

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

CWP-PIL NO. 44 OF 2022 (O&M)

Reserved on : FEBRUARY 08, 2024

Pronounced on : MARCH 13, 2024

Vikas

...Petitioner

Versus

**Deputy Commissioner, Kurukshetra
And others**

...Respondents

**CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present : Mr. Vikas (petitioner-in-person).

Mr. Deepak Balyan, Additional Advocate General, Haryana.

**Mr. Chander Shekhar, Advocate,
Mr. Manmohan Saroop, Advocate and
Ms. Meenakshi Saroop, Advocate,
For respondent No.3.**

LAPITA BANERJI, J.

In the present writ petition which is in the nature of a Public Interest Litigation (PIL), the petitioner has prayed for issuance of an appropriate writ directing the respondent authorities to decide the complaints/representations dated July 12, 2021 and September 21, 2021. The petitioner has also prayed for suspension of the Block Development Panchayat Officer (BDPO) duty.

2. Initially the petitioner had filed a PIL being CWP (PIL) No.164 of 2021 for redressal of his grievances made vide complaint dated July 12, 2021 before the SHO, Kurukshetra. The said PIL was dismissed as withdrawn by an Hon'ble Co-ordinate Bench vide order

dated September 20, 2021 with the observation that in case the grievances of the petitioner were brought to the notice of the Deputy Commissioner (DC), Kurukshetra by way of filing a representation, then a decision would be taken by the Deputy Commissioner in accordance with law after giving a personal hearing to the petitioner.

3. The petitioner's grievance was that the Sarpanch of Gram Panchayat Bhiwani Khera, did not allow the petitioner to inspect the records in violation of the Haryana Panchayati Raj Act, 1994 and the provisions of Haryana Panchayati Raj Rules, 1995. A complaint was registered on C.M window Haryana (CM Haryana Redress and Monitoring System, Haryana). The Block Development and Panchayat Officer, Thanesar issued an order on the Sarpanch to arrange inspection of records on June 22, 2020. However, the Sarpanch and the Gram Sachiv remained absent on the aforesaid date and consequently, the inspection of records could not be carried out. Again such inspection was directed to be conducted vide Block Development and Panchayat Officer's order dated June 23, 2020, but on the scheduled date of inspection on June 26, 2020, again the aforesaid officers remained absent.

4. The petitioner filed an application under Right to Information Act, 2005, but the State Public Information Officer (SPIO) and the Assistant State Public Information Officer (ASPIO) of Gram Panchayat, Bhiwani Khera, refused to provide the same on the pretext that the information sought for was not clear and therefore, the same could not be answered. Then the petitioner again filed another application under Right to Information Act, on July 17, 2020, seeking information of the said documents but neither the said documents were produced nor

was the petitioner informed about rejection of such application. The petitioner filed an appeal before First Appellate Authority on August 24, 2020 under the Right to Information Act and the Sarpanch and Gram Sachiv were required to be present on September 15, 2020 with requisite documents but both were absent on the said date.

5. By an order dated January 28, 2021 the State Information Commission, Haryana ordered the said authorities to provide the documents for inspection on February 05, 2021 but the same was not done till September 2021, when the petitioner was finally allowed to inspect the documents. During inspection, the petitioner found that building materials were bought by the Gram Panchayat from one M/s Gupta Bricks and Company, without advertising any tender or calling for any quotations from other sellers, in purported violation of Rule 135 of Haryana Panchayati Raj Finance, Budget, Accounts, Audit, Taxation and Work Rules, 1996. Under the said Rule, if any work assigned to a person/firm was amounting to more than Rs.5,00,000/-, the same was required to be advertised.

6. The petitioner alleged that Gram Panchayat (GP) bought materials from two companies, namely, Baba Corporation and Nath Industries, which were owned by Sarpanch's brother-in-law and sister-in-law, respectively. The Sarpanch and her husband were the real owners of the said entities and drew personal profits from the said firms. The said companies generated more than 40 bills in a span of two days and the same were below the prescribed limit of ₹5,00,000/- raised on M/s Gupta Bricks and Company in order to circumvent the requirement of advertisement. A complaint dated July 12, 2021 was lodged with the SHO, Kurukshetra University Police Station which was not acted upon.

