
(1972) 11 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2797 of 1972

Attar Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 08-11-1972

Acts Referred:

Punjab Panchayat Samitis and Zila Parishads Act, 1961 — Section 5(2)

Citation : (1972) 11 P&H CK 0006

Hon'ble Judges : Harbans Singh, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : Chandra Singh, for the Appellant; S.P. Jain for Advocate General, (Haryana), for Respondents Nos. 1 to 3 and Mr. R.A. Saini and Mr. M.J.S. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—This judgment will dispose of C.W. Nos. 2754, 2797 and 2799 of 1972, as common questions of law are involved. 1 will first deal with C.W. 2797 of 1972, the facts of which are as follows:--

The petitioners, eight in number, were elected primary members of the Panchayat Samiti, Sonapat in the election held on July 10, 11 and 12, 1972, along with eleven other members u/s 5(2) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Act). A meeting of the primary members so elected was summoned for July 27, 1972, for the co-option of requisite number of members u/s 5(2)(c) of the Act. The meeting had to be adjourned because no member attended. The result was that according to rule 4 of the Punjab Panchayat Samitis (Co-option of Members) Rules, 1961 (hereinafter called the Rules), the quorum of 3/4th members not being present, another meeting had to be called. That meeting was called by the Presiding Officer (respondent 3) for August 2, 1972. Notices of this meeting were issued to the primary members through the Process Server as well as through post. The members received the notices between July 29, 1972, and August 1, 1972.

However, the meeting was attended by all the primary members including the petitioners who took part in the proceedings. They proposed and seconded the names of some candidates and cast their votes. One of their nominees, Shrimati Khazani Devi (respondent 8), the mother of petitioner 2, Bijinder Singh, was elected. Respondents 4 to 9 were the persons co-opted at that meeting. Their co-option is challenged in this petition on the ground that three clear days' notice of the meeting was not given to the members as is required under rule 4(3) of the Rules.

2. Written statement has been filed by the Presiding Officer in which it has been stated that the petitioners were made aware of the date of the meeting on July 29, 1972, and some of them intentionally avoided to receive the notices on that date. The notices were issued to the members under certificates of posting on July 29, 1972, and were also handed over to the process Server for service. All the petitioners had been served on various dates upto August 1, 1972, and they attended the meeting and took part. It has been alleged by them in the petition that they raised an objection that the meeting was not legal and valid as three clear days' notice had not been given but no heed was paid to their objection. This allegation of the petitioners is denied by respondent 3 in his affidavit and apart from the assertion in the petition and the accompanying affidavit there is no other proof that the petitioners raised such an objection or protested. Their conduct in taking part in the co-option of members by proposing and seconding some names and casting their votes clearly shows that they attended the meeting with-out any reservation or protest. One of their nominees was elected and she was no other than the mother of petitioner 2. In view of these facts, we are of the opinion that the petitioners have no locus standi to file this petition and object that the notice of the meeting served CD them was insufficient and not in accordance with rule 4 (3).

3. A Division Bench of the Bombay High Court (Chagla C. J. and Dixit J.) observed in Gandhinagar Motor Transport Society Vs. State of Bombay, , as under:--

Equally so a defendant may not raise the question of jurisdiction in the Court of first instance, he may not raise the question of jurisdiction in the appellate Court, he may postpone raising the question of jurisdiction upto the stage of the Privy Council or the Supreme Court, yet if the Court has no jurisdiction, the highest Court in the land will allow the point to be raised and decide it in favour of the defendant. But the principle is different when the petitioner comes to this Court for a writ. The Court must tell the petitioner; "it was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ".

On the parity of reasoning it can be said in this case that the petitioners took a chance in the meeting of getting their nominees elected for co-option without any objection and having partly succeeded, after having taken full part in the

proceedings of the meeting, they cannot now be heard to say that the proceedings of the meeting should be declared as illegal and invalid on the ground that the meeting had not been regularly summoned in accordance with the statutory rules. This decision of the Bombay High Court was relied upon by Shamsheer Bahadur, J., in Phalgu Dutta Kirpa Ram Vs. Pushpa Wanti and Others, , and has the approval of various other High Courts.

