

(2019) 03 P&H CK 0176

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13200 Of 2018 (O&M)

Anju Devi

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 15, 15(2), 15(12), 15(6), 62, 121, 123(1), 123(2)

Haryana Panchayati Raj Rules, 1995 — Section 10(2), 10(5)

Citation : (2019) 03 P&H CK 0176

Hon'ble Judges : A.B. Chaudhari, J;Harnaresh Singh Gill, J

Bench : Division Bench

Advocate : B.S. Rana, Ved Parkash, Vivek Saini, Anmol Rattan Singh, Mahir Sood

Final Decision : Dismissed

Judgement

1. By the present petition, the petitioner has sought quashing of notice dated 17.05.2018 (Annexure P-9) issued under Rule 10(2) of the Haryana Panchayati Raj Rules, 1995 (for short 'Rules') by respondent No.3-Deputy Commissioner, Jind, District Jind, by which a meeting was sought to be convened for considering the Motion of No Confidence, on 24. 05.2018 at 1.30 PM.

FACTS

2. The petitioner was elected as Member from Ward No.17 of Block Julana (Panchayat Samiti), Julana in the year 2016. Thereafter, she was elected as Chairman of Panchayat Samiti Julana by securing 25 votes out of total 26 . The petitioner received a notice dated 16.01.2018 issued by Additional Deputy Commissioner, Jind for consideration of "No Confidence Motion" against her. The meeting was convened on 23.01.2018. However, none remain present in the meeting though the petitioner waited there upto 4.30 pm. According to the petitioner since the special meeting had failed there was no occasion for the Additional Deputy Commissioner to issue second notice of meeting dated 05.02.2018 for consideration of "No Confidence Motion" on 10.02.2018. The

same is illegal in the light of proviso to Section 123 (2) of the Haryana Panchayati Raj Act, 1994 (for short 'Act').

3. In reply the affidavit has been filed by Block Development and Panchayat Officer, Julana and it is stated therein that the meeting dated 23.01.2018 could not be held as respondent No.4 was deputed to accompany Superintendent of Police, Jind and Sub-Divisional Officer, Pollution Control Board, Jind to check up the pollution of factory situated in village Deohla and that is why the meeting was postponed until further orders. No meeting was actually held on 23.01.2018 due to the said reason. Consequently, the contention that there was failure to pass motion of no confidence in that meeting is wholly wrong. It is thus stated that letter dated 10.02.2018 (Annexure P-7) relied on by the petitioner was wrongly issued that the earlier motion had failed and therefore the second meeting for motion of no confidence cannot be called within one year. That was wrongly issued in misconception. But the position of law cannot change due to the mistake of Additional Deputy Commissioner in issuing such letter (Annexure P-7). The letter was issued under a bona fide belief and therefore, there was a bonafide error in issuing that letter and the officer has also tendered unconditional apology for the mistake. ARGUMENTS:

4. Learned Senior counsel for the petitioner vehemently argued that the meeting dated 23.01.2018 for considering the Motion of No Confidence was in fact, held in the sense that the petitioner remained present throughout and even after the time for holding and adjourning meeting, but not a single member of Zila Parishad including those who had given requisition, attended the said meeting. The said meeting was, therefore, held and obviously the Motion of No Confidence had failed. He, therefore, submitted that there was no occasion for the Additional Deputy Commissioner, Jind to issue second notice in violation of proviso to Sub-Section 2 of Section 123 of the Act within one year from the failure of the first Motion which failed. He, therefore, submitted that the second notice is liable to be quashed and set aside.

5. Per contra, learned State counsel as well as learned Senior counsel for the private respondents vehemently opposed the petition and submitted that the majority is against the petitioner and the will of the majority should be respected. Learned counsel submitted that the meeting was not at all held because of the reasons furnished in the reply filed by respondent No.5-Ms. Poonam Chanda, Block Development and Panchayat Officer, Julana that she was deputed to accompany Superintendent of Police, Jind and Sub-Divisional Officer, Pollution Control Board, Jind to check up the pollution of factory situated in village Deohla and that is why the meeting was postponed until further orders. She, therefore, submitted that there was no failure of the Motion of No Confidence as contended by the petitioner. They therefore, prayed for dismissal of the writ petition.

CONSIDERATION

6. We have heard learned counsel for the rival parties at length. Section 123 (1) & (2) with proviso of the Act reads thus:-

"123. (1) The term of the office of President and Vice-President of a Zila Parishad shall be five years unless sooner removed.

(2) If by a resolution passed against the President or Vice-President, as the case may be, two-third of the total number of its elected members of the Zila Parishad decide at a meeting convened by the prescribed authority in the manner prescribed, that the President or Vice President, as the case may be, shall vacate the office and in such case the Zila Parishad shall elect the new President or Vice-President as the case may be, as specified in section 121 of this Act :

Provided that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice-President, as the case may be, was notified, and after the expiry of such period, whenever such a meeting is convened during his term of office and the proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the President or Vice-President unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened."

