

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

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CWP-12214-2020

Date of Decision : 19.08.2020

Gurmail Singh

.....Petitioner

V/s

Financial Commissioner, Department of Rural Development and
Panchayat Punjab and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. J.S. Bhandohal, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 13.02.2019 (Annexure P-6) passed by respondent No.1-the Financial Commissioner, Department of Rural Development and Panchayat, Punjab and order dated 13.07.2020 (Annexure P-8) passed by respondent No.3-the Block Development and Panchayat Officer, Dera Bassi, District SAS Nagar.

Briefly stated the petition has been filed on the averments that the petitioner was elected as Sarpanch of Gram Panchayat Jastana Khurd on reserved category seat for Scheduled Caste candidate for the tenure from May, 2013 to July 2018. Due to political factionalism respondent No.4 made a false complaint against the petitioner, three Panches and Panchayat Secretary alleging irregularities in the works done by the Gram Panchayat. The petitioner was suspended from the post of Sarpanch. Enquiry was conducted by Additional Deputy

Commissioner (D), S.A.S. Nagar who submitted report dated 28.11.2018 concluding that the allegations made in the complaint were false. Respondent No.2-the Director Rural Development and Panchayat, Punjab vide order dated 08.10.2018 exonerated the petitioner on the basis of the above-said report. Civil Writ Petition No.26124 of 2018 was filed by respondent No.4 which was disposed of by the Coordinate Bench of this Court vide order dated 10.10.2018 with direction to respondent No.1 to consider and decide the legal notice dated 15.05.2018 within 6 months. In view of the above-said order, the Director Panchayat directed the Additional Deputy Commissioner (D), SAS Nagar to conduct enquiry regarding additional allegations made by respondent No.4 against the petitioner who accordingly conducted inquiry and submitted report dated 30.01.2019 holding that the allegations are not proved. Respondent No.1 passed order dated 13.02.2019 holding that the allegations made by respondent No.4 are false. Respondent No.4 filed COCP No.310 of 2019 for delay in compliance of order dated 10.10.2018. Vide order dated 27.02.2019, the Coordinate Bench of this Court directed respondent No.1 to place on record enquiry report on the basis of which speaking order was passed by respondent No.1. Instead of filing copy of enquiry report dated 30.01.2019, respondent No.1, while reversing his earlier order dated 13.02.2019, passed order dated 03.04.2019 holding the petitioner to be responsible for embezzlement of Rs.1,85,070/-. On the basis of order dated 03.04.2019, respondent No.3 has issued order dated 13.07.2020 directing the petitioner to deposit amount of Rs.1,85,070/-.

Learned Counsel for the petitioner has argued that the petitioner was exonerated by respondent No.2-the Director Rural Development and Panchayat, Punjab vide orders dated 08.10.2018 and 13.02.2019 on the basis of enquiry reports dated 28.11.2018 and 30.01.2019 of Additional Deputy Commissioner (D), S.A.S. Nagar concluding that the allegations made in the complaints of respondent No.4 were false. During hearing of COCP filed by respondent No.4, the Coordinate Bench of this Court vide order dated 27.02.2019 directed respondent No.1 to place on record enquiry report on the basis of which speaking order was passed by respondent No.1 but instead of filing copy of enquiry report dated 30.01.2019, respondent No.1 without having any power to review illegally reversed his earlier order dated 13.02.2019 and passed order dated 03.04.2019 holding the petitioner to be responsible for embezzlement of Rs.1,85,070/-. On the basis thereof the petitioner has been directed vide order dated 13.07.2020 to deposit amount of Rs.1,85,070/- in violation of Section 216 of the Punjab Panchayati Raj Act, 1994 (for short 'the 1994 Act'). Impugned orders dated 03.04.2019 and 13.07.2020 are illegal and liable to be set aside.

Notice of motion restricted to respondents No.1 to 3 only.

Pursuant to supply of advance copy of the petition, Mr. Shireesh Gupta, Sr. DAG, Punjab has appeared and accepted notice on behalf of respondents No.1 to 3.

Learned State Counsel has submitted that the petitioner has not challenged the correctness of the report on the basis of which order dated 03.04.2019 has been passed. Respondent No.3 has taken proceedings against the petitioner under Section 216 of the 1994 Act.

The petitioner has equally efficacious remedy of filing reply/appeal in respect of impugned order dated 13.07.2020 passed by respondent No.3 against him and the writ petition is not maintainable.

I have heard learned Counsel for the petitioner and learned State Counsel and perused the relevant statutory provisions and the material on record.

