

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

1.

**CWP No. 21527 of 2024
Reserved on : 04.12.2024
Date of decision: 09.01.2025**

Nabhdeep Bansal

.... Petitioner

Versus

State of Punjab and Anr

.... Respondents

2.

CWP No.21532 of 2024

Yudhvir Singh

.... Petitioner

Versus

State of Punjab and Anr

.... Respondents

3.

CWP No.21561 of 2024

Vipan Singh

.... Petitioner

Versus

State of Punjab and Anr

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

**Present : Mr. Amit Jhanji, Sr. Advocate with
Mr. Navjot Singh, Advocate
Mr. Shashank Shekhar Sharma, Advocate
Ms. Triyyambika, Advocate for the petitioner(s).**

Mr. Maninder Singh, Sr. DAG, Punjab.

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SURESHWAR THAKUR, J.

1. The present reference becomes generated from the order pronounced by the learned Single Bench of this Court, on 28.10.2024 upon CWPs-21527, 21532 & 21561 of 2024, wherein, the learned Single Bench of this Court has

passed the following order. For the sake of convenience, the facts are being extracted from CWP No.21527-2024.

“as to whether the mechanism provided by the respondents vide instructions dated 19.08.2003 & 07.10.2016 is legally sound for the desired purpose.”

2. Consequently, under the orders of the Hon’ble Chief Justice, the instant Larger Bench has been constituted.

3. The counsels appearing today before this Court have been heard at length.

4. The petitioner has preferred the instant writ petition, seeking the passing of a writ of Certiorari, thus for quashing charge sheet dated 21.08.2024 (Annexure P-1). He further seeks the making of a writ of Mandamus, thus directing the official respondents to keep in abeyance the drawings of any coercive steps in pursuance of charge sheet dated 21.08.2004.

5. The contents of the charge sheet dated 21.08.2024 (Annexure (P-1) are ad verbatim extracted hereinafter.

“Mr. Nabhadeep Bansal son of Mr. Brij Bhushan Bansal, Sub-Divisional Engineer is informed that action is recommended against you on the basis of the attached charge list under Rule-8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

2. You are required to respond in writing within 21 days after receiving the list of charges. In your response, you must indicate whether you accept the allegations or admit to any of the charges. If you have any defenses or explanations, you should include them in your written reply. Additionally, if you wish to present your case or provide a personal account in person, please indicate your desire to do so.

3. You are also informed that if you wish to see the relevant government records for preparing reply to this charge sheet, you may see it in the office of Construction Division No.2, Jalandhar Cantt on any working day during office hours. It is also clarified that you will be shown only those records which are relevant to this charge sheet and are available

in the above office. If, in the opinion of the above mentioned office, it is not considered proper to show this record in public interest, then you will be refused to show it.

4. You are advised that if you want to see any record which is not with this department, then you will arrange to see such record yourself. It is also clarified that your excuse of not seeing the record will not be considered as your plea of not replying to the show cause notice in time. If your answer to the charge sheet is not received within the stipulated time, it will be considered that you have no answer.

The answer to the charge sheet should be sent directly to the signatory (in 2 steps). Acknowledgment of access to this memorandum and accompanying documents should also be sent.”

6. On the (supra) writ petition the learned Co-ordinate Bench of this Court had proceeded to declare vitiated, rather the initiation of disciplinary proceedings against the present petitioners. Consequently, the disciplinary proceedings drawn against the present petitioners were set aside. The operative part of the verdict pronounced by the learned Single Bench of this Court, is extracted hereinafter.

“Under the given circumstances, I am of the opinion that the initiation of proceedings by the respondents against the petitioners on the basis of samples drawn on 18.04.2022 is based on the analysis result as supplied by the Research Lab, PD (B&R), Patiala which is vitiated in view of my observations recorded above. The proceedings are accordingly set aside and the petitions in hand stand allowed. The other aspects as regards the power of the State to draw samples is thus not required to be gone into any further at this stage.”

