

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

**Civil Writ Petition No. 10666 of 2010
Date of Decision: 21.1.2013**

Manohar Lal Doda and another

.....Petitioners.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Dinarpur, Advocate
for the petitioners.

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

Mr. Deepak Sibal, Advocate
for respondent No.6.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Feeling aggrieved against the order dated 6.4.2010 (Annexure P-15) passed by respondent No.1, thereby exonerating respondent No.6 from the charges pursuant to the inquiry report dated 4.2.2010 (Annexure P-14), petitioners have approached this Court by way of instant petition under Article 226/227 of the

Constitution of India, seeking a writ in the nature of Certiorari, for quashing of the inquiry report dated 4.2.2010 (Annexure P-14), and also the order dated 6.4.2010 (Annexure P-15). The petitioners have also prayed for entrusting the inquiry against respondent No.6 to the CBI, in respect of alleged omissions and commissions.

The brief facts of the case are that respondent No.6 became the President of Municipal Council, Thanesar, District Kurukshetra in the month of May, 2005. On a complaint (Annexure P-1), alleging the sanctioning of building plans by respondent No.6, ignoring the set procedure, a show cause notice was issued to respondent No.6 vide Annexure P-2. Thereafter, the Sub Divisional Officer (civil), Thanesar, submitted the inquiry report, Annexure P-3. Based on the inquiry report, a show cause notice dated 4.12.2007 (Annexure P-4), was issued to respondent No.6. The matter was primarily pertaining to the alleged sanctioning of the building plans contrary to the procedure. Annexure P-5 to Annexure P-9 are the official communications in this regard. Thereafter, another inquiry report dated 24.8.2007 (Annexure P-10), was submitted by the Additional Deputy Commissioner, Kurukshetra. It seems that on the consideration of the matter, another inquiry was entrusted to the Chief Town Planner, who submitted his inquiry report dated 25.6.2008 (Annexure P-11). On the basis of the above said inquiry reports, another show cause notice was issued to respondent No.6 by the Directorate Urban Local Bodies, Haryana, vide Annexure P-12.

Dissatisfied with the alleged inaction on the part of

respondent No.2, petitioners approached this Court, by way of CWP No. 10723 of 2009, which was disposed of vide order dated 21.7.2009 (Annexure P-13), with a direction to respondents No. 1 and 2 to take final decision on the show cause notice, in accordance with law, within a period of two months.

The record further shows that a regular inquiry was ordered against respondent No.6, which was entrusted to the Additional Deputy Commissioner, Kurukshetra, who submitted his detailed inquiry report dated 4.2.2010 (Annexure P-14). Thereafter, respondent No.1 passed the impugned order dated 6.4.2010 (Annexure P-15), thereby exonerating respondent No.6 from the allegation levelled against her, by the petitioners. Further, it was held that for the decisions taken by the House, respondent No.6 cannot be held responsible individually, as President of the Municipal Council.

Notice of motion was issued and in response thereto, written statement on behalf of respondent No. 2 was filed. Another written statement was filed on behalf of respondents No. 3 to 5. A separate reply was also filed on behalf of respondent No.6 and pursuant thereto, petitioners filed the replication. Thereafter, an additional affidavit was also filed on behalf of respondent No.6.

Learned counsel for the petitioners submits that the earlier inquiries vide which respondent No.6 was held guilty, were the true inquiry reports. He further submits that the impugned inquiry report dated 4.2.2010 (Annexure P-14) was a procured document and the impugned order dated 6.4.2010 (Annexure P-15), passed by

respondent No.1, was contrary to the true facts and circumstances of the case, vide which respondent No.6 was illegally exonerated from the serious charges, duly proved against her.

Learned counsel for the petitioners vehemently contended that respondent No.6 had been acting in most illegal and arbitrary manner, while misusing her office of President of Municipal Council, causing unaccountable financial loss to the Municipal Council. She procured the impugned orders exercising her undue influence whereas she ought to have been removed from the post of President of Municipal Council, for her illegal actions and omissions. He concluded by submitting that the impugned inquiry report (Annexure P-14), as well as the order passed by respondent No.2, vide Annexure P-15, were liable to be set aside and the earlier reports, which were true as per facts of the case, deserve to be accepted. Immediate follow up action was required to be taken against respondent No.6, directing her removal from the post of President of Municipal Council.

Per contra, learned counsel for the State submits that all the earlier inquiry reports were only the preliminary inquiries. Petitioners were guilty of misleading this Court by withholding the material information, while filing the present writ petition. He drawn the attention of this Court to the inquiry report dated 12.3.2010 (Annexure R-1/1), submitted by the Deputy Commissioner, Kurukshetra, which has been intentionally withheld by the petitioners, as the same does not find even a passing reference in the writ petition. Learned counsel next contended that the Executive Officer,

Municipal Council, Thanesar, was since found working against the interest of Municipal Council, inquiry was ordered against him, which was concluded, vide Annexure R-1/2. When respondent No.6 submitted her reply to the show cause notice, vide Annexure R-1/3, matter was again got inquired. He also submits that the petitioners, who were the Municipal Councillors, Thanesar, were habitual of making repeated complaints, causing unwarranted interference in the smooth functioning of the Municipal Council.