The learned counsel for the respondents have brought to our notice a judgment of their Lordships of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, wherein it was held (Para 20 of the report):

We are, therefore, of opinion that the fact that some of the Councilors received less than three clear days" notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councilors attended the meeting. Of these nineteen, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice".

In that case, their Lordships posed the question thus : "Is the provision of three clear days" notice mandatory, that is does the failure to give such notice make the proceedings of the meeting and the resolution passed there invalid?" and answered it thus :

The use of the word "shall" is not conclusive on the question. As in all the other matters of statutory construction the decision of this question depends on the ascertainment of the legislature's intention. Was it the legislature's intention in making the provision that the failure to comply with it shall have the consequence of making what is done invalid in law ? That is the question to be answered. To ascertain the intention the Court has to examine care-fully the object of the statute, the consequence that may follow from insisting on a strict observance of the particular provision and above all the general scheme of the other provisions of which it forms a part.

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It is pointed out that while providing that three clear days" notice of special general meeting shall be given to the Councilors, the legislature said in the same breath that "in cases of great urgency, notice of such shorter period as is reasonable should be given to the Councilors of a special general meeting". The decision of what should be considered to be a case of "great urgency" was left entirely to the President or the Vice President on whom the duty to call such a meeting is given u/s 27 (2). It is urged by the learned counsel that if the intention of the legislature had been to make the service of three clear days"

notice mandatory, it would not have left the discretion of giving notice for a shorter period for some of the special general meetings in this manner. We see considerable force in this argument. The very fact that while three clear days" notice is not to be given of all special general meeting and for some such meetings notice only of such shorter period as is reasonable has to be given justifies the conclusion that the "three clear days" mentioned in the section was given by the legislature as only a measure of what it considered reasonable.

In the present case, rule 4(3) no doubt provides that a meeting shall be convened after giving three clear days" notice to the members but if all the members attend even if the notice is short and the meeting is held, no member present at that meeting and taking part without any objection can be allowed to raise the objection in a writ petition that the meeting had not been regularly and validly convened.

4. In re : Bailey Hay & Co. Ltd. (1972) 42 Comp. Cases 442, notices convening an extraordinary general meeting of a company to pass resolutions for the voluntary winding-up of the company and the appointment of a liquidator were one day short of the period required by the articles of association, namely, 14 clear days" notice The meeting was, however, attended by all the five corporators and the resolutions were passed by the votes of two shareholders who between them held 500 shares. Two other shareholders who together held 300 shares, deliberately abstained from voting and refrained from casting the 00 votes of an associated company of which, as managing director and chairman, respectively, they were in control. One of the abstaining shareholders shortly afterwards discovered that the notices had been defective, but beyond mentioning that fact some months later to an accountant appointed by the creditors to investigate the affairs of the company, did nothing to challenge the validity of the liquidation and co-operated with the liquidator. Later on, the associated company disputed the validity of the liquidation and the status of the liquidator and it was held that the resolution, being intra vires the company, must be deemed to have been passed with the unanimous agreement of all the company"s corporators, and those who abstained from voting must be treated as having acquiesced by their conduct, both at the meeting and subsequently, in the company being wound up voluntarily on that day. The object of issuing notice for a meeting is to enable the members to attend the meeting to transact the business of which notice is given. In the present case, the petitioners attended the meeting and had notice of the business to be transacted thereat. They not only attended the meeting but, according to the Presiding Officer, raised no objection or protest and willingly took part in the proceedings. They not only cast their votes but proposed and seconded the names of the candidates for being elected. They are, therefore, not entitled to the writ prayed for by them for declaring the proceedings of that meeting as illegal and invalid.

