
(1972) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh

Harbalas and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 20-10-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1972) 10 P&H CK 0002

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Judgement

R.N. Mittal, J.—This petition under Articles 226 and 227 of Constitution of India has been filed for quashing the Notification dated August 8, 1972, and the co-option of respondents Nos. 4 to 9 to the Panchayat Samiti, Rajaund, held on August 2, 1972.

2. On July 10, 1972, 16 primary members of the Panchayat Samiti, Rajaund, (hereinafter referred to as "the Samiti") were elected by the Panches and Sarpanches of Gram Panchayats. Two primary members of Samiti representing the Co-operauve Societies were elected on July 11, 1972, and one member representing the Market Committee on July 12, 1972. The Deputy Commissioner, Karnal, appointed K.L. Mujhal as Presiding Officer u/s 16 of the Punjab Panchayat Samitis and Zila Parishads Act, 1951, (hereinafter referred to as "the Act") who called a meeting of primary members on July 29, 1972, for co-opting two women, and four persons from Scheduled Castes as members of the Samiti. The meeting could not be held on July 29, 1972, as the quorum wasnot complete. The same was adjourned to August 2, 1972. One Shri Kali Ram, son of Sh. Hazuri resident of village Sherda, a defeated candidate in the election of Panchayat Samiti, instituted a suit in the Court of Sub Judge, Kaithal, for declaration that the election of the primary members of the Samiti was null and void and for permanent injunction restraining the primary members from acting as such and from holding any meeting for co-option of two women, and four persons from Scheduled Castes. He also filed an application for ad interim

injunction before the Sub Judge who issued a temporary injunction restraining 19 primary members from holding any meeting on August 2, 1972, or on any other date for taking oath or for co-opting four members of Scheduled Castes and Scheduled Tribes and two women members and from holding any meeting for the election of Chairman and Vice Chairman as well as from electing two members of Zila Parishad till August 36, 1972, (Annexure "A"). A letter in pursuance of the said order was also sent to the Returning Officer (Annexure "B"). The letter was delivered to the Returning Officer, respondent No. 3 at 11.35 A.M. on the same day when the meeting was being held, who refused to stay the co-option. Thereafter nine primary members refused to take part in the co-option and informed respondent No. 3 in writing that they were not casting their vote on account of injunction order of the Court, otherwise they would be liable for contempt of Court (Annexures "C"). This letter was delivered at 12.10 P.M. on the "same date i.e. August 2, 1972." On the basis of the result of the said co-option, the names of respondents Nos. 4 to 9 have been notified by Notification dated August 9, 1972, published in Haryana Government Gazette (Annexure "D") The election of respondents Nos 4 to 9 is stated to be illegal inter alia on the grounds that all proceedings after receipt of ad interim injunction order at 11.35 A.M. became illegal and that K.L. Mujhal, the Returning Officer, did not conform to the requirements of Section 16 for being appointed as such.

3. The petition has been contested by the Deputy Commissioner, Karnal, the Returning Officer and private respondents. The Deputy Commissioner has stated that K.L. Mujhal, respondent No. 3, was appointed as Presiding Officer. The co-opted members were properly elected as no injunction could be issued legally by the Court in favour of Kali Ram.

4. Shri K.L. Mujhal, the Returning Officer, states that Civil Writ No. 2472 of 1972, for this very purpose was filed and dismissed in (sic) on August 1, 1972, that he was a Presiding Officer and not a Returning Officer; that the orders of the Court were not addressed to him and, therefore, he was also not bound to execute them; and that when he received the order, the election had started and some votes had been polled. It is also stated by him that no temporary injunction had been issued to him and he could not refuse to receive the votes of the members who handed them over to him. It is further stated by him that he was a gazetted officer not below the rank of Extra Assistant Commissioner.

5. The private respondents also denied the allegations of the petitioners. They raised certain preliminary objections which, I am dealing in the first instance. They also stated that the injunction order issued by the trial Court is without jurisdiction and therefore it will have no effect.