7. A reading of the reasons which prevailed upon the learned Single Bench of this Court to pass the (supra) extracted operative part of the verdict becomes founded upon the hereinafter extracted reasons.

- (i) *That as per the procedure informed by the State Counsel on instructions from Mr. Rohit Jindal and Mr. Mandeep Singh, XENs, Quality Control Cell and by referring to the proceedings of the meeting held with the Director, Quality Control and Addl. Secretary of PWD, IB and RR, the sample was required to be taken in duplicate and it was to be packed bearing the seals of the checking*

team and the Incharge of the work from where the sample was collected. At the time of the receipt of sample in the office of Director, Quality Control Cell, the seals were required to be checked and had to be kept intact. The procedure adopted by the respondents instead is that the seals had been removed by the Director, Quality Control Cell and the sample was changed from the earlier packaging into a new packaging and sent to the Research Lab, Patiala. The abovesaid procedure seriously compromises the sanctity and the purity of the sample that had been so obtained. Besides, there is no reason or occasion as to why the Deputy Director is required to reopen the seals that have already been affixed at the site especially when the object of removal of the identity mark is only for the purposes of maintaining secrecy which could be preserved by shifting the sample to another packaging material with separate identity mark and seal.

- (ii) The other aspect which weights upon this Court is in relation to the possibility of sample tampering which such possibility is immense considering that as per the report from the laboratory, there has been a substantial variation in almost all the samples that had been collected at the site and as sealed and sent to Research Lab. The variation is substantial and varies from 25% to 50% of the sample size, in a large number of cases and there has been increase in certain cases. Such a discrepancy in the sample size shows that the samples had not been properly sealed and stored and that the possibility of the samples having been tampered with or having been altered during the period of their storage with the Director, Quality Control and before the same were received in the office of the Research Lab cannot be ruled out. No explanation of any nature has come forth either in the affidavit filed by the respondents or during the course of the arguments as to how and under what circumstances, the samples were stored in the office of Director, Quality Control Cell.*
- (iii) The Court needs to be satisfied that before any punitive action such as imposing a penalty of recovery of dues and also blacklisting on any person is imposed, the lapse for which he is alleged, must actually be established and should not be based merely on preponderance of probabilities or a possibility of the error/lacking of quality. The sampling, storage and analysis reflect a gross discrepancy, which such discrepancy cannot outrightly be ignored. The Court cannot thus shut its eyes to the abovesaid glaring aspect.*
- (iv) Even though a last attempt was made by the respondent-State that the testing size was only 1500 grams and that the discrepancy in the weight of the sample would not have any material bearing on the final outcome, however the same cannot be accepted. The concern espoused before this Court is not that the testing was not done on a proper size of sample but the challenge is based on the purity and sanctity of the sample itself and that the said sanctity of*

sampling, storage and analysis having not been maintained, the final result is not beyond suspicion and cannot be accepted per se as sufficient proof of establishing a guilt against a persons who have executed and undertaken the works.

(v) *Whenever any punitive measure requires a sampling and testing, the foundation of any such penalty is required to be preserved and kept intact. The burden for the same lies on the agency intending to prosecute or impose penalty. The authorities cannot stress that their word be accepted as proof of evidence especially when the circumstances show that the contractors were not associated in the process of storage and testing of samples. The burden hence lies on the respondents to explain the substantial variance in the sample sizes, which it has failed to discharge.*

(vi) *A State act must reflect fair play in action and should not be indicative of a sovereign oppression. A contractor cannot be presumed in law to have executed a sub-standard work. The same is required to be established in a manner which is just, fair, transparent and can be upheld on the legal parameters. Where the State fails to instill confidence of the person aggrieved and to maintain sanctity of the sample drawn, an action based on defective and questionable storage deserves to fail.*

