

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

CWP-20032-2020

Date of Decision: 17.07.2023

Sunil Kumar

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. V.K. Sandhir, Advocate, for the petitioner.

Mr. Arun William, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for quashing of order dated 12.02.2020 (Annexure P-3) passed by respondent No.2 vide which respondent No.6 has wrongly and illegally been directed to proceed against the petitioner as per the provisions of Section 216 of Punjab Panchayati Raj Act, 1994 (for short 'the Act') for causing financial loss to the Gram Panchayat and further for directing official respondents not to initiate proceedings against the petitioner.

It has been contended by learned counsel for the petitioner that the petitioner has been compelled by the respondents to approach this Court by way of filing the present petition as the respondents have initiated malafide action against the petitioner at the behest of respondent No.7, which is totally in violation of the statutory provisions of Section 216 of the Act. He has submitted that as per facts of this case, the petitioner remained Sarpanch of the Gram Panchayat of village Rangilpur and served his tenure from the year 2008 to 2013. He has submitted that during his tenure, the petitioner carried out various development works in the village as per rules

under the supervision of Panchayat Secretary. He has submitted that there was no complaint whatsoever against the petitioner throughout his tenure, however, six years after ending of his tenure, respondent No.7, who is the sitting Sarpanch of the village filed a frivolous complaint dated 14.05.2019 (Annexure P-1) against the petitioner before the Financial Commissioner, Rural Development and Panchayat Department, Punjab on the basis of various allegations like embezzlement of Gram Panchayat funds by allegedly committing various irregularities by the petitioner during his tenure. He has submitted that in pursuance to the complaint filed by respondent No.7, respondent No.3 recommended vide his letter dated 13.01.2020 (Annexure P-2) to respondent No.2 for conducting a detailed enquiry in the complaint filed by respondent No.7 and as a result the Director, Department of Rural Development and Panchayat, Punjab i.e. respondent No.2 directed respondent No.6 to take action on the enquiry report of the complaint regarding misappropriation of lacs of rupees by the Panchayat village Rangilpur from the year 2008 to 2013 vide letter dated 12.02.2020 (Annexure P-3). He has submitted that in pursuance to this letter, BDPO, Rupnagar sent a notice dated 25.08.2020 (Annexure P-4) to the petitioner for directing him to be present on 03.09.2020 at 2:00 A.N. in the office of Additional Deputy Commissioner (D), SAS Nagar. The petitioner filed a reply dated 10.09.2020 (Annexure P-5) to the notice received by him from BDPO-i.e. respondent No.6 and he duly explained all the allegations made against him and took a specific stand that his tenure was from the year 2008 to 2013 and thus, as per statutory provisions of the Section 216 of the Act, no action can be taken against him after the expiry of two years from the date of end of his tenure. He further submits that

respondent No.6 again sent a letter dated 19.10.2020 to the petitioner directing him to be present at the time of holding measurement of the development work done during his tenure i.e. from the year 2008 to 2013. Learned counsel for the petitioner has vehemently contended that from the facts of the case it is apparent that the petitioner has served as a Sarpanch of the village from the year 2008 to 2013 and the complaint on the basis of which action has been initiated against him was filed by respondent No.7 on 14.05.2019. Learned counsel has vehemently relied upon provision of Section 216 (4) of the Act, which specifically restrains any action against any person after the expiry of two years from him ceasing to be a member. He submits that the petitioner ceased to be member of the Panchayat in the year 2013, whereas, the complaint has been filed by respondent No.7 on 14.05.2019 on the basis of which action under Section 216 of the Act has been initiated by the respondents against him as is evident from the overwhelming record produced before this Court. He has submitted that the action initiated against the petitioner is evidently under Section 216 of the Act as is clear from the impugned letter dated 12.02.2020 and thereafter the letter dated 25.08.2020 written by respondent No.6 to the petitioner. He submits that in view of statutory provisions of the Act and the law settled, the impugned action of the respondents by way of impugned letter dated 12.02.2020 is totally unsustainable in the eyes of law and thus, the same deserves to be set aside.

