

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

CWP-29243-2019

Date of decision: 5.11.2019

Ranvir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Ravi Malik, Advocate for
Mr.Ashish Grewal, Advocate for the petitioner

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for setting aside order dated 30.5.2019 (Annexure P-4) passed by respondent No.2-Deputy Commissioner, Palwal vide which, respondent No.3 has been reinstated on the post of Sarpanch.

Learned counsel for the petitioner states that despite pending the regular enquiry against respondent No.3, he has been reinstated on the post of Sarpanch. None of the encroachments over the panchayat land and outskirts (*phirni*) of the village has been removed by the petitioner or the other persons of the village.

Heard.

Hon'ble Supreme Court in **Haryana Financial Corporation &**

Anr. vs M/S Jagdamba Oil Mills & Anr 2002(3) SCC 496 held as under:-

“The obligation to act fairly on the part of the

administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak V. Union of India [1969 (2) SCC 262]. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". [As per Lord Diplock in Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside (1977 AC 1014)]. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1947 (2) ALL ER 680]:

"It is true the discretion must be exercised

reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

While this is not the occasion to examine the content and contours of the doctrine of fairness, it is enough to reiterate for the purpose of this case that the power of the Courts while reviewing the administrative action is not that of an appellate court."

In the case in hand, the allegations against respondent No.3 are that he has encroached upon the panchayat land while holding the office of Sarpanch of the village. Further, during his tenure, certain other persons also illegally encroached upon the gram panchayat land and also the *phirni*, however, he failed to take appropriate action against them. In this regard he is facing regular enquiry. Now respondent No.3 vide application dated 14.5.2019 has submitted before the respondent No.2- Deputy Commissioner, that the encroachments in question stand removed and he

may be reinstated to the post of Sarpanch. Respondent No.2 after considering all the material facts and examining the report produced on the file, has ordered reinstatement of respondent no.3. No *mala fide* has been alleged by the petitioner against respondent no.3 or Deputy Commissioner, respondent No.2. The decision arrived at by respondent no.2 does not suffer from any defect or perversity warranting any interference by this Court.

Dismissed.

5.11.2019

gsV

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No