.4.2010, a day before recommendation of the Assistant Collector 1st Grade, submitted an application to the electricity department/SDO regarding the inflated bill. A sum of ₹ 15,000/- was deposited on 7.5.2010 and the balance amount of ₹ 6903/- on 29.12.2010, therefore, on the date of the consideration of the application or recommendation, he was defaulter. In support of the aforementioned contention, provisions of Rule 15 of the Punjab Land Revenue Rules as applicable to the State of Haryana (for short 'the Rules'), have been referred to;

d) The judgment rendered by the Division Bench of this Court in **Harbans Singh Versus The Financial Commissioner, Appeals-I, Punjab & Ors., 2007 (5) RCR (Civil) 838**, relied upon by the learned Single Bench, cannot be treated to be a judgment in rem as it was a judgment based upon the merits and de-merits of the candidates, for, in an appeal preferred before the Commissioner against the order of the Collector, the matter was remitted to the Collector for taking the decision afresh. Revision was filed but the same was dismissed without setting-aside the Commissioner's order. It is in those circumstances, the Division Bench held that the

recommendation of the Collector cannot be substituted by an opinion of the Financial Commissioner by evaluating the merits of the candidates and, thus, urged for setting-aside the impugned order.

Per contra, Mr. Vikram Singh, learned counsel representing respondent No.4 submitted that seven candidates had submitted their applications for the post of Lambardar. One candidate, namely, Shishpal had withdrawn his application. Ex-parte proceedings were initiated against four candidates. Only two candidates, i.e., appellant and respondent No.4 were left for consideration. The Collector, after evaluating the merits of the candidates and considering the recommendations of the revenue officers rightly appointed respondent No.4 Ramesh Kumar as Lambardar on 29.7.2010. Respondent No.4 is 12th pass and 43 years old. He motivated four persons for family planning and was not a defaulter of electricity bills as he had been paying electricity bills regularly. The electricity department had issued inflated bill without any basis and rationality. The claim of the appellant was rightly considered by the revenue officers by ignoring the recommendation of the Assistant Collector 1st Grade. It is settled law that the choice of the Collector cannot be substituted by the Commissioner or the Financial Commissioner on the premise that other candidate was a better candidate. In support of the aforementioned submission, he referred to the judgment rendered by the Division Bench of this Court in **Sarwan Kumar Versus The Financial Commissioner Appeals-I, Punjab, 2002 (2) R.C.R. (Civil) 520** and urged this Court for dismissal of the appeal by upholding the order under challenge.

We have heard the learned counsel for the parties, appraised the

paper book and are of the view that there is force and merit in the submissions of Mr. Ram Avtar Sheoran, learned counsel for the appellant and the reason is not the one but many.

It would be apt to reproduce Rule 15 of the Rules. The same reads thus:-

“15. Matters to be considered in first appointments.-- In all first appointment of headman, regard shall be had among other matters to -

- (a) his experience as substitute/Sarbarah Lambardar;
- (b) extent of property in the estate possessed by the candidate;
- (c) service rendered to the state by himself or by his family;
- (d) his personal influence, character, ability and freedom from indebtedness;
- (e) the strength and importance of the community from which selection of a headman is to be made;
- (f) service rendered by himself or by his family in the national movements to secure freedom of India.

In case of an ex-headman of an estate or sub-division thereof in the territory now comprising the State of Haryana who had resigned or was dismissed on account of his participation in a national movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of rule 16 and the ex-headman would be appointed in his place, if he has not rendered himself unfit for appointment for any of the reasons given in rule 16 except imprisonment for a political offence before 15th August, 1947. In case, the ex-headman is no longer alive, a person of his family who would under the rules have been entitled to be headman if the resignation or dismissal had not

intervened, would be appointed as headman. But when no such person exist there would be no need to remove the existing lambardar.

(g) services rendered by himself to the community and development programmes;

(h) he shall be not less than 21 years of age at the time of inviting the application for the appointment of Lambardar;

(i) he should be literate, preferably middle pass.”

Rule 15 of the Rules, prescribes the matters to be considered for the appointment as Lambardar. Sub-rule (d) of Rule 15 provides that the candidate must be free from all indebtedness. Admittedly, respondent No.4 was a consumer of Dakshin Haryana Bijli Vitran Nigam and a bill (Annexure R-4 collectively) had been issued raising a demand of ₹ 24,993/- and against the aforementioned demand, respondent No.4 deposited a sum of ₹ 15,000/- on 7.5.2010 and that too on the application submitted by him to the Sub Divisional Officer dated 27.4.2010 a day before when the Assistant Collector 1st Grade, vide order dated 28.4.2010, submitted recommendation in his favour, to the Collector.

