
(1969) 02 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 516 of 1965

Ad Lal Shiv Lal and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 27-02-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Panchayat Samitis and Zila Parishads Act, 1961 — Section 16, 5(2)

Citation : AIR 1970 P&H 189

Hon'ble Judges : Shamsheer Bahadur, J; R.S. Narula, J; D.K. Mahajan, J

Bench : Full Bench

Advocate : H.S. Wasu, B.S. Wasu and L.S. Wasu, for the Appellant; B.S. Dhillon, for A.G., H.L. Sarin B.S. Shant, A.L. Bahl, H.S. Awasthy and B.S. Malik, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula and D.K. Mahajan, JJ.—The co-option of respondents Nos. 9 to 14 as members of the Panchayat Samiti Khuian Sarwar, has been questioned by the petitioners in this case. Petitioner No. 1 claims to have been elected as a primary member of the said Panchayat Samiti. Petitioner No. 2 was a Harijan and had contested the election, but was bracketed with respondents Nos. 10 and 11, each of which three candidates secured two votes. None of them was elected in the straight contest on the 22nd of January, 1965. Just after the result of the election of the primary members was declared, the Returning Officer proceeded to decide as to which of the three Harijan members who had contested the election, but had not been elected, were entitled to be co-opted u/s 5(2) (cc) of the Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961) (hereinafter called the Act). At the meeting of the Samiti convened u/s 16 of the Act for co-opting the other members on February 16, 1965, an objection was raised to the manner in which new ballot papers had been prepared by the Presiding Officer. The objection was turned down by the written order of the Presiding Officer (Annexure "A"). This related to the co-option of respondents No. 9 and 12 to 14

only,

2. Mr. Harnam Singh Wasu, the learned counsel for the petitioners has contended that the Returning Officer had no jurisdiction to draw the lots between the three Harijan members, that is, petitioner No. 2 and respondents Nos. 10 and 11, so as to decide as to which two out of them were entitled to be co-opted. He has also argued that according to the law laid down by a Division Bench of this Court in Charan Dass Dogra and Others Vs. Punjab State and Others, the co-option under Clause (cc) of Sub-section (2) of Section 5 of the Act is not automatic in any circumstances and has to be done in a meeting convened under Rule 3(1) read with Rule 4-A of the Panchayat Samitis (Co-option of Members) Rules, 1961. The learned Advocate General contests this proposition and has submitted that the earlier Division Bench judgment of this Court needs reconsideration. We are bound by the Division Bench judgment and since its correctness is doubted, it would be appropriate that the whole case is heard by a larger Bench. It is, therefore, directed that the papers of this case may be placed before my Lord, the Chief Justice for constituting a Full Bench to hear this petition, and to decide the matter. At the request of the learned counsel for the petitioners, it is directed that the case may be fixed before the Full Bench as early as possible.

JUDGMENT

R.S. Narula, J.

3. The facts leading to the filing of this writ petition have been narrated in requisite detail in the order of reference made by the Division Bench on February 14, 1967, which may be read as a part of this judgment. This reference was necessitated by vehement arguments addressed before the Division Bench by Mr. J. N. Kaushal, the then Advocate-General for the State of Punjab, asking the Bench to reconsider the decision of an earlier Division Bench of this Court (Dua, J. and myself) in Charan Dass Dogra and Others Vs. Punjab State and Others, . At the hearing of the writ petition before Us today Mr. B. S. Dhillon, the learned Additional Advocate-General for the State of Punjab, as well as Mr. Harbans Lal Sarin, learned counsel for respondents Nos. 5, 10 and 11, have unequivocally stated that they cannot find any fault with the earlier Division Bench judgment of this Court in the case of Charan Dass Dogra and Others Vs. Punjab State and Others, and conceded that the said case was correctly decided. We accordingly hold that Charan Dass Dogra and Others Vs. Punjab State and Others, lays down correct law.

4. This petition under Articles 226 and 227 of the Constitution relates to the co-option of Harijan members to the Block Samiti in question. Sub-section (2) of Section 5 of the Punjab Panchayat Samitis and Zilla Parishads Act (3 of 1961) (hereinafter called the Act) provides that where a Panchayat Samiti is to be constituted for a block, it shall consist of primary members to be elected in the manner prescribed by the provisions contained in Clause (a) of Sub-section (2) of Section 5. Clause (a) states that sixteen members have to be elected by the

Pan-ches and Sarpanches, two members have to be elected as representatives of the Co-operative Societies, and one member has to be elected as representing the Market Committees in the block. Clause (b) of Sub-section (2) deals with Associate Members with whom we are not concerned in this case. Sub-clause (ii) of Clause (c) states:--

"Co-opted Members, to be co-opted in accordance with the provisions of Section 16, comprising-

(i)

(ii) four persons belonging to Scheduled Castes and Scheduled Tribes, if no such person is selected under Clause (a):

Provided that if only one, two or three persons are elected under Clause (a), then three, two or one such person respectively shall be co-opted."

By Section 2 of the Punjab Panchayat Samitis and Zila Parishads (Amendment) Act, 1964, the following was added as Clause (cc):--

"After the first general election of primary members of Panchayat Samitis is held. Co-opted Members to be co-opted in the following manner, notwithstanding anything contained in Clause (c) or Section 16, comprising-

(i)

(ii) four persons belonging to Scheduled Castes and Scheduled Tribes securing in the election under Sub-clause (i) of Clause (a) the highest number of votes amongst candidates of those Castes and Tribes, where no such person is elected under Clause (a):

Provided that if only one, two or three such persons are elected under Clause (a), then three, two or one such person, respectively, securing in the election under Sub-clause (i) of Clause (a) the highest number of votes amongst candidates of those Castes and Tribes, shall be co-opted: Provided further that where no such person or less than four such persons contested the election, then four such persons or the requisite number of such persons, as the case may be, shall be co-opted in accordance with the provisions of Section 16."

Section 16 of the Act states:--

"The Deputy Commissioner concerned, or any gazetted officer appointed by him in this behalf, not below the rank of an Extra Assistant Commissioner, shall, as soon as possible after notification of election of Primary Members, call a meeting of such Members in the manner prescribed for the purpose of co-opting Members required by Clause (c) of Sub-section (1) of Section 5 and Clauses (c) and (cc) of Sub-section (2) of that section. The aforesaid officer shall preside at such meeting." It is apparent from the provisions of Section 16:--

(i) that proceedings for co-option under that section cannot be taken in hand before the notification of the election of Primary Members;

(ii) that such co-option as is referred to in Section 16 has to be made only in a meeting of the Primary Members, and

(iii) the meeting in which Members have to be co-opted has to be called in the manner prescribed for the purpose of holding such a meeting, i.e., it has to be called by the Deputy Commissioner concerned or by any gazetted officer appointed by him in that behalf and as provided in the rules framed under the Act. Rule 3 of the Panchayat Samitis (Co-option of Members) Rules, 1961 is in the following terms:--

"(1) After a notification of election of Primary Members of a Panchayat Samiti has been issued the Deputy Commissioner or any Gazetted Officer appointed by him in this behalf, not below the rank of Extra Assistant Commissioner (hereinafter referred to as "Presiding Officer"), shall convene a meeting of these members at the office of the Panchayat Samiti or at such other place as he may determine in this behalf for the purpose of co-opting members as required by Clauses (c) and (cc) of Sub-section (2) of Section 5. Such meeting shall be convened after giving five days clear notice to the Members.

(2) The notice referred to in Sub-rule (1) shall state-

(i) the date, time and place of meeting)

(ii) the number of women, elected as Primary Members, and the number, if any, of women to be co-opted; and

(iii) the number of persons belonging to Scheduled Castes and Scheduled Tribes elected as Primary Members and the number, if any, of such persons to be co-opted."

The abovequoted rule adds to the three requirements of Section 16 already enumerated above a fourth one as a sub-requirement under item (iii). A valid meeting called by the competent authority for purposes of co-option has to be convened only after giving five days clear notice to the Members.

