2023:PHHC:155250-DB

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

(I) CWP-19670-2021
Reserved on: 22.11.2023
Date of decision: 07.12.2023

GRAM PANCHAYAT BEHBALPUR TEHSIL NABHA AND OTHERS

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

(II) CWP-13503-2021

GRAM PANCHAYAT FATEHPUR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Raj Kumar Garg, Advocate
for the petitioners (in CWP-19670-2021)

Mr. Jaskaran Singh, Advocate
for the petitioner (in CWP-13503-2021)

Mr. Maninder Singh, DAG, Punjab

Mr. D.K. Saldi, Advocate
for respondent No.4 (in CWP-19670-2021) and
for respondent No.5 (in CWP-13503-2021)

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<u>SURESHWAR THAKUR, J.</u>

1. Since both the writ petitions make a challenge to condition No.3, as respectively carried in Annexure P-5 in CWP-19670-2021, and,

in Annexure P-3 in CWP-13503-2021, therefore both the writ petitions are amenable to be decided through a common verdict.

2. Before proceeding to make an adjudication, upon, the said challenge, it is deemed imperative to extract the impugned condition No.3, as is respectively carried in Annexure P-5 in CWP-19670-2021 and in Annexure P-3 in CWP-13503-2021.

> *"3. It will be mandatory to deposit 30% Panchayhat Samiti here in the account of concerned Panchayat Samiti through cheque within 15 days of the receipt of auction money. Disciplinary action will be taken against the defaulter Panchayat Secretary, V.D.O. and B.D.P.O. for not doing so."*

Submissions of the learned counsel for the petitioner(s)

3. Learned counsels appearing for the respective petitioners, in making a challenge to the validity of incorporation of the said condition, respectively in Annexure P-5 in CWP-19670-2021 and in Annexure P-3 in CWP-13503-2021, thus make a submission before this Court, that the said therein en-grafted condition, is contrary to the provisions, as become en-grafted in Rule 6 of The Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as "the Rules of 1964"), provisions whereof became extracted hereinafter.

> *"**6. Leases to be by auction**:*
>
> *(1) Subject to the provisions of sub-rule (1) of rule 4 all leases of land in shamlat deh shall be by auction, after making publicity in the manner laid down in sub-rule (10). All documents executed in this connection shall be signed by a Sarpanch or in his absence by Panch performing the*

duties of the Sarpanch and two other Panches authorized for the purposes by the Gram Panchayat.

(a) one-third of the cultivable land proposed to be leased shall be reserved for giving on lease by auction to the members of the Scheduled Castes only and. If on two different dates fixed for auction no such person is forthcoming, or the Panchayat Samiti refused to confirm the auction, under clause 2(a) (i) the reservation shall cease to have effect; and

(b) any Sarpanch or Panch or member of his or her family, such as: a father, father-in-law, mother, mother-in-law, wife, husband, son grandson, or any other relative dependent on him or her, shall not be allowed to bid for the auction and to take land in Shamlat deh on lease;

(2) Lease of land in Shamlat Deh already under plough shall not be given for a period exceeding three years, while that of land not tinder plough and infested with trees bushes, etc. may be given for a period not exceeding seven years to the highest bidder. The auction shall be subject to the approval of -

(a) the Panchayat Samiti (1) where the area does not exceed one hundred acres and the highest bid of the lease at the auction is less than the average [rate of the similar Shamlat lands in the preceding year].

(ii) where the area exceeds 100 at but does not exceed 500.

(b) the Zila Parishad - Where the area exceeds 500 acres, but does not exceed 1,000 acres:

(c) the Government:- where the area exceed 1000 acres."

4. They continue to submit, that since the income derived by the Panchayat concerned, is through auction monies becoming deposited before the Panchayat concerned. Therefore, they contend that the said deposit of auction monies, as, made from auctions of Shamlat Deh lands,

thereby makes the entire village proprietary body concerned, to hold a lawful right, to claim that it is but utilized for the welfare of the entire village proprietary body concerned. In sequel, they submit, that the interests or rights of the village proprietary body concerned, in the shamlat deh land, which were or are subjected to auction, and, also fetch auction monies, rather would be gravely prejudiced, in case the fetched auction monies, contrarily are utilized for liquidations of salaries and renumerations of the officials of the government officials concerned.

