
(1972) 08 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 1475 of 1972

Jai Mal

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 17-08-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) 1 ILR (P&H) 482

Hon'ble Judges : Rajinder Nath Mittal, J

Bench : Single Bench

Advocate : Surinder Sarup with Mr. K.S. Saini, for the Appellant; H.N. Mehtani, Assistant Advocate-General Haryana, for the Respondent Nos. 1 to 4 and Mr. R.K. Chhokar, for the Respondent

Final Decision : Allowed

Judgement

Rajinder Nath Mittal, J.—This writ petition has been under Articles 226 and 227 of the Constitution of India praying that the order of the Deputy Commissioner (copy Annexure "C" to the petition) by which the appointed Shri Sultan, son of Shri Phusa Ram, resident of village Rai Malikpur. tehsil Narnaul, as Panch of Gram Panchayat Rai Malikpur, under sub-rule (2) of rule 12 of the Haryana Gram Panchayat Election Rules, 1971 (hereinafter referred to as "the Rules"), be quashed.

2. The facts which have given rise to this writ petition are that elections to Gram Panchayat of village Rai Malikpur were held in June July, 1971, and the petitioner along with Birdha Ram, respondent No. 8, Ram Narain, respondent No. 6, Ladhu Ram, respondent No. 7 and Jeeta Ram son of Sukha Ram were elected as Panches. Jeeta Ram after the elections died in the first week of January, 1972, and thereby a vacancy was caused in the Gram Panchayat. The authorities concerned did not take steps to hold fresh elections for filling up the vacancy caused by his death and the petitioner made an application in writing to respondents 1 and 2 requesting them to fill in the vacancy by holding an election

without delay. It is further alleged that without taking any action on the application of the petitioner, respondent No 2 directed respondent No. 3 to call a meeting of the remaining Panches for co-opting a woman Panch and also to elect a Sarpanch under the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as "the Act"). Thereafter, the petitioner along with Birdha Ram filed a suit for permanent injunction against respondent Nos. 3, 4, 6 and 7 praying that they should be restrained from holding the aforesaid meeting till all the seats in the Panchayat had been filled. The Subordinate Judge issued an ad interim ex parte injunction as prayed for and subsequently confirmed the same. A second application was made by the petitioner to respondent No. 1 that the vacancy in the Gram Panchayat should be got filled by holding an election which was forwarded by it to respondent No. 2 for necessary action vide communication dated April 21, 1972 (copy Annexure "A" to the Petition) who instead of complying with the direction of respondent No. 1, referred the matter to the District Development and Panchayat Officer. After that, respondent No. 2, vide his order dated April 28, 1972, nominated Sultan as a Panch. Later on, he passed a formal order on May 2, 1972, for appointment of Sultan as a member of the Gram Panchayat in the vacancy caused by the death of Jeeta Ram. The petitioner has challenged the aforesaid order, inter alia on the ground that the impugned order (copy Annexure "C" to the petition) has been made contrary to the provisions of section 10 of the Act read with rule 42 of the Rules. They have further averred that the vacancy should have been filled by election and not by nomination. It is further alleged that section 11 of the Act should be resorted to only if the remedy by way of election u/s 10 read with rule 42 of the Rules has been complied with and exhausted. In the present case as the procedure prescribed by section 10 of the Act had not been exhausted, therefore, the proceedings u/s 11 of the Act are illegal and without jurisdiction. Three returns have been filed by three different set of respondents--the first by Sultan respondent No. 5, the second by Ram Narain and Ladhu Ram respondents 6 and 7 and the third by the Deputy Commissioner, respondent No. 2. All of them have denied the allegations of the writ-petitioner and stated that the nomination of respondent No. 5 was legal and proper. In the return of the Deputy Commissioner, it is further stated that the date for holding the bye election to the vacancy of Panch caused by the death of Jeeta Ram was fixed for April 21, 1972, but the incharge Block Development and Panchayat Officer, Nangal Chaudhry, showed his inability in publication of election programme within time and that the election could not be held for that reason. It is also stated by him that the appointment has been made by him strictly in accordance with the provisions of section 11 of the Act read with sub-rule (2) of rule 12 of the Rules.

3. The first submission which was made by the learned counsel for the petitioner was that section 10 was not taken into consideration by respondent No 2 when he passed an order u/s 11 of the Act. According to the learned counsel for the petitioner, nomination u/s 11 of the Act could be made only if for any reason a Panch had not been elected u/s 10. In support of his contention, he relied on a

Division Bench judgment of this Court Mahabir Parshad v. State of Haryana 1970 P L J 681, wherein it has been observed as follows:

To my mind the provisions of section 11 cannot be invoked whilst the process of section 10 is yet continuing. It is only when the filling of the casual vacancy by the procedure u/s 10 read with rule 40 has been frustrated that as a last resort, the appointment by the prescribed authority u/s 11 is to be invoked.

