

(1975) 08 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3274 of 1975

Hardatt Singh

APPELLANT

Vs

The Block Development and Panchayat Officer and Others

RESPONDENT

Date of Decision : 25-08-1975

Acts Referred:

Evidence Act, 1872 — Section 115
Haryana Gram Panchayat Election Rules, 1971 — Rule 38, 39(6)
Punjab Gram Panchayat Act, 1952 — Section 9(2)

Citation : AIR 1976 P&H 122 : (1976) 2 ILR (P&H) 819

Hon'ble Judges : R.S. Narula, C.J.;K.S. Tiwana, J

Bench : Division Bench

Advocate : Surinder Sarup, for the Appellant; M.S. Liberhan and S.C. Kapoor, for the Respondent

Final Decision : Allowed

Judgement

1. Out of the 7 members who originally constituted the Gram Panchayat of village Neela Heri, 2 had died leaving the Panchayat to be constituted by the remaining five. A vote of no-confidence was passed against the petitioner who was the Sarpanch of the said Panchayat in an extraordinary general meeting of the Panchayat held on March 20, 1975, by a majority of 3 to 2- The no-confidence resolution passed in that meeting was, however, set aside by a Division Bench of this Court (R.N. Mittal and Bains, JJ.) on May 16, 1975, while allowing the present petitioner's Civil Writ Petition No. 2234 of 1975. It is the common case of both sides that the only ground on which that petition was allowed and the resolution of no-confidence, dated March 20, 1975, was annulled was that the meeting in question had been presided over by one of the Panches and not by the Block Development and Panchayat Officer or any other officer authorised by him. After the decision of the Division Bench in the previous writ petition, the Block Development and Panchayat Officer respondent No. 1, issued a fresh notice, dated May 21, 1975, convening a fresh extraordinary general meeting of the Gram Panchayat for May 28, 1975. In that meeting again the vote

of no-confidence against the petitioner was passed by a majority of 3 to 2. Copy of the resolution passed at that meeting is Annexure P. 1.

2. The validity and legality of the second meeting held on May 28, 1975, has now been impugned in the present petition before us on four grounds, namely:--

(1) that the first proviso to second proviso in Sub-section (2) of Section 9 of the Punjab Gram Panchayat Act, 1952, as amended in Haryana, bars the convening of a meeting for considering a proposal for no-confidence similar to the one which was not passed at a meeting held within one year prior to the meeting in which the impugned resolution was passed;

(2) that the second proviso to Sub-section (2) of Section 9 makes the previous permission of the Director for holding a meeting for passing a vote of no-confidence against a Sarpanch a condition precedent and inasmuch as such permission was not separately obtained for the meeting in which the impugned resolution was now passed, the meeting should be deemed to have been held without the requisite permission; the argument being that the permission granted by the Director for the previous meeting held on March 20, 1975, lapsed with the holding of that meeting and fresh consent was necessary as a sine qua non for the holding of the meeting on May 28, 1975;

(3) that a resolution of no-confidence under the second proviso to Sub-Section (2) of Section 9 can only be passed by the Panchayat which is constituted according to the provisions of the Act and inasmuch as the Panchayat which purports to have passed the resolution consisted of only 5 members: as against the prescribed strength of 7 members, the Panchayat was not constituted properly and no valid resolution of no-confidence could be passed by such a Panchayat; and

(4) that in the absence of any statutory provision contained in the Act or in the Rules framed thereunder, providing for the manner of calling and conducting the meeting for passing a resolution of no-confidence, it is necessary that the same procedure should be followed for the conduct of such a meeting as is prescribed by Rules 38 and 39 of the Rules as held by a Division Bench of this Court in *Dharam Singh v. State of Haryana* 1974 P&H LJ 365 and inasmuch as the said procedure for the conduct of the meeting was not followed in the instant case by votes having been allowed to be cast openly by the show of hands and not by secret ballot as required by the aforesaid rules, the proceedings of the meeting resulting in the passing of the impugned no-confidence motion are liable to be quashed.

3. The first two points urged by the learned counsel for the petitioner appear to us to be based on a misconception of the legal position. The no-confidence motion was sought to be introduced against the petitioner. The Director granted his previous permission for the consideration of the motion-It is only the meeting, dated March 20, 1975, in which the motion was considered that has been held to be illegal by the order of this Court in the petitioner's earlier writ

petition. The resultant legal position is that the meeting, dated March 20, 1975, is deemed to have never been held as the purported meeting was no meeting in the eye of law, as it had not been held strictly in conformity with the statutory requirements of the Act and the Rules. This being so, the proposed resolution is deemed in law not to have been considered at all by the panches and they had no legal opportunity to vote for or against it till the present meeting, dated May 28, 1975, was held. The previous permission granted by the Director would lapse only if and after the no-confidence motion is considered in a legally held meeting and it is either passed or defeated. Such a meeting was held for the first time on May 28, 1975. For the same reason it cannot be argued successfully that the no-confidence motion had "not been passed" in the earlier meeting which was held within one year of the present meeting, as in the eye of law there was no earlier meeting. Contentions Nos. 1 and 2 of the learned counsel for the petitioner are, in this view of the matter, devoid of merit and are repelled.

