Before Rameshwar Singh Malik, J.

DARSHANI DEVI—*Petitioner*

versus

STATE OF HARYANA & OTHERS—*Respondents*

CWP No. 13033 of 2012

January 22, 2013

Constitution of India, 1950 - Art. 226 - Haryana Panchayati Raj Act, 1994 - S.53 - Financial loss caused to Gram Panchayat - Petitioner directed to deposit amount without issuance of any show cause notice - Inquiry conducted by District Development and Panchayat Officer - Recovery notice issued - Appeal and revision of petitioner dismissed - Civil Writ Petition filed - Allowed - Held, Orders suffered from patent illegality - Passed in violation of S.53 of Haryana Panchayat Raj Act, 1994 - Recovery notice could not be passed without giving show cause notice.

Held, that having heard the learned counsel for the parties at a considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised on behalf of both the parties, this Court is of the considered opinion that the impugned orders suffer from patent illegality, because the same have been passed in violation of the provisions of Section 53 of the Act of 1994. The writ petition deserves to be allowed for the following reasons.

(Para 8)

Further held; that having said that, this Court feels no hesitation to conclude that respondent No.3 acted without jurisdiction while straightaway issuing the impugned recovery notice dated 15.7.2011 (Annexure P-3), without giving a show cause notice to the petitioner, as envisaged under Section of 53 (2) of the Act of 1994. A valuable right of the petitioner was illegally taken away by respondent No.3, while passing the impugned recovery notice Annexure P-3.

(Para 11)

Further held, that had respondent No.3 issued the show cause notice to the petitioner, along with copy of the inquiry report (Annexure P-2), as he was obliged to do so, the petitioner might have been in a position to convince the authorities, placing reliance upon the relevant official record that she was not responsible for the loss allegedly caused. However, since the petitioner was denied the opportunity to defend herself for which she was entitled in law, the impugned order passed by respondent No.3, cannot stand the test of judicial scrutiny.

(Para 12)

Further held, that in this view of the matter, all the three impugned orders passed by the respondent authorities are in violation of the provisions of Section 53 of the Act and cannot sustain in the eyes of law. The authorities, while exercising their jurisdiction under the Act of 1994, are working as quasi judicial authorities. They decide the valuable rights of the parties. Thus, it is unhesitatingly held that while exercising their powers under the Act of 1994, the authorities are required to comply with the provisions of the Act meticulously. They are also expected to pass speaking orders supported with reasons, referring to the relevant provisions of law and also the official record. The basic principle of Audi Alteram Partem is a must to be kept in mind and the authorities under the Act are obliged to ensure the meticulous compliance of this basic rule of natural justice.

(Para 14)

Arvind Singh, Advocate, *for the petitioner.*

Sunil Nehra, Sr. DAG, Haryana for the State.

RAMESHWAR SINGH MALIK J.

(1) The present writ petition is directed against the order dated 15.7.2011 (Annexure P-3) passed by respondent No.3, vide which the petitioner was straightaway directed to deposit the disputed amount, on account of alleged financial loss caused to the Gram Panchayat, without issuance of a show cause notice. Consequent orders i.e. appellate and revisional orders, are also under challenge.

(2) Brief facts of the case, necessary for disposal of the instant petition, are that on a complaint against the petitioner, District Development and Panchayat Officer, Ambala-I conducted an inquiry against the petitioner

and submitted his report, vide Annexure P-2. The impugned recovery notice dated 15.7.2011 (Annexure P-3), came to be issued by respondent No.3 asking the petitioner to deposit the amount mentioned therein, on the basis of inquiry report Annexure P-2.

(3) Dissatisfied with the impugned recovery notice, petitioner filed her appeal before the Deputy Commissioner, who dismissed the same, vide order dated 24.8.2011 (Annexure P-4). Petitioner approached learned Financial Commissioner by way of her revision petition (Annexure P-5). The Financial Commissioner also dismissed the revision of the petitioner vide order dated 10.1.2012 (Annexure P-6).

(4) Feeling aggrieved against the above said orders passed by the respondent authorities, petitioner has approached this Court by way of instant petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing of the impugned orders. That is how, this Court is seized of the matter.

(5) Notice of motion was issued and pursuant thereto, respondent No. 1 to 3 filed their joint written statement.

(6) Learned counsel for the petitioner contended that officer competent to hold the inquiry against the petitioner was not the District Development Officer because of which, inquiry proceedings stands vitiated. Learned counsel next contended that for the sake of arguments only, even if the inquiry report Annexure P-2 is admitted to have been conducted by the appropriate authority, still respondent No.3 acted without jurisdiction, while issuing the impugned recovery notice Annexure P-3. He further submits that since respondent No.1 and 2 also fell into serious error of law, while not appreciating the material fact that the impugned notice issued by respondent No.3 was suffering from jurisdictional error, all the three impugned orders were liable to be set aside. Relying upon the provisions of Section 53 of the Haryana Panchayat Raj Act, 1994 ('Act of 1994' for short), learned counsel concluded by submitting that since the impugned orders have resulted in serious miscarriage of justice, being violative of the provisions of Section 53 (2) of the Act of 1994, the same were not sustainable in law. Thus, he prays for acceptance of this petition.

(7) Per contra, learned counsel for the State submits that since the impugned orders passed by the respondent authorities were based on true facts of the case, the authorities have committed no error of law, while passing the impugned orders. He concluded by submitting that the writ petition was without any merit and was liable to be dismissed.

