
(2013) 07 P&H CK 0375
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 2188 of 2012

Ganga Parshad

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Panchayati Raj Act, 1994 — Section 62

Citation : (2013) 07 P&H CK 0375

Hon'ble Judges : Satish Kumar Mittal, J; Mahavir S. Chauhan, J

Bench : Division Bench

Advocate : Rajiv Singh Doon, for the Appellant; Randhir Singh, Addl. AG, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Mahavir S. Chauhan, J.—The instant Letters Patent Appeal has been filed under Clause X of Letters Patent to challenge judgment dated 24.7.2012 passed by learned Single Judge of this Court in CWP No. 4368 of 2012 allowing the writ petition filed by respondent No. 3 and setting aside resolution dated 17.02.2012 adopting motion of no confidence against Naresh Kumar (respondent No. 3 herein). The factual background of the case is that in the year 2010, respondent Naresh Kumar was elected as Vice Chairman of the Block Samiti, Jind, District Jind (hereinafter referred to as the "Samiti"). Some members of the Samiti were averse to his election as Vice Chairman. On the request of 23 elected members of the Samiti respondent No. 2, vide notice dated 8.2.2012, convened a meeting of the Samiti for considering "Motion of No Confidence" against Naresh Kumar the petitioner in CWP and respondent No. 3, herein, for 17.2.2012. On 17.2.2012 out of total 30 elected members, only 22 members came present in the meeting. According to the impugned resolution 20 members voted in favour, and one member voted against, the motion, while one vote was cancelled and the "Motion of No Confidence" was passed against respondent Naresh Kumar. According to respondent Naresh Kumar motion of "No Confidence" against him

was carried out in spite of the fact that one member had marked the arrow mark stamp on ballot paper in such a manner that the stamp spilled in both the columns, one supporting the motion and the other opposing it. This vote, according to respondent Naresh Kumar, was counted in favour of the motion whereas it ought to have been counted against it. This was done in violation of Rule 65(1)(b)(g) of the Haryana Panchayati Raj Election Rules 1994 (for short the "Rules") and Section 62 of the Haryana Panchayati Raj Act, 1994 (for short the "Act"). Even the Election Officer, vide letter dated 17.2.2012, admitted that in one of the votes, stamp was affixed in the middle of ballot spilling in both the columns for conveying the choice to support and oppose the motion. As per Section 62 of the Act, for carrying the "No Confidence" motion, it was to be supported by 2/3rd of the elected members and if the aforesaid ballot was rejected, the motion would have fallen.

2. To challenge the outcome of the meeting i.e. passing of "No Confidence Motion", said Naresh Kumar invoked the provisions of Articles 226/ 227 of the Constitution of India by filing CWP No. 4368 of 2012.

3. Notice of motion of the writ petition having been issued, the official respondents therein i.e. State of Haryana and Addl. Deputy Commissioner, Jind put in appearance and filed a reply, inter alia, stating that on one ballot paper, arrow cross-mark was stamped on both the sides which was treated in favour of "No Confidence Motion" because major portion of the mark was for motion of "No Confidence".

4. On hearing both the sides, and on perusal of the record including the disputed ballot paper, learned Single Judge vide his order dated 24.7.2012 allowed the writ petition and set aside the motion of "No Confidence" passed against the aforesaid Naresh Kumar by holding that the disputed vote ought to be rejected because it did not give any clear indication whether the voter voted for or against the "No Confidence Motion". Learned single Judge also observed that the disputed vote could be counted as a valid vote as per Proviso to Rule 65 of the Rules, if the mark put by the voter had spilled over two columns in such a manner that a minor portion of it was in the column against the motion or vice versa but the mark on the disputed ballot was affixed in such a manner that it did not clearly show whether the voter intended to support or oppose the "Motion of No Confidence".

5. Feeling aggrieved by and dissatisfied with the order dated 24.7.2012, one Ganga Parshad has filed the instant Letters Patent Appeal with a prayer that the appeal be allowed and order of learned Single Judge dated 24.7.2012 passed in Civil Writ Petition No. 4368 of 2012 be set aside and reversed.

6. Respondents No. 1 and 2 are contesting the appeal while respondent No. 3 has chosen not to appear despite service and, therefore, he has been proceeded against ex parte.

7. We have heard learned counsel for the parties and perused the record of the

case, minutely.

8. On behalf of the appellant it is vehemently argued that the disputed ballot paper has rightly been taken in favour of the motion of no confidence as major portion of the arrow mark stamp is appearing in the column in favour the motion of "No Confidence" and only minor portion of it is appearing in the column against the motion.

9. Having heard the rival contentions and on perusal of the record including original disputed ballot paper, photocopy of which has been taken on record, it is found that the appeal lacks substance.

10. Though there is no dispute with regard to the fact that for carrying motion of "No Confidence", 2/3rd of the elected members were required to cast their votes in favour of the motion, yet it would be of importance to reproduce here Rule 65 of the Rules and Section 62 of the Act:-

65 Scrutiny and rejection of ballot papers:- (1) A ballot paper contained in a ballot box shall be rejected if:-

(a) x x x

(b) It is spurious ballot papers.

(c) to (f) x xx x

(g) it has been marked in the column of more than one candidates or...

62. Terms of office of Chairman and Vice Chairman:-

(1) The term of office of the Chairman and vice Chairman of a Panchayati Samiti shall be five years.

Provided that Chairman or Vice Chairman shall cease to be the Chairman or Vice Chairman if by a resolution passed by not less than two thirds of the total number of its elected members, the Panchayat Samiti decided at meeting convened in the manner prescribed that he shall vacate his office.

