
Before V.K. Bali & K.S. Garewal, JJ

JOG DHIAN,—*Petitioner*

versus

FINANCIAL COMMISSIONER, REVENUE HARYANA AND
OTHERS,—*Respondents*

C.W.P. No. 1582 OF 2004

7th January, 2005

Constitution of India, 1950—Art. 226—Punjab Land Revenue Act, 1887—S.15(c)—Appointment of respondent No. 4 on the post of Lambardar by the Collector—Commissioner reversing the order of Collector and appointing the petitioner—Financial Commissioner dismissing the appeal of respondent No. 4—On a review application by respondent No. 4 Financial Commissioner remanding the case to Collector to decide the same afresh—Patent error in the orders passed by the Commissioner and Financial Commissioner that respondent No. 4 was involved in a murder case—Infact the petitioner who was involved in the case—Orders passed by the Financial Commissioner remanding the case to Collector are contradictory and have caused manifest injustice to respondent No. 4—No violation of rules or perversity in the orders of the Collector appointing respondent No. 4 as Lambardar—Petition dismissed while setting aside orders passed by the Commissioner and Financial Commissioner.

Held, that complete injustice has been done to the fourth respondent. It is too well settled as a proposition of law and even the Financial Commissioner has also so mentioned that the choice of the Collector in the matter of appointment of Lambardar is to be considered final and can be set at naught only if the same is against the rules or is perverse. Choice of the Collector was disturbed by the Commissioner primarily on the ground that respondent No. 4 was involved in a murder case and in that connection had remained in custody for over a year and that such people would not inspire any confidence amongst the people to whom he would ultimately represent. When an apparent mistake made by learned Commissioner and Financial Commissioner came to the notice of the latter and learned Financial Commissioner did realise the mistake and held that it is the petitioner who was involved in a murder case and not respondent No. 4, which fact is now

admitted in the writ petition itself, it is rather surprising that how the petitioner was then considered a fit person to be appointed as Lambardar.

(Para 15)

Further held, that in the matter of appointment of a Lambardar, the choice of the Collector is final. No violation of rules or perversity in the order of the Collector has been shown at any stage. Order of the Collector was set aside primarily on the ground that respondent No. 4 was involved in a murder case, which fact turned out to be absolutely incorrect. In fact, it is the petitioner who was involved in a murder case. If such a patent error had occurred in the orders passed by learned Commissioner and Financial Commissioner, such orders ought to have been set aside without any further discussion on merits as the choice of the Collector should have been upheld.

(Para 15)

Further held, that once the Court finds that injustice has been done to a party, in exercise of the jurisdiction vested in it under Article 226 of the Constitution of India, it is always open to undo the same. It is not necessary for the concerned party to agitate by way of writ petition before the Court might come to his rescue. If the facts, that constitute incomplete justice, may come to the notice of the High Court, it would have ample power to modify or set aside such orders. The High Court does not issue writs, orders or directions for the enforcement of any of the rights conferred by Part III of the Constitution alone. It can issue writs, orders or directions for any other purpose in view of the provisions contained in Article 226 of the Constitution of India. The words 'for any other purpose' would certainly embrace in its sweep for the purpose of doing justice between the parties.

(Para 17)

S.S. Godara, Advocate, *for the petitioner.*

JUDGEMENT

V.K. BALI, J.

(1) Jog Dhian, the petitioner herein, sought appointment on the post of Lambardar that became vacant due to the death of Shri Amar Singh, the then Lambardar of Village Ghespur, Sub-Tehsil

Radaur. Whereas, the Collector,—*vide* its order dated 7th June, 2001, Annexure P-2, after following the procedure and after considering the candidature of the petitioner and the one Hari Chand, preferred to appoint the latter as Lambardar, choice of the Commissioner in an Appeal preferred by the petitioner against the order, Annexure P-2, fell on the petitioner. Hari Chand, constrained of the order passed by the Commissioner dated 26th February, 2002, Annexure P-3, filed an appeal before learned Financial Commissioner, who dismissed the same on 8th April, 2003 (Annexure P-4). Hari Chand sought review of order, Annexure P-4, dated 8th April, 2003 and on 22nd July, 2003, learned Financial Commissioner, without, at that stage, issuing a notice or hearing the petitioner, passed the following order :—

“Arguments heard. Review application allowed. The case is fixed for arguments on merit on 26th August, 2003. Summoning of respondent, if need be, would be decided thereafter :—

(2) The petitioner was, indeed, sent a notice and,—*vide* order dated 2nd December, 2003, Annexure P-6, learned Financial Commissioner modified his earlier order dated 8th May, 2003 and remanded the case to the Collector to decide the same afresh.

