

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

CWP No.6626 of 2019

Date of decision:20.02.2020

Manish

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Sandeep Moudgil, Advocate
for respondents No.2 and 3.

SUVIR SEHGAL, J.

The petitioner has approached this Court for issuance of a writ of certiorari for setting aside letter dated 01.03.2019 (Annexure P-10) and for further issuance of a writ of mandamus directing the respondents to allow the petitioner to continue on the post of Sarpanch till the next elections of Municipal Committee are held or during the remaining tenure of earlier Gram Panchayat, whichever is earlier, and further to take action on his application dated 27.02.2019 (Annexure P-9) within a specified time.

The petitioner was elected Sarpanch of Gram Panchayat, Kundli. Vide notification dated 02.07.2018 (Annexure P-1), Government of Haryana in exercise of powers under Sections 4(1) and (2) of the Haryana Municipal Act, 1973 (hereinafter referred to as “the Act”) proposed to

include the village Kundli by forming Municipal Committee, Kundli in District Sonapat. This was followed by another notification dated 16.10.2018 (Annexure P-2) deciding to form Municipal Committee, Kundli by including the area of village Kundli. The petitioner had undertaken many development works and submitted applications dated 08.12.2018 and 18.12.2018, Annexures P-3 and P-4, respectively to respondents No.2 and 3 i.e. Deputy Commissioner and Administrator-cum-SDM Sonapat permitting him to make payments for the same. He filed CWP No.38139 of 2018 which was disposed of by this Court on 21.12.2018 (Annexure P-5) with a direction to respondent no.2 to consider and decide his representation dated 08.12.2018 (Annexure P-3). Vide order dated 06.02.2019 (Annexure P-6), respondent no.2 informed the petitioner that after formation of the Municipal Committee, old liabilities are to be liquidated by the Administrator and demand of the petitioner was un-sustainable. This order was challenged by the petitioner in CWP No.3973 of 2019 and this Court on 27.02.2019 (Annexure P-7) stayed the operation and effect of the order dated 06.02.2019 (Annexure P-6). Relying upon a clarification issued by Director Urban Local Bodies, Haryana to the Deputy Commissioner, Hisar vide letter dated 20.02.2019 (Annexure P-8), petitioner submitted representation dated 27.02.2019 (Annexure P-9) to respondent no.2 requesting for handing over of the charge of Sarpanch so that he can make payment for the development works executed by him but despite the stay order, respondent no.3 asked the officials of Gram Panchayat to hand over the record of Panchayat by impugned letter dated 01.03.2019

(Annexure P-10)

Upon notice, respondents No.2 and 3 filed reply wherein it was submitted that the petitioner has not approached this Court with clean hands and had suppressed material facts in his writ petition. It was further submitted that vide notification dated 19.12.2018 (Annexure R-2/1), the Government made a provision in the Haryana Municipal Citizen's Participation Act, 2008 (hereinafter referred to as "Act of 2008") to the effect that whenever any Gram Panchayat is merged with the Municipal Committee then the merger will be in such a manner that the office bearers of the Panchayat will be part of the Municipal Committee as Members of the geographical area and will work as such till the next election of the Municipal Committee or till the term of that Gram Panchayat ends, whichever is earlier. In addition, it was submitted that the petitioner had failed to challenge and disclose the letter dated 30.01.2019 (Annexure R-2/2) vide which it was instructed that since the Gram Panchayat, Kundli had been merged in the Municipal Committee, Kundli, all records have to be submitted to the office of Deputy Commissioner, Sonapat so that pending payments could be made. The respondents further submitted that repeated writ petitions have been filed by the petitioner on the same cause including CWP No.3973 of 2019 wherein the order dated 06.02.2019 (Annexure P-6) was passed by this Court. Replication has been filed by the petitioner reiterating the stand taken in the writ petition.

Counsel for the petitioner has submitted that in view of the clarification issued by the Director, Urban Local Bodies Haryana on

19.12.2018 (Annexure P-8), he is entitled to continue as a Sarpanch of the Gram Panchayat, Kundli, to operate the bank accounts and to make the payments for the works executed during his tenure as Sarpanch. He has laid much stress on the interim order dated 27.02.2019 (Annexure P-7) passed by this Court in CWP No.3973 of 2019 whereby the operation and effect of the order dated 06.12.2019 (Annexure P-6) was stayed. Counsel for the respondents, in their response, have drawn the attention of this Court to the notification Annexures P-1, P-2 as well as R-2/1 to submit that the petitioner became a Member of the Municipal Committee in terms of the amendment carried out in the Act of 2008.

I have considered the rival contentions of the counsel for the parties.

