

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

**CWP-4074-2018
Reserved on: 18.07.2023
Pronounced on:28.07.2023**

Gurbaksh Singh and another Petitioners

Versus

State of Punjab and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Raj Kumar Garg, Advocate, for the petitioners.

Mr. Arun William, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J.

Prayer in the present petition is for quashing of notice dated 13.02.2018 (Annexure P-2) issued by respondent No.3, who is not a part of the Panchayati Raj Institution, for making an enquiry into the works done by the Panchyats during their tenure of 2008 to 2013, as the said notices are in violation of Section 216 of the Punjab Panchayati Raj Act, 1994 (for short 'the Act').

It has been submitted by learned counsel for the petitioners that petitioner No.1 was Sarpanch of Gram Panchayat Shikar, Block Dera Baba Nanak, District Gurdaspur in the year 2008 to 2013 and he worked alongwith his Panches and discharged his duty with full sincerity. It is submitted that during his tenure, there was no complaint whatsoever against petitioner No.1. He has further submitted that petitioner No.2 was Sarpanch of Gram Panchayat Khawaza Vardag, Block Dera Baba Nanak, District Gurdaspur in the year 2008 to 2013 and he also worked with his Panches with full sincerity and during this period no complaint whatsoever was ever received against him. He has submitted that thereafter, in July 2013 fresh

elections of Gram Panchayats in Punjab were held and new Panchayats were elected for the term July 2013 to July 2018. He has submitted that the whole record pertaining to the functioning of the Gram Panchayat was handed over to the new Panchayats in July 2013. It is submitted that the petitioners had done their development works during their tenure of 2008 to 2013 and all the development works done by the petitioners were duly verified by the BDPO, Dera Baba Nanak, District Gurdaspur. It is submitted that with malafide intentions, frivolous complaints were filed against the petitioners and in pursuance to the same, respondent No.3 issued notices dated 13.02.2018 (Annexure P-2) to the petitioners, namely, Gurbakash Singh and Ram Singh directing them to come present at 10:00 a.m. on 14.02.2018 and 15.02.2018, respectively. It is submitted that the notices have been issued to the petitioners in violation of Section 216 of the Act. He has submitted that term of the petitioners as Sarpanch of their respective villages was from the year 2008 to 2013 and as is evident from Section 216(4) of the Act, no action can be taken against them after the expiry of two years from the date of end of their tenure. He has relied upon the

Explanation (ii) of Section 20 of the Act, which reads as under:-

“(ii) to produce the Panchayat records on being required to do so by an officer of the Department of Rural Development and Panchayats not below the rank of Social Education and Panchayat Officer,-”

In view of this, learned counsel for the petitioners has submitted that the competent officer cannot be below the rank of Social Panchayat Officer. He has vehemently contended that from the facts of the case it is apparent that the petitioners have served as Sarpanch of their

respective villages from the year 2008 to 2013 and notices have been issued to them on 13.02.2018. 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 his ceasing to be a member. He submits that the petitioners ceased to be member of the Panchayat in the year 2013, whereas, the notices have been served on them on 13.02.2018. He submits that in view of statutory provisions of Section 216 of the Act and the law settled, the impugned notices are totally unsustainable in the eyes of law and thus, the same deserve to be quashed.

Learned State counsel has already filed reply by way of affidavit of Jasbir Singh Dhillon, Block Development and Panchayat Officer, Dera Baba Nank, Gurdaspur. Learned State counsel has opposed the submissions made by learned counsel for the petitioners. He has submitted that the enquiry can be conducted against the petitioners by an eligible officer and in the present case, Assistant Commissioner was appointed as enquiry officer and action on the basis of enquiry report would be taken by the concerned BDPO under Section 216 of the Act. He has submitted that there is only enquiry against the petitioners, which is being conducted, whereas, the provisions of Section 216 of the Act would come into play only when show cause notice is issued to a Sarpanch/Panch. He has submitted that notices issued to the petitioners suffers from no illegality and thus, petition being devoid of any merit, deserves to be dismissed.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioners have served as Sarpanch of their respective villages from the year 2008 to 2013. As submitted by the counsel

for the petitioners, the petitioners duly served their tenure and carried out various development works in their villages during their tenure. There is nothing on record to show that there was any complaint as such during the tenure of the petitioners, however, the notices dated 13.02.2018 (Annexure P-2) have been issued to the petitioners i.e. after about five years from the date when they were ceased to be the Sarpanch of villages. By virtue of the notices issued to the petitioners, they were directed to join the enquiry to be conducted against them.

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 reason- able 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 petitioners as Sarpanch came to an end in the year 2013 and as enumerated under the Act, the petitioners cannot be called upon after the expiry of two years from the date of their 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 of the mandate of the statutory period of two years and hence, the notices issued to the petitioners deserves to be quashed.

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 notices dated 13.02.2018 (Anneuxre P-2) are totally in violation of the provisions of Section 216 of the Act and thus, the same being unsustainable in the eyes of law are hereby quashed and the subsequent actions if any taken against the petitioners in pursuant to the same are also quashed.

The petition stands allowed.

28.07.2023

sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No