
(1970) 03 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 2770 of 1969

Krishan Kumar and another	Vs	APPELLANT
State of Haryana and others		RESPONDENT

Date of Decision : 03-03-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1970) 03 P&H CK 0044

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : H.S. Wasu and Mr. B.S. Wasu, for the Appellant; G.C. Garg, for the Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—Krishan Kumar and Jai Narain have filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction, quashing the order of the Deputy Commissioner, Respondent No. 2, dated 19th May, 1969, by which Mahabir Parshad Respondent No. 3, was appointed as Sarpanch, Gram Panchayat Elenabad

2. The Petitioners are Members of the Gram Sabha, Elenabad. The brief facts as stated in the petition are that election to the office of Panches and Sarpanch of village Elenabad, was held on 8th January, 1964, when Krishan Kumar, Petitioner No. 1, was declared elected as Sarpanch of the said Gram Panchayat. An election petition challenging the election was filed. As a result thereof his election was set aside on 7th September, 1967. Petitioner No. 1 filed Civil Writ No 2121 of 1967 against the order of the prescribed. Authority setting aside his election but the same was dismissed in limine on 4th October, 1967. When the election of Petitioner No 1 was set aside, charge of the records of the Gram Panchayat was handed over to one Tara Chand; but in the meeting of the Gram Panchayat held on 30th December, 1967, one Des Raj was elected Sarpanch. The election of Des Raj was challenged by way of Civil Writ No. 293 of 1968, and the appointment of

Des Raj as Sarpanch was set aside. Copy of the judgment is Annexure "A" to the petition.

3. It is further stated that the Deputy Commissioner, Respondent No 2, exercising powers under Rule 4 of the Gram Panchayat Election Rules, 1960 (hereinafter referred to as the Rules) , directed the Sub Divisional Officer (C), Sirsa. to chalk out a programme for holding the by-election to the Gram Panchayat Elenabad, before 30th June, 1968. In pursuance of these directions, the election of Sarpanch was actually fixed for 29th June, 1968, but before it could be held, a telegram was received by the Sub Divisional Officer, Sirsa, from the Development Commissioner, Haryana, Chandigarh, dated 26th June, 1968 (Copy Annexure "C" to the petition), saying ""Election Sarpanch Ellenabad fixed for 29th June, 1968 be stayed till further orders". Under this direction the election was stayed and did not take place. After some time Respondent No. 2, in exercise of his powers u/s 11 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act) vide impugned order dated 19th May, 1969, appointed Respondent No. 3 as Sarpanch of the Gram Panchayat, Ellenabad. It is this order of the prescribed authority which has been challenged by way of this petition.

4. There is no representation on behalf of Respondents 1 and 2 nor has any return been filed on their behalf. The petition is contested only by Mahabir Parshad, Respondent No. 3, who has filed written statement controverting the allegations made in the petition.

5. It was contended by Mr. Wasu, learned Counsel for the Petitioners that the circumstances of the case did not warrant appointment of Respondent No. 3 as Sarpanch by the prescribed authority u/s 11 of the Act. In my view there is considerable force in this contention of the learned Counsel. Section 6 of the Act prescribes the constitution of a Gram Panchayat and also the disqualifications which debar a person from becoming a member thereof. Section 10 of the Act precribes the method of filling casual vacancies and reads thus:

10. Filling of casual vacancies.-Whenever a vacancy occurs by the death, resignation or removal of a Panch or a Sarpanch, a new Panch or Sarpanch, as the case may be, shall be elected in such manner as may be prescribed, and the person so elected shall hold office for the unexpired portion of the term for which the person in whose place he was elected would have otherwise continued in office.

Rule 40 prescribes a procedure for filling casual vacancies and is in the following terms:

40. Procedure for filling casusal vacancies - Where a vacancy occurs among the elected members of the Panchayat by death, resignation or removal of any member and a new member is to be elected in his place in accordance with the provisions of Section 10, such election shall be held within 60 days of the occurrence of the vancancy in accordance with these rules.

Provided that limit of sixty days prescribed in this rule may be extended by the Deputy Commissioner, if in his opinion there are sufficient grounds for such extension.

In the instant case, after the decision of Shamsheer Bahadur J, in Civil Writ No. 293 of 1968 (Tara Chand and Ors. v. State of Haryana and others C.W. No. 293 of 1968.), decided on 29th March 1968, (copy Annexure "A" to the petition), the Deputy Commissioner, Hissar, vide memo. (Copy Annexure "B" to petition) directed the Sub Divisional Officer (Civil), Sirsa, to hold by election to the offices of the Sarpanch and a Panch before 30th June, 1968, which date was extended by him in exercise of his powers under Rule 40. Accordingly the election to these two offices was fixed for 29th June, 1968, when on 26th June, 1968, a telegramme was received from the Development Commissioner, Haryana, saying "Election Sarpanch Ellenabad fixed for 29th June, 1968 be stayed till further orders" (copy Annexure "C" to the petition). In obedience to this order, the election to the office of Sarpanch fixed for 29th June, 1968, was not held. It is not known as no material has been placed on the record, as to on what grounds and on whose application the election was stayed. The fact, however, remains that the election was stayed and nothing is known as to what further action was taken by the Government in this respect, and that all of a sudden after about one year of the issuance of the stay order, the Deputy Commissioner, Hissar, in exercise of his powers u/s 11 of the Act, passed the impugned order on 19th May, 1969 It would be useful at this stage to reproduce Section 11 which is in the following terms:

Appointment in cases of default.-

It for any reason a Sarpanch or a sufficient number of Panches are not elected, or a casual vacancy is not filled within the time prescribed, the prescribed authority may appoint the necessary number of duly qualified persons as a Sarpanch or Panch, as the case may be, and any such person shall hold office for the unexpired portion of the term for which the person in whose place he was appointed would have otherwise continued in office.

6. From the plain reading of this section I do not find any escape from the conclusion that in the circumstances of the case, Respondent No. 3 could not be appointed as Sarpanch of the Gram Panchayat of Elenabad. I am not prepared to hold, as was contented by Mr. Garg, that the words "if for any reason" are very wide so as to include even the cases where a casual vacancy is not fitted within the time prescribed owing to some act of the Government. In the instant case, the issuance of the stay order did not permit the holding of the election on 29th June, 1968, the date fixed for that purpose and it is beyond my comprehension that such a reason could legally be taken into consideration for filling the casual vacancy u/s 11 of the Act. The words "if for any reason" visualize some such situation as may arise when no qualified person is available to contest the election for filling the causal vacancy within the time prescribed. The reason has to be one which is not created with a view to defeat and nullify the provisions of

Section 10 and Rule 40 which prescribe a mandatory procedure for filling the casual vacancies." In this view of the matter I hold that the appointment of Respondent No. 3 as Sarpanch of Gram Panchayat of Elenabad, by the Deputy Commissioner, Hissar, exercising powers u/s 11 of the Act, was illegal and without jurisdiction. No other point was urged.

7. For the reasons recorded above, I allow this petition and quash the impugned order dated 19th May, 1969. In the circumstances of the case I make no order as to costs.