

133 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27738-2024 (O/M)

Date of decision : 16.10.2024

Shokat Ali

..... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikram Singh, Advocate
for the petitioner (s).

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Shokat Ali) has 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 setting aside the the inquiry report dated 26.09.2024 (Annexure P-3) and also the letter dated 30.09.2024 (Annexure P-4), issued by respondent No. 2 (Deputy Commissioner, Nuh).

2. Briefly, the petitioner was elected Sarpanch of village Sunari, Tehsil Tauru, District Nuh and his tenure was from the year 2016 upto year 2021. Petitioner claims that after completion of his tenure, the charge of the post of Sarpanch was taken from him, in terms of letter dated 12.02.2021 (Annexure P-1) and even the records were handed over by him. It is further claimed by the petitioner that during his tenure, there was no complaint against him.

2.1 It appears that respondent No. 6 (Syysar Khan) submitted a complaint against the petitioner, alleging embezzlement of panchayat

funds, wherein an inquiry was got conducted. In the inquiry report dated 26.09.2024 (Annexure P-3), it has been concluded as under :-

“CONCLUSION

There is a very clear pattern and indication of misappropriation of public funds which strongly vindicates the allegations given in the complaint. These irregularities represent only the few development works that were inquired into. The allegations of corruption prima facie appear to be true and a thorough investigation and audit into all the development works in the Sunari village over the course of the tenure of the Shaukat Ali from 2016-21.

Strong action against the erstwhile sarpanch is recommended along with recovery of misappropriated public funds.”

3. It transpires that on the basis of aforesaid inquiry report dated 26.09.2024 (Annexure P-3), the Deputy Commissioner, Nuh, vide letter dated 30.09.2024 (Annexure P-4) has written to the Block Development and Panchayat Officer, Tauru, to initiate legal action/lodge FIR against the petitioner.

4. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief (s), as noticed above.

5. Learned counsel for petitioner submits that the action of respondent No. 2-Deputy Commissioner, Nuh in getting an inquiry conducted against the petitioner on the allegations of misappropriation/embezzlement of public funds is bad in law as the said action was taken beyond a period of two years from the date of expiry of tenure of the petitioner as Sarpanch of village. It is submitted that the inquiry conducted against the petitioner is illegal and unsustainable in the

eyes of law as the petitioner was never associated with the inquiry, therefore, the principles of natural justice have been violated. It is further submitted that respondent No. 3 was not competent to hold the inquiry in terms of Section 53 of Haryana Panchayati Raj Act, 1994 (in short '1994 Act'). It is still further submitted that the letter dated 30.09.2024 (Annexure P-4), issued by the Deputy Commissioner is also contrary to the provisions of Section 53 of 1994 Act. With the aforesaid submissions, it is prayed that the impugned inquiry report dated 26.09.2024 (Annexure P-3) as well as letter dated 30.09.2024 (Annexure P-4) be set aside.

6. Heard.

7. Apparently, a preliminary inquiry into the allegations of misappropriation/embezzlement of Gram Panchayat's fund was got conducted by respondent No. 2-Deputy Commissioner, Nuh. According to the inquiry report dated 26.09.2024 (Annexure P-3), the allegations of corruption against the petitioner were prima facie appeared to be true, 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 petitioner was found, in those circumstances, no fault can be found with the direction issued by the Deputy Commissioner to the concerned BDPO to initiate legal action/lodging of FIR against the petitioner.

8. As regards the submission of the learned counsel for the petitioner that no opportunity of hearing has been afforded to the petitioner before recommending initiation of action against the petitioner,

suffice it to say 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...”

9. As regards the submission on behalf of the petitioner that the procedure prescribed under Section 53 of 1994 Act has not been followed, it is observed that Section 53 of 1994 Act 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 not regarding initiation of action under Section 53 of 1994 Act, but a recommendation for initiating legal action/lodging FIR against the petitioner, as regards allegations of corruption/misappropriation of public funds, which in the preliminary inquiry report (Annexure P-3), were prima facie found to be true. Learned counsel for petitioner has failed to point out any provision contained in 1994 Act, which provides that before recommending legal

action/registration of FIR, the procedure under Section 53 of 1994 Act is required to be followed. Therefore, finding no merit in this submission, the same is rejected.

10. I also do not find any merit in the contention that respondent No. 3 was not competent to hold the inquiry in terms of Section 53 of 1994 Act. At the cost of repetition, it is observed that the issue in hand is not regarding initiation of action under Section 53 of 1994 Act, but a recommendation for initiating legal action/lodging FIR against the petitioner as regards allegations of corruption/misappropriation of public funds, which were found to be true during the preliminary inquiry.

11. No other argument has been raised.

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

13. 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.

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

(HARSH BUNGER)
JUDGE

16.10.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No