

2024:PHHC:149740



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-30831-2024 (O&M)
Date of decision : 18.11.2024

SANJIDA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Petitioner (Sanjida) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 04.11.2024 (Annexure P-9) passed by the learned Commissioner, Faridabad Division, Faridabad, to the extent that she has been restrained from participating in the proceedings of the Gram Panchayat.

2. Briefly, the petitioner was elected as a Sarpanch of Village Dungeja, Tehsil Punhana, District Nuh, in the year 2022. It appears that a complaint was submitted by respondent No.6 (Aarshad), who is also a Member Panchayat of Gram Panchayat Dungeja, wherein he alleged that the petitioner being the Sarpanch, had withdrawn an amount of

Rs.1,95,600/- after forging his signatures on the resolution. On the said complaint, an enquiry was conducted by the SDO (Civil), Punhana, who submitted his report dated 26.12.2023, wherein it was *inter alia* held that the signatures of respondent No.6 recorded in the proceedings register, appear to be different from the signatures on the complaint as well as the statement of respondent No.6.

2.1 Considering the afore-said enquiry report, the Deputy Commissioner, Nuh suspended the petitioner under Section 51 of the Haryana Panchayati Raj Act, 1994 (for short 'the 1994 Act') vide order dated 01.02.2024 (Annexure P-2).

2.2 An appeal filed by the petitioner against the suspension order dated 01.02.2024 (Annexure P-2), was also dismissed by the learned Commissioner, Faridabad vide order dated 20.02.2024 (Annexure P-3).

2.3 The afore-said orders dated 01.02.2024 (Annexure P-2) as well as 20.02.2024 (Annexure P-3) were challenged by the petitioner by filing ***CWP-4586-2024*** before this Court.

2.4 It appears that during the pendency of the afore-said ***CWP-4586-2024***; the petitioner was removed from the post of Sarpanch vide order dated 23.08.2024 (Annexure P-4) passed by the learned Deputy Commissioner, Nuh, after taking note of the fact that an FIR No.0016 dated 01.02.2024 under Sections 420, 467, 468 and 471 IPC was registered at Police Station Pinangavan. Accordingly, the petitioner withdrew ***CWP-4586-2024*** with liberty to avail her remedies against the order dated 23.08.2024 (Annexure P-4), whereby she had been removed from the post of Sarpanch.

2.5 Thereafter, the petitioner challenged the order dated 23.08.2024 (Annexure P-4) by filing an appeal before the learned

Commissioner, Faridabad; however, since no final order on the stay application filed by the petitioner was passed, accordingly, the petitioner preferred **CWP-28440-2024**, which was disposed of vide order dated 21.10.2024 (Annexure P-8), whereby the learned Commissioner, was directed to decide the stay application.

2.6 It transpires that the learned Commissioner, vide its order dated 04.11.2024 (Annexure P-9) has decided the appeal preferred by the petitioner in her favour by setting aside the order dated 23.08.2024 (Annexure P-4), *inter alia* on the ground that the enquiry into the signatures of the petitioner should have been got done from handwriting expert. It was also observed that even the regular enquiry has not been got done after the suspension of the petitioner, which is a lapse as per the Rules. Accordingly, the matter has been remanded to the learned Deputy Commissioner, Nuh for conducting an enquiry and passing a speaking order. However, vide same order dated 04.11.2024 (Annexure P-9), it has been directed that the petitioner will not take part in any proceedings of the Gram Panchayat.

2.7 In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court with a limited prayer for setting aside the direction issued by the learned Commissioner, whereby the petitioner has been restrained from taking part in the proceedings of the Gram Panchayat.

3. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

4. After arguing for some time, learned counsel for the petitioner has restricted his prayer for issuing appropriate directions for completing the enquiry in pursuance to the remand order dated 04.11.2024 (Annexure P-9) and for rendering final decision thereon within a period of one month.

5. I have considered the afore-said prayer made by learned counsel for the petitioner, however, in my considered view, the said prayer of the petitioner cannot be accepted, considering the fact that there is an allegation against the petitioner that she had forged the signatures of respondent No.6 and had illegally withdrawn the amount of Rs.1,95,600/-. It is not disputed that the case FIR No.0016 dated 01.02.2024 under Sections 420, 467, 468 and 471 IPC, already stands registered at Police Station Pinangavan, for the alleged embezzlement. The enquiry has already been marked against the petitioner. Although, in the initial enquiry report dated 26.12.2023 (Annexure P-1), it was held that the signatures of respondent No.6 do not tally with his signatures on the complaint and his statement and on that account, the petitioner was suspended and subsequently removed; however, the removal order of the petitioner has been set aside vide order dated 04.11.2024 (Annexure P-9), primarily on the ground that no regular enquiry has been conducted.