(3) In the back drop of the facts, as mentioned above, while seeking appointment on the post of Lambardar, the petitioner, naturally, seeks setting aside of orders, Annexures P-5 and P-6, in the present writ filed by him under Article 226 of the Constitution of India, on the two fold grounds that learned Financial Commissioner in the powers vested with him under section 15 of the Punjab Land Revenue Act, 1887, dealing with review, had no jurisdiction to modify/review his earlier order without issuing notice to him and secondly, that he is far more meritorious than that of Hari Chand, who was appointed as Lambardar by the Collector, which order has since been set aside by learned Commissioner and which was, in the first instance, upheld by learned Financial Commissioner as well.

(4) When the matter came up for hearing before us on 30th January, 2004, we were, *prima facie*, of the view that the petitioner, in view of the observations made by the Commissioner and the Financial Commissioner, could not be appointed as a Lambardar at all. While so observing, we passed a detailed order on 30th January, 2004 and issued notice to the petitioner as to why order, Annexure

P-2, passed by the Collector be not upheld and all the later orders be not set aside. We will make a mention of our observations that we made while passing order dated 30th January, 2004 in later part of the judgment. It appears that before the matter could come up for hearing on 26th March, 2004, there was change in the roster. Learned counsel, it is apparent, did not inform the Bench, then seized of the matter, that the petitioner has been put to a notice as to why order, Annexure P-2, passed by the Collector be not upheld and all later orders be not set aside. He simply made a statement that he had instructions to withdraw the writ petition. On the statement made by him, Division Bench of this Court consisting of Swatanter Kumar and Ajay Kumar Mittal, JJ, passed the following order on 26th March, 2004 :—

“Learned counsel appearing for the petitioner states that he has been instructed to withdraw this writ petition. Dismissed as withdrawn.”

(5) It appears that on the same very day, order passed by this Court on 30th January, 2004 came to the notice of the Bench, then seized of the matter, and, therefore, the Bench recorded the following order on the same very day :—

“Learned counsel had made a mention and we had passed the above order in the earlier part of the day. Now it has been brought to the notice of the Court that a detailed order was passed by a Division Bench of this Court on 30th January, 2004 issuing notice to the petitioner as to why order Annexure P-2 passed by the Collector be not upheld and all the later orders be not set aside for the reasons stated in that order.

For the reasons mentioned in the order, we do not feel that we should have granted liberty to the petitioner to withdraw the writ petition unconditionally or otherwise. We also feel that it was the duty of the learned counsel appearing for the petitioner to disclose true and correct facts before the Court. We had also directed the staff of the Court to inform the counsel to appear again before the Court today, however, attempts of the staff have proved futile.

Let this case be listed for directions and re-hearing on 2nd April, 2004. The Registry shall issue a notice to the counsel for the petitioner without process fee and ensure its service.”

(6) When the matter came up for hearing before the Bench on 2nd April, 2004, following order was passed :—

“We have heard the learned counsel for the petitioner.

In view of the order dated 30th January, 2004, the desirability of passing the order dated 26th March, 2004 may have to be examined. That is why, we had directed the Registry to list this case for hearing after informing the counsel for the petitioner.

In view of the above circumstances, it would be appropriate that the matter is heard by a Bench which passed the order dated 26th March, 2004 (It appears that 26th March, 2004 has been wrongly mentioned. It should have been 30th January, 2004).

List on 9th April, 2004 after obtaining the orders from Hon’ble the Chief Justice.”