5. The learned counsel for the petitioners has relied on certain judgments which are now noticed The first judgment cited by him was rendered by a Division

Bench of this Court in Charan Dass Dagra v. Punjab State (1965) 67 PLR 1233, wherein it was held that rule 4-A of the Rules does not dispense with the formality of a proper legal co-option in accordance with section 5(2)(cc)(i) second proviso. On the other hand, this rule strengthens the view that a meeting must be formally convened for the purpose of co-option and the formality properly gone into. Co-option itself is a substitute for election. It is not a mere procedural formality which is directory and can be waived or dispensed with; it is, on the contrary, the basis and the foundation of the rights which a co-opted member acquires on co-option under the statute. The right of a co-opted member to vote at other elections can be founded only on a proper and legal co-option just as the right of a duly elected member can only be founded on a proper and Valid election and merely because a person may be held by this Court to be entitled to co-option under the relevant statutory provisions does not dispense with the legal statutory formalities of co-option. That case is clearly distinguishable. In that case, in an earlier writ petition, a direction had been given by this Court that respondent 8 be co-opted in accordance with section 5(2)(cc)(i) second proviso. That direction was ignored and Kumari Chuneshwari Gaur was declared as a co opted member She voted at the meeting held for the election of Chairman and Vice Chairman and delegates to the Zila Parishad. If her vote had been excluded, the votes polled by the candidates were equal and it was her vote that tilted the balance in favour of the candidate who was declared elected. It was on these facts that the observation was made that the meeting had to be held and business transacted in accordance with the Rules. This judgment does not decide that if all the members attend the meeting and transact the business they or any of them can complain that the meeting had not been convened strictly in accordance with the Rules.

6. The learned counsel for the petitioners then referred to a Full Bench decision of this Court in Ad Lal and others v. State of Punjab (1969) 71 PLR 489. All that was held in that case was that--

it is apparent from the provisions of section 16 of the Punjab Panchayat Samitis and Zila Parishads Act,--

(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, that is, 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.

It was further held that a valid meeting for the purpose of co option could be convened by the competent authority only after giving five clear days notice to

the members in accordance with rule 3 of the Rules. The rule laid down by the Full Bench cannot be taken objection to but the learned Judges nowhere held that if all the members attend the meeting in spite of shortness of notice and do not raise any objection to the same at the meeting, and transact the business of co-option, they can file a writ petition to challenge the validity of that meeting or the co-option of members made at that meeting.

7. The learned counsel then referred to *Narbada Prasad Vs. Chhaganlal and Others*, wherein it was held--

It is a well understood rule of law that if a thing is to be done in a particular manner, it must be done in that manner or not at all. Other modes of compliance are excluded" This dictum does not apply in the present case in view of what has already been said above, that is, the petitioners are by their conduct estopped from challenging the validity of the meeting or the co-option held thereat since they not only attended the meeting but fully participated in the meeting, cast their votes and proposed and seconded the names of their nominees.

8. Lastly, the learned counsel relied on an unrecorded judgment of a Division Bench of this Court (*Capoor and Narula, JJ.*, in *Didar Singh v. Deputy Commissioner, Hoshiarpur and others* LPA 116 of 1967, L.P.A. No 116 of 1967, decided on August 17, 1967. On facts that judgment is distinguishable. The petitioner in that case did not receive the notice of the meeting but on coming to know on the morning of October 7, 1966, that the meeting was to be held that day he attended and pointed out to the Executive Officer about the illegality committed by the latter but no heed was paid to his objection. He did not take part in the proceedings of the meeting. It was held that the meeting was not legal as the notice issued was short by one day. Apart from the fact that the petitioner in that case did not take part in the proceedings, the decision of their Lordships of the Supreme Court in *K Narasimhiah v. H.C. Singri Gowda and others* (supra) was not brought to the notice of the learned Judges. The petitioner in that case could not be disqualified from filing a writ petition on the principle laid down in *Gandhinagar Motor Transport Society v. State of Bombay* (supra).

