

*Before Rameshwar Singh Malik, J.*

**GURDEEP SINGH SARPANCH—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondent**

CWP No. 17896 of 2012

May 20, 2013

*Constitution of India, 1950 - Art. 226 - Petitioner was elected as a Sarpanch in 2008 - Earlier, one Satwant Kaur was a Sarpanch from 2003 - 2008, and on a complaint, a preliminary inquiry was instituted against Satwant Kaur for actions for the period 2003-2008 - Preliminary inquiry report, inter alia, concluded that a sum of Rs.147790/- was recoverable from the petitioner though there was no complaint against him and nor was he associated with the inquiry proceedings - Petitioner placed under suspension vide order dated 17.11.2009 - Challenged through writ petition - In the meantime, regular inquiry completed against petitioner and order of removal passed - Earlier writ petition withdrawn and appeal filed challenging the order of removal - Appeal dismissed on account of delay - Present writ petition filed challenging the dismissal of the appeal - High Court held that since the preliminary inquiry was only against Satwant Kaur and not the petitioner, regular inquiry against the petitioner was not warranted - Moreover, he was not associated with the preliminary inquiry and any finding in the preliminary inquiry could not be used to his detriment - Writ petition allowed - Petitioner ordered to be reinstated as Sarpanch.*

*Held*, that It has gone undisputed on record that initially, there was no complaint against the petitioner when the preliminary enquiry report (Annexure P-1) was prepared, vide Annexure P-1, on the allegation levelled against Smt. Satwant Kaur, Ex-Sarpanch. Petitioner was never associated in the enquiry proceedings, before submitting the enquiry report (Annexure P-1). Similarly, while conducting regular enquiry, the allegations were changed alleging that petitioner had misappropriated the amount of pension of dead persons. No preliminary enquiry was ever conducted about this allegation.

Regular enquiry (Annexure P-7) is on entirely different set of allegations, about which no preliminary enquiry was conducted. Thus, this Court is satisfied that the respondent authorities treated the petitioner in an arbitrary manner, because of which, the impugned orders cannot be sustained.

(Para 10)

*Further held*, that the settled proposition of law that every administrative action has to be just and reasonable. Basic principles of natural justice are not mere formality but they are required to be meticulously complied with. In the present case, it has been found that the object behind passing the impugned orders was to keep an elected person out of his office for one or other reason. Petitioner has not been granted due opportunity to defend himself at different crucial stages. Further, the appellate authority had an occasion to set aside the impugned removal order, which was suffering from patent illegality but the appellate authority also fell into serious error of law, while not deciding the appeal on merits but only on account of delay, thereby again violating the basic principles of natural justice.

(Para 14)

*Further held*, that It is the settled proposition of law that the administrative as well as quasi judicial authorities should make an endeavour, to decide the rights of the citizens on merits and not on account of technicalities. Nobody should be forced to go home with a grievance that he was not granted due opportunity to defend himself. Exceptions apart, it is always better to decide any lis on the merits, so as to ensure that substantial and complete justice is done to the parties. Thus, it is unhesitatingly held that the impugned orders passed by the respondent authorities are patently illegal and cannot be sustained.

(Para 15)

N.P.S. Mann, Advocate, *for the petitioner*.

Pankaj Mulwani, DAG, Punjab.

**RAMESHWAR SINGH MALIK, J. (ORAL)**

(1) Whether the allegation enquired into, by way of preliminary enquiry, could have been changed at the stage of regular enquiry, so as to remove the petitioner from the post of Sarpanch, is the pivotal issue involved in the present case, which falls for consideration of this Court.

(2) The facts, which are hardly in dispute, are that pursuant to the panchayat election held in the respondent-State in the month of May 2008, petitioner came to be elected as Sarpanch. Smt. Satwant Kaur was Sarpanch from 2003 to 2008. A complaint was moved against her by Sh. Nachhatar Singh, present Panch of the Gram Panchayat and one Rachhpal Singh. The complaint was entrusted for preliminary enquiry to the Sub-Divisional Officer, Panchayati Raj, Ferozepur, who conducted the enquiry and submitted his report dated 13.4.2009 (Annexure P-1). However, there was no allegation against the petitioner. Although, the enquiry officer was not conducting any enquiry on any complaint against the petitioner, yet, he made an unwarranted reference in the last two lines of the report that a sum of Rs.1,47,790/- was recoverable from the present Sarpanch, because the work for which that amount was withdrawn, was not executed at the site. The above-said enquiry report was forwarded to the Director, Rural Development and Panchayat Department, Punjab respondent No.2, vide Annexure P-2.