(7) The matter, thereafter, however, came up for hearing before the same very Bench on 7th May, 2004. The Bench then after reproducing two orders earlier passed by it dated 26th March, 2004 and 2nd April, 2004, further recorded as follows :—

“After hearing the learned counsel for the petitioner as well as examining the records, we are of the considered view that principle of judicial propriety would require that this matter should be listed before the Bench presided over by Hon’ble Mr. Justice V.K. Bali, subject to and after obtaining orders of Hon’ble the Chief Justice.”

(8) It is in view of the facts, as fully detailed above, that the matter has come up for hearing before the same very Bench which passed order dated 30th January, 2004. When the matter, however, came up for hearing before us on 15th July, 2004, counsel for the petitioner was not available and yet, in the interest of justice, we deferred orders on that date and directed the matter to be listed on 19th August, 2004. On the date aforesaid, counsel for the petitioner

made a request for adjournment and the case was adjourned to 9th September, 2004. On the adjourned date, once again on the request made by the counsel for the petitioner, the case was adjourned to 16th September, 2004. The matter, however, came up for hearing on 17th September, 2004 and the prayer made by the petitioner to withdraw the writ petition was dismissed and the matter was ordered to be listed for arguments on 24th September, 2004. On the date, as mentioned above, counsel for the petitioner sought adjournment by circulating the papers in advance on that behalf. The case was adjourned to 8th October, 2004. Once again on 8th October, 2004, a written request for adjournment came and the matter was adjourned to 26th October, 2004. On the adjourned date, once again a request for adjournment was made on which, we recorded the following order:—

“This order be read in the context of order dated 30th January, 2004 passed by the Division Bench consisting of one of us (V.K. Bali, J.) and Rajive Bhalla, J. as also order dated 7th May, 2004 passed by Division Bench consisting of Swatanter Kumar and Ajay Kumar Mittal, JJ. After these two orders were passed, we passed order dated 17th September, 2004 dismissing the application of the petitioner for withdrawing the petition. Thereafter, learned counsel has freely indulged in seeking adjournments. Written request for adjournment was circulated when the matter came up for hearing on 24th September, 2004. Written request was repeated once over again when the matter came up for hearing on 8th October, 2004. Today again, written request for adjournment has been circulated, which reads thus:—

“The undersigned has to appear before Metropolitan Magistrate, Patiala House, New Delhi. On 26th October 2004, the undersigned will be leaving for Delhi. Inconvenience caused to this Hon’ble Court is regretted. Hence, adjournment for 2 weeks is prayed for.”

We do not find the cause for adjournment to be justified. If the learned counsel was to appear before Metropolitan Magistrate, it is at that place where the counsel ought to have chosen to move an application and not before this

Court. From the orders, that we have passed earlier and from the attending circumstances, we are, *prima facie*, of the view that learned counsel is trying to avoid arguments in the matter before this Court. In the interest of justice, we, however, adjourn this matter for 7th December, 2004, but make it clear that appropriate orders, in accordance with law, shall be passed on that date and no request for adjournment shall be entertained.

(9) On the adjourned date, the Court was informed by Shri Parveen Bhadu, Advocate, who appeared on behalf of counsel for the petitioner, that arguing counsel was attending his daughter in the PGI. Despite order dated 26th October, 2004 clearly mentioning therein that no request for adjournment shall be entertained. We, however, again adjourned the case to 16th December, 2004. Once again, the case was adjourned to 17th December, 2004. On 17th December, 2004, counsel again sought an adjournment and this time on the ground that the petitioner has taken away the brief from him. If this was to be a ground for adjournment, we simply fail to understand that why on the earlier occasions adjournments were sought on entirely different grounds. We say no more and leave the matter at that but do not entertain the prayer of the counsel for further adjournment of the case.

(10) Insofar as, contention of learned counsel for the petitioner that learned Financial Commissioner had no jurisdiction to review his order without issuing notice to the petitioner is concerned, the same, does find support from the provisions of Section 15 of the Punjab Land Revenue Act, 1887, dealing with review. Sub-Section (c) of Section 15 of the Act reads thus :—

“An order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order.”

