
(2014) 12 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13891 of 2014

Binder Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Panchayati Raj Act, 1994 — Section 13, 87, 87(3)

Citation : (2015) 178 PLR 459 : (2015) 1 RCR(Civil) 498

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Baltej Singh Sidhu, Advocates for the Appellant; Deepa Singh, Addl. A.G, Advocates for the Respondent

Judgement

Paramjeet Singh, J.—Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the official respondents to get the records along with accounts of the Gram Panchayat Village Chak Rohliwala, District Fazilka from respondent No. 4 and to hand over the same to the petitioner, who has been unanimously elected as Sarpanch of the Gram Panchayat. I have heard learned counsel for the parties and perused the record.

2. It is the case of petitioner that she took oath as Sarpanch on 08.08.2013 under Section 13 of the Punjab Panchayati Raj Act, 1994 (in short, "the 1994 Act"), but till date, charge has not been handed over to her after taking over the same from respondent No. 4. It is also pleaded by the petitioner that under Section 87 of the 1994 Act, charge is required to be taken over from the Sarpanch or Panch before filing of his/her nomination paper for the fresh election or on vacation of his/her office due to any reason. In this case, it appears that no charge was taken over by the concerned authority as per Section 87(3) of the 1994 Act. Rather in pursuance of notice of motion of the present writ petition, respondents No. 1 to 3 appeared and filed written statement taking numerous

preliminary objections. Preliminary objections No. 3 and 4 read as under:

"3. That the oath was administered to the members of the Gram Panchayat on 8.8.2013 and thereafter the meeting was convened under the chairmanship of the petitioner, wherein, it was resolved that now all the bank accounts of the Gram Panchayat will be operated by Smt. Binder Kaur, Sarpanch, Lakhwinder Singh, Panch and the Block Development and Panchayat Officer, Jalalabad. A true translated copy of the resolution dated 20.8.2013 is being annexed herewith as Annexure R-1.

4. That out of total 6 members, five member panches of the Gram Panchayat, the petitioner was also present in the said meeting and passed a resolution on 14.10.2013 wherein it is stated that Sarpanch Binder Kaur, Gram Panchayat, is not correct. Therefore, we all the panches are not supporting the Sarpanch for work. Thus, you are requested to appoint an administrator for doing the development works of our village and for auctioning the shamlat land. A true translated copy of the resolution dated 14.10.2013 is being annexed herewith as Annexure R-2."

3. In pursuance of order dated 18.11.2014, respondent No. 3- BDPO and Sh. Rajiv Kumar, Panchayat Secretary came present in Court. Statement of Sh. Rajiv Kumar was recorded which reads as under:

"Statement of Rajiv Kumar, Panchayat Secretary, Village Chak Rohi Wala.

On. S.A.

I am Secretary of Panchayats of five villages, namely, Dhani Kartar Singh, Chak Pali Wala, Chak Rohi Wala, Mandi Amin Ganj and Rora Wala (Tare Wala). I was posted in 2004 in this Tehsil. I was posted in this circle in July, 2010-11 and have been continuing since then. I am having entire record of village Chak Rohi Wala in my custody and record of other four villages is with the respective Sarpanches. I am in custody of this record because quorum of the Panchayat is not complete. I will bring entire record on the next date of hearing."

4. In his statement, Sh. Rajiv Kumar, Panchayat Secretary admitted that record of the Gram Panchayat is with him and he did not hand over the same to the petitioner because quorum of the Panchayat is not complete. This is sorry state of affair depicting how democratically elected representatives are being treated by the officials. He also admitted that he is posted in this very area since 2004 and is Secretary of five villages, namely, Dhani Kartar Singh, Chak Pali Wala, Chak Rohi Wala, Mandi Amin Ganj and Rora Wala (Tare Wala) but except village Chak Rohi Wala, records of remaining four villages are with their respective Sarpanches. He has not handed over the charge to the petitioner in the present case only due to alleged incomplete quorum. But the Panchayat Secretary has no power to take decision with regard to quorum or otherwise. This is the function of only BDPO or superior authority. The Secretary can only bring the facts to the notice of competent authority. It appears that whole affairs are being run by Sh.

Rajiv Kumar, Panchayat Secretary at his own, who actually is not the competent authority to do so. In these circumstances, this Court deems it fit and proper that Sh. Rajiv Kumar, Panchayat Secretary should be transferred outside the district at some far off place preferably to Pathankot or any other far off place, but at least not in Malwa region for five years. Besides this, appropriate action shall be taken against Sh. Rahiv Kumar, Panchayat Secretary by the competent authority.

5. It has also been brought to the notice of this Court that after issuance of notice, Ms. Baljit Kaur Dhillion, Block Development and Panchayats Officer, Jalalabad (W) started issuing notices to the petitioner with a view to pressurize her to withdraw the instant petition. Ms. Baljit Kaur Dhillion, BDPO, who is present in Court, could not sufficiently explain this conduct of hers. Therefore, she is warned to be careful in future and directed to desist from such acts in future. If it comes to the notice of this Court in future that Ms. Baljit Kaur Dhillion is exceeding her powers and exerting extra pressure on the elected representatives in future, serious notice of the same will be taken including ordering appropriate action against her.

6. In pursuance of order dated 08.12.2014, Mr. C. Sibin, Director, Department of Rural Development and Panchayats, Punjab is present in Court and submits that he has already suspended the Panchayat Secretary, Sh. Rajiv Kumar and assures that charge will be handed over to the petitioner against receipt within a week from today and proper list of the documents etc. will be prepared before handing over the same to the petitioner-Sarpanch. He also assures that for future purposes, the department will issue specific instructions with regard to custody of record as per Section 87 of the 1994 Act and Rule 8 of the Punjab Panchayati Raj Rules, 2012 framed in this regard. It is made clear that any instructions contrary to the 1994 Act and Rules will have no force in law and will not be binding upon the elected representatives and the officials are bound to comply with the provisions of law. It has also come into notice of this Court that when the charge is handed over or taken over by the Sarpanch, no list is being prepared, rather the officials rely upon resolution. If there is such a state of affair, then grave mistake can occur with regard to custody and proper maintenance of record. Since the elected representatives specifically ladies are depending upon the officials, proper list of handing over and taking over registers/record/charge is required to be prepared.

In view of above, instant petition is disposed of.

No order as to costs.