Vide order dated September 20, 2021 passed by a Co-ordinate Bench, it was observed that in the event a representation was made before the Deputy Commissioner, the Deputy Commissioner would look into the matter, pursuant to the filing of CWP-PIL-164 of 2021, as noted here-in-above.

7. Consequently, by a representation/complaint dated September 21, 2021, the petitioner intimated his grievances to the Deputy Commissioner, Kurukshetra. In the said complaint, it was alleged that without calling for tender/quotations and advertisement in the local newspapers, materials were procured from two companies by the name of Baba Corporation and Nath Industries. Furthermore, the petitioner alleged that the complaint made against M/s Gupta Bricks and Company, was not registered against the Sarpanch qua M/s Gupta Bricks, even though an FIR bearing No.162 dated 28.04.2021 under Sections 168, 406, 420, 467, 468, 471, 506 and 120-B of IPC in Police Station Kurukshetra University, was registered qua the allegations made against the Sarpanch with regard to Baba Corporation and Nath Industries. Since the Sarpanch had monetary interest in the works carried out by the Gram Panchayat, she should have been disqualified from acting in her official capacity. It is the petitioner's contention that since no decision was taken on the aforesaid complaints dated July 22, 2021 and September 21, 2021 despite order dated September 20, 2021, he was constrained to file the second PIL being CWP-PIL-198-2021. The second PIL was disposed of vide order dated November 30, 2021 in light of the submissions made by Additional Advocate General, Haryana that the decision would be communicated to the petitioner expeditiously, on the aforesaid complaints.

8. A contempt petition being COCP No. 438 of 2022 was filed by the petitioner on the ground of non-compliance of the order dated November 30, 2021. The learned Single judge upon hearing the contempt petition was of the view that the issues regarding the petitioner not coming forward to join enquiry proceedings or not cooperating in the proceedings or the same officer against whom allegations have been made being directed to hold the enquiry, were not issues which could be examined in the contempt proceedings. Accordingly, the contempt petition was disposed of.

9. Thereafter, on 19.03.2022 the petitioner filed the present PIL, wherein by an order dated July 21, 2022 passed by an Hon'ble Co-ordinate Bench, the Deputy Commissioner, Kurukshetra was directed to look into the matter at his own level since the complaint had been pending for quite some time.

10. After a preliminary enquiry, vide report dated December 14, 2022 (hereinafter referred to as Preliminary Enquiry Report) by the officers concerned (Additional Deputy Commissioner, Kurukshetra, XEN Panchayati Raj and Accounts Officer, DRDA), *prima-facie* it was found that the allegations made by the petitioner were true and the said report was placed before the Deputy Commissioner for taking necessary action. Pursuant to an order dated December 15, 2022 passed by an Hon'ble Co-ordinate Bench, the Deputy Commissioner filed a status report dated February 16, 2023 (hereinafter, referred to as First Status Report) enclosing the preliminary enquiry report whereby it was recorded that execution of works had been done by the Gram Panchayat by bypassing e-tendering process and materials which were purchased for

the Gram Panchayat, were from firms/concerns indirectly related to the Sarpanch.

11. In the preliminary enquiry report, it was recorded that the complainant had raised two major issues. The first issue related to execution of works amounting to more than ₹5,00,000/- by splitting them into bills amounting to less than ₹5,00,000/- so as to avoid the e-tendering process as was required by the guidelines issued by the Additional Chief Secretary, Government of Haryana, Development and Panchayat Department vide Memo dated June 07, 2017 which stipulated that every work above the amount of ₹5,00,000/- should be executed by way of tendering process. It appeared from the amount of bills that the same could have been split into smaller amounts for avoidance of e-tendering process. A payment of ₹17,54,000/- was made from public funds *qua* the purchase of building material for the construction of street from PWD Road to the house of one Ved Prakash. However, the above mentioned work was executed departmentally in clear violation of guidelines issued by the government. Similarly, for construction of the street from Shiv Mandir to the house of one Sohan Lal, an amount of ₹11,79,000/- was received and for construction of street from the house of one Babu Ram to the house of Beshakhi Ram, an amount of ₹8,55,000/- was received. Furthermore, for construction of the street from PWD Lukhi Road to Dada Khera, an amount of ₹10,15,000/- was received. Again, no tender had been issued for execution of the aforesaid works.

