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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8893 of 2024 (O&M)
Date of Decision: 20.05.2024

Rajender Prasad
..... Petitioner

Versus

State of Haryana and others
..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sunil Sihag, Advocate
for the petitioner.

Ms. Upasna Dhawan, AAG, Haryana.

Mr. J. P. Sharma, Advocate
for the applicant/respondent No.5.

RAJESH BHARDWAJ, J.

CM-8516-CWP-2024

Instant application has been filed for placing on record MLR dated 20.07.2023 (Annexure A-1) and report of the possession proceedings dated 06.07.2023 (Annexure A-2).

For the reasons recorded in the application, the same is allowed. MLR dated 20.07.2023 and report of the possession proceedings dated 06.07.2023 are ordered to be taken on record as Annexures A-1 & A-2).



CM-8517-CWP-2024

Instant application has been filed for impleading the injured, namely, Laxmi Naryan as respondent No.5 in the present petition.

Notice in the application to counsel for the non-applicant/petitioner.

Mr. Sunil Sihag, Advocate appears and accepts the notice on behalf of the non-applicant. He submits that he has no objection if the same is allowed.

For the reasons recorded in the application, the injured, namely, Laxmi Naryan is ordered to be impleaded as respondent No.5 in the present petition. Amended memo of parties annexed with the application is taken on record. Registry is directed to tag the same at an appropriate place.

Application stands allowed.

CWP-8893-2024

1. Present writ petition has been filed for quashing/setting aside the orders passed by respondents No.1 to 3 whereby the petitioner has been initially removed/suspended from the post of Sarpanch of Gram Panchayat Bhungarka, Tehsil Nangal Chaudhary (Mahendergarh) and later on his representation for reinstatement was dismissed by respondent No.3 (Annexures P-3 & P-5 dated 09.08.2023 and 08.12.2023), the appeal against the said arbitrary order passed by respondent No.3 whereby she has removed the petitioner from the post of Sarpanch, in a totally arbitrary manner was dismissed without application of mind and



on a wholly untenable ground by respondent No.2 (Annexure P-10 dated 21.03.2024) and further to set aside the order passed by respondent No.1 (Annexure P-9) dated 13.03.2024 whereby the BDPO Nangal Chaudhary (respondent No.4) has been appointed as an Administrator of Gram Panchayat Bhungarka, Tehsil Nangal Chaudhary which are arbitrary, illegal, contrary to the provision of law and passed without application of mind. Further prayer has been made for directing the respondents to reinstate the petitioner on the post of Sarpanch of Gram Panchayat Bhungarka who is an elected person under the provisions of Haryana Panchayati Raj Act, 1994 and for staying the operation of impugned orders Annexures P-1 to P-12 and for directing respondent No.1 to handover the charge of Gram Panchayat Bhungarka to the petitioner which is presently with the Block Development and Panchayat Officer (respondent No.4) with an immediate effect during the pendency of the present petition.

2. The petitioner before this Court contested the Gram Panchayat elections held in October, 2022 and was elected as Sarpanch of village Bhungarka, District Mahendergarh. After having been elected, an FIR No.199, dated 20.07.2023 under Sections 148, 149, 307, 323 IPC and Section 25 of Arms Act, 1959 was registered against the petitioner. The learned Judicial Magistrate Ist Class, Narnaul vide order dated 22.07.2023 send the petitioner to judicial custody for 14 days. The Deputy Commissioner, Mahendergarh exercising his power vested under Section 51(1) of the Haryana Panchayati Raj Act, 1994 (hereinafter



referred to as 'the Act') suspended him from the post of Sarpanch vide his order dated 09.08.2023. Being aggrieved by the same, the petitioner filed an appeal before the learned Commissioner, Gurugram under Section 51(5) of the Act. However the learned Commissioner, Gurugram on hearing both the sides found no merit in the appeal filed by the petitioner and thus dismissed the same vide his order dated 21.03.2024. On his suspension, the learned Deputy Commissioner appointed the Block Development & Panchayat Officer Nangal Chaudhry as the Administrator of the village under Section 49(1)(2) of the Act. The petitioner also approached the respondent authorities for his reinstatement, however the same was also declined by the respondent authorities vide order dated 08.12.2023. Being aggrieved by his suspension, dismissal of the appeal and appointment of the Administrator and rejection of his application for reinstatement, the petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that after having been elected as sarpanch of the village, the petitioner had done various development works of public welfare and development in the Gram Panchayat. He submits that on 20.07.2023, the construction of boundary wall around the Panchayat Ghar was initiated. On conducting the demarcation of the land that belongs to the Gram Panchayat, it was found that different persons namely, Ram Avtar, Laxmi Narain, Rajender, Abhey Singh and Ami Chand etc. had encroached upon the land of Gram Panchayat. The police help was sought for removal of



