A MAHAVIR SINGH

v.

KHIALI RAM & ORS.

(Civil Appeal No. 7252 of 2008)

B DECEMBER 12, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

CONSTITUTION OF INDIA, 1950:

Article 226 – Power of High Court to review the order of C *appointing authority – High Court setting aside appointment of Lambardar (Village Headman) made by Collector and directing appointment of writ petitioner – HELD: Court while exercising power of judicial review has a limited jurisdiction and is ordinarily concerned with correctness of decision* D *making process and not merit of the decision – In the instant case, High Court has not found that Collector, in analyzing the comparative merits of two candidates, committed any error in his decision making process – Equity also does not lie in favour of the writ petitioner – Even otherwise, when respective merits of candidates is taken into consideration, equity has* E *no role to play – Judgment of High Court set aside – Equity – Punjab Land Revenue Rules – rr. 15 and 16.*

PUNJAB LAND REVENUE RULES:

rr. 15 and 16 – Appointment of Lambardar (Village Headman) – Criteria – HELD: Collector being the appointing F *authority has considered the relevant factors and comparative merits of candidates in terms of r.15 – High Court erred in setting aside the appointment made by Collector and in directing appointment of writ petitioner – Punjab Land Revenue Act, 1887 – s.28.*

G *r.16 – Lambardar (Village Headman) – Nature of appointment – HELD: Holder of post of Lambardar is not a government servant – He does not hold a civil post within the meaning of Article 309 of the Constitution – His main income is the amount of commission which he receives out of*

H

revenue collected – Constitution of India, 1950 – Article 309. A

Respondent no. 1, who along with the appellant was short-listed as a candidate for the post of Lambardar (Village Headman), challenged, by way of writ petition in the High Court, the order of the Collector appointing the appellant to the said post. The High Court allowed the B **writ petition and directed that respondent no. 1 be appointed to the post of Lambardar as in its opinion he was more meritorious than the appellant.**

In the instant appeal it was primarily contended for the appellant that the High Court committed a serious C **error as it, in exercise of writ jurisdiction, entered into the merit of respective candidates.**

Allowing the appeal, the Court

HELD: 1.1. Although the post of Lambardar is governed by the provisions of the Punjab Land Revenue D **Act and the Rules framed thereunder, holder of the said post is not a government servant. He does not hold a civil post within the meaning of Article 309 of the Constitution of India. He although is paid a fixed sum but his main income is the amount of commission which he receives** E **out of the revenue collected. Apart from collection of revenue, he has other functions to perform including rendition of assistance to the investigating officer when a crime is committed in the village. [Para 12] [541-F-H; 542-A]**

Advanced Law Lexicon, **3rd edition 2005, page 2616,** F **referred to.**

1.2. The District Collector is the appointing authority. He considered the respective merits of the candidates in great details, including the factor that the appellant was G **more experienced in Lambardari work as he was the son of a deceased Lambardar and used to help him in the work. The Collector also found the appellant being 36 years of age to be more suitable than respondent No. 1 who was aged 62 years at the relevant time. So far as character of the respective candidates is concerned, all** H

A were found to have been possessing good character. Similar opinion was expressed in respect of land and property. The Collector drew his conclusion, upon taking into consideration the factors which were all relevant for the purpose of appointment to the post of 'Lambardar'. [para 13] [542-A-F]

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Lt. Malik Abbas Khan v. Ghulam Haidar 1940 Lahore Law Times 25; *Kalyan Singh v. Haidar* 1928 Lahore Law Times 33; *Lila Ram v. Asa Ram* 1955 Lahore Law Times 29 and *Jai Dayal v. Mohar Singh* 1962 P.L.J. 64, referred to.