8. However, despite the (supra) order becoming passed, yet in the respondent(s) issuing a charge sheet dated 21.08.2024 (Annexure (P-1), vis-a-vis the present petitioners, wherein, attributions of mis-conduct, as made against the present petitioners, are similar to the ones, as become embodied in the earlier quashed letter dated 15.06.2022. Consequently, the petitioners through instituting the present writ petition bearing No.CWP-21527-2024, espoused therein, thus the grantings of the hereinafter extracted reliefs;

“a) Civil Writ petition under Article 226/227 of the Constitution of India for issuance of a writ in nature of certiorari for quashing of the Charge Sheet dated 21.08.2024 (Annexure P-1), whereby, the said charge sheet has been issued in an illegal and an arbitrary manner with the sole motive to harass the present petitioner and therefore, in the interest of justice, above said impugned order are prayed to be set aside.

b) Further writ in the nature of mandamus or any other appropriate writ, direction or order directing the official respondents to keep in abeyance any coercive steps in pursuance of Charge Sheet dated 21.08.2024 (Annexure P-1) being initiated against the present petitioners till the pendency of the present writ petition.”

9. When the instant writ petition came up for hearing on 28.10.2024, before a Coordinate Bench of this Court, the hereinafter extracted order was passed.

(9) Consequently, Registry is directed to put up the case file(s) before Hon'ble the Chief Justice for constitution of an appropriate Bench to resolve the issue in hand "as to whether the mechanism provided by the respondents vide Instructions dated 19.08.2003 & 07.10.2016 is legally sound for the desired purpose."

10. Therefore, in terms of paragraph 9 of the abovesaid order, wherein the instant reference becomes encapsulated, thus the matter was placed before Hon'ble the Chief Justice, which constrained the Hon'ble the Chief Justice, to constitute the instant larger Bench, for putting to a quietus the above referred to question of law.

Reasons for declaring the instant reference to be mis-constituted or being coram non judice

11. For the reasons to be assigned hereinafter, this Court is of profound view, that though the remedy available to the respondent concerned, in CWP-15327-2022, was to cast a challenge qua the above extracted operative part of the judgment recorded by the learned Coordinate Bench of this Court, upon, CWP-15327-2022, thus through the filing of a LPA before this Court. However, the said recourse remained unadopted at the instance of the aggrieved-respondent, from the verdict pronounced upon CWP-15327-2022 and on the connected therewith writ petitions. As such, though therebys the (supra) extracted operative part of the decision recorded by the Coordinate Bench of this Court on 25.07.2024, prima facie acquired binding and conclusive effect. Moreover, though therebys the (supra) extracted operative part of the verdict was required to be implemented, whereas, the same remaining unimplemented, inasmuch as, the grounds as earlier taken in the earlier quashed letter dated 15.06.2022, yet becoming re-taken in the charge sheet dated 21.08.2024 (Annexure P-1), thus drawn against the present petitioners.

12. Be that as it may, though therebys the Coordinate Bench of this Court while becoming seized with the writ petition No.21527-2024, thus with the (supra) reliefs becoming canvassed therein, but was required to either grant relief to the present petitioner or was required to direct the initiation of contempt proceedings against the respondents, besides was also required to assign to the aggrieved-respondents from the decision made by learned Bench of this Court, rather to canvass the remedy of an intra Court appeal before the LPA Bench of this Court. However, yet the learned subsequent Bench has made the instant reference which for all the above said reasons besides for the hereinafter stated reasons rather was not required to be made nor is required to be answered as such, the same being *coram non judice*.

13. Imminently a public work was awarded to the contractors concerned, which however was not subjected to a keen and studied oversight, thus leading to defective works becoming executed by the contractors concerned. The instant purported defective execution of public works by the contractors concerned, thus led the government, to make a profound contemplation, that the present petitioners rather made an ill oversight over the execution of works, whereby the process of the apposite samplings was done, whereafter the collected samples were tested at the laboratory concerned. However, though the results of the examinations made over the samples despatched to the laboratory concerned, are not appended with the instant petition. Nonetheless, the non-appending of the results of the apposite examinations, is prima facie not relevant nor forecloses an inference that the said results were inculpatory in nature, as only on the results making inculpatory echoings qua thereafters the disciplinary actions against the present petitioner becoming initiated.