the encroachment, however the encroachers opposed the same and they started beating the petitioner. He has submitted that the licenced weapon of the petitioner was also snatched by them. He submits that in the scuffle, the accidental fire took place and on account of the same, false FIR was registered against the petitioner. He submits that at the behest of the petitioner, FIR No.201, dated 20.07.2023 under Sections 379-B, 323, 325, 148, 149, 506 & 201 of IPC was registered against the encroachers. He submits that the petitioner was attacked in a pre planned manner. He has submitted that without appreciating the facts and circumstances, respondent No.3 had suspended the petitioner from the post of Sarpanch vide impugned order dated 09.08.2023. He submits that after having been released on bail on 08.11.2023, the petitioner filed representation to respondent No.3 for his reinstatement on 10.11.2023, however the same was illegally declined by respondent No.3 i.e. the Deputy Commissioner vide order dated 08.12.2023. He assailed the same by way of filing an appeal before respondent No.2 i.e. the Divisional Commissioner, however no proceedings were carried out by the respondent authorities. Hence the petitioner approached this Court by way of filing CWP No.3817 of 2024, which was disposed of vide order dated 20.02.2024. He has submitted that in pursuance to the order passed by this Court, respondent No.3 had arbitrarily suspended as many as 12 panches of Gram Panchayat Bhungarka on 21.02.2024 and appointed the Administrator on 13.03.2024. He submits that respondent No.2 arbitrarily



dismissed the appeal filed by the petitioner vide impugned order dated 21.03.2024.

4. It has been further submitted by learned counsel for the petitioner that the proceedings against the petitioner were carried out under Section 51(1) of the Act wherein respondent No.3 had illegally suspended the petitioner from his elected post of Sarpanch. He submits that no inquiry has ever been marked by respondent No.3 and thus in a highly illegal and arbitrary manner, the petitioner was suspended. He submits that the proceedings initiated against the petitioner are totally biased and totally motivated. He submits that the Hon'ble Supreme Court in "*Sardar Meena vs. State of Rajasthan and others*", SLP (C) No.16820 of 2021, decided on 22.0.2022, has laid down that suspension of the Sarpanch cannot be continued in ad infinitum manner and the respondents were directed to decide the matter particularly in the light of inquiry conducted by the officials and not on the basis of FIR etc. He submits that in view of the law laid down by the Hon'ble Supreme Court in Sardar Meena's case (supra), the petitioner could not have been suspended on the basis of the criminal proceedings initiated against him in FIR No.199 dated 20.07.2023. He submits that thus it is evident that respondent No.3 had illegally suspended the petitioner and the appeal filed by the petitioner before respondent No.2 was illegally dismissed. He submits that appointment of the Administrator by respondent No.3 is also in violation of the settled proposition of law. He submits that the impugned orders have been passed in violation of the principles of



natural justice and the action taken by the respondent-State in passing the impugned orders being totally unsustainable in the eyes of law and thus, the impugned orders deserve to be set aside.

5. Notice of motion.

6. On asking of the Court, Ms. Upasna Dhawan, AAG, Haryana appears and accepts notice on behalf of the respondents-State. Mr. J. P. Sharma, Advocate appears and accepts the notice on behalf of respondent No.5.

7. *Per contra*, learned counsel for the State has vehemently opposed the submissions made by learned counsel for the petitioner. She has submitted that the petitioner has not approached this Court with clean hands. She has submitted that the petitioner is the elected Sarpanch of village and is governed by the provisions of Haryana Panchayati Raj Act. She submits that FIR No.199 dated 20.07.2023 was registered against the petitioner by the complainant-injured, namely, laxmi Narain. She submits that the occurrence took place on 20.07.2023 and the complainant-respondent No.5 suffered the bullet injuries as is evident from the MLR of the injured-respondent No.5. She has submitted that the petitioner was arrested and later on was released on bail. She submits that on registration of the FIR, the petitioner was amenable to the legal action as enumerated under Section 51 of the Act. She submits that it has been categorically laid down under Section 51(1) of the Act that if the proceedings taken against the Sarpanch or a Panch is likely to embarrass him in the discharge of his duties then he is amenable for his suspension.



