

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

CWP-16048-2018

Reserved on:25.08.2023

Date of decision : 01.09.2023

Raj Bala

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. V.P. Sangwan, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

None for respondent No.4.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for issuance of writ in the nature of certiorari, quashing Enquiry Sr. No.129 dated 09.03.2018 along with subsequent proceedings.

Learned counsel for the petitioner has submitted that the petitioner was elected Sarpanch of the Village Chandwas, Tehsil Badhra, District Charkhi Dadri and completed her tenure in the year 2010. During her tenure, the MGNREGA Scheme was executed and the labourers were enrolled in the same. Muster-rolls were prepared by the Mat. On the instruction of the Additional Deputy Commissioner, payment of their wages was transferred in their account. It is submitted one co-villager namely, Ram Bhagat filed a complaint, clandestinely, after seven years of the completion of petitioner's tenure to the Hon'ble Lokayukta Haryana,

Chandigarh which was sent to the Deputy Commissioner on the basis of the frivolous allegations with a request to carry out the enquiry. The enquiry was further assigned to the Sub Divisional Officer (Civil), Badhra. The Enquiry Officer completed the enquiry vide his report dated 09.03.2018 without associating the petitioner and the report thereafter was submitted to the Deputy Commissioner. The petitioner filed application dated 11.04.2018 praying for conducting the enquiry afresh however, the same was rejected by the Deputy Commissioner on 11.04.2018. Thereafter, on the completion of this enquiry, FIR No.135 dated 18.04.2018 under Sections 409, 420, 468, 471 of IPC was registered against the petitioner. He submits that the enquiry conducted against the petitioner on the basis of complaint dated 14.07.2017, is totally in violation of Sections 53(2) and 53(5) of The Haryana Panchayati Raj Act, 1994 (for short 'the Act') as under Section 53(5) of the Act, no action can be taken against any person after expiry of 06 years from the date of occurrence of loss etc. or after two years from his/her ceasing to be a Sarpanch or Panch as the case may be, whichever is earlier but the complaint has been filed by Ram Bhagat on 14.07.2017 which is admittedly beyond the statutory period of 06 years and thus, the whole action taken in pursuance to the complaint filed is *void ab initio*. He submits that the enquiry conducted is totally biased and tainted. He submits that petitioner though was the Sarpanch however, responsibility regarding preparing the muster-roll was of Mat and thus, the petitioner had no role whatsoever in preparing the same hence, the findings in the enquiry were totally unsustainable in the eyes of law. He has relied upon the judgment titled as **Mam Chand Vs. State of Haryana, 1975 PLJ 278.** He

has submitted that the impugned action taken against the petitioner on the basis of enquiry report dated 09.03.2018 being totally against the settled proposition of the law deserves to be *set aside*.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He submits that the petitioner has concealed the material facts from this Court. He has submitted that the inquiry report dated 09.03.2018 was prepared after examining every aspect of the matter and the allegations were found to be proved during the enquiry. He submits that the complaint was filed before the Lokayukta Haryana to hold the petitioner guilty for the embezzlement of Rs.1,510/- by showing deceased Tara Chand to have worked on the days when he was no more. He has submitted that though the provisions of The Haryana Panchayati Raj Act cannot be denied but the FIR No.135 dated 18.04.2018 under Sections 409, 420, 468, 471 of IPC has also been registered against the petitioner and the challan in the same has been filed, charges are framed and now the case is under trial. He has submitted that during enquiry, it was found that the muster-rolls in the MGNREGA Scheme were prepared and the presence of labourer namely, Tara Chand son of Shree Chand was recorded from 04.03.2010 to 14.03.2010 whereas Tara Chand died on 22.01.2010. He submits that there is no merit in the petition and the same be dismissed.

I have heard counsel for the parties and perused the record.

It is evident that petitioner remained Sarpanch of the Village and her tenure came to an end in the year 2010 and thereafter, the complaint was filed on 17.06.2017 i.e. after 07 years when the petitioner ceased to be the Sarpanch. For the decision of the controversy involved,

appreciation of the provisions of Section 53(5) is relevant which read as under:-

Liability of Sarpanch or Panch:-

XXXX XXXX XXXX

53(5) 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 six years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a Sarpanch or Panch as the case may be, whichever is earlier.

From the appreciation of the statutory provisions, it is evident that the Legislature has specifically barred any action to be taken against any person regarding making good any loss after the expiry of 6 years from the occurrence of the loss, waste or misapplication or after expiry of 02 years from his/her ceasing to be a Sarpanch whichever earlier. Admittedly, the tenure of the petitioner ceased in the year 2010 itself and thus, complaint filed on 17.06.2017, on the basis of which, impugned enquiry was conducted, is beyond the statutory period of 06 years. Thus, the same is totally against the statutory provisions and action taken against the petitioner is totally illegal.

The Hon'ble Division Bench of this Court in **Gurdial Singh and others Vs. State of Punjab and others, 2013(1) RCR(Civil) 139** has held that no inquiry can be initiated after the expiry of 06 years as laid down in Section 53(5) of the Act. The submissions made by counsel for the State that the FIR on these allegations is pending trial would have no bearing on the merits of this case. Thus, in the considered opinion of this Court, this Court finds the Enquiry No.129 dated 09.03.2018 to be totally

in violation of Section 53(5) of the Haryana Panchayati Raj Act, 1994 and thus, being unsustainable in the eyes of law, is hereby quashed. Petition is allowed in the abovesaid terms.

01.09.2023

(RAJESH BHARDWAJ)

m. sharma

JUDGE

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