(11) Whereas, legal position may, as such, be in tune with the contention raised by learned counsel for the petitioner but on facts what we find is that order, Annexure P-6, finally modifying order, Annexure P-4, came to be passed after issuing notice to the petitioner and hearing his counsel as well. This fact is not in dispute and is also amply made out from the very reading of order, Annexure P-6. It is true that on 22nd July, 2003, learned Financial Commissioner allowed

the review application but at the same time, he fixed the matter for arguments on merits for 26th August, 2003 and further mentioned that summoning of respondent, if need be, would be decided thereafter. The petitioner, as mentioned above, was, indeed, summoned and his counsel was heard as well. Order, Annexure P-5, dated 22nd July, 2003, even though may technically be incorrect but the same makes no difference in substance as in ultimate analysis order, Annexure P-4, was modified only after hearing the petitioner. It rather appears to us that an inadvertent mistake came to be made by learned Financial Commissioner while mentioning that review application was allowed. The context of the order shows that the words that were required to be used were that review application was being entertained. What we have said above would be clear from the fact that if review application was to be allowed, then ultimate order whether setting aside order, Annexure P-4, or modifying the same, would have been passed on the same date. Instead, learned Financial Commissioner fixed the matter for arguments on 26th August, 2003 and thereafter issued notice to the petitioner as is the conceded position. In view of the facts and circumstances of this case, we do not find any substance in the contention of learned counsel that order, Annexure P-4, was reviewed without issuing notice to the petitioner. Insofar as controversy on merits is concerned, suffice it to mention that learned Collector, while appointing Hari Chand as Lambardar of the village, thread bare discussed the *inter-se* merits of the petitioner and Hari Chand, while observing as follows :—

“I have heard the arguments raised by both the parties and applied mind in this regard. Also perused the case file. It is clear that Sh. Hari Chand is more educated than Sh. Jog Dhian. He is son of deceased Nambardar. Also worked as Sarbrah. Also works actively in Government projects. Gram Panchayat has recommended his case. He is Member Panchayat. Naib Tehsildar, Radaur and Tehsildar Jagadhari have also forwarded his case. The only aspect in favour of Sh. Jog Dhian is that he owns more agricultural land. Otherwise, Sh. Hari Chand out scores him in all aspects. The rulings cited above also are applicable in present case.

Hence, keeping in mind the all facts and circumstances stated above and after finding Sh. Hari Chand a more suitable candidate for appointment as Nambardar, village Ghespur,

Sub Tehsil Radaur, I do hereby appoint him as new Nambardar on the vacancy lying vacant because of death of Sh. Amar Singh. File be consigned to the record room. Copy of this order be also sent to SDO Civil, Jagadhari.”

(12) The facts, as recorded by learned Collector in the order, reproduced above, are not in dispute. When the matter, however, came up for hearing in appeal before learned Commissioner, order of the Collector was set aside primarily on the ground that Hari Chand, who was respondent before the Commissioner, remained in judicial custody and was acquitted on the basis of benefit of doubt. Even though in the order, dated 26th February, 2002 passed by learned Commissioner, while dealing with judicial custody, word appellant has been mentioned, but the context of the order would show that learned Commissioner was under the impression as if Hari Chand had remained in judicial custody and was acquitted on the basis of benefit of doubt. When Hari Chand filed a revision before learned Financial Commissioner wherein, Jog Dhian (the petitioner herein) was arrayed as respondent, it was urged on behalf of Jog Dhian that Hari Chand had remained in judicial custody for one year and FIR No. 130, dated 30th December, 1978 was registered against him under Section 302 of Indian Penal Code and that he was discharged by the Court on the basis of benefit of doubt. While considering so, learned Financial Commissioner observed as follows :—

“He failed to consider the case which was registered against the petitioner wherein he was discharged by the Court on the basis of benefit of doubt. (Hari Chand was the petitioner before the Financial Commissioner). Though he was not considered yet the fact that he remained in judicial custody for a long period and this fact alone will create a bad reputation for the person in the village. Hence, I feel such person should not be appointed as Lambardar of village.”

