

(1973) 07 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1318 of 1973

Dharam Singh and Another	Vs	APPELLANT
The State of Haryana and Others		RESPONDENT

Date of Decision : 30-07-1973

Acts Referred:

General Clauses Act, 1897 — Section 21
Gram Panchayat Act — Section 9
Haryana Gram Panchayat (First Amendment) Election Rules, 1971 — Rule 38, 39

Citation : AIR 1974 P&H 99

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Judgement

1. The petitioners and respondents 4 to 9 were elected as Panches of village Kachhana, tahsil Kaithal, district Kurukshetra, in the elections held in 1971. Petitioner 1 was thereafter elected as Sarpanch in the election held in December, 1971/ January, 1972. The Block Development and Panchayat Officer, Rajound, called a meeting of the Panches for February 22, 1973, at 11 A.M. to determine as to what was the opinion of the majority of the Panches and for the passing of the resolution on no-confidence against the Sarpanch. It is stated by petitioner 1 that the notice that was served on him mentioned February 23, 1973 as the date of the meeting and not February 22, 1973. He went to the office of the Block Development and Panchayat Office, Rajound, on February 23, 1973, and was told that the meeting had already taken place on February 22, 1973, and the no-confidence motion had been passed against him. He was also told that respondents 4 to 9 were present at that meeting and unanimously voted in favour of the no-confidence motion. The petitioner then tried to obtain the copies and filed this petition challenging his removal from the office of Sarpanch in consequence of the no-confidence motion.

2. Separate written statements have been filed by respondent 2, respondent 3 and respondent 4. It has been stated that the notice, copy of which is annexure "E" to the affidavit of the petitioner dated May 4, 1973, was served on the

petitioner by affixation as he refused to accept service. Petitioner 2 accepted service by thumb marking the duplicate of the notice. The service was effected by the Chaukidar of the Panchayat which was attested by the Chaukidar of the village. The petitioners have produced the affidavit of the Chaukidar of the village denying that petitioner No. 1 ever refused to accept service of the notice which was sought to be served by the Chaukidar of the Panchayat. The record has been produced and a purported thumb mark of petitioner 2 is to be found on the duplicate of the notice. The learned counsel for the petitioners, however, states that the thumb impression is not of petitioner 2 and that comparison can be made of that thumb impression with his thumb impression on the power of attorney. I am not prepared to act as an expert and since it is a disputed question of fact, I decline to go into the same. I will prefer to base my decision on the presumption that all official acts are regularly done in the discharge of official duties. No reason has been stated why the Chaukidar of the Panchayat was deposing against the petitioners in respect of the service of the notice. I consequently hold that the notice for the meeting to be held on February 22, 1973, was duly served on the petitioners and if they did not attend that meeting, they did so at their own risk.

3. It is vehemently argued by the learned counsel for the petitioners that the meeting had not been summoned in accordance with law Section 9 of the Gram Panchayat Act, as was in force in the State of Haryana after its amendment effected in 1971, in so far as relevant, reads as under:--

"9. (1) Before entering upon the duties of their office, the Sarpanch and Panches shall take on oath in the form specified in Schedule IV.

(2) The Sarpanch and Panches shall hold office for a period of five years:

Provided that an outgoing Sarpanch or Panch shall, unless the Government otherwise directs, continue to hold his office, until his successor has taken the oath:

Provided further that subject to the approval of the Director, the Sarpanch may be removed from his office by a majority of the votes of the Panches consisting the Gram Panchayat at its extraordinary general meeting held with previous permission of the Director:

... .."

"Director" in this section means the Director of Panchayats appointed under the Act. Rule 38 of the Haryana Gram Panchayat (First Amendment) Election Rules 1971, provides for the meeting to be called for election of Sarpanch and is in the following words:--

"38(1) The Block Development and Panchayat Officer shall call a meeting of Panches, to elect the Sarpanch, which shall be presided over by the Block Development and Panchayat Officer or by any other officer authorised in this behalf by him. Such officer shall be called the "Presiding Officer".

(2) The Block Development and Panchayat Officer shall issue a notice in writing to all Panches intimating the date, time and place of the meeting referred to in sub-rule (1).

(3) The notice shall be sent by post at least seven days before the date of meeting at the ordinary place of residence of each Panch and shall also be served through an official of the Block and a copy thereof shall be exhibited on the notice board of the Panchayat.

Provided that the notice to a Panch, who is elected, co-opted or nominated after the issue of the notice under sub-rule (2) shall be issued and served by the Presiding Officer in such manner as he deems fit before the meeting.

(4) A copy of notice, along with the entire original record of its service on the Panchas, shall be made over under proper receipt to the Presiding Officer so as to form part of the proceedings of the election."

Rule 39 of the Rules provides that not less than half of the total number of Panches shall constitute the quorum for the election of the Sarpanch. No rule prescribes the manner in which a meeting of the Panches for the consideration of a no-confidence motion against the Sarpanch is to be called and conducted. Sub-section (2) of Section 9, however, provides that an extraordinary meeting of the Panches shall be called to consider the no-confidence resolution. In the absence of any specific provision, the principle discernible in Section 21 of the General Clauses Act, 1897, can be resorted to, that is, the meeting for the removal of a Sarpanch by passing a no-confidence resolution shall also be held in the same manner in which a meeting for the election of the Sarpanch is to be held, that is, the procedure prescribed in Rules 38 and 39 has to be followed. Rule 38 requires one week's notice to be sent to the Panches and in the present case the notice was issued on February 7, 1973, and is alleged to have been served on the petitioners and respondents 4 to 9 in the manner stated above on that very date. The notice specifically mentions that it was for calling an extraordinary general meeting for the purpose of passing a no-confidence motion against petitioner 1 for which permission had been given by the Director of Panchayats, Haryana. It was further stated that the meeting would be held to determine as to what was the opinion of the majority and the resolution was to be passed accordingly. There were seven Panches and one Sarpanch and out of them six were present at the meeting called by the Block Development and Panchayat Officer and all the six unanimously voted in favour of the no-confidence resolution. The meeting was thus called in accordance with Rules 38 and 39 and was perfectly valid. If the petitioners did not attend that meeting, they did so at their own risk.

4. For the reasons given above, I find no merit in this petition which is dismissed but the parties are left to bear their own costs.

5. Petition dismissed.