
(1985) 03 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 558 of 1985

Bachan Singh

APPELLANT

Vs

Deputy Commissioner, Kurukshetra

RESPONDENT

Date of Decision : 14-03-1985

Acts Referred:

Citation : (1985) 2 CurLJ 50 : (1985) ILR (P&H) 413 : (1985) PLJ 281 : (1986) RRR 558

Hon'ble Judges : J.M.Tandon, J

Advocate : Mr. H.S. Hooda, Advocate., Advocates for appearing Parties

Judgement

J.M. Tandon, J.

1. Bachan Singh petitioner is Sarpanch of Gram Panchayat Majri, Tehsil Guhla, District Kurukshetra and was elected Member of Panchayat Samiti, Guhla. The Deputy Commissioner, Kurukshetra, issued notice dated January 11, 1985 (P. 1) to the Primary Members of the Panchayat Samiti, Guhla, including the petitioner for a meeting to be held in the office of Block Development and Panchayat Officer, Guhla, on January 19, 1985, for cooption of members. The programme of the meeting (P. 2) was sent to the Primary Members along with the notice P. 1. After the Primary Members had been administered oath in terms of section 10 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereafter 'the Act'), the cooption of the Members did not take place. The SubDivisional Officer who was to preside over the meeting on January 19, 1985, has averred in the written statement that no proceeding in the matter of cooption was taken on the date fixed for want of quorum. The case of the petitioner is that the names of five persons who were to be coopted were duly proposed and seconded by the primary members on January 19, 1985. The Sub Divisional Officer under the pressure of the opposite group illegally adjourned the meeting and it is incorrect that the adjournment was due to want of quorum.

2. The Deputy Commissioner, Kurukshetra issued another notice dated January 22, 1985, (P. 3) to the Primary Members of the Panchayat Samiti for a meeting

to be held on January 27, 1985, for cooption of members. The meeting was duly held on January 27, 1985 and five members were coopted. The petitioner has assailed the cooption of respondents No. 4 to 8 as Members of the Panchayat Samiti on January 27, 1985, in the present writ.

3. The learned counsel for the petitioner has argued that the meeting of the Panchayat Samiti requisitioned and held on January 19, 1985, was wrongly adjourned for ulterior motives. The persons proposed and seconded for co option on January 19, 1985, should be taken as duly coopted members. The co option of respondents No. 4 to 8 made in the subsequent meeting on January 27, 1985, is bad. The contention is without merit.

4. In the written statement filed by Shri Dalip Singh, Sub Divisional Officer, Guhla, the averment made is that no proceeding was taken at 9 A.M. on January 19, 1985, for want of quorum and the meeting was, therefore, adjourned. The meeting for the cooption of members was to start at 9 A.M. on January 19, 1985, as detailed in the programme P. 2. In view of the clear averment of the Sub Divisional Officer that the requisite number of members to complete the quorum was not present at 9. A.M. on January 19, 1985, it is difficult to hold that the meeting on that date was wrongly adjourned. The meeting on January 19, 1985, having been adjourned for want of quorum, the question of making valid proposals duly seconded for cooption of five persons as Members did not arise.

5. The learned counsel for the State has contended that this writ petition is liable to be dismissed on the ground that the petitioner can assail the election of respondents No. 4 to 8 as members of the Panchayat Samiti in election petition. The learned counsel for the petitioner has argued that assuming that the petitioner could challenge the election of respondents No. 4 to 8 in an election petition, he can still assail their election in the writ petition because the remedy of election is not efficacious.

6. Section 2 (15) of the Act reads : `` Words and expression used but not defined in this Act shall have the meaning assigned to them in the law for the time being in force relating to Gram Panchayats, Municipalities, District Boards and Market Committees.``

7. Second 13A (e) of the Punjab Gram Panchayat Act, 1952, defines the term `election` and it reads : `Election` means the election of a Sarpanch or Panch and for the purposes of election disputes includes, the cooption of a Panch.``

8. It is clear that the cooption of a Member of the Panchayat Samiti is an election under Section 2 (15) of the Act read with section 13A (e) of the Punjab Gram Panchayat Act. Respondents No. 4 to 8 have been coopted (elected) as Members of the Panchayat Samitis. Their election can, therefore, be assailed in an election petition. The proper mode to assail an election is to file election petition. It is difficult to uphold the contention of the learned counsel for the petitioner that the elction petition to assail the election is not an efficacious mode. The apprehension spelt out by the learned counsel for the petitioner is that the

authority competent to decide the election petition may delay its disposal or keep it pending ad infinitum. The apprehension put forth is highly misconceived. The petitioner cannot assail the election of coopted members in writ petition as the alternative remedy of elected petition is available to him. The writ petition is liable to fail on this ground as well.

9. In the result, the writ petition fails and is dismissed. No order as to costs.