6. A preliminary objection has been raised by the learned Counsel for the private respondents that Randeep Singh petitioner is a graduate and he took part in co-option of women members held on August 2, 1972, which he did not disclose in the petition. The counsel for the petitioners states that it was not matter fit to be stated as nothing hinges on it. He also states that superfluous matter should not

be stated in the petition. After hearing the counsel for the parties, I find that there is no force in the contention of the learned Counsel for the private respondents. No doubt if some material fact is suppressed and by suppression of that fact the petitioners take some benefit, the Writ can be dismissed. He however, has not been able to convince me that the petitioners by suppressing the fact have taken any undue advantage. Moreover, it has been stated by the counsel for the petitioners that Randeep Singh did not take any part in the co-option of the members from Scheduled Castes. I am not convinced that by not disclosing the aforesaid fact they took any advantage. The said contention is, therefore, rejected.

7. He raised another preliminary objection that a Writ Petition had been dismissed earlier and that fact was also not disclosed in the petition. Again it has not been brought to my notice as to what was the allegation in the former petition. Correct particulars of that petition have also not been filed by the respondents. In the circumstances, I do not think that non-disclosure of that fact will affect the present petition in any way. The counsel for the respondents in support of his contention relied upon Civil Writ No. 1465 of 1965, Badlu Ram etc. v. The State of Punjab and Ors. decided on 1.5.69. In that case a second writ petition was filed exactly on the same grounds on which the previous writ petition was filed. The earlier writ petition had been dismissed. In the second writ petition it was not clearly stated that the scheme was attacked on exactly the same grounds on which the same had been attacked earlier. On the grounds of suppression veri, the subsequent petition was dismissed by this Court. The facts of the aforesaid case are different from the facts of the present case and the said observations are not applicable here. This contention also has got no force and is rejected.

8. The first submission of the counsel for the petitioners is that the Returning Officer appointed u/s 16 of the Act had not the qualifications to be appointed as such. He also states that the election is invalid as the Returning Officer thus appointed could not call a proper meeting. The counsel for the State states that respondent No. 3 was competent to be appointed as a Presiding Officer and his appointment was valid. It will be useful to reproduce Section 16 of the Act which is as follows:

The Deputy Commissioner concerned, or any Gazetted Officer appointed by him in this behalf, not below the rank of an Extra Assistant Commissioner, shall, as soon as possible after notification of election of Primary Members, call a meeting of such Members in the manner prescribed for the purpose of co-opting Members required by Clause (c) of Sub-section (1) of Section 5 and Clauses (c) and (cc) of Sub-section (2) of that section. The aforesaid officer shall preside at such meeting.

There are Punjab Panchayat Samitis (Cooptation of Members) Rules, 1961, (hereinafter referred to as "Cooptation Rules") which give certain procedure for issuing notice for calling the meeting etc. Rule 3 of the Cooption Rules is also

important for the purpose of deciding the present writ petition which is as follows:

3 (1) After a notification of election of Primary Members of a Panchayat Samiti has been issued, the Deputy Commissioner or any Gazetted Officer appointed by him in this behalf, not below the rank of Extra Assistant Commissioner (hereinafter referred to as "Presiding Officer"), shall convene a meeting of these Members at the office of the Panchayat Samiti or at such other place as he may determine in this behalf for the purpose of co-opting members as required by Clauses (c) and (cc) of Sub-section (2) of Section 5. Such meeting shall be convened after giving five days clear notice, to the Members.

(2) The notice referred to in Sub-rule (1) shall state:

(i) the date, time and place of meeting ;

(ii) the number of women, elected as Primary Members, and the number, if any, of women to be co-opted; and

(iii) the number of persons belonging to Scheduled Castes and Scheduled Tribes elected as Primary Members and the number, if any, of such persons to be co-opted.

