
(1969) 12 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1935 of 1966

Hukam Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 11-12-1969

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 14
Punjab Panchayat Samitis and Zila Parishads Act, 1961 — Section 103, 15(1), 5, 5(1), 5(2)

Citation : (1971) 2 ILR (P&H) 387

Hon'ble Judges : S.S. Sandhawalia, J; Harbans Singh, J

Bench : Division Bench

Advocate : K.N. Tewari, for the Appellant; G.C. Mittal and P.C. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Singh, J.—Facts giving rise to this writ petition, filed by Hukam Singh, may briefly be stated as follows:

2. The Petitioner was a member of the Market Committee, Rewari, district Gurgaon. in the year 1958, when he was removed by an order of the State Government, dated 16th of June, 1958 (Annexure "A"), being satisfied that he has been guilty of misconduct as a member of the aforesaid Market Committee. Thereafter fresh elections to the Market Committee. Rewari. were held on 10th of August, 1963. The Petitioner stood for that election and was elected as a member and later was elected as the Chairman of the Market Committee. As no election petition is provided under the Act and consequently one Ram Narain Singh, filed civil writ No. 1563 of 1963, against the Petitioner Hukam Singh, challenging his election to the Market Committee on the ground that as a result of his removal by the State Government in 1958, he was not qualified to be elected as the member. This writ petition came up before me and was allowed on 5th January, 1965, and the aforesaid order was confirmed in appeal by the

Letters Patent Bench on 20th of April, 1965. Copy of the Bench decision is Annexure "B" and inter alia, it was argued that the disqualification on the ground of removal of the Appellant in the year 1958, for misconduct was so harsh that it should be held unconstitutional. This ground was repelled and as stated above, the order setting aside his election was confirmed by the Bench on 20th of April, 1965.

3. In the year 1964, that is, after his election to the Market Committee, Rewari, but before the date on which Civil Writ No. 1563 of 1963 abovementioned was accepted and his election quashed, the elections to the Panchayat Samiti, Bawal, were held. This election was held on block-wise basis and Sub-section (2) of Section 5 of the Punjab Panchayat Samitis and Zila Parishads Acts, 1961 (hereinafter referred to as the Act) provides as follows:

(2) Where a Panchayat Samiti is to be constituted for a block, it shall consist of the following Members:

(a) primary Members to be elected in the manner prescribed by the persons as provided hereunder:

(i) sixteen Members from the block, by the Panches and Sarpanches of Gram Panchayats in the block from amongst themselves;

(ii) two Members representing the Co-operative Societies within the jurisdiction of the Panchayat Samiti, by the members of such Societies elected...from amongst the members of these societies;

(iii) one Member representing the Market Committees in the block, by the members of such Committees from amongst the producer members residing within the jurisdiction of the Panchayat Samiti.

The Petitioner, Hukam Singh was elected to the Panchayat Samiti, Bawal, under Clause (iii) above representing the Market Committees in the block being a producer member residing within the jurisdiction of the Panchayat Samiti. He continued working as the member of the Panchayat Samiti, of which he was also elected Chairman till 12th of August, 1965, that is. after the decision of the Bench of this Court in the Letters Patent Appeal referred to above, when the Deputy Commissioner, Gurgaon, informed him as follows:

Shri Hukam Singh have been (having been) disqualified was ineligible to stand for election to the Market Committee, Rewari and as such was not eligible for election as primary member to the Panchayat Samiti Bawal as also its Chairman are void. u/s 15(1) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, he shall forthwith cease to be member of the Panchayat Samiti representing Market Committee and as Chairman and his office shall become vacant.

Against this order Hukam Singh filed civil writ No. 2267 of 1965, inter alia, alleging that "the Petitioner was given no notice before passing the impugned

order. Section 103 of the Act entitles the Government to hold an enquiry before removing a member. No such enquiry was instituted in the instant case." This civil writ was allowed on the ground that the Deputy Commissioner had not given any notice of hearing to the Petitioner and order of removal as member of the Panchayat Samiti was consequently set aside.