Order dated 03.04.2019 was passed by respondent No.1 on the basis of report submitted by Deputy Director (P) Incharge Complaint Branch, Rural Development and Panchayat, S.A.S. Nagar on the basis of physical verification conducted in the presence of the petitioner and respondent No.4. The petitioner has not attached copy of the said enquiry report with the petition and has not challenged the correctness of the same. Subsequent to passing of order dated 03.04.2019 proceedings have been initiated against the petitioner under Section 216 of the 1994 Act and impugned order dated 13.07.2020 is in fact first notice regarding taking action under Section 216 of the 1994 Act.

Section 216 of the 1994 Act, which contains the provisions regarding liability of the members of Panchayats, reads as under:-

“216. Liability of members of Panchayats.-

(1) Every member of a Panchayat shall be liable for the loss, waste or misapplication of any money or property belonging to the Panchayat, if such loss, waste or misapplication is a consequence of his neglect or misconduct while such member and shall also be liable to pay interest at the prescribed rate, from the date of loss, waste or misapplication, on the amount assessed under sub-section (2) or sub-section (3) as the case may be.

(2) The Block Development and Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise, and after giving the member concerned an opportunity to explain, assess, by order, in writing the

amount due from him on account of such loss, waste or misapplication :

Provided that -

- (a) where such member happens to be the Chairman or a member of the Panchayat Samiti, the proceedings under this sub-section shall be taken by the District Development and Panchayat Officer ;
 - (b) where such member happens to be the Chairman, Vice-Chairman or a member of the Zila Parishad, the proceedings under this sub-section shall be taken by the Deputy Director.
- (3) Any person aggrieved by an order made under sub-section (2) may within a period of thirty days from the date of such order, appeal to :-
- (a) the District Development and Panchayat Officer, if the order has been made by the Block Development and Panchayat Officer ;
 - (b) the Deputy Director, if the order has been made by the District Development and Panchayat Officer ; and
 - (c) the Director, if the order has been made by the Deputy Director ;

and on appeal being filed, the appellate authority may suspend the execution of the order upon such terms as to costs, payments of the amount involved or otherwise as he thinks fit and subject to the result of appeal, if any, the order of Block Development and Panchayat Officer, District Development and Panchayat Officer and the Deputy Director, as the case may be, shall be final.

(4) 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 four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a member, whichever is later.

(5) The State Government may call and examine the record of any order made under this section for the purpose of satisfying itself as to the legality and propriety of such order and may confirm, modify or rescind such order :

Provided that no order prejudicial to any person shall be made by the State Government, unless that person has been afforded a reasonable opportunity of showing cause against the proposed order.

(6) The amount assessed as due from a member may, in the event of his death, be recovered from his legal heirs to the extent of property inherited by them from such member.”

Section 216 (1) of the 1994 Act makes every member of a Panchayat liable for the loss, waste or misapplication of any money or property belonging to the Panchayat, if such loss, waste or misapplication is a consequence of his neglect or misconduct as such member and the liability also extends to payment of interest at the prescribed rate, from the date of loss, waste or misapplication, on the amount assessed under sub-section (2) or sub-section (3) as the case may be. Section 216 (2) of the 1994 Act empowers the concerned Block Development and Panchayat Officer to assess the amount due from the concerned member of the Gram Panchayat on account of such loss, waste or misapplication by passing order in writing on the application of the Gram Panchayat or otherwise after giving him an opportunity to explain. Section 216 (3) of the 1994 Act confers on the person aggrieved by an order made under 216 (2) of the 1994 Act by the Block Development and Panchayat Officer a right to file an appeal before the District Development and Panchayat Officer within a period of thirty days from the date of such order.

In view of Section 216 (2) the petitioner is entitled to an opportunity to submit his reply/explanation in response to notice dated 13.07.2020 before respondent No.3-the Block Development and Panchayat Officer, Dera Bassi, District SAS Nagar who shall be duty bound to pass a reasoned order in writing. In case the petitioner feels aggrieved by the order so passed by respondent No.3-the Block Development and Panchayat Officer, Dera Bassi, District SAS Nagar, the petitioner will be entitled to file appeal against the same before the District Development and Panchayat Officer, S.A.S. Nagar. Since the

petitioner has equally efficacious remedy of filing appeal under Section 216 (3) of the 1994 Act before the District Development and Panchayat Officer, S.A.S. Nagar against order passed by respondent No.3-the Block Development and Panchayat Officer, Dera Bassi, District SAS Nagar, the present petition is not maintainable.

In view of the above, the petition is dismissed with no order as to costs with liberty to file reply in response to order dated 13.07.2020 and appeal against order to be passed on consideration of the reply before the District Development and Panchayat Officer, S.A.S. Nagar.

Nothing in this order shall be treated as expression of any conclusive opinion on merits of the case so as to bind or influence the District Development and Panchayat Officer, S.A.S. Nagar in decision of the appeal, if any filed, on merits in any manner.

19.08.2020

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(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No