C

2. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India is basically concerned with the correctness of the decision making process and not the merit of the decision. It has not been found by the High Court that the Collector in expressing

D his opinion as regards comparative merit of appellant *vis-a-vis* respondent No. 1 committed an error in his decision making process. The principles of natural justice have been complied with. Procedure laid down in the Rules has also been complied with. The Collector also

E acknowledged that respondent No. 1 had rendered the services to the State as a member of the Armed Forces. He took into consideration that the views of the respectables of the village were in favour of appellant as also the fact that he had participated in the collection work of the village and helped the government officials at the

F time of their visit. Further, the Naib Tehsildar and the Circule Revenue Officer had also recommended appellant's name. There cannot be any doubt or dispute whatsoever that a writ court could interfere with a finding of fact when the same inter alia is found to be perverse.

G However, no such finding has been arrived at by the High Court. [Para 16 and 18] [544-A-B; 547-B]

Dalpat Abasaheb Solunke v. B.S. Mahajan (1990) 1 SCC 305; *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Others v. M/s. Gopi Nath &*

H *Sons and Others* 1992 Supp (1) SCC 312; *State of U.P. v.*

Committee of Management of S.K.M. Inter College **1995 Supp (2) SCC 535 and** *Durga Devi v. State of H.P.* **(1997) 4 SCC 575, relied on.**

Bhagat Ram v. State of Himachal Pradesh, **(1983) 2 SCC 442, held inapplicable.**

3. It cannot be said that the equity lies in favour of respondent No. 1. Even otherwise, when respective merit of the candidates is taken into consideration, equity has hardly any role to play. [Para 19] [547-D]

4. The judgment of the High Court being wholly unsustainable is set aside. [Para 20] [547-E]

Case Law Reference:

1940 Lahore Law Times 25	**referred to**	**para 14**
1928 Lahore Law Times 33	**referred to**	**para 14**
1955 Lahore Law Times 29	**referred to**	**para 14**
1962 P.L.J. 64	**referred to**	**para 14**
(1990) 1 SCC 305	**relied on**	**para 17**
1992 Supp (1) SCC 312	**relied on**	**para 17**
1995 Supp (2) SCC 535	**relied on**	**para 17**
(1997) 4 SCC 575	**relied on**	**para 17**
(1983) 2 SCC 442	**held inapplicable**	**para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7252 of 2008.

From the final Judgment dated 9.11.2006 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 5582 of 2006.

S.B. Sanyal, R.K. Gupta, S.K. Gupta, Arun Yadav and Shekhar Kumar for the Appellant.

V.C. Mahajan, R.K. Rathore and Kuldip Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appointment of a Lambardar, who is a Village Headman and is *inter alia* engaged in the job of collection of

A revenue on commission basis, is governed by the provisions of the Punjab Land Revenue Act, 1887; Section 28 whereof reads as under:

"28. Rules respecting Kanungos and village officers – (1) The State Government may make rules to regulate the
B appointments, duties, emoluments, punishment, suspension and removal of kanungos and village officers."

3. Pursuant to or in furtherance of the said rule making power, the State of Punjab framed the Punjab Land Revenue Rules (for short "the Rules"). Criterion for appointment in the
C post of Lambardar is laid down in Rule 15 and that of his discharge is laid down in Rule 16 thereof. Rule 15 enumerates the factors which are required to be taken into consideration for the purpose of appointment in the said post being:

"(a) his hereditary claims;

D (b) the property in the estate possessed by the candidate to secure the recovery of land-revenue;

(c) services rendered to the State by himself or by his family;

(d) his personal influence, character, ability and freedom
E from indebtedness;"

4. The District Collector of Hisar undertook the process of appointment of Lambardar for the Village Thurana in his District in terms of the said Rules.