Referring to the averments taken in para 2 of the preliminary submissions on behalf of respondents No. 3 to 5, learned counsel for the State submits that the petitioners were granted due opportunity of being heard even during the course of inquiry, which was conducted against respondent No.6. Petitioners got their statements recorded and also submitted some documents. He concluded by submitting that petitioners are trying to settle their political score by misusing the process of law, by way of instant petition because of which, the writ petition was liable to be dismissed with costs.

Learned counsel for respondent No.6, while supporting the contentions raised by the learned State counsel, submits that petitioners had been proceeding on a destructive and negative approach, right from the day one. He further submits that instead of, cooperating with the elected body and staff of the Municipal Council in carrying out the development works, petitioners had been causing wholly unwarranted interference in the development activities, which were being carried out by the elected body. While sincerely

performing her official duties, with the help of the Municipal Councillors and staff, respondent No.6 had been meticulously following the due procedure, as prescribed under the relevant provisions of law. He seeks dismissal of the writ petition with costs.

While rebutting the arguments raised by the learned counsel for the respondents, learned counsel for the petitioners submits that all the earlier inquiries were duly conducted indicting respondent No.6. He relies upon Annexure P-3, P-4 and P-10, in this regard. He further submits that report dated 12.12.2007 (Annexure R-1/2), was a procured document behind the back of the petitioners. Referring to para 4 of his replication, he submits that inquiry report dated 12.12.2007, was liable to be ignored outrightly. Thus, he prays for acceptance of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present petition is without any merit and no interference is warranted at the hands of this Court, while exercising its writ jurisdiction, for more than one reasons, which are being recorded hereinafter.

It is a matter of record that this writ petition came to be filed on 24.5.2010 whereas the report dated 12.3.2010 (Annexure R-1/1) had been already submitted by the Deputy Commissioner, Kurukshetra to respondent No.1. No reason is forthcoming as to why this report was not placed before this Court by the petitioners at the time of filing of the writ petition. Further, a combined reading of

inquiry report Annexure P-14, impugned order Annexure P-15, regular inquiry report Annexure R-1/1 and the report Annexure R-1/2 besides, pleadings of the parties, makes it clear that the petitioners have been granted due opportunity of being heard. Their statements were recorded and they were associated in the inquiry proceedings against respondent No.6. After due consideration of the entire matter, respondent No.1 came to the conclusion, vide impugned order dated 6.4.2010 (Annexure P-15), that respondent No.6, individually, could not have been held responsible, as the charges were relating to the functioning of Municipal Council based on resolutions passed by the Municipal house. The decisions were taken by the house associating the technical staff as well and not by the President individually. It was further observed that respondent No.6 could have been held responsible if she took the decision at her own level, ignoring recommendations of the officers. Thus, no patent illegality can be attached to the impugned order passed by respondent No.1.

During the course of arguments, learned counsel for the petitioners could not point out any patent illegality or perversity in the regular inquiry report dated 12.3.2010 (Annexure R-1/1) and also the inquiry report Annexure P-14. The impugned order Annexure P-15 seems to have been passed by respondent No.1 after due application of mind. Respondent No.6, being the President of Municipal Council, was not expected to be a technical expert for each and every activity to be carried out by the Municipal Council, for the purpose of development. She was supposed to act with the aid and advise of the staff and other officers. The autonomous bodies like

Panchayat, Municipal Committees, Municipal Corporations, act and speak through resolutions. The elected office bearers like Sarpanch of the Gram Panchayat or the President of the Municipal Council, cannot be held responsible individually for any action which has been the result of collective decision of the Gram Panchayat/Municipal Houses, until and unless, some misconduct or personal liability is established by way of an inquiry, duly conducted after following procedure, prescribed under the relevant provisions of law.

In the present case, no such illegality has been pointed out by learned counsel for the petitioners, which might be sufficient to hold respondent No.6 personally responsible. In this view of the matter, this Court feels no hesitation to conclude that respondent No.1 committed no error of law while passing the impugned order. Further, this Court is not sitting in appeal over the impugned orders passed by respondent No.1. The impugned order has not been found to be suffering from the vice of arbitrariness.

Learned counsel for the petitioners also could not point out any arbitrariness or unreasonable approach in the decision making process, while passing the impugned orders by respondent No.1. Once, the petitioners have been granted due opportunity of being heard, no prejudice has been shown to have been caused to the petitioners, in this regard also. The submission made by learned counsel for the State has been found to be plausible that the petitioners are trying to set their political scores by way of instant unwarranted litigation. Having said that, it is unhesitatingly held that the petitioners cannot be permitted to do so, while invoking the extra

ordinary jurisdiction of this Court. Process of law cannot be allowed to be use, much less misuse thereof, for settling political score.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is devoid of any merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, the instant writ petition is ordered to be dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

21.1.2013
AK Sharma