(8) Having heard the learned counsel for the parties at a considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised on behalf of both the parties, this Court is of the considered opinion that the impugned orders suffer from patent illegality, because the same have been passed in violation of the provisions of Section 53 of the Act of 1994. The writ petition deserves to be allowed for the following reasons.

(9) Since the present case revolves around Section 53 of the Act of 1994, it would be appropriate to reproduce Section 53, which reads as under:-

"Liability of Sarpanch or Panch. -

(1) Every Sarpanch or a Panch of a Gram Panchayat shall be liable for the loss, waste or misapplication of Gram Fund or property belonging to that Gram Panchayat is such loss, waste or mis-application is a consequence of his neglect or misconduct while working as Sarpacnh, Up-Sarpanch or a Panch as the case may be.

(2) The Block Development and Panchayat Officer concerned may, on the application of Gram Panchayat or otherwise, for loss, waste or mis-application of Gram Fund or property belonging to that Gram Panchayat and after giving adequate opportunity to Sarpanch or Panch, as the case may be, to explain, assess by order in writing the amount due from him on account of such loss, waste or misapplication of such Gram Fund or property and take necessary steps for its recovery.

(3) Any person aggrieved by an order under sub-section (2) may, within one month of the date of such order apply to the Director to have it set aside and the Director may suspend, vary or rescind

such order upon such terms as to costs, payment into court or otherwise, as he thinks fit, but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.

(4) Notwithstanding anything contained in sub-section (3), the Government may, either on its own motion at any time or an application received in this behalf within a period of sixty days from the date of the order, call for the records of any proceedings in which the Director has passed an order under subsection (3) for the purpose of satisfying itself as to the legality or propriety of such order and may pass such order in relation thereto as it thinks fit.

Provided that the Government shall not pass an order under this sub section prejudicial to any person without giving him a reasonable opportunity of being heard.

(5) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a Sarpanch of Panch as the case may be, whichever is earlier.

(6) The amount assessed as due from Sarpanch or Panch, as the case may be, may after his death be recovered from his legal heirs to the extent of property inherited by them."

(10) No reason is forthcoming as to why learned Deputy Commissioner-respondent No.2 marked the inquiry to the District Development and Panchayat Officer, instead of Block Development and Panchayat Officer, as envisaged under Section 53 of the Act. Even if this aspect of the matter is ignored for the reason that no prejudice has been shown to have been caused to the petitioner on this account, either respondent No.2 or the District Development and Panchayat Officer Ambala-I, never asked respondent No.3 to straightaway issue recovery notice. On the other hand, they only directed respondent No.3 to proceed further, in accordance with the provisions of Section 51 and 53 of the Act of 1994. It seems that respondent No.3 kept sitting on the matter for quite some time and then

all of a sudden straightaway issued the recovery notice dated 15.7.2011 (Annexure P-3). A bare perusal of the impugned recovery notice shows that it was issued in violation of Section 53 (3) of the Act of 1994, reproduced above.

(11) Having said that, this Court feels no hesitation to conclude that respondent No.3 acted without jurisdiction while straightaway issuing the impugned recovery notice dated 15.7.2011 (Annexure P-3), without giving a show cause notice to the petitioner, as envisaged under Section of 53 (2) of the Act of 1994. A valuable right of the petitioner was illegally taken away by respondent No.3, while passing the impugned recovery notice Annexure P-3.

(12) Had respondent No.3 issued the show cause notice to the petitioner, along with copy of the inquiry report (Annexure P-2), as he was obliged to do so, the petitioner might have been in a position to convince the authorities, placing reliance upon the relevant official record that she was not responsible for the loss allegedly caused. However, since the petitioner was denied the opportunity to defend herself for which she was entitled in law, the impugned order passed by respondent No.3, cannot stand the test of judicial scrutiny.

(13) The impugned order passed by respondent No.3, which was an order without jurisdiction, was not properly considered and appreciated by the appellate as well as the revisional authorities, in the right perspective. It is pertinent to note here that in para 6 of her revision filed before respondent No.1, petitioner took a specific stand that order dated 15.7.2011 (Annexure P-3), was beyond the provisions of the Act of 1994 and the petitioner was denied the opportunity to defend herself, before passing the impugned order by respondent No.3. However, respondent No.1 failed to appreciate this aspect of the matter as well, while passing his impugned revisional order dated 10.1.2012 (Annexure P-6).

(14) In this view of the matter, all the three impugned orders passed by the respondent authorities are in violation of the provisions of Section 53 of the Act and cannot sustain in the eyes of law. The authorities, while exercising their jurisdiction under the Act of 1994, are working as quasi judicial authorities. They decide the valuable rights of the parties. Thus, it is unhesitatingly held that while exercising their powers under the Act of 1994, the authorities are required to comply with the provisions of the Act

meticulously. They are also expected to pass speaking orders supported with reasons, referring to the relevant provisions of law and also the official record. The basic principle of *Audi Alteram Partem* is a must to be kept in mind and the authorities under the Act are obliged to ensure the meticulous compliance of this basic rule of natural justice.

(15) No other argument was raised.

(16) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is held that the impugned orders dated 15.7.2011 (Annexure P-3), 24.8.2011 (Annexure P-4) and 10.1.2012 (Annexure P-6) are not sustainable in law. All these three impugned orders are liable to be set aside and the same are, hereby, set aside

(17) In view of the above, the case is remanded to the Block Development and Panchayat Officer, Ambala-I-respondent No.3, to proceed further in accordance with law and the observations made herein-above.

(18) Resultantly, the instant writ petition stands allowed, however, with no order as to costs.

J.S.M.