
(2008) 11 P&H CK 0063
In the Punjab And Haryana At Chandigarh

Baljit Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 153 PLR 64 : (2009) 2 RCR(Civil) 868

Hon'ble Judges : Satish Kumar Mittal, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioners, who are 5 out of 5 panches of Gram Panchayat, Village Bambiha, Tehsil and District Bathinda, have filed this petition under Article 226 of the Constitution of India for quashing the proceedings of the meeting of the members of the Gram Panchayat held on 21.7.2008, wherein respondent No.6 Kheta Singh was elected as Sarpanch of the Gram Panchayat. The petitioners have also sought for a direction to the official respondents to convene a fresh meeting of the members of Gram Panchayat for conducting the election of the Sarpanch in accordance with the procedure prescribed under the Punjab Panchayat Election Rules, 1994 (hereinafter referred to as "the Rules").

2. The brief facts of the case are that the election of nine members of Gram Panchayat of the village was held on 26.5.2008. After the election names of nine elected Panches were duly notified and oath of allegiance was administered to them. Thereafter, u/s 13-A of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as "the Act"), the Deputy Commissioner, Bathinda (respondent No.3 herein) authorized Shri Rajinder Singh, Sub Divisional Officer (respondent No.4 herein) as Presiding Officer to convene the first meeting of the newly elected members of the Gram Panchayat to conduct the election of the office of Sarpanch. Accordingly, respondent no.4 convened the first meeting of the Gram Panchayat on 18.7.2008. The said meeting was attended by 5 Panches i.e. the petitioners and the remaining 4 Panches, who belong to the opposite group,

remained absent. Therefore, due to lack of quorum, the said meeting was adjourned to 19.7.2008, as Sub-rule (2) of Rule 45 of the Rules prescribes two-third quorum for the first meeting. However, as per Sub-rule (6), no quorum is necessary for the second meeting. On 19.7.2008, due to non-availability of time to the Presiding Officer, the meeting was again adjourned to 20.7.2008. On 20.7.2008, the meeting was held at Block Development and Panchayat Officer, Sangat, which was attended by all the 9 Panches, but the said meeting was again postponed to 21.7.2008 at 12 noon, on the ground that no time was left.

3. It is the case of the petitioners that respondent No.4, the Presiding Officer, was in connivance with the minority group and on one pretext or the other, he had illegally adjourned the aforesaid meetings, in order to provide time to the other group to manipulate the requisite support. It is the further case of the petitioners that on 21.7.2008, for whole of the day, all the 5 petitioners remained present at the office of the Block Development and Panchayat Officer, Sangat, where the meeting was to be held, but the Presiding Officer did not reach there. The petitioners made a video movie, in which Kuljeet Singh, Block Development and Panchayat Officer, Sangat, acknowledges that the Presiding Officer did not reach at the venue to conduct the meeting of the members of the Gram Panchayat for the purpose of election of the Sarpanch. Immediately, the petitioners moved an application to the Block Development and Panchayat Officer. On the next morning i.e. on 22.7.2008, the petitioners made a complaint to the Sub Divisional Magistrate, Bathinda, to conduct an enquiry. On the said complaint, an enquiry was conducted by the Sub Divisional Magistrate, Bathinda and he reported the matter to the Deputy Commissioner, Bathinda. On that, the Deputy Commissioner sent a letter to the Principal Secretary, Government of Punjab, Irrigation Department, Chandigarh, copy of which has been annexed, with the petition as Annexure P-11, about non-holding of the election of the Sarpanch by respondent No.4 on 21.7.2008. The Deputy Commissioner further ordered for fresh enquiry by the Sub Divisional Magistrate, Bathinda. During the course of enquiry, the Sub Divisional Magistrate recorded statements of number of persons and submitted that report to the Deputy Commissioner, copy of which has been annexed with the petition as Annexure P-14. In this report also, it was found that on 20.7.2008, in spite of the fact that all the Panches attended the meeting, respondent No. 4 illegally postponed the" meeting to 21.7.2008, without any justification. It has been reported that on 21.7.2008, the Presiding Officer did not come present in the office of the Block Development and Panchayat Officer, Sangat and no election was conducted. However, it has been mentioned that during the enquiry, the Presiding Officer submitted photo copies of the proceedings of the register, in which meeting of the Panchayat members was shown to be conducted on 21.7.2008 in which respondent no.6 was elected as Sarpanch. But on that report, no action was taken.