5. Indisputably, six persons had applied for the said post.
F However, Appellant and Respondent No. 1 as also one Ram Kumar were found fit to be considered for appointment to the said post. Upon consideration of the respective merit of the said candidates and in particular that of the appellant and the respondent No. 1 herein, appellant was appointed being a more
G meritorious candidate than others, stating:

"...He is of 36 years of age having good personality and he has work experience of Namberdari. For the purpose of security of the Govt. money, he has 8 kanals 18 marlas agricultural land and plot which is sufficient for the purpose
H of security. He has good credibility in the village. The

respectable of the village also want to appoint him as Namberdar. He actively participated in the collective work of the village and help the Govt. Officials at the time of visit. The Naib Tehsildar and Tehsildar, Hansi have also recommended the name of Sh. Mahavir Singh for the appointment on the post of Namberdar..." A B

6. For arriving at the aforementioned findings, the factors relevant therefor, viz., the educational qualification, age, experience in work of Lambardari, relation in village and character, land and property, illegal possession and dues, etc. had been taken into consideration. C

7. Respondent No. 1 filed a writ petition thereagainst before the Punjab and Haryana High Court, Chandigarh which was marked as Civil Writ Petition No. 5582 of 2006. By reason of the impugned judgment and order dated 9.11.2006, a Division Bench of the said Court inter alia opining that the respondent No. 1 herein was a more meritorious candidate, reversed the said decision of the District Collector holding that Respondent No. 1 was also a graduate having work experience of 15 years in the Armed Forces and character certificate having been issued in his favour by the Head Master of Government Girls Primary School and the Sarpanch of Village Thurana and moreover having served in the Armed Forces that he was a dedicated and disciplined person and enjoys a good reputation. D E

8. Before the High Court a contention was raised by the appellant that the respondent No. 1 was guilty of encroachment of land wherefor he was being proceeded against under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 in respect whereof, the following comments were made: F

"...It is suffice to say that these proceedings appear to be motivated, having been filed after initiation of procedure for appointment to the post of Lambardar..." G

The appointment of the appellant, on the said findings, was directed to be set aside by the High Court, stating:

"Respondent No.4 does not have better claim on account H

A of inheritance as the office of Lambardar is not a hereditary office. It appears that the competent authority has totally ignored the comparative merits of the petitioner as well as respondent No.4. As per the qualification the petitioner has certainly an edge over respondent No.4. No doubt, the choice of the competent authority in the appointment of B Lambardar should not ordinarily be interfered with, but from the facts of the present case, it is quite evident that the authorities have totally ignored the merits of one of the candidates, therefore, interference is necessitated.

In view of the above, we find that the petitioner would C be the best suitable candidate for the post of Lambardar as he has experience of being the member of disciplined force and is more meritorious. Accordingly, the present writ petition is allowed and it is directed that the petitioner be appointed as Lambardar of Village Thurana."

D 9. Mr. S.B. Sanyal, learned senior counsel appearing on behalf of appellant, in support of this appeal, would submit:

(i) As the father of the appellant was a Lambardar and he had been helping him in carrying out his functions in that capacity, he had experience.

E (ii) Appellant being younger in age than respondent No. 1, he was a better candidate.

(iii) Appellant is a graduate of a University, whereas respondent No. 1 was merely a deemed graduate for the purpose of Class 'C' post having served the F Army for a period of fifteen years.

(iv) Respondent No. 1 having been convicted for unauthorisedly occupying the land of Gram Panchayat Thurana under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, he G could not have been appointed in the post of the Lambardar.

(v) The High Court committed a serious error insofar as it, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, entered into the H merit of the respective candidates, which is beyond

its domain.

10. Mr. V.C. Mahajan, learned senior counsel appearing on behalf of respondent No. 1, contended:

(i) The relevant factors as laid down under the Rules having not been complied with by the District Collector, the High Court in exercise of its writ jurisdiction could have interfered therewith.

(ii) A finding of fact arrived at by a statutory authority, if perverse, is liable to be interfered with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

(iii) In any event, the respondent No. 1 being a retired military personnel, the equity also lies in his favour.

(iv) The fact that the respondent No. 1 has been convicted for commission of an offence under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, having been raised for the first time before the High Court, no cognizance thereof should be taken by this Court.