The words "if for any reason" used in section. 11 are, therefore, not to be torn out of their context to give a wide and unguided power to the prescribed authority for appointing its own nominees to the office of the Sarpanch or Panch instead of holding an election to fill the same. In my view the words "if for any reason" are clearly related to the words "are not elected" and read in this context it is implied that the reason must be one connected with the failure of the primary election process. To visualise one of numerous such possibilities, a situation may well arise when no qualified person is available or nobody comes forward to seek election to the office. The reason thus has to be one which is not created or does not have the effect of defeating and nullifying the provisions of section 10 and rule 40 which prescribe a mandatory elective procedure for filling the casual vacancies. In any case the authorities cannot by their own act first thwart the process of election by ordering a stay of the same and then to make this very stay order a ground for by-passing the mandatory provisions of holding an election. This, in my view, would not obviously be a valid use of the power u/s 11.

4. The learned counsel for the petitioner further submitted that respondent No. 2 did not take proper steps to hold the elections. On the other hand, the learned counsel for the respondents, submitted that the contention of the learned counsel for the petitioner did not hold good as in the present case the Deputy Commissioner fixed a date for election but the same could not be held on April 21, 1972, as the Block-Development and Panchayat Officer, Nangal Chaudhry, showed his inability in publication of election programme within time and for the said reason the election could not be held. He also submitted that the Deputy Commissioner rightly nominated respondent No. 5 u/s 11 read with sub-rule (2) of rule 12 of the Rules.

5. After hearing the contentions of the learned counsel for the parties, I am of the view that the contention of the learned counsel for the petitioner has got great force. The reason for not holding the election should be reasonable. The reason which has been given in the present case by the Deputy Commissioner does not appear to be a good reason u/s 10 of the Act. In the first instance, he says in para 14 of the return that the election programme could not be chalked out earlier in the month of March on account of General elections. The General elections have been told, were held on March 11 and 12, 1972. After that, the programme for the present election could be chalked out. After the said date, the election was fixed for April 21, 1972, but it was not held on a ground which did not appear to be sufficient ground. The Block Development and Panchayat Officer

should have held the election according to the programme and if that was not held, the Deputy Commissioner could extend the time under rule 42 of the Rules. The said rule provides that if the election could not be held within sixty days of the occurrence of the vacancy in accordance with the rules, the Deputy Commissioner could extend time if in his opinion there were sufficient grounds for such extension. The learned Division Bench has also observed that if the authorities by their own act first thwart the process of election by ordering a stay and then make it a ground for by-passing the mandatory provisions of holding elections, this will not be a valid use of power u/s 11 of the Act. I am bound by the observations of the learned Division Bench in Mahabir Prashad's case (supra) and hold that the nomination of the Panch under sub-rule (2) of rule 12 of the Rules read with section 11 of the Act is not valid as the Deputy Commissioner failed to hold elections for electing a Panch u/s 10 of the Act.

6. The next submission made by the learned counsel for the petitioner was that the powers had been exercised by the Deputy Commissioner under sub-rule (2) of rule 12 of the Rules, which is in the following terms:

12(2) If the number of validly nominated candidates is less than the number of seats to be filled, the Returning Officer shall forward a list of the elected candidates to the Deputy Commissioner together with a report specifying the number of unfilled seats. The Deputy Commissioner shall thereupon take action u/s 11 of the Act, for the purpose of which the Deputy Commissioner shall be the prescribed authority.

7. The learned counsel for the petitioner further submitted that according to the above rule if the number of validly nominated candidates was less than the number of seats to be filled by the Deputy Commissioner, the Deputy Commissioner thereupon could take action u/s 11 of the Act. According to him, he could take benefit of sub-rule (2) of rule 12 of the Rules only if the number of nominated candidates was less than the number of seats and not on account of death of a Panch. The word "nominated candidate" had not been defined, but from the perusal of the scheme of the rules, it was clear that the nominated candidate could not be equated with an elected Panch. In the present case, it could not be said that the deceased was a nominated candidate after the election had been held. The candidature of a person came to an end after the election. The learned counsel for the respondents submitted that the deceased had not become a Panch as oath had not been administered to him u/s 9 of the Act and as long as an oath had not been administered and the new Panchayat had not come into existence, he was not to be treated as a Panch. He further drew my attention to section 5 of the Punjab Gram Panchayat (Haryana) Amendment Act, 1971 (hereinafter referred to as "the Haryana Act") and submitted that under sub-clause (6) of section 5 of the Haryana Act, immediately after the election of Panches, election of a Sarpanch had to be held. As such, election of Panchayat is a process in which panches and Sarpanch are elected. He also referred to sub-clause (2) of section 9 of the Act wherein it has been provided that the Sarpanch