4. Thereafter, hearing was given to the Petitioner and a detailed order was passed by the Deputy Commissioner on 1st of July, 1966 (Annexure "D"). by which it was held that the Petitioner "has become ineligible for election as a primary member of Panchayat Samiti, Bawal, u/s 6(k) of the Punjab Panchayat Samitis and Zila Parishad Act, 1961." The Deputy Commissioner consequently directed u/s 15(1)(a) of the said Act that the Petitioner shall cease to be a Chairman and member of Panchayat Samiti, Bawal. The present writ petition is directed against this order.

5. The sole ground on which the Deputy Commissioner has directed that the office of Chairman and that of member of Panchayat Samiti, Bawal, held by Hukam Singh, shall stand vacated by him was as a result of the Bench decision in L.P.A. 29 of 1965. the Petitioner had ceased to be a member of the Market Committee. Rewari, whom he was, supposed to represent in the Panchayat Samiti, Bawal, and in view of that he had become disqualified and ineligible for being elected as a member of the Panchayat Samiti as provided in Section 15(1) read with Section 6(k) of the Act.

6. On behalf of the Petitioner, two contentions have been raised before us. First, that the provisions in the Punjab Agricultural Produce Markets Act, according to which if once a member of the Committee is removed for misconduct by the State Government, he becomes disqualified for all times to come for being elected as a member of the Market Committee, was ultra vires the Constitution. Secondly, the Deputy Commissioner had no authority to decide whether the Petitioner was so disqualified or not and that in any case by reading Section 15(1) with Sections 5(2)(a) and 6(k) of the Act. all that is necessary is that a person, to be qualified to be elected u/s 5(2)(a)(iii) of the Act, should be a member of the Market Committee on the date of election and the mere fact that subsequently he has ceased to be a member either because he has been removed by a Court of Law or he has resigned would not in any way affect his right to continue as a member.

7. The first contention need not detain us for the simple reason that in the present petition, we are not concerned at all with the question whether he has been rightly or wrongly removed from the membership of the Market Committee. As already stated, there is a Bench decision of this Court upholding his removal from membership and that is final and the argument that the provision disqualifying him for all times to come from contesting for the membership of the Market Committee is ultra vires, apart from the same having been rejected by the Bench, cannot be raised in the present writ petition because that has no relevancy to the matter in controversy before us. The only question that arises

for consideration in the present case is whether in case of a person elected under Clause (iii) of Section 5(l)(a) of the Act, he vacates the office as soon as he ceases to be a member of the Market Committee in the block in question.

8. Section 15(1) of the Act provides for the circumstances in which the Chairman, Vice-Chairman or a Member of a Panchayat Samiti after he has been elected Chairman, Vice-Chairman or a Member shall cease to be the Chairman, Vice-Chairman or the Member as the case may be. These circumstances are mentioned in Clauses (a) and (b) of Section 15(1) of the Act and are as follows:

(a) he becomes subject to any of the disqualifications specified in Section 6; or

(b) he absents himself without the permission of the Panchayat Samiti from more than three consecutive ordinary meetings of the Samiti.

Section 6 of the Act enumerates the disqualifications of candidates for election as primary members. Inter alia Clauses (f), (h), (i) and (j) provide as follows:

(f) is so disqualified by or under any law made by the Legislature of the Punjab State; or

(g) * * *.

(h) has been dismissed from the service of Government, etc., etc....

(i) has... within five years from the date specified for the nomination of candidates, been serving a sentence of imprisonment for an offence involving moral turpitude for not less than one year ; or

(j) is disqualified from membership of a Municipal Committee... or any other local authority as a result of his election having been set aside.

Apart from these, there are other clauses providing disqualifications based on age, unsoundness of mind, being a whole-time salaried Government servant or having an interest in a contract with Panchayat Samiti, etc. Clause (k) is in general terms and is as follows:

(k) is disqualified for being elected or co-opted as a member.