The aforesaid section and the rule clearly show that the meeting of primary members for the purpose of co-opting members can be called either by the Deputy Commissioner concerned or by any Gazetted Officer appointed by him in this behalf not below the rank of an Extra Assistant Commissioner. In the present case it is admitted by the respondents that the Returning Officer was an Executive Engineer in P.W.D., B. & R., Karnal. The question is whether he is a Gazetted Officer not below the rank of Extra Assistant Commissioner. The whole controversy is about the interpretation of the words which have been underlined by me above. The respondent No. 3 in his return states that he is an officer not below the rank of an Extra Assistant Commissioner but higher than that. The learned Counsel for the State states that the aforesaid clause will mean that he should be a Gazetted Officer of the rank of an Extra Assistant Commissioner and it is not necessary that he should be in the same hierarchy. The counsel for the petitioners states that the specification of words Extra Assistant Commissioner clearly shows that he should be in the same hierarchy. He further states that the interpretation put by the counsel for the State is not warranted by the phraseology used in the section. After hearing the counsel for the parties I find great force in the contention of the learned Counsel for the petitioners. The Punjab Civil Service (Executive Branch) Rules, 1930, (hereinafter referred to as the "Service Rules") contain the expression "Extra Assistant Commissioner" in Rule 3. The said rule is as follows:

Members of Service shall be eligible for appointment to the following posts:

Number of posts Designation of posts 261 Extra Assistant Commissioners. 10 Promotion posts.

Again the Service has been defined in Clause (c) of Rule 2 and means the Punjab Civil Service (Executive Branch). In rule 3, ten posts have been designated as promotion posts which have also been defined and mean the superior posts, ordinarily reserved for members of the Indian Civil Administrative Service. Reading of the Rules clearly shows that the persons of Punjab Civil Service (Executive Branch) are appointed as Extra Assistant Commissioners. They can also come higher up in the hierarchy of promotion posts There can be only one interpretation of Section 16 of the Act and Rule 3 of the Cooption Rules read with Rule 3 of the Service Rules that the legislature wished that the persons appointed for the purpose of holding elections should be from the line of civil servants who are in the hierarchy of Extra Assistant Commissioners not below that rank. It may be that the legislature considered that legal objections are raised at the time of holding cooption and a person who understands the technicalities of law and has got experience of the Courts should be appointed as such an officer. The respondent No. 3 belongs to a different Service which has got no concern with the Service from which Extra Assistant Commissioners are taken. For the foregoing reasons the contention of counsel for the respondents is untenable and that of the petitioners prevails.

9. The next question that arises is what is the effect of such an appointment. The counsel for the petitioners states that the provision is mandatory and breach of such a provision makes the election void. The counsel for the respondents state that by appointment of the said officer no injustice has been caused to the parties and therefore, the election cannot be declared to be void. The counsel for the petitioners in support of his contention relied upon L.P.A. No. 116 of 1967. *Didar Singh v. Deputy Commissioner Hoshiarpur, etc.* decided on August 17, 1967. In that case a resolution was moved for requiring the Chairman and the Vice Chairman of the Panchayat Samiti to vacate their respective offices. It was provided in the rules that 7 days should elapse between issuing of notice and the date of meeting. In that case the notice was not a proper notice according to the rules. A resolution was passed in which the President Chairman and Vice Chairman were removed by the members. A Writ Petition was filed which was dismissed. In L.P.A. it was observed as follows:

After all a minimum period of notice of a meeting at which a serious question such as the removal of the Chairman or the Vice Chairman is to be decided must have been provided by the Statute with some purpose and I do not see how a meeting, which is convened before the elapse of such a minimum period, can be regarded as a lawful meeting, or the resolutions passed at it be allowed to stand as legal and valid.

After making these observations, the appeal was accepted. On the other hand, the learned Counsel for the private respondents relies on the following observations in *Onkar Singh v. State of Haryana and Ors.* 1972 P.L.R. 378 : 1971 P.L.J. 606.

Even if the notice was invalid, this Court will not interfere unless it was satisfied

that manifest injustice had occurred. In the present case there is no manifest injustice in as much as the election was unanimous and even if the petitioner was not duly served and did not attend or there was no proper notice, it resulted in no injustice to him.

