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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1

CWP-31058-2019 (O&M)

Arvind Kumar Malik and another

.....Petitioners

versus

State of Haryana and others

..... Respondents

2

CWP-19884-2019 (O&M)

Sulochana Devi

....Petitioners

versus

State of Haryana and others

....Respondents

Reserved on: 16.02.2024
Date of decision: 29.02.2024

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.P. Chahar, Advocate
for the petitioners in CWP-31058-2019.

Mr. M.S. Chahal, Advocate
for the petitioner in CWP-19884-2019.

Mr. Rajesh Gaur, Addl. AG, Haryana.

Mr. Sumit Sangwan, Advocate
for respondent No.4 in CWP-19884-2019
for respondent No.5 in CWP-31058-2019.

RAJESH BHARDWAJ, J.

By this common order, I intend to dispose of abovesaid two petitions which are interconnected and relate to the common issue. For brevity, the facts of the case are being taken from CWP-31058-2019.

Prayer in this petition is for quashing the impugned order dated 23.04.2019 passed by respondent No.4 along with preliminary inquiry report dated 03.11.2017 being illegal, arbitrary, unconstitutional in violations of principles of natural justice as well as concerned Rules and Act and non-sustainable in the eyes of law.

It has been submitted by counsel for the petitioners in CWP-31058-2019 that petitioner No.1 was the Block Development and Panchayat Officer, Dadri-II, District Charkhi Dadri at that time and petitioner No.2 was the Gram Sachiv of Village Kheri Bura, Tehsil and District Charkhi Dadri whereas, in CWP-19884-2019, petitioner was the Ex-Sarpanch of Village, Kheri Bura.

It is submitted by counsel for the petitioners that Gram Panchayat, Village Kheri Bura passed Resolution No.1 dated 10.06.2014 mentioning therein that the Panchayat land bearing Plot No.8 having an area of about 5 acres being an unleveled land, could not be irrigated properly and hence, was uncultivable and therefore, the Resolution was passed to get permission from the Deputy Commissioner before getting the earth excavated from this plot. The copy of this Resolution dated 10.06.2014 was sent to the Deputy Commissioner on 11.08.2014. The Block Development and Panchayat Officer, Dadri-II vide letter dated 03.04.2015 asked the Sarpanch and Gram Sachiv to get the open auction held for excavating earth from Plot No.8 for getting it leveled. The auction notice was published in the Hindi Newspaper. Notice for inviting intending persons to participate in open auction to be held on 16.04.2015 was published in Dainik Chetna Newspaper on 07.04.2015. He submits

that Resolution No.1 dated 16.04.2015 was passed for excavating the earth upto the depth of 4 ½ feet from the shamlat land bearing Plot No.8 measuring 5 acres. The open auction was held on 16.04.2015 in which 5 participants gave their bids. The highest bid was of Rs.1,50,000/- given by the Mukhyapal and the same was accepted by the Gram Panchayat. The amount of Rs.1,50,000/- was deposited with the Sarpanch of the Gram Panchayat. He submits that a complaint was given to the Deputy Commissioner with regard to excavation made beyond the permissible limit from the shamlat land. The Deputy Commissioner vide letter dated 13.07.2015 asked the Mining Department and the Commissioner of Police, Bhiwani to enquire into the matter. It is submitted that the Mining Department, Bhiwani vide letter dated 23.07.2015 asked the Tehsildar to order Halka Patwari/Girdawari to report about the earth excavated beyond the permissible limit. The Halka Patwari vide his report dated 27.07.2015 informed that about 2 feet sand has been excavated out of the total area of 20 kanals 16 marlas comprised in Rectangle No.34. The Sarpanch of the Gram Panchayat gave no objection to the same. He submits that the Mining Department vide letter dated 04.08.2015 submitted his report to the Deputy Commissioner mentioning therein that 8,710/- tons of excess earth has been excavated by the Contractor and hence, he was fined for an amount of Rs.91,875/- which was deposited by the Contractor in the Treasury vide Challan No.10737605 dated 31.07.2015. He submits that respondent No.5 filed a complaint to respondent No.4 to get an enquiry done into the work of the Sarpanch on 17.08.2015. The Block Development and Panchayat Officer conducted the enquiry on the complaint filed and vide his report dated 15.02.2016, the allegations made