14. Though public works have to be most diligently executed, as therebys the requisite public amenities become endowed to the entire public. Necessarily, if

there is any defect in the execution of public works, thereby the responsibility for dereliction of duties becomes enjoined to be cast both upon the executing agency, besides upon the supervising officers.

15. For ensuring the purpose of fixing of the apposite responsibility(ies), thus arising from the purported commission(s) of misfeasance(s), nonfeasance(s), and malfeasances, by the executing agency concerned, thus in purported connivance of the present petitioners, thereupon the government deemed it fit to make collections of samples, whereafter the samples as stated (supra), were sent for examination to the Laboratory concerned, and the results thereons were inculpatory in nature. Necessarily though thereby the issuance of the apposite letter qua the present petitioners but was a dire necessity.

16. Moreover, though prima facie, thus evidence was to surfeith rather for negating the results of the examination(s), thus grooved in the premise, that the examinations as made over the parcels but were made, despite the said collected samples being tampered or spoiled, whereupon, thus the enquiry officer may have been led to exonerate the present petitioners.

17. However, prima facie the Coordinate Bench of this Court, prima facie in quashing through an order dated 25.07.2024, thus the letter dated 15.06.2022, which however yet led to the drawings of the present charges against the present petitioners, thus did assume the role of an enquiry officer, besides the subsequent assumption of the said role even by the subsequent Coordinate Bench of this Court, thus was also not required to be assumed by the latter Coordinate Bench of this Court.

18. Be that as it may, the above observations may not be construed to be binding and conclusive effect, as any purported vitiation seeping into the verdict pronounced by the learned Single Bench of this Court, rather was required to be dislodged, through the availment by the respondents vis-a-vis the remedy of a LPA becoming preferred thereagainst before the LPA Bench of this Court. However, the

apposite LPA became unpreferred, though therebys the binding and conclusive effectivity becomes garnered by the decision (supra) with therein (supra) observations.

19. Consequently, therebys the present respondents rather were not required to be initiating disciplinary proceedings, thus on grounds similar to the ones, as became embodied in the letter dated 15.06.2022, which was earlier issued to the petitioners and which became quashed and set aside. As such, prima facie the initiation of disciplinary proceedings by the present respondents against the present petitioners, though is prima facie an ill indulged into contumacy. Nonetheless, since no contempt action has been proposed to be drawn against the present respondents by the present petitioners. Therefore, the said issue is not required to be further dilated upon.

20. It is in the face of the issuance of Charge Sheet dated 21.08.2024 (Annexure P-1), that the present petitioners instituted (supra) petitions, before this Court. Conspicuously, the ground as raised therein for the quashing of Annexure P-1, is quartered, on the premise, that since the earlier decision recorded by the learned Single Bench of this Court, on 25.07.2024, thus had acquired conclusivity, therebys there was no competence in the disciplinary authority, to subsequently draw disciplinary proceedings against the present petitioners.

21. Necessarily on the above ground though, the subsequent writ petitions, though prima facie, was required to be allowed, but the learned Coordinate Bench, upon, being seized with the present writ petitions, rather has formed a disagreement, thus with the (supra) reasons as become made by the learned Single Bench of this Court, on 25.07.2024, wherebys, the latter had proceeded to quash letter dated 15.06.2022. Resultantly, therebys the Coordinate Bench of this Court has formulated the (supra) reference for an answer thereto becoming made by this Court.

22. Initially, the Benches of this Court are under a Constitutional obligation to adhere to the principles of propriety. The norm of propriety governing judicial functionings, thus becomes underpinned in the niche, that an unreversed verdict pronounced by a learned Single Bench of this Court, thus acquires binding and conclusive effect, whereupon, such a binding decision but is to be adhered to or is required to be meted deference by a subsequent Coordinate Bench of this Court. The subsequent Coordinate Bench of this Court before whom a subsequent writ petition, as is the present one was laid, thus prima facie has breached the (supra) norm of propriety. The said breach has sparked from the subsequent Coordinate Bench of this Court, while becoming seized with the instant writ petition, thus proceeding to dis-concur with the reasoning as became assigned by the learned Single Bench of this Court, whereas, prima facie it was required to be enforcing the binding and conclusive verdict as become earlier made upon CWP No.15327 of 2022, on 25.07.2024, by the learned Single Bench of this Court.