She has submitted that the impugned orders have been passed keeping in view the facts and circumstances of the case which warranted the suspension of the petitioner. She submits that the petitioner assailed the suspension order by way of filing the appeal wherein after hearing both the sides, the appeal was dismissed. It has been submitted that on registration of the FIR, the Block Development & Panchayat Officer submitted his report dated 20.07.2023 and on the basis of the same, respondent No.3 has rightly suspended the petitioner by invoking his power under Section 51(1) of the Act. She submits that appointment of the Administrator is totally in accordance with the law as the petitioner was arrested and later on he was suspended. Thus for the smooth functioning of the Gram Panchayat, the appointment of the Administrator was made as per the mandate of the Act. She has submitted that the challan has already been filed against the petitioner before the trial Court. To buttress her arguments, she has relied upon the judgment passed by the Division Bench of this Court in “*Balbir Singh vs. State of Punjab*”, **2001(4) RCR (Civil) 323**.

8. Learned counsel for respondent No.5 has also opposed the submissions made by learned counsel for the petitioner and has argued on the same line as has been contended by learned State counsel. He has submitted that in the facts and circumstances of the case, it is apparent that conduct of the petitioner would cause embarrassment in the discharge of duties and thus there being no infirmity in the impugned



order passed, the petition being devoid of any merit deserves to be dismissed.

9. The Court has heard learned counsel for the parties and perused the record with their able assistance.

10. As deciphered from the arguments raised by learned counsel for the petitioner, the petitioner was elected as Sarpanch of the village in October, 2022. After having been elected as Sarpanch, on 20.07.2023, when the construction of the boundary wall was going on, the occurrence took place wherein FIR No.199 dated 20.07.2023 was registered against the petitioner by injured complainant, namely, Laxmi Narain. As submitted before this Court, the injured suffered two fire arm injuries. As per the allegations, the petitioner was carrying his licenced weapon and he fired shots from his licenced weapon causing injuries to the injured. The petitioner was arrested and sent to the judicial custody, however on 08.11.2023, he was granted bail by the Court. After the registration of the FIR, the Block Development & Panchayat Officer submitted his report and thus respondent No.3 invoked his power under Section 51(1) of the Act and suspended the petitioner from his post. For resolving the issue involved, the appreciation of the provisions of Section 51(1)(a)(b) of the Act is relevant, which is as follows:

51. *Suspension and removal of a Sarpanch or Panch*

- (1) *The Director or the Deputy Commissioner concerned may, suspend any Sarpanch or Panch, as the case may be,--*
- (a) *where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the*



Director or Deputy Commissioners concerned the charge made or proceeding taken against him is likely to embarrass him in the discharge of his duties or involves moral-turpitude or defect of character ;

- (b) *during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.*

Xxxxxxx”

11. From the perusal of the statutory provisions, it is apparent that the Director or the Deputy Commissioner has been empowered to suspend the Sarpanch or Panch wherein he is facing the trial in a criminal case and if in the opinion of the Director or the Deputy Commissioner, this charge is likely to embarrass him in the discharge of his duties.

12. Needless to say, the incident had taken place in the village. As per the allegations, the petitioner fired shots from his licenced weapon which caused fired armed injuries to the complainant. The offence alleged against the petitioner is 307 of Indian Penal Code.

13. In the overall facts and circumstances of the case, respondent No.3 i.e. the Deputy Commissioner had rightly invoked his power in suspending the petitioner. The appeal filed by the petitioner was also heard in detail by the Commissioner. The relevant record was perused and due opportunity of hearing was provided to the petitioner. In all its humility, there is no dispute regarding the observations made in the judgment relied upon by the petitioner passed by the Hon'ble Supreme Court in ***Sardar Meena's case (supra)***, however the statutory provisions of Section 51 of the Haryana Panchayati Raj Act empowers the Director



or the Deputy Commissioner to suspend the Sarpanch or Panch if the conditions as enumerated therein are found to have been fulfilled. The same having been found to have been fulfilled, necessary action for removal was bound to follow. The appointment of the Administrator is also as per the provisions of the Act. In *Balbir Singh’s case (supra)*, the similar controversy was dealt with by the Hon’ble Division Bench and it has been held that accusation of a serious nature of offence is a source of embarrassment and thus, it has been held that there is no infirmity in the impugned orders passed by the authorities in ordering the suspension.

14. Thus, this Court does not find any infirmity in the impugned orders passed. However, as held by the Hon’ble Supreme Court in *Sardar Meena’s case (supra)*, the suspension not to continue in ad infinitum manner. As submitted before this Court, the challan has already been filed before the trial Court. Thus, the trial Court is requested to expedite the trial.

15. Accordingly, the present petition stands dismissed.

20.05.2024
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(RAJESH BHARDWAJ)
JUDGE

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