
(1973) 12 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3038 of 1973

Harchet Singh

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 18-12-1973

Acts Referred:

Citation : (1973) 12 P&H CK 0003

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Balbir S. Bindra with Mr. J.L. Verma, Mrs. Surjit Kaur and Vijay Jindal, for the Appellant; H.N. Mehtani, Assistant Advocate General for the Respondents 1 to 3 and Mr. Baldev Kapur for the Respondents 4 to 9, for the Respondent

Judgement

Rajendra Nath Mittal, J.—The facts of the present writ petition are that election to the Panchayat Samiti Guhle Block (hereinafter referred to as the Samiti) was held on July 21, 1972 in which petitioners, respondents 4 to 9 and nine others were elected as primary members u/s 5 of the Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter referred to as the Act). The election of the primary members was notified in official Gazette and a meeting of the newly elected members was fixed for September 3, 1972 for administration of oath to them u/s 10 of the Act, for the election of the Chairman and Vice-Chairman and for electing two members of the Zila Parishad. When the Presiding Officer started administering oath to the newly elected members, respondents 4 to 9 staged a walk-out as they were in minority and did not want to participate in the election of the Chairman and the Vice-Chairman. Before staging walk-out they (respondents 4 to 9) pressed upon the Presiding Officer to adjourn the meeting to some other date. Having failed to secure postponement, they walked out of the meeting without taking or making oath or affirmation of allegiance. By the aforesaid act of respondents 4 to 9, their election became invalid by virtue of sub-section (2) of section 10 of the Act. The petitioner along with Chairman of the Samiti approached the Deputy Commissioner, Block Development and Panchayat

Officer with a request that as their election had become invalid, therefore, the vacancies so caused be filled up by fresh election. The block Development and Panchayat Officer wrote to the Deputy Commissioner letter dated February 16, 1973 (copy Annexure "A") requesting him to fix date for administering oath to those members who had walked out from the meeting held on September 3, 1972. The Executive Officer of the Panchayat Samiti by letter dated June 6, 1973 informed all the persons who had not taken oath, that the Sub Divisional Officer (Civil), Kaithal, respondent No. 2 would visit the Panchayat Samiti's office for administration of oath to them on June 7, 1973 at 9 A.M. He further requested them to be present on that date. No oath could be administered to them on June 7, 1973 and another similar notice was issued to them that oath would be administered on July 6, 1973. On that date oath was administered to respondents 4 to 9. The action of respondent 2 in administering oath to them is illegal, without jurisdiction and against the provisions of the Act. The petitioner has stated that respondents 4 to 9 had ceased to be members of the Samiti. The writ petition has been contested by the respondents. Three returns have been filed ; one by Shri Gnr dial Singh respondent No. 9, the second by Shri Yog Raj Dutta, Block Development and Panchayat Officer, Guhla, and the third by Shri G.L. Rampaul, Presiding Officer.

2. It is contended by the learned counsel for the writ petitioners that respondents 4 to 9 walked out of the meeting on September 3, 1972 which was fixed for administering oath to the newly elected members which amounts to refusal on their part to take oath. In the circumstances he submits that they ceased to be members of the Samiti. The learned counsel for the private respondents has urged that the respondents left the meeting as the Presiding Officer was late by more than two hours. He further submits that Sant Ram, respondent 4, who was present at the time when the Presiding Officer came, informed him that meeting should be postponed because some members of his group had left the office and it was not possible to bring them back immediately. In the circumstances he urges that their act of leaving the meeting did not amount to refusal. He also submits that unless there was express refusal to take oath by the said respondents, they did not cease to be members of the Samiti under sub-section (2) of section 10 of the Act. Learned counsel for the State has also supported the contention of the learned counsel for the private respondents.

3. I have heard the learned counsel for the parties at considerable length. In order to appreciate the argument it is necessary to reproduce section 10 of the Act which is as follows :--

10(1) Every election and co-option of a Member and the election of the Chairman or Vice Chairman of a Panchayat Samiti shall be notified by the Deputy Commissioner concerned in the Official Gazette and no Member shall enter upon his duties until his election or co-option has been so notified and notwithstanding contained in the India 1 Oaths Act, 1873, until he has taken or made, at a meeting of the Panchayat Samiti, an oath or affirmation of his allegiance in the

form specified in Schedule I.

(2) If any such person refuses to take or make such oath or affirmation, his election or co-option, as the case may be, shall be deemed to be invalid and a fresh election or co-option shall take place.

(3) No person whose election or co-option has been deemed to be invalid under this section shall be eligible for election or co-option to any Panchayat Samiti for a period of two years from the date on which he ought to have taken or made such oath or affirmation.

Sub-section (2) of section 10 says that if a person refuses to take oath, his election shall be deemed to be invalid and a fresh election shall take place. The first question that will arise is whether respondents 4 to 9 left the meeting on account of the reason that the Presiding Officer came late or as a protest as he was not ready to postpone it on their pressure. It has been admitted by the learned counsel for the private respondents that no protest was made in writing at that time to the Presiding Officer. In letter dated February 16, 1973 written by the Block Development and Panchayat Officer to the Deputy Commissioner, it is mentioned that at time of oath ceremony, on political basis, a group of eight members walked out of the meeting without taking oath. In the circumstances he requested him to fix the date for administration of oath to them. A reading of the letter goes to show that respondents 4 to 9 did not leave the meeting as Presiding Officer came late but they did so on account of political reasons. The next question is that if the respondents walked out of the meeting whether it will amount to refusal to take oath. The word "refuse" has not been defined in the Act. In the Shorter Oxford English Dictionary, Third Edition the word has been defined as, "To decline to accept or submit to (a command, rule, instruction, etc.) or to undergo (pain or penalty) (sic). Of a horse : To stop short at (a hedge, water, etc.) instead of leaping." The respondents by their act declared to submit to the order of the Deputy Commissioner and did not take oath as ordered by him. They no doubt did not expressly make any statement that they refused to take oath, but their conduct clearly goes to show that they impliedly did not carry out his orders. This act will definitely tantamount to refusal. It is not necessary that the refusal should be by express words. On the other hand refusal can be inferred from the conduct of a person. In the present case respondents 4 to 9 have by their conduct refused to take or make oath or affirmation as they were required to do under the Act. In the circumstances their election shall be deemed to be invalid. The Deputy Commissioner could not fix another date for administering oath to respondents 4 to 9 whose election had become invalid by virtue of sub-section (2) of section 10 of the Act.

4. For the reasons recorded above, I accept the writ petition with costs, hold the election of respondents 4 to 9 invalid and direct them not to resume duties of the office of members of the Panchayat Samiti. Counsel's fee Rs. 150/- to be borne equally by the State and the private respondents.