12. The second issue related to the purchase of materials from two firms, namely, Baba Corporation and Nath Industries. Regarding purchase of material from Baba Corporation and Nath Industries, it was

found that the former was a firm owned by one Naresh Kumar, who was the brother-in-law of the Sarpanch, Bhiwani Khera namely Krishna Rani and the latter was a concern owned by Pinki Rani, who was sister-in-law of the Sarpanch. *Prima-facie*, it was found that the purchase of materials from the said two firms, the partners/proprietors of which indirectly related to the Sarpanch, was in violation of the 1994 Act.

13. Section 175 (G) of the Haryana Panchayati Act, 1994 is reproduced herein under :

“175 Disqualifications :

Xxx

(g) has directly or indirectly by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad;

Xxx”

14. The Deputy Commissioner’s stance was that after taking due cognizance of the preliminary inquiry report he had issued a show cause notice to the Sarpanch, as well as Gram Sachiv, Junior Engineer and Sub-Divisional Officer. Thus, it was submitted on behalf of the Deputy Commissioner, Kurukshetra that a legal course of action against the erring officials had already been initiated.

15. Upon perusal of the first status report, the Hon’ble Co-ordinate Bench, vide order dated February 21, 2023 recorded that the same was inadequate and a better report was required to be filed giving the full details. It was noticed that the status report was silent about the action taken by the police authorities on the FIR. Furthermore, it was noticed that from the final report filed after completion of investigation before the competent Court, the action seemed to have been taken against some of the officers, leaving the others out.

16. Meanwhile, a second report alongwith speaking order dated April 17, 2023 (hereinafter second enquiry report) was supplied by the office of the Deputy Commissioner to the office of Advocate General, Haryana for vetting. In the course of second enquiry, it transpired that the funds for execution of development works were duly sanctioned by the HRDF Board, Chandigarh and received by Gram Panchayat on October 25, 2018 and August 28, 2019. Furthermore, consolidated guidelines dated June 30, 2017, were issued by the Additional Chief Secretary to Government of Haryana, Development and Panchayat Department and according to the revised guidelines, the e-tender process was required to be conducted only when the *Gram Panchayat was to execute works upto ₹20,00,000/- through a contractor*. However, in the present case the Gram Panchayat, Bhiwani Khera had executed the works at its own level and not through a contractor and therefore, the e-tender process was not mandatory for the said works.

17. The next issue that was addressed was whether material purchased for the development works was in accordance with the rate list prescribed by the district administration along with details of said purchase. It was found that the materials were purchased at the DC rate approved by the District Level Committee and that there was no restriction on sourcing of the materials the rates of which had been fixed by the District Level Committee. Therefore, there was no evidence to prove that either the procurement was done against the Rules or at rates higher than the one's mandated by the Committee. Every firm from which the materials were procured was listed in the said report.

18. After a perusal of the two enquiry reports, it transpired that two contradictory reports were given by the officials directly relating to

the Panchayat Department because in the preliminary enquiry report dated December 14, 2022, *prima-facie* it was found that there was substance in the complaint made against the Sarpanch, Bhiwani Khera whereas in the second enquiry report dated April 17, 2023, it was found that the allegations made by the complainant were false. It was in these peculiar circumstances that a letter dated 15.05.2023 was sent by the Additional Advocate General that a competent authority be directed to look into the controversy and the two reports submitted by the District Authorities, so that a final report could be filed before the High Court. Resultantly, a Vigilance Committee was constituted on July, 17, 2023 to investigate the matter.