Bill bearing No.2934 issued on 12.12.2010 revealed that the outstanding dues against respondent No.4 was ₹ 17,225/-, and after adjustment of the amount, respondent No.4 was liable to pay ₹ 6903/-. The aforementioned demand of ₹ 17,225/- was account of the arrears and as well as actual consumption.

Concededly, respondent No.4 deposited a sum of ₹ 6903/- on 29.12.2010, thus, on the date of recommendation by the Assistant Collector, and appointment by the Collector vide order dated 29.7.2010, respondent No.4 was in arrears/defaulters of the Dakshin Haryana Bijli Vitran Nigam.

This aspect had not been considered either by the Collector or the Commissioner, thus, in our view, the Financial Commissioner as per the provisions of the Rule, *ibid*, earnestly set-aside the orders of the Collector and the Commissioner.

We cannot remain oblivious of the fact that this Court, while issuing notice of motion on 13.2.2015, passed the following order:-

“We have gone through the order dated 29.07.2010 passed by the Collector. Prima-facie, the order appears to be perverse, hence interference by the Financial Commissioner was apparently justified.

Notice of motion for 05.05.2015.

Notice re: condonation of delay.

Meanwhile, the impugned judgment passed by the learned Single Judge shall remain stayed. Resultantly, the order of the Financial Commissioner shall be given effect forthwith.”

The order of the Financial Commissioner had been ordered to be given effect forthwith. For all intents and purposes, the appellant had been performing the role of the Lambardar. There is no dispute to the ratio decidendi culled out in the judgments cited supra.

In **Harbans Singh's case (supra)**, the genesis of the judgment has been on the premise that the Financial Commissioner without setting-aside the orders of the Collector and the Commissioner, appointed adverse party as Lambardar. It is on that ground, the Court had an occasion to deal with the powers of the Financial Commissioner. For the sake of brevity, Para 10 of the judgment reads as under:-

“The learned Financial Commissioner, appears to have erroneously arrogated to himself with jurisdiction of a Collector by proceeding to examine in great detail the merits of each candidate. While proceeding, thus, the Financial Commissioner,

referred to the educational qualifications, opined as to the background of the parties, examined the claim put forth by respondent no.4 as to his status as a Sarbrah Lambardar from 1979 to 1992, referred to the extent of land owned by the petitioner and the respondent no.4 and then proceeded to select respondent no.4. The Financial Commissioner, the final authority under the Act though cognizant of his jurisdiction, should have dwelled upon the limitations, attendant thereto. Not only did the Financial Commissioner, ignore the non filing of any revision by respondent no.4, he also proceeded to set aside the order of the Commissioner and select respondent no.4, on the plea that finality to such proceedings was necessary. It is true that finality to litigation is a laudable object but finality by assuming or appropriating jurisdiction, is an arbitrary and perverse application of the aforementioned principle. In the facts and circumstances of the present case, we are satisfied that the Financial Commissioner had no jurisdiction to select respondent no.4 for the post of Lambardar. In our considered opinion, the order passed by the Commissioner was just and valid and should, therefore, have been upheld by the Financial Commissioner.”

Thus, the aforementioned judgment would not be applicable to the facts and circumstances of the present case.

In **Sarwan Kumar's case (supra)**, the Division Bench, while referring to the provisions of Rule 17 of the Rules which pertains to the matters to be considered for appointment of successors, expressed the scope of interference by bringing the case within the four corners of expression “judicial review” and decided whether such order would be suffering from any jurisdictional infirmity or patent illegality. The aforementioned judgment was also based upon the facts and circumstances of that case and, therefore, would not be applicable in this case.

The argument of Mr. Vikram Singh is not able to cut ice and is hereby rejected. The learned Single Judge has not noticed the aforementioned fact while setting-aside the order of the Financial Commissioner and, therefore, order, in our view, suffers from illegality and perversity. The same is hereby set-aside. The order of the Financial Commissioner is ordered to be restored.

Letters Patent Appeal is resultantly allowed.

**(RAJESH BINDAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 09, 2018
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No