7. Perusal of the above proviso in term shows that there has to be a failure of Motion of No Confidence in the meeting that is held and if there is a failure, second meeting cannot be held within one year. There is an obvious reason for insertion of said time limit of one year that there should be no disturbance in the functioning of Panchayat Samiti or with the office of the Chairman, at least for a period of one year even if the majority is against such Chairman. It is in this context, the provision is required to be read and understood.

8. It cannot be disputed that meeting dated 23.01.2018 could not be held for the reasons furnished by respondent No.5 in her reply filed in response to the present petition. We have no reason to disbelieve what respondent No.5 has stated in her reply/affidavit and we accept the said stand. We reject the stand taken by the petitioner that she was present upto 4.30 P.M. and that the proposal for vacating the office by virtue of Motion of No Confidence because no member remained present in the meeting, had failed.

9. This Court is of the firm opinion that in a democratic set up, the will of the majority should be given due weight and should prevail and not in the manner as contended by the petitioner that without considering and testing the proposal for the Motion of No Confidence by mere failure to hold meeting, the same should amount to last failure. Such interpretation would not be harmonious looking to the democratic principles. The meaning of the words "last failure" in the proviso to above Section 123(2) of the Act will have to be construed not in a pedantic manner. After all, in case of Motion of No Confidence what is important is will of the majority of the council or the members who have elected the Chairman. When the majority has lost confidence in the Chairman and that such a motion/

proposal is not even placed and considered by the House, the will of the majority cannot be set a naught by buttressing the bar of one year.

10. The Apex Court in the case of Kiran Pal Singh versus The State of Uttar Pradesh and others, in Civil Appeal No.2622 of 2018 (Arising out of S.L.P. (Civil No.1724 of 2018), decided on 17.05.2018, stated thus, in Paras 16 to 20, which read thus:-

"16. We may now note the stand that was put forth before the High Court. It was contended that during the pendency of the 1st notice, the 2nd notice could not have been issued. There was no assertion that the meeting was convened pursuant to the 1st notice in the manner in which the statute provides for the same. The words "not carried out" as aforesaid are of immense significance. The meeting has to be convened as per the provisions of the said Section. The second part relates to want of the quorum. Though the quorum has not been defined under the Act, yet in the context, it would mean the quorum that requires the number of members to be present for the purpose of voting. For example, if the notice of intention is given to the Collector by more than half of the total members in Kshettra of 40 members but on the date of the meeting, there are only 10 members, indubitably there is a lack of quorum. Similarly, when the quorum is there and voting takes place, but eventually the vote of no confidence fails then the motion is not carried out as per the provisions contained in Section 15. To understand the concept of quorum, we may refer with profit to the authority in *The Punjab University, Chandigarh v. Vijay Singh Lamba and Ors.* MANU/SC/0075/1976 : (1976) 3 SCC 344, wherein while discussing about quorum, the Court had held:

"7. ...'Quorum' denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly so that its acts may be lawful.

17. In *Corpus Juris Secundum*, Volume 74, the word 'quorum' has been defined as follows:

The word 'quorum', now in common use, is from the Latin and has come to signify such a number of officers or members of any body, as is competent by law or constitution to transact business;... Quorum of a body is an absolute majority of it unless the authority by which the body was created fixes it at a different number.

18. In *Black's Law Dictionary* (Second Edition), the word 'quorum' is defined as under:

When a committee, board of directors. meeting of shareholders, legislative or other body of persons cannot act unless a certain number at least of them are present, that number is called a "quorum." Sweet. In the absence of any law or Rule fixing the quorum, it consists of a majority of those entitled to act. See *Ex parte Willcocks*, 7 Cow. (N.Y.) 409, 17 Am. Dec. 525; *State v. Wilkesville Tp.* 20

Ohio St. 293; Heiskell v. Baltimore, 65 Md. 125 : 4 Atl. 136 : 57 Am. Rep. 308; Snider v. Rinehart 18 Colo. 18 : 31 Pac. 716.

19. In this context, reference to Sub-section (6) of Section 15 is fruitful. It reads thus:

(6) As soon as the meeting convened under this Section commences, the Presiding Officer shall read to the Kshettra Panchayat the motion for the consideration of which the meeting has been convened and declare it to be open for debate.

It is quite clear that only when the number of persons are present and the meeting takes place, the debate under Sub-section (6) comes into play. Thus, in the absence of quorum, the said provision will not come into play.