5. What happened in the instant case is not in dispute. The election of Primary Members was concluded on January 22, 1965. Immediately after the result of the election of Primary Members was declared, the Returning Officer there and then took up the matter of co-option without having been delegated the authority of the Deputy Commissioner to convene a meeting for that purpose and without giving any five days notice of the meeting to the Members and without even holding a formal meeting for that purpose drew lots between petitioner No. 2 on the one hand and respondents Nos. 10 and 11 on the other. All the said three parties to this case had contested the election for Primary membership, but had not been declared successful and had polled an equal number of votes. This was clearly in violation of all the mandatory requirements of Section 16 and Rule 3. In the written statement of the Returning Officer (Shri Dhyan Singh respondent No. 2), it has been stated by him in this behalf as below:--

"It is admitted that at the time of counting votes on January 22, 1965, it was found that three Depressed Class candidates received equal number of votes while only two were to be co-opted. However, the co-option was not required to be done by me. I did this because all the candidates had approached me to draw out two names by lots which was done publicly. Two out of these three candidates received the benefit and all the three signed on a paper that they agreed with the lots drawn. However, all this was done on pressure from all sides which is regretted."

The legality and the manner in which the co-option was done in this case has, therefore, not been supported even by the Returning Officer. When this defect came to the notice of the Deputy Commissioner, he called a meeting of the Primary Members for February 3, 1965, but instead of drawing lots as required by Rule 4-A which is in the following terms, the Presiding Officer of the meeting merely approved of the lots that had already been drawn by the Returning Officer on January 22, 1965:--

"Notwithstanding anything contained in Rule 4, no quorum shall be necessary for the purpose of co-opting members under Clause (cc) of Sub-section (2) of Section 5 from amongst women or persons belonging to Scheduled Castes and Scheduled Tribes, securing the highest number of votes, and their names shall be determined and declared by the Presiding Officer in the presence of Members, if any, attending the meeting convened under Rule 3:

Provided that if on account of equality of votes secured by women candidates or those belonging to Scheduled Castes and Scheduled Tribes, as the case may be, it cannot be determined as to who amongst them is or are to be co-opted, the matter shall be decided by the Presiding Officer in the presence of Members, if any, by drawing lots and the candidate or candidates, whose name or names is or are drawn first shall be declared to have been duly co-opted."

Mr. Sarin contends that since respondent No. 2 drew the lots with the consent of petitioner No. 2, he cannot impugn the action of the Returning Officer and of the Deputy Commissioner though, he concedes that, it is impossible to support the same in law. It is settled law that jurisdiction cannot be conferred by mere consent where it does not exist in law. In these circumstances, the co-option of respondents Nos. 10 and 11 is patently illegal and has to be set aside.

6. Learned counsel for the petitioners next contended that as a necessary consequence of our decision on the first point, we should further hold that the elections of the Chairman and Vice-Chairman of the Block Samiti as well as the election of the representatives of the Samiti to the Zila Parishad were illegal as two persons not entitled to participate therein had voted in those elections. Petitioner No. 1 contends that he intended to stand for all those offices, but could not do so. There is no force in this contention. The fact remains that petitioner No. 1 never stood for the election to any of those offices. Even if he had been a candidate at one or more of those elections, he has to show in order to succeed

that respondents Nos. 10 and 11 had voted against him in the relevant election and that if only one of them was there and petitioner No. 2 had been there in place of the other one of them, this would have made material difference in the result of the concerned election. No such allegation has been made in this petition. We are, therefore, unable to entertain the prayer for any further relief being granted in this case. Even otherwise, we are inclined to think that in view of the discretion vested in us by Article 226 of the Constitution, it would be improper to interfere with those elections at this stage after the expiry of more than four years. The co-option of respondents Nos. 10 and 11 being wholly illegal, we proceed to set it aside.

7. For the reasons already recorded, this writ petition is allowed with costs to the extent that co-option of respondents Nos. 10 and 11 made by the Returning Officer on January 22, 1965, as well as in the meeting held on February 3, 1965, is held to be illegal and consequently set aside.

D. K. Mahajan, J.

8. I agree.

Shamsher Bahadur, J.

9. I also agree.