

**227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-18350-2018****Reserved on : 21.09.2023****Pronounced on : 27.09.2023**

Sukhwinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Nakul Sharma, Advocate, for the petitioner.

Mr. Arun Willian, Assistant Advocate General, Punjab.

None for respondent No.6.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the enquiry report dated 09.02.2018 (Annexure P-3) and report dated 06.07.2018 (Annexure P-5) submitted by the SDO, Panchayati Raj, Public Works, Samrala, District Ludhiana, whereby, it has been held that an amount of Rs.18,73,175/- is liable to be recovered from the petitioner and proposed action to be taken on the basis of the said report as the conducting of enquiry is totally against the provisions of Section 216(4) of Punjab Panchayati Raj Act (for short, 'the Act').

It has been submitted by learned counsel for the petitioner that the petitioner remained Sarpanch of the village Nagra, Block Samrala, District Ludhiana from the year 2008-2013. He submits that the petitioner discharged his duties in accordance with law and during this period no enquiry etc. was instituted against the petitioner on the allegation of embezzlement or misappropriation of funds. He submits that though there was a complaint filed by one Kuldeep Singh against the petitioner on the allegations of committing irregularities/embezzlement but no enquiry was conducted regarding the same,

however, the petitioner was shocked to receive the notice dated 25.01.2018 from the SDO(PR), Samrala, wherein, he was asked for sending the complete record, mustroll, MB, and assessment for the year 2008 to 2013 i.e. the tenure during which the petitioner worked as Sarpanch of the village. He submits that notice issued is totally in violation of provisions of Section 216(4) of the Act and initiation of the enquiry in the year 2018 after five years from the date the petitioner ceased to be the Sarpanch, is equally violative of Section 216(4) of the Act. He submits that the impugned report dated 09.02.2018 was submitted by the SDO (PR), Samrala to the Deputy Chief Executive Officer, Zila Parishad, Ludhiana, wherein, it was illegally held that an amount of Rs.15,31,261/- was liable to be recovered from the petitioner, which is totally against the settled principles of law being violative of Section 216(4) of the Act. He submits that another enquiry dated 06.07.2018 was conducted by the SDO (PR) on the complaint filed by Kuldeep Singh, wherein, it has been held that the petitioner had committed embezzlement of Rs.18,73,175/-. He submits that the petitioner filed an application dated 09.07.2018 are specifically praying that the enquiry reports dated 09.02.2018 and 06.07.2018, totally malafide and being violative of Section 216(4) of the Act, do not have any sanctity under the law and thus, deserves to be set aside. He has relied upon the judgment of Hon'ble Division Bench of this Court in Gurdial Singh and others vs. State of Punjab and others, 2013(1) RCR (Civil) 139 and judgments of Single Bench of this Court in CWP-9618-2014 titled as Sharda Kumari vs. State of Punjab and others, decided on 13.02.2017 and in Ram Kanwar, Ex-Sarpanch of Gram Panchayat Rai vs. State of Haryana and others, 2011(3) RCR (Civil) 436.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner worked as Sarpanch of the village for the period 2008-2013. He submits that the complaint dated 15.03.2010 against the petitioner was filed by one Kuldeep Singh for committing various irregularities and misappropriation of money. He submits that the complaint was filed against the petitioner when he was working as Sarpanch of the village. He submits that during his tenure itself cognizance of the complaint filed for alleged misappropriation and embezzlement of Panchayat fund was taken by the Director Rural Development and Panchayat by marking the same to the office of DDPO for further enquiry. He submits that SDO, Samrala sent summons dated 17.10.2017 to the petitioner to be present at the spot for assessment and measurement of various works carried out during his tenure. He submits that inspection of the spot and assessment and measurement of various works were carried out on 25.10.2017 in the presence of the petitioner. He submits that by duly associating the petitioner in the enquiry, the allegations against him were found to have been proved and thus, the SDO, Samrala held the petitioner liable for the recovery of Rs.15,31,261/-. He has submitted that the contentions of counsel for the petitioner, regarding second enquiry initiated against the petitioner, are also beyond the facts and circumstances of the case. It is submitted that the petitioner was dis-satisfied with the outcome of the enquiry conducted by the SDO, Samrala, wherein, recovery of Rs.15,31,261/- was directed to be effected from the petitioner, hence, he himself requested by filing an application dated 09.03.2018 for conducting the second enquiry for re-assessment of the works by another independent officer. He submits that this request of the petitioner