23. The departures from the norm of propriety as becomes underpinned in the (supra) rule, does not augur well for the prosperity and growth of this exalted institution, as therebys the immensity of public faith reposed in the judicial dispensation system, as created under the Constitution of India, but naturally gets weakened besides gets eroded.

24. It appears that the subsequent Coordinate Bench of this Court, which was seized with the instant writ petition prima facie assumed also the role of an enquiry officer, as also become earlier assumed by the learned Single Bench, of this Court, which was seized with CWP-15327-2022, and whereons the (supra) extracted operative part became passed, whereby the letter dated 15.06.2022 became quashed and set aside.

25. Though, the lack of evidentiary worth of the apposite testings as made in terms of the (supra) evolved mechanism thus, to the considered mind of this Court, may be a possible exculpatory plea becoming taken by the present petitioners, but only before the enquiry officer. The reason for stating so generates from the factum that, unless the results of the examination, as made upon the collected samples became subjected to the rigor of evidentiary tests, thus through the said results initially becoming tendered into evidence by the officer, who drew them, whereafter he was required to be subjected to successful cross-examination, whereupon alone prima facie credible speakings would emanate from the enquiry officer, that the present mechanism as created for quality testing of the execution of public projects but is or is not of sound evidentiary strength.

26. Since prima facie the workability of the (supra) evolved mechanism for making, thus was respectively done by the learned Single Benches of this Court and that too in theirs exercising original writ jurisdiction. Thereupon, in the said exercise of original jurisdiction, both assumed onto themselves the role of an enquiry officer besides assumed onto themselves the role of examining the credibility of the results of the apposite laboratory examinations. Consequently, both the Coordinate Benches of this Court prima facie appear to derogate from the salient rubric governing the exercise of original writ jurisdiction, to the extent, that both did assume onto themselves, thus respectively the role of trial judges seized with the criminal trial, besides that of an enquiry officer, who on receiving the apposite evidence(s) about the credibility of the results of the examination, thus alone was jurisdictionally empowered to declare that the results of the examinations are faultless or are flawed on any ground whatsoever.

27. However, a situation has yet emanated upon this Court, thus from the prima facie conclusivity becoming acquired by the verdict (supra), pronounced by the learned Single Bench of this Court. Though the said decision was required to

be enforced by the subsequent Coordinate Bench of this Court, which became seized with the instant writ petition. Moreover, though the remedy to the present respondents to assail the said verdict was through preferring thereagainst LPA before this Court, and though the said remedy remains unavailed, yet to the considered mind of this Court, thus for doing larger and substantial justice, since prima facie tort(s) of misfeasance, nonfeasance, and malfeasances have been purportedly committed by the present petitioners, that therebys, rather than the instant writ petitions continuing before the learned Coordinate Bench of this Court, thus the subsequent Coordinate Bench of this Court rather may in its profound wisdom deem it fit, and, appropriate to, after relegating the respondents to the remedy of LPA, to thus not proceed with the instant writ petition.

28. Therefore, in the wisdom of learned Single Bench of this Court, he may preserve the said remedy to the present respondents.

29. Ultimately, this Court for all the above stated reasons becomes constrained to state that the reference made to this Court, thus was not required to be made, the same being *coram non judice*, as any affirmative or dis-affirmative order answer provided thereto, would ultimately impign upon the jurisdiction of the enquiry officer, rather to determine whether the results of the examination made over the collected samples, thus are faultless or are flawed.

30. Hence, the reference is answered accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 9, 2025
Ithlesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No