in the complaint by respondent No.5 were found to be not substantiated. He submits that respondent No.4 again got preliminary enquiry conducted from its Registrar on 03.11.2017. The Registrar issued notice to the petitioners and without there being any evidence, came to the conclusion that the Contractor has excavated excess earth from the land in connivance with Gram Sachiv, BDPO and Sarpanch. Thereafter, respondent No.4 issued notice to the petitioners wherein they filed their reply before respondent No.4. He submits that the respondents have specifically replied in the reply filed that the findings against them are totally against the evidence on record. It has been submitted that the open auction was held on 16.04.2015 by following the Rules in an impartial and fair manner. It has been submitted that the land which was lying barren was converted into a cultivable land. He submits that respondent No.4 on the basis of conjectures and surmises passed the impugned order dated 23.04.2019 which is totally null and void. It is submitted that respondent No.4 failed to consider that the open auction was held on 16.04.2015 as per the Resolution passed by the Gram Panchayat and no one had raised any objection at the time of open auction. He has submitted that respondent No.4 failed to appreciate that the Resolution passed by the Gram Panchayat on the basis of which the open auction was held on 16.04.2015 had never been challenged before the appropriate authorities under the Punjab Village Common Land Act. It is submitted that once the Resolution passed by the Gram Panchayat was not rescinded by the competent authority, the open auction held on 16.04.2015 could not be held illegal as the same was held in due process of the law. He submits that respondent No.4 had exceeded his jurisdiction in passing the

impugned order. He has vehemently submitted that as per the provisions of Section 17 of the Haryana Lokayukta Act, the Lokayukta i.e. respondent No.4 can make the appropriate recommendations and suggestions only if the allegations are substantiated. It is submitted that the allegations made in the complaint are not substantiated as is evident from the evidence on record and thus, the impugned order is totally in violation of the statutory provisions. It is submitted by counsel for the petitioners that the direction given by respondent No.4 to register the FIR and punish the petitioners and issuing another direction for initiating the stern departmental action under Rule 7 of the Haryana Civil Services Punishment and Appeals Rules is totally beyond the jurisdiction of respondent No.4 and thus, deserves to be *set aside*.

Per contra, learned counsel for respondent No.5 has vehemently opposed the submissions made by counsel for the petitioners. He submits that the respondent initially filed a complaint. He further submits that on the complaint filed, preliminary enquiry was conducted by the Registrar Lokayukta who submitted his detailed report dated 03.11.2017 and the same was put thereafter, before the Hon'ble Lokayukta for appropriate recommendations. It is submitted that on hearing the petitioners, Lokayukta Haryana-respondent No.4 passed the impugned order in accordance with law and thus, there is no scope of interference in the same in writ jurisdiction. He submits that the petitioners have not approached this Court with clean hands. He has submitted that it is an admitted position that 5 feet sand was removed from 5 acres land without any permission of the Mining Department and the same is against the Resolution passed by the Gram Panchayat as the Contractor was not

