

129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20522-2024 (O/M)
Date of decision : 23.08.2024

Parmeet Singh and another Petitioners

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. N.P.S. Mann, Advocate
for the petitioners.

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HARSH BUNGER, J. [ORAL]

1. Petitioners (Parmeet Singh and another) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for quashing the letter/order dated 17.07.2024 (Annexure P-5), passed by respondent No. 10-Block Development and Panchayat Officer, Gandiwind, District Tarn Taran (in short 'BDPO'), vide which he, on the recommendation of respondent No. 9, has recommended for registration of a case FIR against the petitioners for political reasons without affording any opportunity of hearing to them and without following the procedure under Section 216 of Punjab Panchayati Raj Act, 1994 (in short '1994 Act').

1.1 A further prayer has been made by the petitioner for issuance of a writ of mandamus for directing respondents not to exceed their jurisdiction and to proceed as per the provisions of law as the tenure of the petitioners as Panchayat Secretaries in the Gram Panchayat Thathi Sohal was for a very short duration and no major work was conducted

under their supervision and the names of other six Panchayat Secretaries, who also remained posted there, have not been mentioned anywhere.

1.2 Another prayer has been made for directing respondents No. 1 to 4 to take action in the matter and also look into the role of respondents No. 5 to 10 and also the reasons for which the other ten BDPOs have been ignored, although they were supervising the works and why the names of Junior Engineers alongwith Sub Divisional Officers, who have also signed and issued the utilization certificates for all grants, received by the Gram Panchayat, have not been included in the recommendation given for registration of FIR.

2. Briefly, according to the petitioners, the general elections of Gram Panchayats within the State of Punjab were held on 31.12.2018 and the charge was taken by the Sarpanches in January, 2019. In the election to the Gram Panchayat, Thathi, one Jagjit Singh was elected as the Sarpanch and seven other Panches were also elected. It is stated that during the tenure of five years of the Gram Panchayat, Thathi, it received a total grant of about 77,78,932/- and out of the same, Rs. 11,14,496/- is still lying in the account of Gram Panchayat and remaining amount is stated to have been spent by the Panchayat on development works from January, 2019 upto February, 2024.

2.1 Petitioners' claim that during this period of five years, eight Panchayat Secretaries (including the petitioners) remained posted at village Thathi and all the technical works are done by the Gram Panchayat, Thathi, as per the technical guidance of the Junior Engineers and Sub Divisional Officers posted there, who had signed all the measurement books and utilization certificates in respect of all the grants

received. It is further claimed that during this five years period, ten BDPOs also remained posted at Block Gandiwind and the aforesaid utilization certificates have also been signed/attested by them.

2.2 It appears that respondent No. 11 (Sakatar Singh), resident of village Thathi, submitted a complaint to respondent No. 3-Deputy Commissioner, Tarn Taran, praying that a detailed inquiry be conducted into the works done by the Gram Panchayat, Thathi, during the aforesaid five years period. The said complaint is stated to have been marked to the BDPO concerned by the Deputy Commissioner, vide its letter dated 12.05.2023. It is stated that another complaint was submitted by respondent No. 11 to respondent No. 5-District Development and Panchayat Officer (in short 'DDPO') for conducting inquiry into the grants received by the Gram Panchayat during the said five years period, which was marked to respondent No. 8-BDPO, Gandiwind, for conducting a detailed inquiry and to submit report. It appears that respondent No. 3-Deputy Commissioner directed DDPO, Tarn Taran, to get the measurement of the works done by the Gram Panchayat conducted, whereupon the concerned DDPO got conducted physical verification from the Sub Divisional Officer, who submitted his report, vide letter dated 11.01.2024 (Annexure P-4), stating that after comparison of the records with the income and expenditure, it was found that works of Rs. 10,53,926/- has been done less and further stated that the amount of Rs. 4,01,089/- has been spent on non technical works by way of miscellaneous expenditure, which may be got verified from the concerned BDPO. It transpires that the DDPO, vide its letter dated 15.01.2024 called for a report from BDPO with regard to

expenditure of Rs. 4,01,089/- on non technical works, whereupon the BDPO submitted its report, vide letter No. 3023 dated 07.02.2024, stating that no misappropriation is found in the works done with the grant of Rs. 4,01,089/- on non technical works.

2.3 Petitioners' claim that in view of the aforementioned circumstances, instead of initiating proceedings under Section 216 of 1994 Act, respondent No. 9 (DDPO) and respondent No. 10 (BDPO) with a malafide intent and for political reasons in a completely wrong and illegal manner made a recommendation on 21.05.2024 to the Deputy Commissioner to get an FIR registered against Jagjit Singh, Ex-Sarpanch and the present petitioners.

2.4 It further transpires that the Deputy Commissioner sought legal opinion from the District Attorney, Tarn Taran, who submitted his opinion that the matter was of misappropriation of Rs. 10,53,926/- and being a serious issue, the FIR be registered against the Sarpanch and Panchayat Secretaries. It appears that respondent No. 10 (BDPO, Gandiwind), vide its letter dated 17.07.2024 (Annexure P-5), wrote to the Senior Superintendent of Police, Tarn Taran, for registration of an FIR against Jagjit Singh, Ex-Sarpanch and present petitioners.