The Act of 2008 was notified by the Government of Haryana on 10.10.2008 to give shape to the Constitution (Seventy-Fourth) Amendment Act, 1992 to ensure enhanced participation of citizens in the local development through Area Sabha, Ward Committee etc. Section 2(j) defines the “Ward Committee” as a Committee constituted under Section 11. Further sub-section (1) of Section 11 of the Act, provides that Ward Committee for each Ward in a municipality is to be constituted within six months of the constitution of municipality and sub-section (2) provides as to who will constitute the Ward Committee.

By virtue of a notification issued on 02.07.2018 (Annexure P-1), under sub-section (1) of Section 3 of the Act, the Government of Haryana proposed to declare the entire revenue estate of Kundli as

Municipality Kundli in District Sonapat. This was followed by a notification dated 16.10.2018 (Annexure P-2) whereby the Government declared the said local area as Municipality Committee, Kundli. As a result of these two notifications, the Gram Panchayat in the area became a part of the Municipal Committee, Kundli.

By a subsequent notification issued on 19.12.2018 (Annexure R-2/1), Section 11-A was incorporated in the Act of 2018 which reads as under:-

“Provided further that when any local area/gram panchayat is merged into a municipality, the incumbents of the offices of Panches and Sarpanch at the time of merger shall act as the ward committee for the geographical area so merged till such time as the next elections to that municipality are held or till the term of the erstwhile gram panchayat would have lasted, whichever is earlier.”

The effect of this amendment is that whenever any local area/Gram Panchayat is merged with the Municipal Committee, the said merger will be in such a manner that the office bearers of the Panchayat i.e. Panches and Sarpanches will become part of the Municipal Committee representing their respective territorial/geographical area and they will work as such till the next elections to the Municipal Committee are held or till the term of the Gram Panchayat expires, whichever is earlier. Result of the incorporation of Section 11-A is that the petitioner who was the Saprach of Gram Panchayat, Kundli became a Member of Municipal Committee representing the Ward Committee to take care of the area falling within his

Gram Panchayat.

Vide letter dated 30.01.2019 (Annexure R-2/2), respondent no.2 informed the petitioner that after issuance of the notification dated 16.10.2018 (Annexure P-2), the area of Gram Panchayat, Kundli, has been declared as Municipal Council, Kundli and all the powers of the Gram Panchayat were transferred to the Municipal Council. He was further informed that all the bank accounts transactions of the Gram Panchayat, Kundli have been banned and the Administrator, Municipal Council, Kundli and other authorities have been directed to evaluate all the development works of Panchayat in which payment is due and forward the report. The Block Development and Panchayat Officer, vide his letters dated 30.10.2018 and 16.01.2019 asked the petitioner to deposit the entire record of the Gram Panchayat, Kundli. Another letter dated 21.01.2019 was also written to the petitioner calling for the technical particulars, measurements, bills and other documents for the development works so that payment could be made according to the rules but the petitioner did not deposit the same in the office. Letter dated 30.01.2019 was sent as a reminder to submit the same in the office of respondent No.2 by 01.02.2019. This letter had been suppressed by the petitioner in the writ petition. It is clear that when the petitioner did not respond to this letter, respondent no.3, by virtue of impugned letter dated 01.03.2019 (Annexure P-10) asked the petitioner and other officials of the Gram Panchayat to hand over the entire record of the Gram Panchayat. As such, the issuance of impugned letter by respondent no.3 is fully justified.

It deserves to be noticed that the petitioner had filed CWP No.3973 of 2019 before this Court. The prayer made in the writ petition *inter alia* was to the effect:-

“Issue a writ in the nature of certiorari for setting aside the letter dated 06.02.2019 (Annexure P-6) being wrong and illegal and further issue a writ of mandamus directing the respondents to allow the petitioner to make the payments for the development work got done by the petitioner being Sarpanch of the village and further to take action on the applications dated 08.12.2018 and 18.12.2018 (Annexures P-3 and P-4) within some specified time.”

After hearing this Court, by order dated 27.02.2017, (Annexure P-7) had stayed the operation and effect of the order dated 06.02.2019 (Annexure P-6). The interim order was directed to continue during the pendency of the writ petition. On 20.01.2020, on the statement of counsel for the petitioner, the writ petition was dismissed as infructuous and the following order was passed:-

“Mr. Gaurav Jaglan, learned counsel representing Mr. Vikram Singh, learned counsel for the petitioner, states that the writ petition has become infructuous.

Recording the said statement, the writ petition is dismissed as infructuous.

Interim order dated 27.02.2019 shall stand vacated.

No order as to costs.”

The very basis of instant writ petition is interim order dated 27.02.2017 (Annexure P-17) passed by this Court in CWP No.7937 of 2019 which came to an end with the dismissal of the writ petition. Once the interim order passed by this Court, stood specifically vacated and the writ petition was dismissed, having been rendered as infructuous on 20.01.2020, nothing survives in the present writ petition.

Accordingly, finding no merit in the present writ petition, the same is dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

February 20, 2020
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes