

(2010) 11 P&H CK 0638

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 17946 of 2010

Sukhwinder Kaur

APPELLANT

Vs

Secretary to Govt. of Punjab,
Rural Development and
Panchayats Punjab and Another

RESPONDENT

Date of Decision: Nov. 25, 2010

Acts Referred:

- Punjab Panchayati Raj Act, 1994 - Section 20(5)

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.

Present writ petition has been filed by the Sarpanch of Gram Panchayat, village Shaffipur, Block Jandiala Guru, District Amritsar with a prayer that suspension order (Annexure P-3) dated 21st July, 2010 passed by the Director, Rural Development and Panchayat Department, Punjab be set aside along with the order (Annexure P-4) dated 6th September, 2010 passed by the appellate authority.

2. Primary grievance of the Petitioner is that she had filed reply (Annexure P-2) to the show-cause-notice, whereas it has been wrongly held by the Director, Rural Development and Panchayat Department, Punjab that no reply was filed by the Petitioner and hence, she had admitted the allegations leveled against her and had nothing to controvert the same. Counsel for the Petitioner states that in view of this, the impugned order (Annexure P-3) is nothing but an ex-parte order. Learned Counsel further states that in the enquiry, allegations which surfaced against the Petitioner and recorded are that she, as a Sarpanch of the village, had removed the earth from Khasra No. 29//9(7-2) and the same was lifted and a house has been constructed by her in the pound area. It is stated that the Executive Officer has concluded as under :

Statements of both the parties were perused and spot was inspected by the undersigned and also seen the record of the Panchayat and come to the conclusion that the Sarpanch is constructing the house in his own land which is within the lal laqir and amount received under the NAREGA scheme have been utilized. Accepted. This allegation for removing the earth from the Panchayat land is proved, so Shri Balwinder Singh JE, Block Tarn Taran was deputed submitting the report regarding Kh. No. 29//9 (7-2) after visiting the spot vide letter No. 3032 dated 6/5/2010 and it should be mentioned that what cost will be there to put the land in original position. Regarding this Balwinder Singh JE submitted his report on 12/5/2010 that to put the land in ordinal position it will cost Rs. 1,63,000/-. So it is proved that Smt. Sukhwinder Kaur Sarpanch, Gram Panchayat Saffipur has caused a loss of Rs. 1,63,000/-to the Panchayat so action is recommended against the Sarpanch u/s 20(5) of the Punjab Panchayati Raj Act.

3. Learned Counsel states that the Petitioner-Sarpanch had taken a specific stand that no loss was caused and the report of the Junior Engineer is not according to the measurement taken at the spot and the Petitioner had not spent any funds from NAREGA scheme. Furthermore, it is stated that the Gram Panchayat has passed a resolution No. 2 dated 24th January, 2010 wherein it was decided that the earth taken out as a result of excavation be put in the elementary school and the high school as per their requirements. In the reply, the Petitioner has taken following stand :

3. Gram Panchayat have passed in resolution No. 2 dated 24.1.2010 that there is no earth on the berm of the road adjoining to walls of high school in front of elementary school. So members decided that earth be put here by removing from Panchayat land by trolleys. It is accepted and Head Master also given in writing that there is problem of stagnation of water in elementary school of Shaffipur and by putting 25 trollies of earth in the school, water is being discharged properly. The earth has removed from Panchayat land and 50 trollies of earth have been put in Govt. high school and Head Master of school, Chairman and Secretary have given in writing that earth has been removed from Panchayat land and rest of the earth has been put from main road to link road of village and berms and the same has been removed from Panchayat land.

4. That the earth has been only put in Elementary and High school and berms of link road by removing the same from 1 kanal only out of kh. No. 29//9(7-2) which was higher than the other portion of land which has been done in the interest of the villagers and no loss has been caused to Gram Panchayat as was given earlier. For this year land has been given to Rajinder Singh s/o Baldev Singh on lease. No loss has been caused to Gram Panchayat....

4. This vital aspect, according to the counsel, has not been considered by the Director, Rural Development and Panchayat Department, Punjab, while passing the impugned order (Annexure P-3). Rather, Respondent No. 2 has held as under :

Sarpanch has not replied to the notice, non filing of reply by her shows that she is admitting the allegation leveled against her and do not want to say any thing.

5. Without going into the controversy as to whether the reply was filed by the Petitioner or not, this Court is of the opinion that the legitimate defence raised by the Petitioner has not been considered by Respondent No. 2, while passing the impugned order (Annexure P-3). Accordingly, the impugned orders (Annexure P-3 and P-4) are set aside and the matter is hereby remitted back to Respondent No. 2-Director, Rural Development and Panchayat Department, Punjab to decide it afresh taking into consideration the reply (Annexure P-2) filed by the Petitioner. The Petitioner is also granted liberty to file an additional reply to justify that no act of omission and commission has been committed by her, which calls for her suspension.

6. With the observations made above, present petition is disposed of.