allowed to excavate the earth beyond the depth of 1 feet. It is submitted that the petitioners being the persons in authority were responsible for the embezzlement made and thus, they conspired with the Contractor for embezzlement of the Gram Panchayat Fund. He submits that the petitioners are the officials who were to grant sanction to the development work of the Panchayat and thus, were directly responsible for the excavation carried out beyond the terms and conditions of the Resolution passed. It is submitted that the Resolution No.1 dated 10.06.2014 was initially passed and the open auction was fixed to be held on 16.04.2015. Thereafter, another Resolution was clandestinely passed on the date of auction itself i.e. on 16.04.2015 wherein the excavation of earth upto the depth of 4½ feet was approved. It is submitted that the publication had already been made for inviting the applications from the interested persons but the Resolution was passed on the date of the auction itself only in order to embezzle the Gram Panchayat funds in an illegal manner. He has submitted that the Contractor, Mukhyapal belongs to the family of Sarpanch which in itself shows that the petitioners were hand in gloves with the Contractor. He has submitted that the procedure adopted is totally an eyewash only in order to siphon off a massive amount of the Panchayat Funds. It is submitted that the sanction by the Mining Department reveals that the sanction was granted for only 1 feet sand to be excavated from 2 acres of land whereas the petitioners in blatant violation of their official position have embezzled a huge amount in a blatant manner. It is submitted that on the complaint filed then the preliminary enquiry was conducted and the allegations were *prima facie* established and thereafter, respondent No.4 after joining the petitioners had carried out a detailed

inquiry and the allegations were duly substantiated. Thus, there is no illegality whatsoever in the impugned orders passed. He has submitted that respondent No.4 has recommended for registration of the FIR and the action under Rule 7 of the Haryana Civil Services Punishment and Appeals Rules. It is submitted that in the facts and circumstances of the case, the matter needs to be thoroughly investigated in which the petitioners would be given proper opportunity of hearing. Hence, there being no infirmity in the order passed, the petition being devoid of any merits deserves to be dismissed.

Learned State counsel has also opposed the submissions made by counsel for the petitioners. He submits that as per Lokayukta Complaint No.281, the allegations were made that the petitioners in collusion with the Sarpanch, Gram Panchayat, Kheri Bura have excavated the extra sand against the Resolution passed by the Gram Panchayat Kheri Bura. He has submitted that the meeting of the Gram Sabha of the Gram Panchayat Kheri Bura was held under the headship of Sarpanch wherein in presence of all members of Gram Panchayat Sabha, it was told that in Plot No.8 of the panchayat, 5 acres land was not flat and is bumpy rug. Due to the same, there was problem regarding watering this land and the output of the crop remains low on account of this. Thus, the letter was written to the BDPO to get prior permission from the Deputy Commissioner regarding excavation of the sand from this land measuring 5 acre. The Resolution No.8 dated 03.04.2015 was passed and the open auction was held on 16.04.2015. The highest bidder had given bid for 5 acres of land in which upto 4½ feet sand was to be excavated as per resolution passed on the same day of the auction. He has submitted that as

per the provisions of Mining Minerals Act, the contractor had to deposit the royalty amount in the Mining Department but the Contractor intentionally deposited the royalty of sand i.e. only upto 1 feet depth instead of 4½ feet as auctioned by the Gram Panchayat and the Contractor grabbed the royalty of excess amount of about 3½ feet. It is submitted that on the complaint No.281 of 2015, the Lokayukta had passed the impugned order dated 23.04.2019 for taking the appropriate action against the petitioners after providing them proper opportunity of hearing. He submits that the Resolution dated 10.06.2014 was only to get the land levelled by removing earth from the said land. He further submits that in the Resolution passed it was not mentioned that the earth upto 4½ feet depth was to be excavated. It is submitted that while obtaining permission, the Deputy Commissioner was kept in dark by the Gram Sachiv, BDPO and the Sarpanch. Even in Resolution dated 13.04.2015, the depth of the earth to be excavated was not mentioned. He has submitted that in the advertisement made, it was not mentioned how much sand was to be removed and there was no mention about the required depth of the earth to be excavated. It is submitted that on the date of the auction, the Resolution was passed that the earth to the depth of 4½ feet was to be removed. Thus, allowing the Contractor to remove earth upto 4½ feet deep made the land unfit for cultivation which was earlier being given on lease for income of the Gram Panchayat. It is submitted that the Contractor was having the permission only to remove the earth to the extent of 1 feet in depth but he removed the earth to the extent of 4½ feet. As per the inquiry conducted, it was found that the earth excavated by the Contractor was in total violation of the Resolution dated 10.06.2014. He submits that the