4. It is the case of the petitioners that as a matter of fact, on 21.7.2008, the Presiding Officer did not come present at the office of the Block Development and Panchayat Officer, Sangat and no meeting of the members of the Gram

Panchayat was held on that day, but subsequently, the Presiding Officer, in connivance with the minority group and the Panchayat Secretary, prepared the false proceedings of the meeting by showing that the said meeting was held on 21.7.2008 and it was attended by 6 Panches, in which respondent No.6 was declared elected as Sarpanch. Therefore, the proceedings of alleged meeting held on 21.7.2008 are fabricated and fictitious, and are wholly illegal and void ab initio, therefore, the same are liable to be quashed in the writ jurisdiction.

5. Pursuant to the notice issued, separate written statements have been filed by respondents No. 1 to 3, respondent No.4, respondent No.5 and respondents No.6 to 9. The stand taken by the respondents is that the first meeting held on 18.7.2008 was adjourned due to lack of quorum, whereas the meetings held on 19.7.2008 and 20.7.2008 were adjourned due to lack of time and in the meeting held on 21.7.2008 in the office of the Block Development and Panchayat Officer, Sangat, respondent No. 6 Kheta Singh was unanimously elected as Sarpanch of the Gram Panchayat. The respondents have also raised preliminary objection regarding maintainability of the writ petition, in view of availability of the remedy of election petition. During the course of hearing of this case, this Court directed the Presiding Officer to remain present in the Court along with record. The Presiding Officer has come present and has also produced original proceeding book.

6. After hearing learned Counsel for the parties and perusing the record of the case as well as the proceeding book, we are of the opinion that in the facts and circumstances, the instant case is a fit case, where this Court, in exercise of its inherent powers under Article 226 of the Constitution of India, should quash the proceedings of the meeting, which were alleged to have been convened on 21.7.2008, in which respondent no.6 was allegedly elected as Sarpanch of the Gram Panchayat. A perusal of the proceeding book shows that on 18.7.2008, the first meeting of the members of the Gram Panchayat was held, which was attended by 5 members i.e. the present petitioners. The remaining 4 members did not come present in the said meeting. Accordingly, due to lack of quorum, as required under Rule 45(2) of the Rules, the meeting was adjourned to 19.7.2008. This fact is admitted by both the parties. On 19.7.2008, the meeting was not held due to nonavailability of time to the Presiding Officer. This fact has also not been disputed by both the parties. On 20.7.2008, the meeting was held at the fixed time and venue, in which all the 9 Panches were present, but Presiding Officer did not conduct the election of the Sarpanch, because of paucity of time. The reason given by him that no time was left to conduct the election cannot be accepted. Once the meeting was conducted, the proceedings were written, which were signed/thumb marked by all the 9 Panches, thereafter hardly any time was required to conduct the election in accordance with the Rules. In our opinion, when all the 9 Panches were present in the meeting held on 20.7.2008, the election of Sarpanch should have been conducted and the Presiding Officer was not justified to adjourn the meeting on the ground that no time was left. It appears that the petitioners, who were five in number, were