6. Recently, a Division Bench of this Court in ***Suman vs State of Haryana, 2024(3) RCR (Civil) 287***, while considering the nature of enquiry envisaged under Section 51(3) of the 1994 Act, has held as under :-

“9. We also find that the enquiry conducted by the respondent-State cannot be said to be in accordance with law. The word 'enquiry' as mentioned in Section 51(3) requires to be an enquiry of quasi judicial nature. The candidate who has already been elected must be given a fair and proper opportunity to cross examine the witnesses and the documents produced. Merely by conducting an in-house enquiry and relying on such enquiry report where there is no participation of the elected Panch/Sarpanch, the concerned Officer/Commissioner could not have removed the Sarpanch based on such preliminary enquiry. The law is

*well settled by Hon'ble the Supreme Court in **Amalendu Ghosh v. District Traffic Superintendent, North Eastern Railway, Katihar, 1960 SCC Online SC 65** where it has been held that a Government servant cannot be punished on findings of Preliminary Enquiry. The relevant para reads thus:-*

"3. It is obvious that the enquiry into the accident which was held by the statutory committee was not directed against the appellant as such. It was an enquiry held as is always done in cases of accident to find out who was responsible for the accident. In this enquiry the appellant gave evidence and so did other witnesses. It does appear that the committee held that the statements made by the appellant in support of the Pointsman were not true and that along with the Pointsman the appellant was also negligent in the discharge of his duties. Incidentally it may be pointed out that the first part of the finding which is signed by Mr. Basu, the president of the Enquiry Committee, seems to hold only the Pointsman responsible for the accident, though in the latter part, the appellant and the Pointsman both are held responsible. There is some substance in the grievance made by the appellant that it is not clear from the record when the latter part of the finding was added to the report. But, apart from this aspect of the matter, there can be no doubt that it is as a result of this departmental enquiry into the accident that occasion arose to take action against the appellant; and it was obviously necessary that he should have been given a chance to show his innocence by holding an enquiry in respect of the charge that he was responsible for the accident. The findings reached by the Enquiry Committee as a result of the statutory enquiry cannot be said to be findings made against the appellant in a departmental enquiry made against him for alleged neglect of duty or violation of the statutory rules. This

position is fairly conceded before us by Mr. Ganapathi Iyer, and indeed it is patent on the record that, before issuing notice calling upon the appellant to show cause why the proposed penalty should not be imposed on him, no enquiry into the alleged misconduct had really been held. It may be that the authorities concerned took the view that the departmental enquiry into the accident was enough but that clearly is not right. At the departmental enquiry nobody is accused of negligence or dereliction of duty. It is a kind of investigation made by the department under statutory rules. Therefore, we are satisfied that the appellant is justified in challenging the validity of the impugned order on the ground that a proper enquiry has not been made and he has not been given a reasonable opportunity to meet the charge against him. The said order must, therefore, be set aside."

10. In view of the aforesaid discussion, the present appeal is allowed and the judgment dated 16.01.2024 passed by the learned Single Judge is set aside. We have been told that no new elections have taken place as yet, therefore, respondents are directed to reinstate the appellant-petitioner on the post of Sarpanch..."

6.1 Since the enquiry envisaged under Section 51(3) of the 1994 Act, has to be in the nature of regular enquiry, wherein the opportunity of cross-examination has to be afforded to the delinquent official and leaving no room for any lapse on the procedural part, it may not be possible to conclude the proceedings initiated against the petitioner in a short span of one month. Accordingly, the afore-said prayer of the petitioner is rejected.

6.2 At the same time, it cannot be lost sight of the fact that the petitioner is an elected representative and the ends of justice would be met by directing the learned Deputy Commissioner, Nuh for getting the enquiry

conducted/completed against the petitioner and passing the consequential/speaking order/s within a period of four months from today.

7. The instant writ petition is accordingly dismissed, with the afore-said observations.

8. All pending applications (if any) shall also stand closed.

November 18, 2024
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(HARSH BUNGER)
JUDGE

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