and Panches shall hold office for a period of five years provided that an out going Panch unless the Government directs otherwise continues to hold office until his successor has taken the oath and submitted that unless there was an oath ceremony u/s 9 of the Act, the new Panchayat had not come into existence. In the aforesaid circumstances, he stated that the nomination of respondent No. 5 was valid under sub-rule (2) of rule 12 of the Rules as the deceased had not become a Panch under the above provisions. I do not find any force in this argument of the learned counsel for the respondents. Harmonious construction is to be put on the various provisions of an enactment. The word "Panch" has been defined in sub-clause (i) of section 3 of the Act in the following terms:

Panch means a member of Gram Panchayat or an adalti Panchayat elected or appointed under this Act and includes a sarpanch.

"Gram Panchayat" has been defined in sub-clause (g) of section 3 of the act in the following terms:

"Gram Panchayat" means the Panchayat constituted u/s 5 of the Act.

Section 5 of the Haryana Act relates to the establishment and constitution of a Gram Panchayat. Rules 1 to 41 of the Rules deal with election of Panches and Sarpanches ; rule 42 relates to the procedure for filling up casual vacancies and rules 44 to 49 with the election petitions. In sub-section (6) of section 5 of the Haryana Act and rules 37 of the Rules, it has been stated that immediately after the election of Panches, they should elect from amongst themselves a Sarpanch. The administration of oath to a Panch has been provided in section 9 and before administration of oath, Panches elect Sarpanch. The Legislature has used the word "Panch" in the said sub section even prior to administration of oath to him. In sub section (1) of section 9 of the Act, it has been stated that every elected Panch shall, before entering upon the duties of his office, take an oath in the form specified in Schedule IV. The perusal of this section also shows that the oath is given to a Panch and not to a candidate. The perusal of the aforesaid provisions of the Act and the rules clearly show that the word "Panch" has been used loosely and means a member of Gram Panchayat, whether oath has been administered to him or not. The contention of the learned counsel for the respondent that unless oath was administered to a Panch, he does not become a Panch within the meaning of that word as defined in the Act, is untenable. Sub-clause (2) of rule 12 of the Rules relates to nomination of a Panch in case the number of validly nominated candidates is less than the number of seats and will not apply in the case where election has already been taken place. In my view, this contention of the learned counsel for the respondent has got no force and I hold that nomination of a candidate by the Deputy Commissioner under sub-clause (2) of rule 12 of the Rules is illegal in the present case.

8. Mr. R.K Choker, learned counsel for respondents 5, 6, 7 and 8, then urged that the interpretation which had been made by the Deputy Commissioner was final as contemplated by rule 43 of the Rules According to him, if he had taken a

decision under sub-rule (2) of rule 12 of the Rules on his interpretation of that rule that cannot be questioned by any authority. The learned counsel for the petitioner controverts this position and submits that if the interpretation was prima facie illegal, then this Court in writ jurisdiction can hold the same to be illegal. I also do not find any force in this contention of Mr. R. K. Chokar. This Court under Articles 226 and 227 of the Constitution of India can go into the matter whether a particular provision has been interpreted by any authority rightly or not. Moreover, if that would have been the intention of the rule making authority, it could be said in the rule that any decision of the Deputy Commissioner under the rules would be final and no Court can take cognizance of that matter. The reading of the rule shows that it was framed for a different purpose. The rule states that if any question arises regarding interpretation of the rules, it shall be referred by the person interested or the official concerned to the Deputy Commissioner for decision. It is clear that a decision given by the Deputy Commissioner on a reference under the said rule shall be final. If the matter is not referred to the Deputy Commissioner, then rule 43 of the Rules shall have no application. In the present case, the matter has not been referred either by the Deputy Commissioner himself or by any other authority. Therefore, the contention that his aforesaid decision shall be final does not hold good.

9. For the reasons aforesaid, I accept this petition with costs and quash the order of the Deputy Commissioner, dated May 2, 1972. Counsel's fee Rupees one hundred and fifty only.