9. It thus follows that none of the judgments relied upon by the learned counsel for the petitioners helps him in this matter particularly in the view we have taken of the conduct of the petitioners at the meeting. This petition is, therefore, without any merit and is dismissed with costs. Counsel's fee Rs. 200/- to be shared equally between respondent 1 to 3 (one set) and respondents 6 and 7 (the other set) as only these respondents are represented. C.W. 2754 of 1972.

In this case the first meeting of the primary members for the co-option of members u/s 5 (2) (cc) of the Act was summoned for July 29, (sic), but had to be adjourned in the absence of proper quorum. In that meeting the date of the next meeting was given out as August 4, 1972, but at that very time it was changed to August 2, 1972, and notices were issued to the members for August

2, 1972, according to the affidavit of the Presiding Officer, the petitioners signed the minutes of the meeting in token of their presented cast their votes without any objection Their case is therefore, covered by what has been stated above. There is, therefore, no merit in this petition which is dismissed with costs. Counsel's fee Rs.100/-, payable only to respondents 1 to 3. C.W. 2799 of 1972

In this case the first meeting of the primary members was held on July 29, 1972, but had to be adjourned on account of want of quorum. The second meeting was summoned for August 2, 1972, for the co-option of four persons representing Scheduled Castes and two women. The notice of the meeting was served on the primary members either on the 29th or on the 30th of July, 1972 All the members including the petitioners attended the meeting and took part without raising any objection. The petitioners, for the reasons given above, cannot now challenge the validity of that meeting on the ground of shortness of notice.

10. The second illegality in the proceedings pointed out in the writ petition is that the Presiding Officer helped five members to cast their votes purporting to act under rule 7 (7) of the Rules which reads as under:--

7(7). In the case of a member who is illiterate or is physically incapacitated from voting the Presiding Officer shall, at his or her request, take him or her to the place set apart for voting, ascertain his choice, accordingly mark the ballot-paper, fold it to ensure secrecy and deposit it in the ballot-box.

It is alleged by the petitioners that all those five members were neither illiterate nor physically incapacitated and, therefore, they did not require the help of the Presiding Officer under Rule 7(7) *ibid*. In reply the Presiding Officer has stated in his affidavit that the helped those five members at their request as they told him that they did not know Hindi, the language in which the ballot-papers had been printed, and he helped them as enjoined by rule 7(7). The rest of the allegation that he did so at the instance of Shri Anup Singh, Advocate, the leader of the rival group, with a view to ascertain the persons in whose favour those five members cast their votes, has been denied. The affidavit was filed by the Presiding Officer on September 6, 1972, but in spite of the expiry of two months, the petitioners did not file a counter affidavit stating that those five members knew Hindi language and, therefore, did not require the help of the Presiding Officer under rule 7(7) of the Rules. In these circumstances, we do not find any irregularity or illegality committed by the Presiding Officer in helping those five members to cast their votes in accordance with their wishes.

11. The third illegality in the process of election alleged by the petitioners is that the members did not put the cross mark (X) in column 3 of the ballot-papers as is enjoined by rule 7(4) of the Rules. This allegation has been denied by the Presiding Officer who has stated in his affidavit that--

It is absolutely wrong to allege that none of the voters have marked (X) in column 3 of the ballot-paper. In fact, all the ballot-papers have been marked (X) in column 3 and as such there has been no violation of rule 7(4).

This assertion by the Presiding Officer has not been controverted by filing a counter-affidavit. We, therefore, believe the Presiding Officer that the voters had cast their votes rightly in accordance with rule 7(4) of the Rules.

12. No other point has been stated in the petition or urged at the hearing.

13. For the reasons given above, this petition is dismissed with costs. Counsel's fee Rs. 200.00 to be shared equally by respondents 1 to 3 (one set) and respondents 4, 9, 10, 12, 13, 15, 16, 18 and 24 (the other set) as the petition has been contested only by these respondents.