united and wanted to elect one of them as Sarpanch, but the Presiding Officer under the influence and in connivance with the other group illegally adjourned the said meeting without any justification to enable the other group to win over the majority support. The Sub Divisional Magistrate, Bathinda, in both his reports, copies of which have been annexed, had also reported that the Presiding Officer was not justified in adjourning the meeting on 20.7.2008, when all the 9 Panches were present in the meeting. The matter does not rest here. On 20.7.2008, the meeting was adjourned to 21.7.2008 to be held in the office of the Block Development and Panchayat Officer, Sangat at 12.00 noon. All the five petitioners remained present at the aforesaid venue, throughout the day, but the Presiding Officer did not reach there to conduct the meeting of the Panches. On the same very day, a written complaint was made by the Petitioners to the office of the Block Development and Panchayat Officer, Sangat, and on the next day, a complaint was moved to the Sub Divisional Magistrate, Bathinda. On the complaint, a preliminary enquiry was conducted by the Sub Divisional Magistrate and on the basis of his report, Deputy Commissioner, Bathinda wrote a letter to the Principal Secretary, Government of Punjab, wherein it was categorically stated" that on 21.7.2008, the Presiding Officer did not come present in the office of the Block Development and Panchayat Officer, Sangat, to conduct the election of the Sarpanch. On the asking of the Deputy Commissioner, Bathinda, the matter was again enquired into by the Sub Divisional Magistrate, Bathinda. During the said enquiry, the Sub Divisional Magistrate recorded the statement of Lakhvir Singh, superintendent, Block Development and Panchayat Officer, Sangat, copy of which has been annexed with the petitioner as Annexure P-13. The said officer has categorically stated that on 21.7.2008, the Presiding Officer did not come present in the office of the Block Development and Panchayat Officer, Sangat, for conducting the election. It has been further stated by him that neither the Presiding Officer nor the Panchayat Secretary had informed him about the conduct of the election, though as per the instructions, issued by the State Election Commission, the Presiding Officer is required to inform the office of the concerned Block Development and Panchayat Officer about the election of the Sarpanch, immediately, but till recording of the statement of this witness, no such intimation was given to him. Statements of the Presiding Officer, Panchayat Secretary and Gram Sewak were also recorded. After considering all those statements, the Sub Divisional Magistrate came to the conclusion that on 21.7.2008, the Presiding Officer did not come present in the office of the Block Development and Panchayat Officer, Sangat, for conducting the election of Sarpanch. However, before him, the Presiding Officer and the Panchayat Secretary submitted photo copies of the proceedings, alleged to have been conducted on 21.7.2008 in the premises of the office of Block Development and Panchayat Officer, in which respondent No.6 was elected as Sarpanch.

7. We have examined the alleged proceedings dated 21.7.2008 recorded in the proceeding book. In the said proceeding, it has been recorded that the meeting held on 21.7.2008 in the office of Block Development and Panchayat Officer was

attended by 6 members, but signatures/thumb impressions of all of them were not obtained, whereas proceedings of the earlier dates i.e. dated 18.7.2008 and 20.7.2008, which were attended by 5 members and all the 9 members, respectively, their signatures/thumb impressions were obtained to establish their presence in the meeting. Out of 6 members alleged to be present in the meeting dated 21.7.2008, Baljit Singh (petitioner No. 1 herein) and Jagdev Singh (petitioner No.3 herein) have been shown to have also attended the meeting, but towards the end only 4 members signed those proceedings. In this regard, it has been mentioned that the aforesaid two petitioners left the meeting after the election, without putting their signatures on the proceeding book. Learned Counsel for the petitioners contends that this false recital was made in the proceeding books as actually, no meeting was held on 21.7.2008, but subsequently, these proceedings were recorded by the Presiding Officer, at a secret place, by obtaining the signatures/thumb impressions of the minority group, in order to illegally elect respondent No.6 as Sarpanch of the Gram Panchayat.