SUBMISSIONS OF THE LEARNED COUNSEL APPEARING FOR RESPONDENT No.4 (in CWP-19670-2021) AND FOR RESPONDENT No.5 (in CWP-13503-2021)

5. On the other hand, learned counsel appearing for respondent No.4 (in CWP-19670-2021) and also for the respondent No.5 (in CWP-13503-2021), both have strived to make an effort to validate the incorporation of the impugned condition (supra), as respectively carried in Annexure P-5 in CWP-19670-2021, and, in Annexure P-3 in CWP-13503-2021. In making the above submission, they made a reference to Section 26, as occurs, in the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act of 1994"), provisions whereof are extracted hereinafter.

> *"**26. Constitution of panchayat Secretaries Service-** (1) Notwithstanding anything contained in this Act, the State Government may, be notification, constitute, in the prescribed manner, the Punjab Panchayat Secretaries (hereinafter referred to as the Service):*
>
> *Provided that the service constituted under section 16 of the Punjab Gram Panchayat Act, 1952 shall be deemed to have been constituted under this Act:*

> *Provided further that the rules for regulating the recruitment, salaries, allowances and other conditions of service of members of the Service made under the Punjab Gram Panchayat Act, 1952 shall also be deemed to be made under this Act till such rules are modified, altered or newly framed by the State Government under this Act.*
>
> *(2) The Secretary shall be incharge of the office of the Gram Panchayat and shall perform all the duties and exercise all the powers imposed or conferred upon him by or under this Act or any rules or bye-laws made thereunder.*
>
> *(3) Subject to rules as may be prescribed by the State Government regarding discipline and control, the Secretary shall act in all matters under the control of the Sarpanch through whom he shall be responsible to the Gram Panchayat."*

6. They also make a specific reference to the proviso, which occurs therein, which speaks about a reference to sub Section 1 of Section 26 of the Act of 1994, provision whereof opens with a non obstante clause, and, thereby empowers the State government to, by a notification, thus constitute the Punjab Panchayat Secretaries (hereinafter referred to as "the Service"). Furthermore, the first proviso thereins, speaks that the said service constituted, under Section 16 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as "the Act of 1952"), shall be deemed to have been constituted under the Act of 1994. Furthermore, the second proviso as is carried therein makes speakings, that the Rules regulating the recruitment, salaries, allowances and other conditions of service of members of the Service (Punjab Secretaries), as made under the Act of 1952, thus shall be deemed to have been made under the act of 1994.

7. Having extracted the above provisions existing in the Act of 1994, and, also having discerned the import thereof, this Court also is required to be making a reference to clause 'H', as occurs in Section 86 of the Act of 1994, provisions whereof are extracted hereinafter.

> *"**86. xxx***
>
> *(h) income derived from common lands vested in the Gram Panchayat under any law for the time being in force;"*

8. Moreover, the provisions of clause 'A' of sub-Section 3 thereof are also required to be extracted hereinafter.

> *"**86(3)** xxx*
>
> *(a) the cost of its own administration including the payment of salary, allowances, provident fund and gratuity to the officers and employees and to the secretary;"*

9. A conjoint reading of the above extracted provisions reveals, that the income derived from common lands vested in the Gram Panchayat concerned, thus is to be credited, rather in terms of sub-Section 2 of Section 26 of the Act of 1994, hence to the Gram Panchayat fund.

10. Nonetheless, clause 'A' of sub-Section 3 (supra) enjoins, upon the Gram Panchayat concerned, to ensure the settings apart and also applying annually such credited amounts, so as to meet the costs of its administration, including the payment of salary, allowances, provident fund and gratuity to the officers and employees and of the secretary. Though, the said provisions, do validate, the incorporation of the impugned condition No.3 (supra), thereby both the writ petitions

asking for the quashing of the said condition but are liable to be dismissed.