4. So far as contention No- 3 is concerned, we have no doubt that the panchayat was properly constituted and the mere fact that two of its members had died would not render the constitution of the Panchayat illegal. This point is not res integra. A learned Single Judge of this Court has already held in *Jai Pal Singh v. Director of Panchayats, Haryana* 1974 P&H LJ 122 that the word "constituting" appearing in the proviso to Sub-Section (2) of 9 of the Act means "constituting for the time being". The learned judge further held that if one member of the Panchayat passes away then till such time as his vacancy is not filled in by holding an election, the Panchayat would be deemed to be constituted by one member "less than the number by which it was originally constituted. We are in respectful agreement with the view expressed by Sharma, J. in that case. Counsel for the petitioner contends that if the ratio of the judgment of Sharma, J., in *Jai Pal Singh*'s case is stretched to its logical extent, the Court would have to hold that if 6 out of 7 members of the Panchayat die, the remaining single member would constitute the Panchayat. This is certainly not so. The prescribed statutory quorum for a meeting of the Panchayat is 50 per cent, and the moment the number of Panches left in a Panchayat goes below 50 per cent of the total strength of the Panchayat as originally constituted, complications may possibly arise. It is unnecessary to dilate on the result of such an eventuality as it is the admitted case of both sides that in the instant case 5 out of 7 Panches are alive and all of them took part in the impugned meeting. The third submission of the counsel also, therefore, fails.

5. In order to appreciate the fourth and the last point made out by Mr. Surrinder Samp, the learned counsel for the petitioner reference is necessary to Rules 38 and 39 of the Haryana Gram Panchayat Election Rules, 1971 (hereinafter referred to as the Haryana Rules). Rule 38 provides for the calling of a meeting to elect the Sarpanch and requires the Block Development and Panchayat Officer to issue a notice in writing to all the Panches intimating the date, time and place of the meeting for the election. Rule 39 lays down the procedure for the election of the Sarpanch. Sub-rule (6) of Rule 39 states that if only one candidate is proposed,

he shall be declared elected as Sarpanch by the presiding officer, but if two or more candidates are proposed, the election shall be held "by secret ballot" in the manner stated in Sub- Rule (7) onwards of Rule 39. Admittedly no separate rules have been prescribed for the manner of holding or conducting the meeting under the second proviso to Sub-section (2) of Section 9 of the Act for passing a vote of no-confidence against the Sarpanch, In Dharam Singh's case 1974 P&H LJ 365 (supra) it has been held by the Division Bench that inasmuch as the Haryana Rules do not prescribe the manner in which a meeting of the Panches for consideration of the no-confidence motion against the Sarpanch is to be called and conducted, such a meeting shall also have to be held in the same manner as a meeting for the election of the Sarpanch by operation of the principle underlying Section 21 of the General Clauses Act, 1897. Counsel for the respondents questions the correctness of the view taken by Mahajan, C J., and Pattar, J., in the case of Dharam Singh. We are, however, unable to find any reason for disagreeing with that judgment Following the Division Bench judgment referred to above, we hold that the meeting for the passing of no-confidence motion against the Sarpanch must be conducted as far as possible in the same manner as provided in Rule 39 of the Haryana Rules. Inasmuch as the votes at the meeting held on May 28, 1975, were cast by show of hands and not by secret ballot, the meeting does not appear to have been conducted in accordance with the strict statutory requirements of Sub-rule (6) of Rule 39. The difference between voting openly by show of hands and voting by secret ballot is of great significance. It is not unknown that certain persons are not able to exercise their right of franchise in such matters freely if they have to vote for or against a resolution of this type openly in the presence of the Sarpanch and the opposing parties, and so the voting is freer and fairer if it is by a genuine secret ballot. It cannot, therefore, be argued by the respondents that even though the requirement of Rule 39 (6) is applicable to a meeting u/s 9 (2), and the said provision is not followed, no prejudice has nevertheless been caused to the petitioner. We are not prepared to enter into any such conjectural field. In view of the judgment of the Division Bench in Dharam Singh's case 1974 P&H LJ 365 we find no escape from holding that the meeting, dated May 28, 1975, was not conducted in accordance with Rule 39 (6) of the Haryana Rules in so far as the panches present in the meeting were not directed to cast their secret ballots but were allowed to vote openly by the show of hands.

6. Mr. M. S. Liberhan and Mr. S. C. Kapoor, Advocates for the respondents, have, however, contended that even if the conduct of the impugned meeting was not proper and legal the petitioner is now estopped from challenging the same in view of the fact that he actually participated in the meeting and took a chance of succeeding at the voting by show of hands, without raising any objection to such a procedure being followed. Reliance is placed in this connection on two Division Bench judgments of this Court in Attar Singh v. State of Haryana 1973 P&H LJ 90 and Ram Nath Vs. Ramesh and Others, . None of those cases arose under the Act or the rules with which we are concerned in the present case. Mr-Surrinder Sarup

has, on the other hand, invited our attention to the judgment of a Division Bench of this Court in Sheo Chand v. Jee Ram 1975 P&H LJ 4. B. R TnK, A. C. J. (as he then was) and A. S. Rains. J., held in that case that where it is contended that the petitioner having taken part in the election of a new Sarpanch was estopped from challenging the legality of the no-confidence meeting, the objection would not be valid if the petitioner does not take part in the re-election which is held as a consequence of the Sarpanch being outvoted at the no-confidence meeting. The judgment of the Division Bench in Sheo Chand's case appears to us to be on all fours with the present case. Sitting in Division Bench, we are bound by that judgment and following the same we overrule the objection of the learned counsel for the respondents.

7. In view of our finding on point No. 4 urged by Mr. Surrinder Sarup, this petition is allowed and the impugned resolution of no-confidence against the petitioner passed at the extraordinary general meeting of the Panchayat held on May 28, 1975, is annulled leaving it open to the Block Development and Panchayat Officer to convene and hold a fresh meeting for the consideration of the motion in accordance with law in the light of the observations made above. No costs.