
(2012) 07 P&H CK 0174
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4368 of 2012

Naresh Kumar

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 166, 167, 34, 379

Citation : (2012) 168 PLR 502 : (2013) 3 RCR(Civil) 800

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : H.N. Sahu, for the Appellant; Sunil Nehra, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh, J.—The petitioner has questioned the validity of one of the votes polled which is counted in support of "No Confidence Motion" carried against him. This vote is stated to have been marked in a manner that it has spilled into both the columns meant to indicate voter choice being for or against the motion. Plea accordingly is that vote will not show the choice of the voter in clear manner and so was wrongly counted as validly polled vote. If this vote is held invalid and is rejected then the "No Confidence Motion" for removing the petitioner would fail. The elections to the Gram Panchayat in the State of Haryana were held in the year 2010. The petitioner was elected as Vice Chairman of the Block Samiti, Jind, District Jind. It is averred that some of the members of the Block Samiti were against the petitioner from the very first day of his election as Vice Chairman and made every efforts one after another to remove the petitioner on the one pretext or another. The petitioner claims that his work and conduct was very good throughout and the public of the Samiti was satisfied and happy with his work.

2. The petitioner states that his trouble commenced when he made complaints against Addl. Deputy Commissioner, Jind (respondent No. 2) leading to

registration of an FIR No. 580 dated 29.08.2011 under Sections 379, 380, 381, 411, 166, 167, 120-B and 409 read with Section 34 of the Indian Penal Code at Police Station Jind, District Jind. The subordinate staff working with respondent No. 2 and some private persons were also likely to get involved in this FIR. Thus, respondent No. 2 acted against the petitioner by issuing a notice dated 08.02.2012 for considering "No Confidence Motion" against the petitioner. The notice was issued to all the thirty members of the Block Samiti, Jind fixing 17.02.2012 as date for considering the motion.

3. Out of total 30 members, 22 came present in the meeting for considering the "No Confidence Motion" on 17.02.2012. The record would show that "No Confidence Motion" was carried against the petitioner as is made out from Annexure P-2. The petitioner was suspicious about the result from the very beginning as he found the members to be under pressure of respondent No. 2. Without any justification, no proceedings were recorded in this regard and so also no mention was made about numbers of votes polled for or against the motion.

4. The petitioner made enquiry about it but respondent No. 2 refused to furnish any details. He had to succumb due to some media pressure and so was made to disclose the details of the votes polled in writing.

5. The information disclosed is that total 22 members, came present in the meeting convened for discussing "No Confidence Motion". One vote out of votes of 22 members, who had voted, was cast against the "No Confidence Motion". One member had marked the stamp on ballot paper in a manner that the stamp spilled in both the columns for conveying the choice to support or oppose the motion. Still this vote was considered valid and counted in support of "No Confidence Motion" and so the motion was statedly carried against the petitioner with 2/3rd requisite majority. The petitioner would plead that this vote was required to be rejected as invalid but was illegally counted "for" the motion to make 2/3rd majority and so it is stated that the motion was carried against the petitioner. The petitioner thus was removed from the office of Vice Chairman.

6. The counsel for the petitioner has relied on Rule 65 of the Haryana Panchayati Raj Election Rules, 1994 which is relevant and regulate such a situation for counting of vote during election. The counsel would contend that this vote which was marked in a manner that the stamp affixed spilled over into both the columns cannot be treated as validly cast vote and was required to be cancelled. Instead, the Returning Officer, in violation of the provisions of this Rule, counted this vote as valid that too in support of the "No Confidence Motion". It is this crucial vote, which according to the counsel, would complete the coram of 2/3rd majority for "No Confidence Motion" to be carried. If this vote had been held invalid then the "Motion" would have failed as it would then fall short of 2/3rd majority which is statutory requirement.