In view of the aforesaid observations he stated that in this case no manifest injustice has been done to the petitioners. They cannot take benefit of the appointment of respondent No. 3 as Returning Officer. After making the aforesaid observations the learned Judges again dealt with another point which is this, that in the election of Vice Chairman of Punjab Marketing Committee, he was seconded by a stranger and not by a member of the Marketing Committee as he did not answer to the qualifications set out u/s 12 of the Punjab Agricultural Produce Markets (Haryana Amendment) Act, 1970, (hereinafter referred to as "the Markets Act"). The contention was that the Executive Officer could not travel outside the purview of the statute and nominate the members to the Market Committee who did not answer the requisite qualifications prescribed by statute. It was argued further that he should be treated as a stranger in spite of the fact that there was a notification appointing him as a member of the Market Committee. The learned Bench observed that if such a person participates in the proceedings then the entire proceedings will be vitiated as the rule was mandatory. From the reading of the aforesaid judgment it is clear that a distinction has been made in mandatory and directory rule. According to the Bench the rule regarding notices was merely a directory whereas the rule regarding election of chairman was mandatory. In my view the subsequent observations in Onkar Singh's case help the petitioners in the present case. Section 16 of the Act and rule 3 of the Co-option Rules, in my view, are mandatory and if there is any breach in appointment of the Returning Officer that will affect the election. The meeting convened by the Presiding Officer, who lacked the basic qualifications cannot be said to be a validly convened meeting. The proceedings in such a meeting cannot be held to be valid. As such the cooption of numbers is illegal and invalid.

10. The second submission of the learned Counsel for the petitioners is that an injunction was issued by the trial Court restraining defendants 1 to 19 from holding any meeting on August 2, 1972, or on any other date for taking oath or for coopting four members of the Scheduled Castes and Scheduled Tribes and two members from women of Block Samiti, Rajaund, and the same was served upon the respondents on the same date. An intimation about the said injunction order was also sent to the Returning Officer which was received by him. It is further stated that in obedience to the aforesaid injunction order, the petitioners did not participate in the election and informed the Presiding Officer about it. The learned Counsel then states that in view of the injunction order, the election held after the intimation of the said order is illegal. On the other hand, the learned Counsel for the respondents state that the order of the civil Court was without Jurisdiction as it had no jurisdiction to entertain a suit for the matter which could be challenged in an election petition. They also contend that even if the

injunction is issued and election takes place subsequently, it cannot be declared void on account of issuance of injunction.

11. After hearing the learned Counsel for the parties, I do not find any force in the contention of the learned Counsel for the petitioners. The effect of issuing an injunction is that the person committing the breach thereof, shall be guilty of contempt of Court. It cannot be said that any proceedings in breach of injunction will become void. In my view, I am fortified by the observations of their Lordships of the Supreme Court in *Mulraj v. Murti Raghunath Ji* 1967 S.C. 1386 which are in the following terms:

In effect therefore a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued through a party and it is forbidden from doing certain acts. It is well established that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. Further, it is equally well settled that the injunction order not being addressed to the Court, if the Court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the Court and prohibits it from proceeding further, as soon as the Court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That in our opinion is the only difference between an order of injunction to a party and an order of stay to a Court.

12. The learned Counsel for the petitioners then submitted that even if the order of injunction is forged and the same is conveyed to the party, it is binding on him. I am unable to contribute to the said proposition. The suit is still pending in the Court and the full facts on which the suit has been instituted are not before this Court. In these circumstances, it will not be advisable to express any opinion regarding the jurisdiction of the Civil Court. It may, however, be mentioned that the injunction order issued by the trial Court has been vacated subsequently on August 14, 1972, by order Annexure R-1. In these circumstances, I do not find any merit in the contention of the learned Counsel for the petitioners and the same is rejected.

13. For the reasons recorded above, I accept the Writ Petition with costs and quash the notification dated August 8, 1972, and the co-option of respondents Nos. 4 to 9 to the Panchayat Samiti, Rajaund, held on August 2, 1972. Counsel's fee Rs. 150/-.