was accepted and the second enquiry was entrusted to SDO, Zila Parishad, Ludhiana and hence, the submissions made by counsel for the petitioner regarding second enquiry being illegal, are totally unsustainable in the eyes of law as the same was instituted on the request of the petitioner himself. It is submitted that after the second enquiry, the petitioner was found to be liable for recovery of Rs.18,73,175/-. It is submitted that as the petitioner was duly joined at every stage of enquiry, there is no violation of principle of natural justice. He further submits that there is no violation of Section 216(4) of the Act as contended by counsel for the petitioner. He submits that the complaint against the petitioner was received on 15.03.2010, when the petitioner was the Sarpanch of the village. He submits that in the first enquiry concluded, he was found to be liable for recovery of Rs.15,31,261/-, however, it is on his request dated 09.03.2018, the second enquiry was marked and again he was duly associated in the same and resultantly on the conclusion of the second enquiry, he was found liable for recovery of Rs.18,73,175/-. Thus, it is clear that the enquiry was initiated during the tenure of the petitioner, when he was the Sarpanch and thus, the limitation as enumerated in Section 216(4) of the Act is not applicable in the present case as the enquiry was initiated during the tenure of the petitioner. It was only the recovery part which remained to be effected after the conclusion of the enquiry which was initiated during his tenure.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner remained Sarpanch of the village from 2008 to 2013. During his tenure, a complaint dated 15.03.2010 was filed by one Kuldeep Singh on which the cognizance was taken and enquiry was

instituted. The first enquiry continued even after his demitting the office in the year 2013. He was associated in the enquiry conducted and then inspection, assessment etc was conducted in the year 2017 wherein he was found to be liable for causing loss to the Gram Panchayat to the tune of Rs.15,31,261/-. On his request, the second enquiry was conducted and again he was found to be liable for the payment of Rs.18,73,175/-.

For the decision of the controversy, appreciation of provisions of Section 216 of the Act are relevant, which read as under:-

“216. Liability of members of Panchayat. (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 subsection 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.”

It is apparent that the complaint against the petitioner was filed by Kuldeep Singh on 15.03.2010, when he was holding the office of Sarpanch. It is also not in dispute that the cognizance of the said complaint was taken by the Director, Rural Development and Panchayat who marked the same to the office of DDPO for further enquiry. It is also not in dispute that the petitioner was associated with the enquiry and he was very much present at the time of

assessment and measurement of various works carried out during his tenure. Ultimately, the allegations against the petitioner were found to be correct and thus, SDO, Samrala assessed the loss of Rs.15,31,261/- and the same was held to be recovered from the petitioner. Thereafter, vide the application dated 09.03.2018 filed by him, he showed his dis-satisfaction with the enquiry conducted by the SDO, Samrala and due to this reason, second enquiry was got conducted through SDO, Zila Parishad, Ludhiana. In the second enquiry, the loss caused to the Panchayat was found to be Rs.18,73,175/- for which the petitioner was held responsible. It is pertinent to mention that the petitioner never challenged the first enquiry, rather he opted to file an application dated 09.03.2018, on which respondent-authorities got conducted the second enquiry, in which he was again held guilty. Hence, in the considered opinion of this Court, limitation prescribed in Section 216(4) of the Act would not be applicable in the present case as the complaint against the petitioner was filed on 15.03.2010, when the petitioner was discharging his duties as a Sarpanch and cognizance of the complaint was also taken. The embezzlement and misappropriation of funds caused by the petitioner during the period, when he was working as Sarpanch stands proved in two enquiries, accordingly, the petitioner was held liable for recovery of Rs.18,73,175/-.

The judgments relied upon by the petitioner are also distinguishable on the facts and circumstances of the case in hand as in the case before Hon'ble Division Bench of this Court, the tenure of the petitioner was from 1998-2003, whereas, the impugned notice was issued to the petitioner on 08.03.2012 i.e. after the expiry of statutory limitation of Section 216(4) of the Act.

In the considered opinion of this Court, there is nothing wrong with the enquiry reports Annexures P-3 and P-4 and the petitioner cannot escape his liability for the loss caused to the Panchayat during his tenure as a Sarpanch. Consequently, finding no merit in the present petition, the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

27.09.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No