19. The Vigilance Committee in its inquiry report dated 12.10.2023 (hereinafter Vigilance Committee Report) noted that the revised guidelines dated June 30, 2017 as mentioned above were not presented by the Ex-Sarpanch to the Preliminary Enquiry Committee due to which the Additional Deputy Commissioner, Kurukshetra may not have looked into them while conducting the initial enquiry. Furthermore, it was found that the Gram Sachiv and the Junior Engineer were not a part of preliminary enquiry. During the enquiry proceedings before the Vigilance Committee, the complainant had produced a photograph of a sign board of Nath Industries and Baba Marble Industries which highlighted the mobile number of husband of the Ex-Sarpanch. In defence, the Ex-Sarpanch took the plea that neither Baba Corporation nor Nath Industries belonged to her and she lived separately from her family for the last ten years. On the question whether the bills were fabricated, the Vigilance Committee noted that there was no complaint by the petitioner with regard to quality or quantity of the work executed. In view

of the aforesaid facts and analysis of evidence, the Deputy Commissioner, Kurukshetra came to the conclusion that due procedure was followed in execution of works by the Gram Panchayat.

20. Even though the Vigilance Committee in its report was of the opinion that mobile number of husband of Ex-Sarpanch may have been highlighted in the sign board of the shops and the work may have been purportedly given to the said firms for personal benefits, but since her tenure had already come to an end in 2021, therefore, the issue regarding disqualification of Sarpanch pursuant to Section 175 of the 1994 Act was not relevant any longer.

21. Consequently, in compliance of order of this High Court dated February 21, 2023 a more detailed status report dated October 13, 2023 enclosing the Vigilance Committee's report was filed on October 17, 2023. On November 09, 2023 the Co-ordinate Bench after going through the same, was of the opinion that the allegations against M/s Gupta Bricks had not been clarified and directed the State to clarify as to how complaint dated July 12, 2021 (Annexure P-7) has been investigated. The Superintendent of Police, Kurukshetra filed another status report by way of an affidavit on December 18, 2023, whereby it was indicated that the enquiry report dated October 12, 2023 by the Vigilance Committee revealed that the allegations against M/s Gupta Bricks were also addressed. The relevant portion of the said enquiry report is reproduced herein below:

“xxx

In addition to the above, as per record the petitioner has himself produced the number of bills related to the same development works with regard to the purchase of material for the development works from different firms/companies including :

1. *M/s Gupta Bricks, M/s Kapoor Sports*
2. *Maa Bhadra Kali Tractors and JCB*
3. *Bharat Pump and Pipe*
4. *Sh.Vaishno Electric and Machinery Store*
5. *M/s J.K Construction Company, Kurukshetra and Sanitary Store*
6. *Sharma Steel Kurukshetra*
7. *Jai Shri Ram Bhatta Company*
8. *Sh. Balaji Infrastructure etc.*

22. Furthermore, after conducting an investigation, the police found that there was a lack of incriminatory evidence against the accused and accordingly a report to cancel the FIR No.162 dated April 28, 2021 was filed in the Court of Judicial Magistrate 1st Class, Kurukshetra. However, perusal of the case file revealed that proceedings before Judicial Magistrate 1st Class, Kurukshetra are still pending for April 15, 2024.

23. Since the allegations regarding M/s Gupta Bricks was also addressed, the Deputy Commissioner was of the opinion that the Gram Panchayat was competent to buy materials for development work at the rate authorized by the District Level Committee and there was no evidence to show that the materials were purchased at a higher rate or were of substandard quality. Therefore, the allegations qua M/s Gupta Bricks and Company were also clarified in the enquiry report of the Vigilance Committee and nothing further was required to be done. Therefore, it was prayed that the writ petition should be dismissed.

24. This Court after perusing in detail all the complaints lodged and the detailed enquiry reports based on the guidelines dated June 30, 2017 is of the considered opinion that all the issues/concerns raised by the petitioner in the present PIL have been duly addressed by the concerned authorities. As noticed above, a cancellation report has also been filed in the criminal proceedings and therefore the petitioner has a

remedy available to him to file a protest petition before the Magistrate.

Thus, at this stage it would not be appropriate for this Court to further comment on the issue as it would cause prejudice to either of the sides.

Accordingly, the writ petition along with connected applications, if any, are disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

MARCH 13, 2024
shalini

Whether speaking/reasoned : Yes
Whether reportable : No