8. One important fact, which has come to our notice and compelled us to take this decision, is that Shri Rajinder Singh, Sub Divisional Officer, the Presiding Officer (respondent No.4 herein) was authorized) convene the meeting of 2 Gram Panchayats for election of Sarpanch, namely Village Bambiha (village of the petitioners) and Village Machhana. In Village Machhana also, he has committed similar illegality. In that village, in the meeting held on 20.7.2008, one Harwinder Singh Panch, who was having the majority of 4 panches, out of 7, was elected as Sarpanch, but the same Presiding Officer, without declaring his result, had illegally chosen to postpone the meeting to 21.7.2008 and on that day, he illegally declared one Parwinder Singh elected as Sarpanch of the Gram Panchayat. In the said case also, it was alleged that on 21.7.2008, Shri Rajinder Singh, Presiding Officer did not conduct the meeting and he fabricated the resolution by showing one person absent in the same manner, as has been shown in the present case. In that case also, an enquiry was conducted against him by the Sub Divisional Magistrate and it was found that no meeting was conducted on 21.7.2008 and the wrong proceedings were recorded by the said Officer. During the course of the hearing of the said writ petition, the original proceeding book of the said Village was also perused by us and similar irregularities were noticed. The said petition (C.W.P. No. 13022 of 2008) was allowed by us and fresh election of the Gram Panchayat was ordered to be conducted by a newly appointed Presiding Officer.

9. Learned Counsel for respondent No. 6 has argued that in view of the disputed questions of facts involved in this case as to whether the meeting was held on 21.7.2008 or not, this Court should not entertain this petition and the petitioners should be relegated to the remedy of election petition, in view of the decision of this Court in Baljit Singh v. State of Punjab and Ors. C.W.P. No. 13643 of 2008, decided on August 22, 2008.

10. After hearing counsel for the parties on this point, in the above facts and circumstances of the case, we are not inclined to accept the contention of learned Counsel for respondent No.6. It is true that when the remedy of election petition is available, this Court should refrain itself from entertaining the petitioner under Article 226 of the Constitution of India, questioning the election of the returned candidate, but in the facts and circumstances of this case, this Court cannot be a silent spectator, particularly when a fraud has been played by a Presiding Officer to the election process and electors of the village. Admittedly, a Sarpanch is to be elected by majority of the Panches of a Gram Panchayat. In the present case, out of 9 Panches, 5 are before this Court. They were present in the first meeting, but the remaining 4 were not present on that day. The said meeting was adjourned due to lack of quorum. In the next meeting held on 20.7.2008, all the 9 panches were present, but the Presiding Officer, without any justification adjourned the meeting without conducting the election of the Sarpanch, which under the law he was duty bound to conduct. The said meeting was adjourned to 21.7.2008. On that day, the Presiding Officer did not come present at the venue and did not conduct the election of Sarpanch. Later on the proceedings were recorded at a different place, which was shown to be attended by 6 Panches, who elected one of them as Sarpanch. Once we have come to the conclusion that on 20.7.2008, when all the 9 panches were present, there was no justification to adjourn the meeting, without holding the election of Sarpanch, and further that on 21.7.2008, no meeting was held, as the Presiding Officer did not come present at the time and venue of the meeting, we cannot refrain from interfering on the ground that the remedy of election petition is available, particularly, when the same Presiding Officer has also played similar fraud in another village and declared one Panch elected as Sarpanch, without there being any election.

11. In the aforesaid circumstances, in exercise of inherent jurisdiction of this Court under Article 226 of the Constitution of India, the alleged proceedings of the meeting of the Gram Panchayat held on 21.7.2008 are hereby quashed, and the Deputy Commissioner, Bathinda is directed to authorize any other responsible officer to convene the meeting of the members of Gram Panchayat, Village Bambiha, to conduct the election of the Sarpanch, expeditiously, preferably within a period of 4 weeks from today, in accordance with law. We further direct the Deputy Commissioner to ensure that free and fair election of the office of Sarpanch is conducted in accordance with the Rules.

12. The Election Commission, Punjab, is also directed to initiate appropriate action under the provisions of the Punjab State Election Commission Act, 1994, besides recommending to the concerned department, where Shri Rajinder Singh, Sub Divisional Officer, respondent No.4, is employed, for taking necessary disciplinary action against him, for committing the aforesaid illegality in the election of the Sarpanch of Gram Panchayat, Village Bambiha, Tehsil and District Bathinda.

13. The writ petition is, accordingly, allowed.

Sd- Jaswant Singh, J.