



CWP-14297-2024

-1-

105

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14297-2024
Date of Decision: 01.07.2024

KhatuniPetitioner

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vikram Singh, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

1. Petitioner has filed the present petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing of notice dated 05.12.2023 (Annexure P-2) issued under Section 53 of the Haryana Panchayati Raj Act, 1994 and letter dated 12.01.2024 (Annexure P-3), indicating that an amount of Rs.25,51,39,577/- be recovered from Smt. Khatuni (petitioner herein), ex-sarpanch, Gram Panchayat Rojkameo; along with interest.
2. It is submitted by learned counsel for the petitioner that since the period of two years had already expired when the petitioner ceased to be a Sarpanch of the Gram Panchayat concerned, therefore, no action can be taken against her.
3. At this stage, Ms. Upasana Dhawan, AAG, Haryana, has appeared in pursuance to the advance copy of the writ petition having been served upon State of Haryana and submits that the impugned notice

**CWP-14297-2024****-2-**

(Annexure P-2) as well as the letter (Annexure P-3) have been issued to the petitioner by the Sub Divisional Officer (Civil) Nuh under Section 53 of the Haryana Panchayati Raj Act, 1994 and without explaining her stand before the concerned officer as required under Section 53(2) of the Act *ibid*, the petitioner has straightaway approached this Court. It is further submitted that a complete mechanism of appeal/revision has been provided under Section 53 of the Act *ibid*.

4. Having heard learned counsel for the parties and keeping in view the facts and circumstances of the case, I find substance in the submission made by the learned State counsel. In the notice (Annexure P-2), it is mentioned that the petitioner had transferred amounts i.e. Rs.13,76,35,012/- from Account No.220910100044870 and Rs. 10,51,55,714/- from Account No.220910100015823 (totalling Rs.24,27,90,726/-) into different-different accounts, against the Rules from the year, 2016 till the expiry of her term on dated 24.02.2021 and even thereafter, upto dated 28.10.2022.

4.1 By way of the afore-said notice (Annexure P-2), the petitioner was called upon to explain her position as regards the afore-said withdrawals.

5. Section 53 of the Act *ibid*, reads as under :-

53. (1) Every Sarpanch or a Panch of a Gram Panchayat shall be liable for the loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat if such loss, waste or mis-application is a consequence of his neglect or misconduct while working as Sarpanch or a Panch as the case may be.

(2) The Sub-Divisional Officer concerned may, on the application of a Gram Panchayat or otherwise, for loss,



CWP-14297-2024

-3-

waste or mis-application of Gram fund or property belonging to that Gram Panchayat and after giving adequate opportunity to Sarpanch or a Panch, as the case may be, to explain, assess by order in writing the amount due from him on account of such loss, waste or mis-application of such Gram Fund or property.

(3) Any person aggrieved by an order under sub-section (2) may, within one month of the date of such order apply to the Director to have it set aside and the Director may suspend, vary or rescind such order upon such terms as to costs, payment into court or otherwise, as he thinks fit, but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.

(4) Notwithstanding anything contained in sub-section (3) the Government may, either on its own motion at any time or on an application received in this behalf within a period of sixty days from the date of the order, call for the records of any proceedings in which the Director has passed an order under sub-section (3) for the purpose of satisfying itself as to the legality or propriety of such order and may pass such order in relation thereto as it think fit:

Provided that the Government shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

(4A) The Deputy Commissioner shall recover the amount of loss assessed by the Sub Divisional Officer within a period of three months from the date of order and if the amount is not recovered within the said period, the same shall be recovered as arrears of land revenue.

(5) 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 six years from the occurrence of the loss, waste or mis-application or after the expiry of two years from his ceasing to be a Sarpanch or Panch as the case may be, whichever is earlier.



CWP-14297-2024

-4-

(6) *The amount assessed as due from Sarpanch or Panch, as the case may be, may after his death be recovered from his legal heirs to the extent of property inherited by them.*”

5.1 A perusal of the afore-said extracted provision would clearly indicate that a complete mechanism has been provided under the Act so as to fix the liability of a Sarpanch or a Panch of a Gram Panchayat for causing any loss, waste or mis-application of Gram's fund or property belonging to that Gram Panchayat on account of neglect or mis-conduct of such Sarpanch or Panch, as the case may be; while working on said post(s). Further, in case, any order is passed under Section 53(2) of the Act *ibid*, the aggrieved person has a remedy to approach the concerned Director under Section 53(3) of the Act *ibid* and/or the State Government under Section 53(4) of the Act *ibid*, for the redressal of their grievance. Similar view was taken by this Court in ***Krishan Lal @ Krishan Kumar vs State of Haryana and others, 2016(1)PLR 136.***

6. As regards the reliance placed by the petitioner upon an order dated 28.07.2023 (Annexure P-4) passed by a Co-ordinate Bench of this Court in ***CWP No.4074-2018*** is concerned; suffice it to say that the said order has been passed in the peculiar facts and circumstances of that case, wherein the term of the petitioner therein was from 2008 to 2013 and the notice dated 13.02.2018 was issued under Section 216 of the Punjab Panchayati Raj Act, 1994 i.e. after a period of about five years; whereas, in the instant case, the notice (Annexure P-2) *prima facie* indicates that even after petitioner's term, upto dated 28.10.2022, petitioner had transferred amounts from different Accounts No. and into different-different accounts. The afore-said aspects are required to be considered by the concerned authorities.



CWP-14297-2024

-5-

7. Therefore, once the petitioner has an alternative statutory remedy under Section 53(4) of the Act *ibid*; the present petition is disposed of by relegating the petitioner to seek her remedy under the statute as per provision under Section 53(4) of the Act *ibid*.

8. It is further directed that the concerned authorities under Section 53 (4) shall get a fact finding enquiry conducted as to whether there is delay in initiating action against petitioner under Section 53 of the Act *ibid* and if yes, then the reasons for the same and to further fix the responsibility of the erring officials and to further take necessary action against such erring officials, in accordance with law. Let the aforesaid exercise be carried out within four months from date of receipt of copy of this order and compliance report be sent to this Court within one month thereafter.

9. Copy of this order be given to the learned State counsel, for compliance thereof.

10. All pending application(s), if any, shall also stand closed.

01.07.2024
Himani

(HARSH BUNGER)
JUDGE

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