

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

Sr. No.211

CWP No.23288-2016 (O&M)

DATE OF DECISION: February 28, 2020

BIJENDER

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sumit Sangwan, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Ajay Kumar Gupta, Advocate, for respondent No.5.

SUDHIR MITTAL, J. (ORAL)

The erstwhile Chowkidar of Village Rampura namely Ramanand retired and Assistant Collector 2nd Grade Charkhi Dadri issued a direction on 08.10.2015 for conducting *munadi* for the purpose of inviting applications for the post of Chowkidar. On receipt of applications, respondent No.5 was appointed. The petitioner has assailed his appointment on the ground that no *munadi* was conducted as directed by the Assistant Collector 2nd Grade.

2. Records of the case have been produced in Court pursuant to directions issued. A perusal of the record shows that entry regarding *munadi* has been made and the same is witnessed by two Lambardars namely Dharam Chand and Kailash Chand.

3. Learned counsel for the petitioner submits that Ramanand who was erstwhile Chowkidar was son of Harnam. Dharam Chand (one of the

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witnesses of the *munadi*) is his blood brother. Applications for the post were submitted by respondent No.5 (grand son of Ramanand) and Sunil son of Dharam Chand. Kailash Chand is the business partner of Dharam Chand and an averment in this regard has specifically been made in para 8 of the writ petition. *Munadi* was in fact not conducted as is evident from the certificate of the Sarpanch of the village, a copy of which has been annexed as Annexure P-4. The report is contrived. Since no *munadi* was conducted, the residents of the village have been denied the opportunity of applying for the post. Thus, the appointment of respondent No.5 deserves to be set aside.

4. Learned counsel for respondent No.5 submits that whether Kailash Chand was a business partner of Dharam Chand or not is a disputed question of fact and the same cannot be determined in the writ petition. Moreover, neither Kailash Chand nor Dharam Chand, the persons against whom allegations of collusion have been levelled, have been made a party. The official record establishes that *munadi* was conducted on 08.11.2015 and thus, there is no scope for interference. The writ petition is misconceived and deserves to be dismissed.

5. I have seen the official record. An entry regarding conduct of *munadi* on 08.11.2015 has been made therein. This entry has been counter signed by Dharam Chand and Kailash Chand, Lambardars. Thus, the only question that arises is whether the said entry is collusive or not?

6. It is not disputed that Dharam Chand, Lambardar is the father of Sunil, the other candidate. Accordingly, he is the paternal uncle of respondent No.5. Regarding Kailash Chand, Lambardar being a business partner of Dharam Chand, Lambardar, a specific averment has been made in

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para 8 of the writ petition. There is no denial thereto in the written statement of respondent No.5. Consequently, the averment is deemed to have been admitted. The circumstances suggest collusion.

7. Disputed questions of fact can also be decided in a writ petition, if the pleadings on affidavit give adequate information to the Court. In the present case, adequate material is available on record to decide whether the entry of *munadi* is collusive or not. Thus, the argument of learned counsel for respondent No.5 is rejected.

8. Impleadment of Dharam Chand, Lambardar and Kailash Chand, Lambardar is not necessary as no order adverse to their interest is being passed. Respondent No.5 was appointed as Chowkidar and the order is being passed in his presence. This argument also deserves to fail.

9. For the aforementioned reasons, the writ petition is allowed. Appointment of respondent No.5 as Chowkidar is set aside. The authorities are directed to initiate the process of appointment of a new Chowkidar after conducting fresh *munadi* and in accordance with law.

February 28, 2020

Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No