
(2009) 12 P&H CK 0055
In the Punjab And Haryana At Chandigarh

Balbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 51(3)

Citation : (2010) 157 PLR 512

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.

CM. Nos. 19651-52 of 2009

Applications are allowed as prayed for.

C.W.P. No. 16733 of 2009 (O&M)

1. The writ petition challenges the notice called at the instance of the Block Development and Panchayat Officer to all the Panches of the Gram Panchyat, Bansa on 23.10.2009 calling for a meeting to consider the removal of the present Sarpanch, Sh. Balbir Singh brought at the instance of the Members to hand over charge having majority on the basis of affidavits given by majority of persons expressing no confidence against the petitioner.

2. It is an admitted case that one Balwan Singh had been the Sarpanch of the Gram Panchayat, Bansa and he had been removed from his post by the Director on proof of some charges against him in the manner provided u/s 51(3) of the Haryana Panchayati Raj Act, 1994. On his being removed, one Veer Kaur had been handed over charge on 22.12.2008. She had died in harness on 04.05.2009 and by the post that fell vacant, the petitioner had been handed over charge on 01.06.2009 as a person commanding majority in the Gram Panchayat. The contention of the petitioner was that the provision for removal of a Sarpanch

through a No Confidence Motion was deleted by an amendment, which was made by notification on 19.10.2000. By amendment to Rule 10 of the Haryana Panchayati Raj Rules, 1995, a provision for No Confidence Motion was retained only against Chairman, Vice Chairman, President and Vice President and hence, the contention of the learned Counsel appearing for the petitioner was that after the amendment to the Rules that had been brought-forth, there could not have been a meeting of No Confidence Motion for removal of a Sarpanch and therefore, the proposed meeting called by the Block Development and Panchayat Officer was illegal and liable for judicial intervention.

3. The petitioner has a second string to the bow as it were by urging that Section 6 of the Haryana Panchayati Raj Act, 1994 contemplates "filling up of a casual vacancy" that arises by death, resignation, removal or otherwise of a Panch or a Sarpanch and he shall be elected in the manner as may be prescribed. According to him, Section 2(x) refers to a "casual vacancy" as a vacancy occurring otherwise than by efflux of time. According to him, the vacancy that arose on account of the removal of Balwan Singh and subsequently the death of Veer Kaur was in the nature of casual vacancy and once, he was appointed to hold charge of a Sarpanch, he cannot be removed till the balance of period that remained for the office of the Sarpanch.

4. This contention of the petitioner is refuted by the learned Counsel appearing for the Block Development and Panchayat Officer and for the private respondents, who are Panches of the Panchayat. Their contention is that the appointment of Veer Kaur was not in a post as a Sarpanch but it took place in the manner contemplated u/s 51(6)(i), which reads as follows:

6. Any Sarpanch or Panch, as the case may be, removed under Sub-section (3) shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control:

(i) if he is Sarpanch to a Panch commanding majority in the Gram Panchayat.

5. According to him, the legislature does not employ the expression that a person handed over the records, money or any other property of the Gram Panchayat shall be himself called a Sarpanch. It merely contemplates situation of a person commanding majority in the Gram Panchayat to take charge of records, money etc. The petitioner, who came in the vacancy that was caused by the sudden death of Veer Kaur could again hold the very same position, which Veer Kaur herself held, namely, that he was to be merely treated as a Panch having charge of the records, money and other property of the Gram Panchayat and cannot be treated as a Sarpanch. According to the learned Counsel appearing for the respondents, the Sarpanch is not a person, who shall be elected by the Panches but on the other hand he shall be a person who shall be declared by the Returning Officer from amongst the Panches who has polled the maximum votes. Rule 70 of the Haryana Panchayati Raj Election Rules, 1995 reads as follows:

70. Declaration of results.-(1) The Returning Officer (Panchayat) or the Assistant

Returning Officer (Panchayat) shall-

(a) declare to be elected the candidate for the office of Panch who has secured the largest number of valid votes and certify the return of election in Form 18. Similarly the result of Sarpanch shall also be declared forthwith but if there are more than one polling stations in the sabha area the result sheets for the office of Sarpanch shall be sent to the Polling Station presided over by the Presiding Officer nominated by the District Election Officer (Panchayat) for this purpose, on the same day who shall, after compiling the result sheets in Form 19 declare forthwith the candidate who received the largest number of valid votes elected as Sarpanch. For the purpose of declaration of result for the office of Panch and Sarpanch, the Presiding Officer shall be deemed to be Returning Officer and in case of more than one polling stations in the sabha area, nominated Presiding Officer shall be deemed to be the Returning Officer for declaration of result for the office of Sarpanch;

(b) send [from the place specified in clause (e) of Rule 24] the result sheet for the offices of members of Panchayat Samiti and Zila Parishad to the concerned Returning Officer for Panchayat Samiti at block level and to the Deputy Commissioner respectively;

(c) for the selection of member of Panchayat Samiti, compile all the result sheets in Form 16 and prepare Form 20 and declare the candidate, who received the largest number of valid votes elected and shall certify the return of election in Form 20; and

(d) for the election of member of Zila Parishad compile the result sheets in Form 17 and prepare Form 21 and declare the candidate, who received the largest number of valid votes elected and shall certify the return of election in Form 21.

(2) The Returning Officer (Panchayat) or the officer authorized by him shall send the signed copy of the returns under this rule to the District Election Officer (Panchayat) and to the State Election Commissioner.

6. The filling up of vacancy, which Section 6 contemplates, according to the learned Counsel appearing for the respondents, should be taken in the context of how Rule 70 refers to declaration of a result and cannot be treated as arising in the manner which Section 51(6) provides for.

7. In my view, the proper understanding of these provisions will have to be made only in the context of a rule of interpretation that when the legislature employs two distinct provisions for filling up a vacancy, they must be understood as arising under two different situations. If the manner of filling up of casual vacancy should be understood as including every case of a vacancy falling on account of death or removal of a Sarpanch, then it should be understood as being elected in the manner as may be prescribed. The prescribed manner is what should be understood in the manner that Rule 70 provides. On the other hand, the prescribed manner cannot be understood as arising through a situation

to which Section 51(6) operates. Section 51(6) merely refers to handing over of the records and does not employ the expression "elected in the manner as may be prescribed" used in Section 6 of the Act." Section 6 and 51(6) employs dissimilar expressions and they cannot, therefore, overlap. They must be understood as addressing two different situations. The post, which the petitioner held cannot be taken to be a Sarpanch as such, but it should be taken to be post allowing him to hold the records, money and other property of the Gram Panchayat by his ability to command the majority in. the Gram Panchayat. It may be that a No Confidence Motion cannot be brought against him by virtue of the amendment to Rule 10, if he had been a Sarpanch. I have held that he did not hold the post as a Sarpanch to which alone the amended provisions of Rule 10 would operate. What is possible of an elected Sarpanch to contend in a meeting that there cannot be a No Confidence Motion, can not avail to a person that holds charge of records, property, etc. The impugned notice is not liable for challenge in the manner made by the petitioner and the writ petition ought to, therefore, fail.

8. The writ petition is dismissed. No costs.