11. As aforesaid 22 members participated in the meeting held for considering the motion of "No Confidence", as is evident from Annexure P-3, out of total 22 votes polled, one vote was rejected being blank and one was found to be against motion of "No Confidence". To put it otherwise, from amongst 30 elected members of the Samiti, 20 were said to have polled in favour of the "No Confidence". The figure "20" includes the one disputed vote also.

12. Learned Single Judge after noticing the provisions of Rule 65 of the Rules, observed that the disputed vote could not have been counted in favour of the motion of "No Confidence". To justify this conclusion, learned Single Judge observed as under:-

I cannot persuaded myself to accept the line of submissions made by the State

Counsel. The manner in which the mark appears on the ballot paper cannot cover such cases where the stamp mark is almost equal in both the columns though slightly more in one column. The proviso does say that a vote is to be counted in favour of a candidate where major portion of the mark of stamp falls. If this proviso is interpreted in a manner as pressed by the State Counsel, then there would never be a invalid vote and its validity would be left to be judged by the Presiding Officers/Returning Officers.

One would have to see the meaning which can be assigned to words "major portion" used in the proviso. These words can not be understood to mean that one is to measure the portion falling in each column and then decide in which column more portion appears. The word used is "major portion". Opposite of word "major" is "minor". Thus to say that major portion fell in one column, the minor portion of the stamp should be in the opposite column. The portion of stamp appearing in column meant to oppose the "motion" can by, no stretch of imagination, be termed as "minor portion". It may not be exactly equal to the portion falling in the column for support of motion but it certainly can not be termed as "minor portion" of the stamp mark.

The word "major" in a literal sense means greater or great in number, quantity, size, value, importance, dignity etc. It means greater than minor. The word "minor" means lessor, inferior, unimportant, "inconsiderable lower", smaller than major. Applying this literal meaning of word "major", the words "major portion" would convey the greater portion, meaning greater or a great portion in size. It would also mean that "minor portion" should be in opposite column. Thus, inconsiderably lower or smaller portion in size should be in the opposing column. Neither the portion appearing in column supporting the "motion" can be described as greater portion nor the portion appearing in column opposing the "motion" can be called inconsiderable or a smaller. A little difference in size of "stamp" in both the column would not mean that "major portion" is in one column. A little less or lessor portion of the stamp which appears in the lower column cannot be described inconsiderable. The great portion or inconsiderable lessor would indicate the contrast to understand how the wording used in this section may have to be appreciated. The little bigger portion is appearing in one column but certainly it is not a greater or great in size and one appearing in the lower column certainly is not inconsiderable or lessor that it can pass off as negligible.

The major portion in my view would be something where portion of stamp mark just happens to touch the dividing line or may be even a slight spill over appearing in a second column to a very negligible extent and thus would depict the intention of the voter in clear manner. A stamp mark touching dividing line would convey that major portion is in one column whereas some insubstantial portion spilled over to the other. Here it cannot be said that minor portion has spilled over to second column. It is certainly not so in the case at hand.

The choice of the voter cannot be deciphered from this vote in any clear manner.

There are only two columns on this ballot paper. One was in support of "No Confidence Motion" whereas second was to oppose it. There is sufficient space given for each column. The stamp mark to express vote is very small in size compared to the space provided in the two columns and can easily be affixed leaving much space on both sides of the stamp. 19 voters had clearly shown their intentions by clearly expressing their choice. There is enough space for this mark to be marked in the centre or even on one side and there would be sufficient space still left if the stamp is marked to vote in clear manner. The manner in which this disputed vote is marked, his choice cannot be ascertained to say if this vote was for or against the motion. This appears to have been done by the voter purposely. It could not have been an innocent act. The voter is not an ordinary voter and is a member of the Block Samiti. He could be expected to be wise enough to mark the vote in a proper manner. This centre line of stamp mark appears on the centre dividing line of the two column and the centre portion of the stamp is on the dividing line of the two column. Two of the arrows of the stamp are in the column meant to support "No Confidence Motion", whereas remaining two arrows out of total four are falling in the column against the "No Confidence Motion" in a slight tilted manner. Because of this, perhaps, a slightly more portion of the stamp has spilled in the column for the "Motion" whereas remaining portion of the stamp mark is in the lower column against the "Motion". The manner in which this mark appears on the vote certainly would not clearly show that this voter intended to support or oppose the "No Confidence Motion". This cannot be considered to be a vote where major portion appears in one column. As already noticed, major portion would mean if there is a slight touch on the line dividing the column or may be little bit or a very little spill to the other column. Slightly larger portion may be appearing in one column but equal good part of stamp is appearing in the opposite column as well. This vote in my view cannot be said to be considered valid under the proviso which has been relied upon by the learned State Counsel.

13. We have called for the original ballot papers and have examined the disputed ballot. After examining the original ballot, the same has been returned and its photo copy has been taken on record.

14. A perusal of the disputed ballot paper leaves nothing to doubt that it could not be taken to be in favour of the motion of "No Confidence" as it covers two columns i.e. one in favour and the other against the motion almost equally with a negligible more portion being in the column in favour of the motion. As held by the learned Single Judge, such minor variations in the mark towards column corresponding to the column for the motion cannot be said to be a major portion of the arrow mark stamp favoring the motion.

15. The findings recorded by the learned Single Judge are so meticulous and reasoned that there is hardly any scope to have a different view as regards the disputed ballot.

16. But for the contention based on the said disputed ballot paper, no other point

has been raised on behalf of the appellant against the impugned order of the learned Single Judge.

17. As aforesaid, we have not been able to reach the conclusion different than that of the learned Single Judge after thorough and deep examination of the disputed ballot paper. It may be added that the appellant was not a party to the writ petition. He has not disclosed how he is aggrieved by the impugned order passed by the learned Single Judge, or say he has not established his locus standi to challenge the impugned order. In the result, the appeal fails and is dismissed leaving the parties to bear their own costs.