7. The above details about the manner of the votes cast are disclosed in

response to letter dated 17.02.2012 of the petitioner. In this letter, it is admitted by the Presiding Officer that on one ballot paper, seal was stamped in both the columns but was treated in favour of "No Confidence Motion" because more than half of this seal was stamped in that column which was in favour of "No Confidence Motion". The petitioner would challenge this action in counting this vote in favour of "No Confidence Motion". The petitioner has accordingly approached this Court through the present petition with the grievance that "No Confidence Motion" against the petitioner has not been legally and validly passed and so his removal from the post of Vice Chairman as ordered be set aside.

8. Notice of motion was issued. Reply on behalf of the respondents is filed.

9. When the case was heard on 09.07.2012, the stand reflected in the reply filed by the State in para No. 8 was noticed. It is mentioned in this para that on one ballot paper arrow cross mark was stamped in both columns which was treated in favour of "No Confidence Motion" because major portion of the mark fell in that column which was meant for "No Confidence Motion". Court felt it necessary to call for the records and to examine the ballot papers. The case was adjourned on the prayer of the counsel for the State to produce the record.

10. The record has been produced before me today in a sealed cover.

11. In support of this stand as adopted, Rule 65 of the Rules is relied and emphasized. Stress is on the proviso to Rule 65 of the Rules to urge that the major portion of the Arrow Cross Mark appeared in favour of the column for motion and this vote was rightly taken in favour of the column. The respondent accordingly would submit that there has been no violation of the provisions of law and Rules and this ballot has been validly and legally counted as per proviso to Rule 65 of the Rules.

12. The facts are not much in dispute. The counsel for the petitioner would submit that one vote could not have been validly counted in favour of motion as the stamp marked appeared in both the columns. The State Counsel on the other hand would justify counting of this vote in favour of the "Motion" as major portion of the stamp which was marked to vote appeared in the column supporting the "Motion". It is this conflicting stand of the parties raised on the basis of Rule 65, heavily relied by both the sides, that had necessitated the Court to itself examine the ballot papers.

13. Sealed record of the ballot papers is placed before the Court. The double sealed cover is opened in Court. On one sealed envelop, it is mentioned that it contains 20 votes which were polled in support of "No Confidence Motion". This sealed envelop is opened in Court and 20 ballot papers are perused. There is no dispute about the 19 votes having been clearly marked in favour of "No Confidence Motion". One vote/ballot paper is such where the stamp mark has spilled in both the columns and the dispute is concerning this vote.

14. I have minutely examined this vote. The stamp marked to exercise this vote

is done in a manner that the mark of the stamp has spilled over to both the columns. Part of it appears in column supporting the motion and other part of it is in a column against the motion. The stamp is marked in a manner that two arrows of the upper side and part of dividing line in between the stamp appears in one column for the motion whereas remaining two lower arrows and portion of centre dividing line of stamp is appearing in the column for opposing the motion. It can be described in a manner that some portion of this stamp mark is in the column for the "Motion" whereas other portion of the stamp is in the column which is against the "No Confidence Motion". A slightly more part of the stamp is appearing in the column of supporting "No Confidence Motion" but that is primarily because of the tilted manner in which the stamp mark is affixed and it does not clearly indicate if it was "for" or "against" the motion. Almost equal parts of this stamp appear in both the columns.

15. Counsel appearing for the State would contend that major portion of this vote is in support of "No Confidence Motion" and so he would justify the stand of the Returning Officer in counting the vote in support of "No Confidence Motion". For this, the counsel relies upon proviso to Rule 65 which according to him would be applicable. Rule 65 of Haryana Panchayati Raj Election Rules, 1994 reads as under:-

65. Scrutiny and rejection of ballot papers-(1) A ballot paper contained in a ballot box shall be rejected, if -

- (a) it bears any mark or writing by which the voter can be identified;
- (b) it is a spurious ballot paper;
- (c) it has been so damaged or mutilated that its identity as a genuine ballot paper cannot be established;
- (d) it bears a serial number, or is of a design, different from the serial numbers of, as the case may be, or design of the ballot paper authorized for use at particular polling station;
- (e) it does not bear any mark which it should have borne under the provisions of sub-rule (3) of Rule 49;
- (f) it has not been marked;
- (g) it has been marked in the column of more than one candidates; or
- (h) it has been marked by an equipment and in the manner other than the equipment and the manner prescribed for that purpose:

