



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

251

CWP-1349-2022

Date of decision: 24.03.2025

SUDHIR MOHAN

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Vijay Pal, Advocate and
Mr. Ashish Kaushik, Advocate
for the petitioner.

Mr. Rahul Dev, Addl. A.G. Haryana.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 06.01.2022 whereby the respondents have directed recovery against the petitioner and three other officials for a sum of Rs. 7,36,289/- and for the same to be deposited within 07 days, in equal proportions.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner was appointed as Sub Divisional Officer on 10.12.2004 in Panchayati Raj Department through Regular Selection Process. He was initially posted at Block Badhara, District Bhiwani and eventually in the year 2014, the petitioner got transferred to Block Ellenabad, District Sirsa. In the year 2019, the then Chief Minister announced development works worth Rs. 5 Crores across the Block Ellenabad under the Haryana Gramin



Vikas Yojna Scheme. The Gram Panchayat passed a resolution dated 04.02.2019 for execution of various development works (total 09 works) including construction of three pakka streets in the village Keshupura at different locations amongst other development works in the village. The same are extracted as under:-

“i. From main road to the house of Balwant Ram S/o xxxx Ram a Pakki Street may kindly be constructed.

ii. A Pakki Street may kindly be constructed from the house of Gurmeet Brar to Cremation Ground.

iii. From main road to the house of Joginder Singh Beddi a Pakki Street may kindly be constructed.”

3. Learned Counsel contends that as per the instructions issued by the Additional Chief Secretary in the Department of Panchayati Raj dated 07.06.2017, the Engineering Department is required to prepare the estimate and to ensure the standardization and quality in execution of the works. He further submits that the total works estimate was Rs. 25 lakhs and the sanctioning authority for the said works was the Executive Engineer (PR). Reference is also made to Clause 3 and 4 of the said guidelines about execution of the work issued by the Additional Chief Secretary in the Department of Development and Panchayat, Haryana. The same are extracted as under:-

“.....3. The estimate would be prepared and technically approved by the Panchayati Raj Engineering wing as pe the works Rules, 1996. To



ensure the standardization & quality, the estimates so prepared shall specifically mentioned the quantities of various materials required, the SDO (Panchayati Raj) shall ensure to prepare the estimates within 15 days of the receipt of the resolution of Gram Panchayat, failure of which will attract disciplinary action against him/ them..."

....4. For the work upto Rs. 10.00 Lakh, technical approval would be given by the Sub-Divisional officer (PR), above Rs. 10.00 Lakhs to Rs.25.00 Lakhs by the Executive Engineer (PR), above Rs.25.00 Lakh to Rs.50.00 Lakh by the Superintending Engineer (PR) and above Rs.50.00 Lakh by the Chief Engineer (PR)...."

4. It is submitted that after the resolution had been passed by the Gram Panchayat for construction of streets at above locations, an ownership dispute arose claiming that the said site did not vest with the Gram Panchayat. The proceedings were thus initiated against the petitioner for having caused loss to the State Exchequer and the recovery order has been passed.

5. Learned Counsel for the petitioner raises the following arguments:-

i) That as per the consolidated guidelines issued by the State Government vide memo dated 07.06.2017, the role and responsibility of the Sub Divisional Officer, Panchayati Raj had been confined only to preparing the estimates and for granting technical approval to the extent of his



financial competence. The petitioner as a member of the Panchayati Raj Engineering Wing is only required to ensure the standardization and quality in preparation of such estimate. He contends that there is no allegation of any sub standard material having been used in the execution of the work or that there was an embezzlement.

ii. The petitioner was never granted any opportunity of hearing before the initiation of the said proceedings and there is no discussion about the instructions issued by the respondent Government defining the functions to be performed by the Sub Divisional Officer.

iii He further submits that the aspect of title over the land was required to be verified by the Gram Panchayat itself from the Revenue Officials and that the petitioner could not be held liable for any lapses by the Gram Panchayat. He submits that the specific plea by the petitioner to the said effect has not been refuted by the respondents by making any reference to either the instructions or guidelines issued as per which the Engineering Wing was required to verify the title of the land on which development work was proposed through the resolution passed by the Gram Panchayat. He further contends that subsequently, the villagers have already passed a resolution vesting the said land in the Gram Panchayat itself.

6. It is thus argued that considering the above arguments from any perspective, the petitioner cannot be held liable to pay for recovery of any alleged loss and such loss, if any, can only be recovered from the members of the Gram Panchayat, who passed the resolution and identified the site for execution of the development works.



7. Counsel for the respondent-State relies on the affidavit filed by the Block Development & Panchayat Officer, Ellenabad and contends that three streets had been constructed in the village Keshupura from the funds of CM announcement. These three streets are the private streets having ownership in the names of private persons and not owned by Gram Panchayat Keshupura as per revenue record. A complaint dated 25.09.2019 was moved by Sukhwinder Singh son of Darshan Singh whereupon an Enquiry was got conducted by the Deputy Commissioner, Sirsa through the Sub Divisional Officer (Civil), Ellenabad. An enquiry report dated 25.10.2020 was submitted wherein it was established that the said street was private property. An enquiry was also got conducted by the Block Development and Panchayat Officer, Ellenabad who submitted his report to the Deputy Commissioner, Sirsa vide letter No. 457 dated 14.06.2021 wherein the petitioner amongst others i.e. Gram Sachiv and former Sarpanch of Village Keshupura were found guilty. It was thus concluded that loss was caused to the Gram Panchayat to the tune of Rs. 7,36,289/- and the delinquent officials had been directed to deposit the amount in equal proportion in the account of Gram Panchayat. An FIR No. 233 dated 15.07.2021 had also been registered for offences under Sections 409/420 of the IPC.

8. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.



9. A reference to the specific pleading has been made by the Counsel for the petitioner in the present petition which is extracted as under:-

“15. That the impugned Orders dated 28.06.2021 (P-12) and Order dated 06.01.2022 (P-15) are liable to be set aside on the ground that the same has been passed in the utter negligence of the fact that the petitioner at that relevant time was working as SDO (PR) at Block Ellenabad which is a Technical post and as per the provisions of Guidelines dated 07.06.2017 clause 3 the only work of the petitioner was to prepare the estimate of construction work for the purpose of quality and quantity of the material which was supposed to be used for the construction work as per the resolution dated 04.02.2019 (P-1) submitted by the Gram Panchayat. That the petitioner being the SDO (PR) was holding the technical post and he was not the record keeper of the revenue record of the land of the village Kesupura where the said Development/ Construction work took place. That once the Gram Panchayat itself with consultation with Gram Sachiv itself submitted the resolution dated 04.02.2019 (P-1) seeking development work as per the CM announcement in the constituency Ellenabad, then in no eventuality the petitioner who holds the technical post in the Department could have got to know about the fact that out of the total 9 construction sites in the village Kesupura, 3 Streets amongst them are on Private Land and they do not belong to the Gram Panchayat or Government of Haryana. That needless to say that the record pertaining to the ownership of land in the village area is solely in the possession of Patwari & Tehsildar



*apart from them the Gram Panchayat and Lambardar are the only persons who have the knowledge about the ownerships and the nature of the land of Village area. And moreover, as per the instructions dated 05.02.2015 issued by Additional Chief Secretary, Development and Panchayat Department it was specifically laid down that the DC or the ADC while recommending the works to the Department for the sanction of funds shall also ensure that the Gram Panchayat by Majority has passed resolution for the selection of works. Therefore, once the resolution dated 04.02.2019 (P-1) was submitted by the Gram Panchayat to the petitioner and the estimate of the same was duly approved upto the level of Principal Secretary, Development and Panchayats Department on the recommendation of Deputy Commissioner, Sirsa (P-5 to P-7) then under no circumstances now the petitioner can be made liable for the said cause. That now, the higher authorities are treating the petitioner as a Scapegoat to escape their own liability. That the copy of Instructions dated 05.02.2015 is annexed herewith as **Annexure P-16.**"*

10. It is evident that even though specific case has been set up by the petitioner that as part of the Engineering Wing of the Panchayati Raj Department, he was not required to examine the title of the land regarding which a resolution is passed by the Gram Panchayat for execution of Development works and that he was duty bound to prepare the estimate upon receipt of resolution passed by the Gram Panchayat, failing which disciplinary action would have been initiated against the petitioner. Hence, the role and responsibility of the petitioner was limited to preparing the estimates by ensuring standardization and quality and to ensure that the work



is executed as per the standards prescribed in the tender document. There is no allegation that the execution of the work was substandard or that the estimate was wrongly prepared or that there was an embezzlement. The determination of title over the land was to be verified by the Gram Panchayat from the revenue officials before a resolution and the petitioner being a technical person was not required to verify the same as per the rules of business and duties assigned to him. It is also noticed that notwithstanding a specific case having been set up by the petitioner in this regard, the respondents have chosen not to clarify the said position and have rather not responded to the averments made in the writ. There is thus nothing on record which contradicts the stand of the petitioner or establishes that he was required to ensure a prior verification of the title of land where the development work was executed.

11. Under the given circumstances, I find that the respondents have failed to take note of the instructions describing role and responsibility of the specific officials and in the absence of such a responsibility having been assigned to the petitioner, he cannot be held liable for any such lapse. The liability for the aspects which are required to be verified by the Gram Panchayat before passing of resolution or approval thereof by the competent authority i.e. the Department of Block Development and Panchayat, cannot be imposed against the petitioner.

12. It is a cardinal principle of law that in case any recovery for loss is to be effected, the burden lies on the respondent-Department to prove that the loss in question occurred as a result of acts or omissions committed

**CWP-1349-2022**

-9-

by a delinquent employee. In the absence of any instructions/guidelines or office orders issued by the competent authority assigning the said role and responsibility to the charged official, he thus cannot be held liable for lapses committed by any of the parties.

13. I thus hold that the order of recovery passed by the respondents-authorities is not based on consideration of the consolidated guidelines issued by the respondents vide Memo dated 07.06.2017 and fails to assign any acts of omission or commission on the part of the petitioner.

14. The present writ petition is accordingly allowed and the impugned order dated 06.01.2022 directing proportionate recovery qua the petitioner is set aside. The respondent-State would be at liberty to proceed against any other official, in a manner known to law.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 24, 2025
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No