20. In the case at hand, there is no allegation that the meeting was convened to consider the previous notice dated 9th October, 2017, as provided in Section 15 and the motion was not challenged on any other ground or the lack of quorum. What is singularly contended is that once a notice is given under Section 15(2), another notice of no confidence shall not be received until after expiration of one year. The said submission is without any substance inasmuch as the prohibition under Section 15(12) would only come into play when there is meeting and the motion is "not carried out" as per the provisions of Section 15 or meeting could not be held for want of quorum. As the facts of the instant case would reveal that no meeting was convened to consider the previous notice dated 9th October, 2017, as per the provisions of the Act. Mere receipt of a notice by the Collector will not allow the prohibition under Section 15(12) to come into play. That is not the purpose of the provision. That being the position, the ground urged by the learned Counsel for the Appellant that Sub-Section 15(12) would come into play is sans substratum. Neither of the conditions precedent is satisfied to attract the prohibition engrafted Under Section 15(12) of the Act."

11. In our opinion, the dictum pronounced by the Apex Court in the above, squarely applies to the present matter.

It will be necessary to clarify the confusion that was caused. This Court had made the order dated 08.02.2018 in CWP No.2922 of 2018, which reads thus:-

"Contentends that a notice was issued for a meeting where no confidence motion against the petitioner was to be discussed for 23.01.2018 at 2.30 P.M. but after the expiry of this period when nobody turned up the Addl. Deputy Commissioner postponed the meeting to 4.30 PM which was impermissible in view of Rule 10(5) of the Haryana Panchayati Raj Rules, 1995 which mandates that if within half an hour after the appointed time for the meeting there is no quorum, the meeting shall stand dissolved and the notice shall lapse. It is the contention of the learned counsel for the petitioner that in view of this when meeting could not be convened at 4.30 PM, the only course available to the authority was to permit the notice to lapse and in that eventuality Section 62 of the Haryana Panchayati

Raj Act, 1994 would come to his rescue as no subsequent notice could be issued till the expiry of one year of the failure of first process of no confidence.

Notice of motion for 04.04.2018.

In the meantime, meeting pursuant to notice Annexure P-8 be not held."

12. That was ad interim order not to hold the meeting that was of course subject to the further hearing. However, misunderstanding the said order, the Additional Deputy Commissioner, Jind issued the following letter:-

"In the above mentioned matter Smt. Anju Devi wife of Sh. Rajesh Kumar resident of Village Sirsa Kheri, Post Office Nandgarh, filed a Civil writ petition No.2922 of 2018 in the Hon'ble Punjab & Haryana High Court and Hon'ble Punjab and Haryana High Court passed the order that as per the Section 62 of Haryana Panchayati Raj Act, 1994 if the first meeting has failed then in that case no subsequent notice could be issued till the expiry of one year of failure of first process of no confidence motion meeting. The order of Hon'ble High Court shall remain valid for one year so in compliance of the order of Hon'ble Punjab & Haryana High Court no confidence motion meeting scheduled on 10.02.2018 against Chairperson and Vice Chairman, Panchayat Samiti, Julana is canceled."

13. Thus, he instead of stating that there was an ad interim stay, he cancelled the meeting itself as if the notice of second meeting was quashed by the High Court. The petitioner took advantage of the said position and obviously prayed for withdrawing the petition in view of the said letter and thus, withdrew the CWP No.2922 of 2018. On 23.03.2018, in CM No.4421-CWP of 2018 IN/AND CWP No.2922 of 2018, following order was passed:-

"CM-4432-CWP-2018 is allowed.

Amended Memo of Parties is taken on record.

Learned counsel for the applicant/petitioner prays for permission to withdraw the main writ petition in view of the subsequent orders passed by the official respondents.

Noticing the prayer made in CM-4421-2018, the matter is preponed and taken on board.

In view of the above, CM-4421-2018 is also allowed and the writ petition is dismissed as withdrawn."

14. Thereafter, he having realised the legal position issued notice dated 17.05.2018 (Annexure P-9) for convening the meeting on 24. 05.2018 at 1:30 P.M. for considering the Motion of No Confidence against the petitioner-Anju Devi, Chairperson of Panchayati Samiti, Julana. It is thus second notice dated 17.05.2018 which is under challenge in the present writ petition.

15. We have already recorded our reasons that second meeting by notice dated 17.05.2018 could definitely be held and therefore, we do not find any substance

in the present petition. The petitioner is guilty of taking undue advantage of the mistake made by the officer. Nevertheless, the second special meeting for the reasons aforesaid will have to be held for considering the Motion of No Confidence against the petitioner-Anju Devi.

12. Hence, the following order is passed:-

ORDER

(i) CWP No.13200 of 2018 is dismissed with costs in the sum of ` 5,000/- payable by the petitioner to the State of Haryana within a period of 8 weeks from today;

(ii) Interim order dated 24.05.2018 is vacated;

(iii) The respondent No.3-Deputy Commissioner, Jind is directed to hold a special meeting for considering motion of no confidence within 15 days from today.