Learned State counsel has already filed reply by way of affidavit of Jastinder Singh, Block Development and Panchayat Officer, Ropar. Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that the petition filed by the

petitioner is not even maintainable as the same is pre-emptive and pre-mature in the facts and circumstances of the case. He has submitted that the impugned letter dated 12.02.2020 (Annexure P-3) is a communication between the answering respondent and respondent No.2 and thus, this communication was not even served upon the petitioner. He has submitted that no order or assessment in writing has been given to the petitioner, which would have entitled to him to approach this Court. He submits that in view of the provisions Section 216 (2) of the Act, assessment order will have to be made in writing and communicated to the Sarpanch/Panch in order to constitute proceedings under the provisions of Section 216 of the Act, however, in the present case no such assessment or order in writing has been produced by the petitioner so as to show that proceedings has been initiated against him under Section 216 of the Act and hence, the petition is not maintainable. He has further submitted that even otherwise if the petitioner is aggrieved, he has alternative remedy as enumerated under the Act and thus, the present petition is not maintainable. He has submitted that neither on the maintainability nor on the merits, petitioner has any case and thus, the same deserves to be dismissed.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner has served as Sarpanch of the village from the year 2008 to 2013. As submitted by the counsel for the petitioner, the petitioner duly served his tenure and carried out various development works in the village during his tenure. There is nothing on record to show that there was any action taken by the respondents for alleged misappropriation of funds or any irregularity committed by the petitioner,

however, the complaint (Annexure P-1) has been filed against him in the year 2019 i.e. after about six years from the date when he was ceased to be the Sarpanch of village. Though the impugned letter dated 12.02.2020 is from the office of respondent No.2 to respondent No.6 for taking action on the enquiry report of the complaint but the language of this letter is clear enough that the same is for taking action under Section 216 of the Act. In pursuance to this letter, the petitioner had been issued a notice dated 25.08.2020 by the BDPO i.e. respondent No.6. directing the petitioner to join the enquiry to be conducted against him. The petitioner gave reply to the same as well. Besides this respondent No.6 also directed the petitioner vide his letter dated 19.10.2020 to be present at the time of measuring of development works executed by the Gram Panchayat. From this, it is evident that the proceedings have been initiated against the petitioner on the basis of the complaint filed against him by respondent No.7 for taking action under Section 216 of the Act. Though learned State counsel has defended the action of the State on the basis of the maintainability of this petition being pre-mature but he has failed to justify the impugned action of the State vis-a-vis Section 216(4) of the Act, which prohibits any action against the person after the expiry of four years from the occurrence of loss, waste or misapplication or after the expiry of two years from his ceasing to be a member. 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.”

From the perusal of record, it is evident that the tenure of the petitioner as Sarpanch came to an end in the year 2013 and as enumerated under the Act, the petitioner cannot be called upon to explain for any loss after the expiry of two years from the date of his ceasing to be a member of the Panchayat or after expiry of four years from the date of occurrence of loss. Thus, action initiated by the respondents is in violation to the mandate of the statutory period of two/four years and thus, filing of the complaint by respondent No.7 after a period of about six years from the date when the petitioner ceased to be a member of the Panchayat, is self speaking and hence, the action initiated by the respondents is illegal. Merely because there is an alternative remedy under the Act or the enquiry is yet to be concluded, does not prevent this Court from taking cognizance of the action initiated by the respondents against the petitioner.

From the overwhelming facts and circumstances of the case and viewing the statutory provisions of the Act, this Court is of the opinion that the impugned letter dated 12.02.2020 (Anneuxre P-3) is totally in violation of the provisions of Section 216 of the Act and thus, the same being unsustainable in the eyes of law is hereby quashed and the subsequent

actions against the petitioner in pursuant to the same are also quashed.

The petition stands allowed.

17.07.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No