(13) When in review application, the patent error that it was petitioner Jog Dhian and not respondent Hari Chand who remained in Judicial custody was brought to the notice of learned Financial Commissioner, he observed as follows :—

“I have heard arguments of both the learned counsel and gone through the record. The Collector had appointed the petitioner as Lambardar on the basis of educational qualifications and being a Sarbara Lambardar because

his name was recommended by the lower Courts. A case under Section 302 IPC was registered against the respondent. However, he was acquitted on benefit of doubt by Additional Sessions Judge, Kurukshetra. It seems a factual mistake has been committed by Commissioner Ambala while deciding the case. Registration of the case under Section 302 IPC has been shown against Hari Chand whereas it should be against Jog Dhian. There has also been an FIR registered against Hari Chand under the Excise Act which was subsequently cancelled when he was not found to be involved in the case. Thus his case was not put in the Court for trial.”

(14) It is in view of the observations made by learned Financial Commissioner himself in order, Annexure P-4, to the effect that a person, who had remained in custody for a year in a murder case, should not be appointed as Lambardar, and yet, when the fact came to the notice that, in fact and reality, it is the petitioner, who had remained in custody in a murder case, even though acquitted later, and when the Financial Commissioner had chosen to remand the case to once again consider the candidature of the petitioner, that we had passed order dated 30th January, 2004, putting the petitioner to the notice as to why order, Annexure P-2, passed by the Collector be not upheld and all the later orders be not set aside.

(15) We have considered the matter thoroughly and examined the records of the case and after going through the pleadings made in the petition and also to the extent learned counsel for the petitioner advanced the arguments before us, we find that complete injustice has been done to Hari Chand, the fourth respondent herein. It is too well settled as a proposition of law and even the Financial Commissioner has also so mentioned that the choice of the Collector in the matter of appointment of Lambardar is to be considered final and can be set at naught only if the same is against the rules or is perverse. Choice of the Collector was disturbed by the Commissioner primarily on the ground that Hari Chand was involved in a murder case and in that connection, had remained in custody for over a year and that such people would not inspire any confidence amongst the people, to whom he would ultimately represent. Learned Financial Commissioner, while dismissing the appeal preferred by Hari Chand against the order of the Commissioner, has also clearly recorded that the Collector failed to consider the case, which was registered against Hari Chand wherein,

he was discharged by the Court on the basis of benefit of doubt and this fact alone will create a bad reputation for the person in the village. He further mentioned that in his view, such a person should not be appointed as Lambardar. When an apparent mistake made by learned Commissioner and Financial Commissioner came to the notice of the latter and learned Financial Commissioner did realise the mistake and held that it is the petitioner, who was involved in a murder case and not Hari Chand, which fact is now admitted in the writ petition itself, it is rather surprising that how the petitioner was then considered a fit person to be appointed as Lambardar. When learned Commissioner and Financial Commissioner thought that it is Hari Chand, who was involved in a murder case and had remained in custody for over one year, the finding was that such a person is unfit to be appointed as Lambardar but when it came upon the petitioner, how it was thought necessary to remand the case and re-examine the issue, is absolutely surprising. It is on these observations that,—*vide* order, dated 30th January, 2004, we had put the petitioners to the notice as to why order, Annexure P-2, passed by the Collector be not upheld and all the later orders be not set aside. No reply is at all forth-coming. As mentioned above, it is admitted position, so specifically averred in the writ petition, that the petitioner was involved in a murder case, even though it is stated that he was acquitted, and which order was upheld by the High Court. It may be true that once an accused is acquitted on a criminal charge framed against him, even though by giving benefit of doubt, he is presumed to be innocent but at the same time, such a person cannot command respect from the public as, surely, the people cannot have much confidence and rely upon a person, who, even though, might have been acquitted but who has been tried for murder and remained in custody, either in judicial or police. That apart, in the matter of appointment of a Lambardar, the choice of the Collector is final. No violation of rules or perversity in the order of the Collector has been shown at any stage. Order of the Collector was set aside primarily on the ground that Hari Chand was involved in a murder case, which fact turned out to be absolutely incorrect. In fact, it is the petitioner, who was involved in a murder case. If such a patent error had occurred in the orders passed by learned Commissioner and Financial Commissioner, such orders ought to have been set aside without any further discussion on merits as the choice of the Collector should have been upheld. Learned Financial Commissioner, even though, as mentioned above, primarily upheld the order of the Commissioner on the ground that Hari Chand had been involved in