11. Be that as it may, the proviso underneath 3(a) of Section 86 of the Act of 1994 also contemplates, that the total incurable expenditure on establishment shall not exceed one-third of the total expenditure of the Gram Panchayat in any year.

12. It is in the above regard, that the impugned condition No.3 was required to be drawn, but in tandem, with annual auditings, thus revealing the total expenditure, as incurable on the establishment of the Panchayat concerned, so that thereby, on the said annual auditings being conducted, it becomes revealed, whether the expenditure as incurred in terms of sub-Section 3(a) of Section 86 of the Act of 1994, hence did or did not exceed one-third of the total expenditure of the annual income of the Gram Panchayat in any year. In the event of such auditings being annually done and theirs revealing, thus breach being done to the proviso underneath sub-Section 3(a) of Section 86 of the Act of 1994, thereby in that event, a cause of action may become sparked arise vis-a-vis the aggrieved concerned, and, not earlier. However, when the annual auditings, as become conducted qua the expenditure incurred by the Gram Panchayat concerned, on the establishment concerned, is not placed, on record nor it is revealed, that the said auditings unfolding, that the expenditure incurred on the establishment of the Panchayat concerned, thus exceeding one-third of the total expenditure of the Panchayat concerned, in the said annual year. Consequently, thus also no cause of action as of now becomes sparked vis-a-vis the petitioners.

13. Furthermore, when Rule 8 of the Punjab Panchayat Secretaries (Recruitment and Conditions of Service) Rules, 2013, provisions whereof become extracted hereafter, when speaks, about the Panchayat concerned, becoming bound to make proportionate amount of contribution out of their own sources as levied by the Panchayat Samiti in accordance with the instructions issued by the Director, thus to meet the expenditure of salaries etc., of the Panchayat Secretaries concerned.

> *"**8. Pay of members of the service:-***
>
> *(1) The members of the Service shall be entitled to such scales of pay and allowances, as may be specified by the Government from time to time. The scales of pay, at present, in force in respect of the members of the Service are given in Appendix 'A'.*
>
> *(2) The proportionate amount of contributions shall be made by the Gram Panchayat out of their own sources as levied by the Panchayat Samiti in accordance with the instructions issued by the Director to meet out the expenses of salaries etc. of the Panchayat Secretaries."*

14. Therefore, thereby but there is a bounden obligation casts upon the Panchayat concerned, to from the funds credited into the Panchayat accounts, which but also include the auction monies received by it from auction sales of *Shamlat Deh* lands, thus set apart some part of the above monies rather for meeting the expenditure towards the salaries of the Panchayat Secretaries concerned. Resultantly, there appears to be bounden obligation, upon the establishment of the Panchayat concerned, to appropriate some monies from its accounts towards the salaries, towards meeting the expenditure of its establishment, besides for

meeting the requirements qua defraying the salaries of the Panchayat Secretary(ies) concerned.

15. Be that as it may, yet in the absence, on record of apposite report qua annual auditings of the accounts of the Panchayats concerned, this Court does not deem it fit, and, appropriate to strike down condition No.3, on the ground, that thereby derogation ensues to the above referred provisos as occur underneath sub-Section 3(a) of Section 86 of the Act of 1994.

16. Therefore, the cause of action is reserved in the petitioners to, at an appropriate stage when the annual auditing reports of the funds of the Panchayats, are made available to them, to after making their studied perusal, make gaugings therefrom, whether there is breach to the provisos (supra), as occurs underneath sub-Section 3(a) of Section 86 of the Act of 1994, and/or, to the other hereinabove referred provisions.

17. In view of the above made inferences, and, observations both the petitions sans any merit, and, are dismissed as such, but only at this stage.

(SURESHWAR THAKUR)
JUDGE

7.12.2023
Ithlesh

(SUDEEPTI SHARMA)
JUDGE

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