learned Lokayukta had passed the impugned order after giving due opportunity of being heard to the petitioners and as such the civil writ petition being devoid of any merits deserves to be dismissed with costs.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioners before this Court are BDPO, Gram Sachiv and the Sarpanch. Gram Panchayat passed the Resolution dated 10.06.2014 for levelling the land. As per the Resolution passed, the advertisement was made for inviting the applications from the interested persons for carrying out the excavation and the auction was to be held on 16.04.2015. However, it is apparent from the record that on the very date of the auction, the another Resolution was passed wherein the depth of 4½ feet was mentioned. It is worth consideration that the advertisement had already been made on passing the Resolution but the second Resolution was passed on the date of the auction itself. Complaint was filed before respondent No.4 on the basis of the allegations of embezzlement committed by the petitioners. The preliminary enquiry on this complaint was carried out by the Registrar and the same was concluded on 03.11.2017. *Prima facie*, the allegations were found to have been established and the same was put up before respondent No.4. The petitioners were given the notice. The requisite records were summoned. The replies were filed by the petitioners. On providing the due opportunity to the petitioners of hearing, the allegations mentioned in the complaint were found to be *prima facie* established.

In view of Section 17 of the Haryana Lokayukta Act, respondent No.4 recommended as follows:-

i)to register an FIR against the respondents and thereafter a

senior competent police officer enjoying the reputation of having impeccable integrity be deputed to investigate into the matter expeditiously and to punish the respondents in accordance with law.

ii) Initiate stern departmental action under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules against respondents No.2 and 3 and to punish them appropriately in accordance with law.

iii) To convert the surface of the land horizontal and its cost along with loss caused to the panchayat between 2014 till date due to loss of rent be assessed and recovered from the respondents.

iv) During enquiry, the material placed before this Authority be also considered.

Section 17 of the Haryana Lokayukta Act, 2002 reads as

follows:-

(1) If, after inquiry in respect, of a complaint, the Lokayukta is satisfied-

(a) that no allegation or grievance has been substantiated, he shall close the case and intimate the competent authority concerned accordingly.

(b) that all or any of the allegations or grievances have or has been substantiated either wholly or partly, he shall, by report in writing, communicate his findings, appropriate recommendations and suggestions to the competent authority and intimate the complainant and the public servant concerned about his having made the report.

(2) The competent authority shall cause the report to be examined and communicate to the Lokayukta within three months of the date of receipt of the report, the action taken thereon.

(3) The Lokayukta shall present to the Governor a consolidated annual report on the administration of this Act.

(4)The Governor shall cause to be laid on the table of the State Legislature a copy of the annual report referred to in sub-section (3) above within six months of its receipt along with an explanatory memorandum indicating the action taken thereon, and the reasons for not taking action in a given case.

Perusal of the statutory provisions would show that if the allegation is either wholly or partly substantiated then the Lokayukta would make appropriate recommendation and suggestions to the competent authority. On the appreciation of the evidences produced and hearing the petitioners and the respondents, the Lokayukta had made the recommendations as mentioned above. However, the recommendation made by respondent No.4 in the point i) to the extent of directing to punish the respondents in accordance with law and that in; ii) to punish them appropriately in accordance with law, in the considered opinion of this Court, are unsustainable in the eyes of law. Respondent No.4 as per the statutory provisions is to make the recommendations and suggestions to the competent authority for the requisite action to be initiated. On registration of the FIR, the fair investigation is required to be conducted and conclusion to be drawn would be on the basis of this investigation and it lies within the domain of the investigating agency. Further, regarding completion of the enquiry to be initiated under Rule 7, further cause of action would depend on the outcome of the enquiry to be conducted under Rule 7. Thus, the direction to the extent in Sr. No.i) to punish respondent in accordance with law and ii) to punish them in accordance with law are hereby *set aside*. So far the rest of the directions given by respondent No.4, are concerned this Court does not find any ground for its

interference. The competent authorities are directed to proceed further as in accordance with law. The impugned orders partially modified in above mentioned terms.

Disposed of.

29.02.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No