

(2011) 06 P&H CK 0041

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 11160 of 2011

Bhurpur Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: June 27, 2011**Acts Referred:**

- Punjab Panchayati Raj Act, 1994 - Section 200, 200(1)

Hon'ble Judges: K. Kannan, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

K. Kannan, J.

1 Reply filed on behalf of Respondents 1 to 3 is taken on record.

2 The case is posted today for arguments after filing the reply and I proceed, therefore, to dispose of the case finally on the basis of the averments contained in the petition and the statement filed on behalf of the Respondents 1 to 3.

3. The order in challenge is a direction by the BDPO appointing Respondent No. 4 to spend the grants for certain development works secured on behalf of the panchayat under the 12th Finance Commission Scheme. The impugned order has been passed on the ground that the development works had not been undertaken by the Petitioner in his capacity as Sarpanch and consequently, appointing the 4th Respondent as a person competent to expend the said amounts under the purported authority u/s 200(1) of the Punjab Panchayati Raj Act, 1994. The impugned order reads that a notice had been given to the Petitioner for a meeting on 16.05.2011 to discuss the development projects to be undertaken but he did not appear on that day and all the Panches, who had assembled on that day, had expressed no trust in the Petitioner regarding the development works, since he had not called any meeting regarding the development works nor he had evinced any

interest to complete the works with the grants obtained under the scheme.

4. The grievance of the Petitioner is that Section 200 of the Punjab Panchayati Raj Act contemplates appointment of an Administrator as a person authorized to perform the act, only if there had been a default of performance of any duty and such default has to be brought through notice to call for its performance within a particular period and if only despite such a notice, the work is not completed, the issue could be taken as coming within the four corners of Section 200(1) for entrustment to any other person to perform such duty. The Petitioner would refer to the decision of this Court in *Smt. Harbans Kaur Kainth Sarpanch v. State of Punjab and Ors.* 2003 (1) RCR (Civil) 354, that held that failure of the gram panchayat to spend the grants received due to lack of support of majority of Panches could not be made as a ground to deprive public representatives of their right to effectively hold the elective office and expend the monies. The appointment of the Administrator made u/s 200(1) shall, under such circumstances, be found to be not justified. Yet another decision that has a bearing to the case is *Jaspal Singh Panch and Ors. v. State of Punjab and Ors.* 2009 (4) RCR (Civil), that an appointment of an Administrator on the basis of a letter written by a Sarpanch that he was unable to perform the duties on health grounds, would still be not justified if no opportunity had been granted to the panchayat to perform its duties and if no hearing is provided before such appointment. The learned Counsel for the Respondents would state that the meeting itself had been fixed for carrying out development works and only after he failed to turn up, the impugned order came to be passed. The contention, therefore, was that there had been adequate notice to the Petitioner before appointment of an Administrator and intentionally avoided attending the meeting to give a justification for his non-performance.

5. The order has a fundamental vice in assuming that a non-performance itself will justify a ground for appointment of another person to complete the development works. On the other hand, in terms of Section 200, a default is deemed to occur only if the development works had not been done and it is that default which would require a notice to be given fixing a date before when such works ought to be completed. Without fixing such a date for performance, the appointment of another person is not contemplated u/s 200(1). Fixing a date for a meeting is not the same as fixing the period for performance as contemplated u/s 200(1)(ii) of the Punjab Panchayati Raj Act. The non-participation of the Petitioner in such a meeting ought not to be taken as a failure to perform the act within the date fixed for performance. There is clearly a violation and the impugned order cannot stand in the eyes of law.

6. The learned Counsel for the State points out that the Administrator's term of office itself would be over by 10th July, 2011. I find that it is of no consequence, for, the appointment itself cannot be justified being violative of the procedure mandated u/s 200(1)(ii). The impugned notice is quashed and the writ petition is allowed. Needless to state that the Respondents shall be at liberty to take any independent

action in the manner contemplated by law and explained above for any non-performance of duty.