2.5 According to the petitioners, the Senior Superintendent of Police, Tarn Taran, vide its office letter No. 1103 dated 24.07.2024 (Annexure P-6), has returned the file to the BDPO, Gandiwind, by writing that all the documentation be sent to his office after following procedure.

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition for the relief(s), as noticed above.

4. Heard.

5. From the aforementioned facts, it is borne out that an inquiry into the alleged misappropriation and mis-utilization of Gram Panchayat's fund was got conducted by respondent No. 3-Deputy Commissioner, Tarn Taran, who exercises administrative control over the Gram Panchayats within his district. Upon receipt of certain reports in this matter, a legal opinion was also sought from the concerned District Attorney, who vide his letter dated 24.05.2024, opined that the matter was serious as there were allegations of misappropriation of Rs. 10,53,926/- and considering the inquiry report, an FIR shall be got registered. It appears that the Deputy Commissioner, Tarn Taran, on 12.06.2024 forwarded the proposal to the DDPO, Tarn Taran, who vide its letter dated 14.06.2024, forwarded the original file to the BDPO, Tarn Taran, for getting the FIR registered. Thereafter, vide letter dated 17.07.2024 (Annexure P-5), the BDPO has written to SSP, Tarn Taran, recommending that an FIR be registered against Jagjit Singh, Ex-Sarpanch and present petitioners on the allegations of misappropriation of Rs. 10,53,926/- from the grants received by the Gram Panchayat.

5.1 Admittedly, the SSP, Tarn Taran, has sent back the documents to the BDPO, Gandiwind by observing that the same have not been forwarded by the BDPO through the Deputy Commissioner, Tarn Taran, by following proper procedure. Till date, it appears that no FIR has been registered.

6. Apparently, an inquiry into the allegations of misappropriation/mis-utilization of Gram Panchayat's fund was got conducted by respondent No. 3-Deputy Commissioner, wherein

according to the inquiry reports, the petitioners alongwith Ex-Sarpanch Jagjit Singh have been found to be involved. Even the District Attorney has opined for registration of FIR. The petitioners are seeking quashing of the letter dated 17.07.2024 (Annexure P-5) whereby the BDPO, Tarn Taran had written to the SSP, Tarn Taran for registration of FIR, however, concededly, the documents forwarded to the SSP, Tarn Taran, alongwith aforesaid letter dated 17.07.2024 have already been returned by the office of SSP, Tarn Taran as the recommendation was not through the Deputy Commissioner, Tarn Taran by following proper procedure. Since no action has been taken in pursuance to letter dated 17.07.2024 (Annexure P-5), there is no question of setting aside of the said letter. Be that as it may, upon inquiry into the allegations of misappropriation of Gram Panchayat's funds, the involvement of the petitioners has been found, which indeed is a serious matter. If the Deputy Commissioner, who exercises administrative jurisdiction over the issue regarding which a complaint was received by him and thereafter, he got an inquiry conducted wherein involvement of the petitioners was found, in those circumstances, no fault can be found if the matter is forwarded by the office of the Deputy Commissioner to the concerned police authorities for lodging of case FIR. In ***Naman Singh alias Naman Pratap Singh v. State of Uttar Pradesh, 2019 (1) RCR (Criminal) 350***; Hon'ble Supreme Court held as under:-

“...If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and the Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in the matter...”

7. As regards the submission of the learned counsel for the petitioners that no opportunity of hearing has been afforded to the petitioners before recommending registration of FIR, it is observed that under the scheme of our criminal justice system, there is no provision for affording any opportunity of hearing to an accused against whom the allegations of cognizable offence are made. Hon'ble Apex Court in ***Union of India Versus W.N. Chadha, 1993 AIR (SC) 1082***, held as under:-

“91. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation as lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary...”

8. As regards the submission on behalf of the petitioners that the procedure prescribed under Section 216 of 1994 Act has not been followed, it is observed that Section 216 (*ibid*) deals with the liability of members of panchayat for the loss, waste or mis-application of any money or property belonging to the panchayat, if such loss, waste or mis-application is a consequence of his neglect or mis-conduct. In the instant case, the issue is regarding recommendation for registration of FIR against the petitioners (who being Panchayat Secretaries are incharge of the office of Gram Panchayat in terms of Section 26 (2) of 1994 Act) as regards allegations of misappropriation of Gram Panchayat's funds.

Learned counsel for petitioners has failed to point out any provision

contained in 1994 Act, which provides that before recommending registration of FIR, the procedure under Section 216 of 1994 Act is required to be followed. Finding no merit in this submission, the same is rejected.

9. As regards the contention of the petitioners that in the recommendation letter (Annexure P-5), there is no mention of the other Panchayat Secretaries, Junior Engineers, Sub Divisional Officers, BDPOs etc., it is observed that the matter was only recommended for registration of FIR and in case, the FIR is registered, the entire matter will be investigated and during the course of investigation, in case, the involvement of any other person is found, it goes without saying that appropriate action would be taken against all delinquents.

10. In view of the above discussion, I do not find any merit in the instant civil writ petition and same is accordingly dismissed.

11. It is clarified here that the observations made hereinabove are only for the purposes of deciding the present petition and the same may not be construed as an expression on the merits of the controversy. Any action to be taken in the matter shall be purely in accordance with law.

12. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

23.08.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No