9. The argument of the learned Counsel for the Petitioner was that action has been taken against him under Clause (k) and the same is meaningless because it does not mention as to under what provision of law a person has to be disqualified for being elected or co-opted as a member. His argument was that all the eventualities, which would result in disqualification, are mentioned in the previous clauses and the factum of a person ceasing to be a member of a Market Committee or Panchayat Samiti or Co-operative Society as the case may be u/s 5 (2) (a) of the Act has not been detailed as a ground of disqualification in those clauses. He also referred to the fact that,--vide proviso to Section 8 of the Act, the term of the Panchayat Samiti is five years, whereas u/s 14 of the Punjab Agricultural Produce Markets Act, the term of the Market Committee is three years. The two terms not being co terminus a representative of the Market

Committee u/s 5(2)(a)(iii) of the ACT would have to vacate office as soon as re-election of the Market Committee is held that the representative on the Panchayat Samiti either does not seek re-election or is otherwise unsuccessful. It is contended that this would result in great inconvenience because the membership of the Panchayat Samiti will be in constant flux. The argument of inconvenience based on the membership being in a condition of afflux is of no force because all the members are representatives of different bodies and no inconvenience can be caused on any one or more of them being replaced by another. In case of general elections, either of the Panchayat Samitis or of the Market Committees, due to afflux of time, there is ample provision made in the Punjab Agricultural Produce Markets Act as well as in the Act for the existing members to continue till new ones are elected. In any case, we have to interpret the law as it is and cannot be swayed by the fact that the members, who come as representatives of bodies would cease to be members on their vacating the office in the parent bodies whose representatives they have been chosen and we find no inconvenience or impropriety in such an interpretation being given.

10. The provisions of Section 5(2) (a) of the Act have been reproduced above and it is obvious that the Legislature has specifically provided in each of the three cases for the election of a member or members out of the categories, who are to elect the same. Thus Panches and Sarpanches have to elect 16 members from all the Panchayats in the block, but these 16 persons must be either Panches or Sarpanches. Similarly, the representatives of the Co-operative Societies have to be elected from amongst the members of those Societies. The same is true about the Market Committees. The Committees situated in the block have to send one representative, who must be a member of the Market Committee and not only that but he should also be a producer member, who is residing within the" jurisdiction of the Panchayat Samiti. It was urged on behalf of the State that in view of this, Clause (k) of Section 6 of the Act is apparently to cover cases of persons, who are not qualified for being elected or co-opted under the particular sub-clause of Sub-section (2) of Section 5. It was, however, contended on behalf of the Petitioner that if this was the meaning to be given to this Clause (k), then it should have been worded as "does not possess the requisite qualification as provided u/s 5 for being elected or co-opted as a member". That would perhaps have been a better way of expressing the intention, but Clause (k) coming as it does after all other categories of disqualifications and reading it in the context of Section 5 could not refer to anything but "lack of qualifications" as provided u/s 5. If this interpretation is not put on this clause the same would become redundant, a situation, which, if possible, has to be avoided. It was not contested that if a person is not a member of the Market Committee on the date when he stands for election, he would not be qualified to be so elected. If this disqualification for being elected is not covered by any of the Clause (a) to (j), then it would be referable to Clause (k) read with the relevant Sub-clause (iii) of Section 5(2)(a), of the Act. Thus u/s 6 of the Act, a person who is not a member of the Market Committee would not

be qualified to stand for election for being elected under Clause (iii). If such a disqualification is incurred by a member subsequent to his entering his office as a member, then he automatically ceases to be such a member and must vacate that seat.

11. As regards the authority of the Deputy Commissioner, it was conceded on behalf of the Respondent that he has no authority whatever to declare whether a particular person, who has been elected as a member of the Market Committee has based to be such a member. That is beyond his jurisdiction. This shall have to be decided by a competent authority, be that an authority given jurisdiction to deal with an (election petition or an authority possessing writ, jurisdiction having power to quash the election if the same is found to be improper and illegal. However, once a competent authority has declared that a particular member has ceased to be a member of the Market Committee, such a person would become disqualified to be such a member in view of Section 6(k) read with Section 5(2) (a) (iii) of the Act.

12. In view of the above, we find that in the present case, Deputy Commissioner has done nothing except that after giving an hearing to the Petitioner to show cause why action should not be taken he has directed his removal as member and Chairman of the Panchayat Samiti as the logical consequence of the order of this Court setting aside his election as a member of the Market Committee. We, therefore, find no force in this petition and dismiss the same. As the point raised was considered to be important by the Motion Bench and the case was admitted to the Division Bench straightway, we leave the parties to bear their own costs.