(3) Although, neither there was any complaint nor there was any enquiry against the petitioner and he was never associated in the enquiry proceedings, yet a show cause notice was issued against the petitioner, vide Annexure P-3 dated 1.9.2009. Vide Annexure P-4, petitioner submitted his self-contained reply to the show-cause notice. Having not been satisfied with the reply submitted by the petitioner, respondent No.2 placed the petitioner under suspension vide order dated 17.11.2009 (Annexure P-5). The petitioner filed his appeal, wherein the enquiry officer was directed to submit his enquiry report to the Director within a period of three months, while dismissing the appeal of the petitioner vide order dated 22.3.2010 (Annexure P-5). The suspension order (Annexure P-5) as well as appellate order (Annexure P-6) were challenged by the petitioner before this Court by way of CWP No.9562 of 2010, wherein suspension of the petitioner was stayed by this Court. Regular enquiry was completed against the petitioner vide Annexure P-7, which was forwarded by the Deputy Commissioner to the Director, Rural Development and Panchayat Department, Punjab, vide Annexure P-8, for appropriate action.

(4) Consequently, the Director, Rural Development and Panchayat Department, passed the removal order dated 26.8.2010 (Annexure P-9) because of which, the petitioner withdrew his above-said writ petition with a view to file appeal against the removal order. Petitioner filed his appeal

before the Financial Commissioner. During the pendency of his appeal before respondent No.1, petitioner filed CWP No.8729 of 2012 before this Court, which was disposed of vide order dated 10.5.2012 directing respondent No.1 to decide the appeal of the petitioner by passing a speaking order within a period of four months. Appeal of the petitioner came to be dismissed by respondent No.1 vide order dated 6.8.2012 (Annexure P-10). However, the appeal of the petitioner was not decided on merits but only on account of delay.

(5) Feeling aggrieved against the above-said removal order (Annexure P-9) and appellate order (Annexure P-10), petitioner has approached this Court, by way of present writ petition, seeking a writ in the nature of certiorari for quashing the impugned orders.

(6) Notice of motion was issued and pursuant thereto, reply by way of counter affidavit dated 21.2.2013 of Prabhdeep Singh, Block Development Panchayat Officer, Ferozepur, was filed on behalf of respondents Nos. 1 to 4, controverting the allegations levelled by the petitioner.

(7) Learned counsel for the petitioner submits that when the preliminary enquiry was conducted against the Ex-Sarpanch Satwant Kaur vide Annexure P-1, there was no allegation against the petitioner and only a superfluous observation was made by the enquiry officer in the last two lines of the enquiry report. There was no complaint against the petitioner nor he was associated in the enquiry before submitting report (Annexure P-1). So far as the allegation of misappropriation of pension of dead persons against the petitioner was concerned, no preliminary enquiry was ever held in this regard. However, during the regular enquiry proceedings, the allegation was changed and petitioner was illegally removed from the post of Sarpanch on the basis of an allegation about which no preliminary enquiry was ever directed or conducted. No show-cause notice was issued to the petitioner after second enquiry. He next contended that the alleged regular enquiry report was completed at Ferozepur on 28.7.2010, as per Annexure R-2. Interestingly, as per Annexure P-9, show-cause notice was issued to the petitioner by the Director at Chandigarh on the same day, i.e. 28.7.2010, which shows arbitrariness on the part of respondent authorities. He prays for setting aside the impugned orders by allowing the present writ petition.

(8) On the other hand, learned counsel for the State submits that there was serious allegation against the petitioner. Repeated enquiries were conducted and he was found guilty. Due procedure was followed by issuing show-cause notice and only thereafter the petitioner was removed from the post of Sarpanch. There was nothing wrong with the impugned orders and the same were liable to be upheld. He prays for dismissal of the writ petition.