a murder case and, therefore, was unfit to be appointed as Lambardar, also mentioned at the end of the order that he had examined the qualification of both the persons and he would agree with the finding of the Commissioner that Jog Dhian had more land in the village and is a sportsman and that he won trophies for his sporting skill. If the choice of the Collector in appointment of Lambardar after considering *inter-se* merit between the candidates is final, no occasion had arisen for the Financial Commissioner to re-assess the merits of the respective candidates. Still further, merits of Hari Chand with regard to his being a Graduate as compared to Jog Dhian, who was only Middle pass and other aspects mentioned by the Collector, relevant part of which has been reproduced above, were ignored. Still further, even though, contention raised on behalf of Jog Dhian was that his relative had taken part in games and sports but learned Financial Commissioner recorded that it is petitioner Jog Dhian, who was a sportsman and won trophies for his sporting skill. The petitioner by filing the present petition has not averred with regard to his participation in any sports. All that has been stated is that his family members had also rendered service to the nation. Learned Financial Commissioner, in considered view of this Court, while partially touching merits of the case, violated the settled law that *inter-se* merits of the candidates cannot be reconsidered by the Appellate or the Revisional Authorities and even while doing so, recorded incorrect facts.

(16) In the order of remand, all that has been mentioned insofar as Hari Chand is concerned, is that an excise case was registered against him but while so mentioning, the patent fact that FIR registered against him was cancelled, which could only be, if he was found to be innocent, and further that not even a challan was put against Hari Chand, was completely ignored. Remand to find out further details of the excise case, when it is mentioned in the order passed by learned Financial Commissioner himself that FIR was cancelled, would be an exercise in futility.

(17) In view of the discussion made above, we find no merit in the writ petition and dismiss the same. We are conscious that while dismissing the writ petition, we are setting aside order, Annexure P-3, dated 26th February, 2002 passed by the Commissioner as also orders, Annexures P-4 and P-6, dated 8th April, 2003 and 2nd December, 2003 passed by learned Financial Commissioner as well.

Even though said orders are not under challenge before us, we are, however, of the view that learned Commissioner and Financial Commissioner set aside the order passed by the Collector on wholly untenable grounds and while recording patently incorrect facts. On the same very facts, on which Hari Chand was not found fit to be appointed as Lambardar, the same very grounds, however, did not prevail with the concerned authorities to hold that Jog Dhian was not fit to be appointed as Lambardar. As mentioned above, when the Commissioner and Financial Commissioner were given to understand that Hari Chand was involved in a murder case and had remained in custody for over a year, he was found unfit to be appointed as Lambardar but when the correct fact that it is actually Jog Dhian, who was involved in a murder case, came to their notice, it was decided to remand the case. The orders passed by learned Financial Commissioner are contradictory and have caused manifest injustice to respondent Hari Chand. Once, the Court finds that injustice has been done to a party, in exercise of the jurisdiction vested in it under Article 226 of the Constitution of India, it is always open to undo the same. It is not necessary for the concerned party to agitate by way of writ petition before the Court might come to his rescue. If the facts, that constitute incomplete justice, may come to the notice of the High Court, it would have ample power to modify or set aside such orders. The High Court does not issue writs, orders or directions for the enforcement of any of the rights conferred by Part III of the Constitution alone. It can issue writs, orders or directions for any other purpose in view of the provisions contained in Article 226 of the Constitution of India. The words for any other purpose would certainly embrace in its sweep for the purpose of doing justice between the parties.

(18) In view of the discussion made above, we dismiss the writ petition and set aside order, Annexure P-3, dated 26th February, 2002 passed by the Commissioner as also orders, Annexures P-4 and P-6, dated 8th April, 2003 and 2nd December, 2003, respectively, passed by learned Financial Commissioner. If some proceedings, pursuant to the order of remand passed by learned Financial Commissioner, might have taken place, same shall be of no consequence.

(19) A Copy of this order be sent to the concerned Collector for his information.

R.N.R.