11. 'Lambardar' is defined in Advanced Law Lexicon, 3rd edition 2005, page 2616 as a 'headman of a village or of a patti or section of a village'. It is furthermore stated:

> "...The cultivator who either on his own account, or as the representative of other members of the village, pays the government dues and is registered in the Collector's roll according to his number: as the representative of the rest he may hold the office by descent or by election..."

12. Although the post of Lambardar is governed by the provisions of the Punjab Land Revenue Act and the Rules framed thereunder, holder of the said post is not a government servant. He does not hold a civil post within the meaning of Article 309 of the Constitution of India. He although is paid a sum of Rs. 500/- as a fixed sum but his main income is the amount of commission which he receives out of the amount of revenue collected. Apart from collection of revenue, he has other functions to perform including rendition of assistance to

A an investigating officer when a crime is committed in a village.

13. The District Collector is the appointing authority. He considered the respective merits of the candidates in great details. As indicated hereinbefore, the factor that the appellant is son of a deceased Lambardar and he used to help him in
B the work of 'Lambdari' during his life time was taken into consideration.

Candidature of Ram Kumar was not taken into consideration being a matriculate. The Collector took into consideration the fact that the respondent No. 1 is also a
C graduate keeping in view the services rendered by him in the Armed Forces. As regards age, he found the appellant to be more suitable being 36 years whereas the respondent No. 1 was aged 62 years at the relevant time.

As regards experience of the work of Lambardari, he found
D that the appellant was more experienced in the work of Lambardari. It was, however, noticed that the respondent No. 1 is a retired official from the Indian Armed Force and he has served the nation for 28 years and as such good experience in the military works.

E So far as character of the respective candidates is concerned, all were found to have been possessing good character. Similar opinion was expressed in respect of land and property.

The Collector drew his conclusion, as noticed hereinbefore,
F upon taking into consideration the aforementioned factors which were all relevant for the purpose of recruitment to the post of 'Lambardar'. The High Court in its impugned judgment did not enter into the question as to whether the said findings of the Collector were right or wrong. It did not also take into consideration the nature of jurisdiction the High Court exercises
G under Article 226 of the Constitution of India in such matters.

14. It is now a well-settled principle of law, keeping in view the decisions in regard to the appointment of Lambardar in the State of Punjab, that age of a candidate is a relevant factor.

In *Lt. Malik Abbas Khan v. Ghulam Haidar* [1940 Lahore
H Law Times 25], it was stated:

"...It is certainly not wise, save in very exceptional circumstances, to appoint for the first time, an inamkhor or zaildar whose age is 60 or more." A

In *Kalyan Singh v. Haidar* [1928 Lahore Law Times 33], the Financial Commissioner held that ordinarily the Collector's choice appointing a Zaildar or Sufedpost should not be interfered with even though the appellate authority believes that his choice was not the best choice. B

Similar view was expressed in *Lila Ram v. Asa Ram* [1955 Lahore Law Times 29] in the following terms:

"...While it is now an established principle that there should be no interference with the choice made by the Collector, it does not follow that where the Collector's order is based on a misrepresentation of facts, there should still be no interference." C

In *Jai Dayal v. Mohar Singh* [1962 P.L.J. 64], it was held that even a panch or sarpanch can carry out the job of both the offices together, stating: D

"Another aspect from which the issue may be considered is to see whether a Lambardar is eligible for election as a Panch or Sarpanch. Section 6(5) of the Gram Panchayat Act, 1952, enumerates the conditions which should be fulfilled before a person is entitled to stand for election as, or continue, to be a Sarpanch or Panch. The only relevant provisions of this section are that a person, who is not qualified to be elected as a member of the Legislative Assembly or is a whole-time salaried servant of any Local Authority or State or the Union of India, shall not be entitled to stand for election as a Sarpanch or Panch. It is clearly laid down in section 2 of Punjab Act No.7 of 1952 that a person shall not be disqualified for being a member of the Punjab State Legislature by reason only of the fact that he is a Lambardar. Further, while it may be true to say that a Lambardar holds a civil post under the State, it cannot be said that he is a whole-time salaried servant of the State." E F G

15. Keeping in view the aforementioned backdrop, the correctness of the judgment of the High Court may have to be H

considered.

16. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India is basically concerned with the correctness of the decision making process and not the merit of the decision. It has not been found by the High Court that Collector in expressing his opinion as regards comparative merit of appellant *vis-à-vis* respondent No. 1 committed an error in his decision making process. The principles of natural justice have been complied with. Procedure laid down in the Rules had also been complied with. It is also not correct to say, as has been contended by Mr. Mahajan that the Collector had not taken into consideration the services rendered by the respondent No. 1 to the State. He did acknowledge that the respondent No. 1 had rendered the services to the State as a member of the Armed Forces. The Collector also took into consideration that the views of the respectables of the village were in favour of appellant as also the fact that he had participated in the collection work of the village and helped the government officials at the time of their visit. He furthermore took into consideration the fact that the Naib Tehsildar, Hansi had also recommended his name. Even the Circle Revenue Officer had recommended therefor.

17. It is, therefore, not a case where the finding of the Collector can be said to be perverse. It has also not been established that the said statutory authority while taking a decision failed to take into consideration the relevant factors or based its decision on extraneous considerations or on irrelevant factors not germane therefor.

In *Dalpat Abasaheb Solunke v. B.S. Mahajan* [(1990) 1 SCC 305], this Court held:

> "12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of

the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved *mala fides* affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

In *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Others v. M/s. Gopi Nath & Sons and Others* [1992 Supp (1) SCC 312], this Court held:

"8. But here what was assailed was the correctness of findings as if before an appellate forum. Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

A In *State of U.P. v. Committee of Management of S.K.M. Inter College* [1995 Supp (2) SCC 535], this Court held:

> **"10.** It is settled law that the High Court exercising the power under Article 226 of the Constitution is not like an appellate authority to consider the dispute. It has to see
> B whether the impugned order is based on records or whether the authorities have applied their own mind to the relevant facts. It is seen that clauses (v) and (vi) of sub-section (3) of Section 16-D specifically enumerate the grounds which clearly applied to the facts in this case. Therefore, when the facts do exist on record and the
> C Government have applied their mind to those facts and came to the conclusion that from the facts so collected they were satisfied that the Committee had contravened clauses (v) and (vi) of sub-section (3) of Section 16-D, they have rightly exercised the power under sub-section (4) of
> D Section 16-D. We are of the view that the High Court has traversed the controversy as a court of appeal and committed manifest error of law in interfering with the order."

In *Durga Devi v. State of H.P.* [(1997) 4 SCC 575], this
E Court held:

> "4. In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and
> F fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment.
> G That was the function of the Selection Committee. The observations of this Court in Dalpat Abasaheb Solunke case are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed.

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The impugned order dated 10-12-1992 is quashed and the matter is remitted to the Tribunal for a fresh disposal on other points in accordance with the law after hearing the parties."

18. There cannot be any doubt or dispute whatsoever that a writ court could interfere with a finding of fact when the same inter alia is found to be perverse. However, neither any such finding has been arrived at by the High Court nor do we find any and as such the decision of this Court relied upon by *Mr. Mahajan in Bhagat Ram v. State of Himachal Pradesh* [(1983) 2 SCC 442] cannot be said to have any application whatsoever in this case.

The High Court furthermore failed to take into consideration that while exercising its power of judicial review, it exercises a limited jurisdiction. The court, it is well-settled, is ordinarily concerned with the decision making process and not the merit of the decision.

19. It also cannot be said that the equity lies in favour of the respondent No. 1. Even otherwise, when respective merit of the candidates is taken into consideration, equity has hardly any role to play.

20. For the reasons aforementioned, the judgment of the High Court being wholly unsustainable is set aside. The appeal is allowed. The Collector, Hisar is directed to restore the services of the appellant forthwith. No costs.

R.P. Appeal allowed.