(9) Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned orders cannot be sustained and the writ petition deserves to be allowed for the following more than one reasons.

(10) It has gone undisputed on record that initially, there was no complaint against the petitioner when the preliminary enquiry report (Annexure P-1) was prepared, vide Annexure P-1, on the allegation levelled against Smt. Satwant Kaur, Ex-Sarpanch. Petitioner was never associated in the enquiry proceedings, before submitting the enquiry report (Annexure P-1). Similarly, while conducting regular enquiry, the allegations were changed alleging that petitioner had misappropriated the amount of pension of dead persons. No preliminary enquiry was ever conducted about this allegation. Regular enquiry (Annexure P-7) is on entirely different set of allegations, about which no preliminary enquiry was conducted. Thus, this Court is satisfied that the respondent authorities treated the petitioner in an arbitrary manner, because of which, the impugned orders cannot be sustained.

(11) Further, considerable force was found in the argument raised by the learned counsel for the petitioner, alleging arbitrariness on the part of respondent authorities. He submits that regular enquiry report (Annexure R-2) was prepared at Ferozpur on 28.7.2010. In the impugned order (Annexure P-9), it has been recorded by the Director, while passing the impugned removal order that after considering the regular enquiry report (Annexure R-2), show-cause notice was issued to the petitioner from Chandigarh on 28.7.2010 itself. Thus, argument raised by the learned counsel for the petitioner deserves to be accepted.

(12) Once the regular enquiry report was sent by Additional Deputy Commissioner (D), Ferozpur, to the Director, Rural Development and Panchayat Department, Punjab, vide communication dated 28.7.2010, it

does not appeal to reason as to how the Director could have issued the show-cause notice to the petitioner on the same day, as recorded by him in the impugned removal order Annexure P-9. This material fact shows that the respondent authorities were proceeding under some pressure. Removal order passed by the Director was not based on merits but on irrelevant considerations because of which, the same cannot be sustained.

(13) Similarly, neither any preliminary enquiry was conducted nor any show-cause notice was issued to the petitioner about the allegation levelled against him at page 99 of the paper-book, which is part of the alleged regular enquiry report, Annexure R-2. Again, no preliminary enquiry was held or show-cause notice was issued to the petitioner qua the allegation of alleged misappropriation of amount of pension of dead persons. In this view of the matter, the fact that allegation against the petitioner was changed during the proceedings of alleged regular enquiry, has been found to be correct. Having said that, this Court feels no hesitation to conclude that the respondent authorities acted in arbitrary manner because of which, the impugned orders cannot be sustained.

(14) It is the settled proposition of law that every administrative action has to be just and reasonable. Basic principles of natural justice are not mere formality but they are required to be meticulously complied with. In the present case, it has been found that the object behind passing the impugned orders was to keep an elected person out of his office for one or other reason. Petitioner has not been granted due opportunity to defend himself at different crucial stages. Further, the appellate authority had an occasion to set aside the impugned removal order, which was suffering from patent illegality but the appellate authority also fell into serious error of law, while not deciding the appeal on merits but only on account of delay, thereby again violating the basic principles of natural justice.

(15) It is the settled proposition of law that the administrative as well as quasi judicial authorities should make an endeavour, to decide the rights of the citizens on merits and not on account of technicalities. Nobody should be forced to go home with a grievance that he was not granted due opportunity to defend himself. Exceptions apart, it is always better to decide any lis on the merits, so as to ensure that substantial and complete justice is done to the parties. Thus, it is unhesitatingly held that the impugned orders

passed by the respondent authorities are patently illegal and cannot be sustained.

(16) No other argument was raised.

(17) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that removal order (Annexure P-9) as well as appellate order (Annexure P-10) have been found to be suffering from patent illegality, which cannot be sustained, therefore, they are ordered to be set aside. Consequently, petitioner Sarpanch is directed to be reinstated forthwith.

(18) Resultantly, with the observations made and direction issued, hereinabove, the instant writ petition stands allowed, however, with no order as to costs.

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*P.S. Bajwa*