Provided that where Returning Officer (Panchayat) or any other officer authorized by him, on being satisfied that any such defect as is mentioned in clause (d) or clause (e) has, in respect of all or any ballot papers used at a polling station, been caused by the mistake or failure on the part of the Presiding Officer or Polling Officer concerned, or has directed that the defect should be overlooked a

ballot paper shall not be rejected only on the ground of such defect under clause (d) or clause (e):

Provided further that if the mark put by a voter has spread over two columns of the ballot paper the vote shall be counted in favour of the candidate in which column the major portion of the mark falls.

(2) Before rejecting any ballot paper under sub-rule(1) the Returning Officer (Panchayat) or such other officer authorized by him shall allow each [counting agent] (substituted by Leg Sup. Part III dated 04.11.94) present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper.

(3) The Returning Officer (Panchayat) or such other officer authorized by him shall record on every ballot paper which he rejects the letter "R" and the grounds of rejection in abbreviated form whether in his own hand or by means of a rubber stamp.

(4) All ballot papers rejected under this rule shall be bundled together.

16. It is the highlighted portion containing proviso that the State Counsel has pressed hard. The counsel for the petitioner on the other hand would refer to Rule 65(1)(g) which according to him is relevant. This Rule provides that the ballot papers contained in a ballot box shall be rejected if it has been marked in the column of more than one candidate. State counsel would contest this and urge that this Rule would apply when a voter has marked the stamp in two columns in favour of two candidates and not when one mark is endorsed on one of the ballot paper and it happens to spill over to two columns. As per the State counsel, that position is governed by proviso to the Rule which clearly shows that if the mark put by a voter has spread over to two columns of the ballot paper, the vote shall be counted in favour of the candidate in which column the major portion of the mark falls. On the basis of this Rule, the State counsel pleads that major portion of this mark falls in a column supporting "No Confidence Motion" and thus this vote was rightly counted in favour of "No Confidence Motion" having been carried and it was rightly not rejected.

17. I have examined and re-examined this vote (ballot paper) in the light of the submissions made before me and as per Rule 65 of the Rules.

18. I cannot persuaded myself to accept the line of submissions made by the State Counsel. The manner in which the mark appears on the ballot paper cannot cover such cases where the stamp mark is almost equal in both the columns though slightly more in one column. The proviso does say that a vote is to be counted in favour of a candidate where major portion of the mark of stamp falls. If this proviso is interpreted in a manner as pressed by the State Counsel, than there would never be a invalid vote and its validity would be left to be judged by the Presiding Officers/Returning Officers.

19. One would have to see the meaning which can be assigned to words "major

portion" used in the proviso. These words can not be understood to mean that one is to measure the portion falling in each column and then decide in which column more portion appears. The word used is "major portion". Opposite of word "major" is "minor". Thus to say that major portion fell in one column, the minor portion of the stamp should be in the opposite column. The portion of stamp appearing in column meant to oppose the "motion" can by, no stretch of imagination, be termed as "minor portion". It may not be exactly equal to the portion falling in the column for support of motion but it certainly can not be termed as "minor portion" of the stamp mark.

20. The word "major" in a literal sense means greater or great in number, quantity, size, value, importance, dignity etc. It means greater than minor. The word "minor" means lessor, inferior, unimportant, "inconsiderable lower", smaller than major. Applying this literal meaning of word "major", the words "major portion" would convey the greater portion, meaning greater or a great portion in size. It would also mean that "minor portion" should be in opposite column. Thus, inconsiderably lower or smaller portion in size should be in the opposing column. Neither the portion appearing in column supporting the "motion" can be described as greater portion nor the portion appearing in column opposing the "motion" can be called inconsiderable or a smaller. A little difference in size of "stamp" in both the column would not mean that "major portion" is in one column. A little less or lessor portion of the stamp which appears in the lower column cannot be described inconsiderable. The great portion or inconsiderable lessor would indicate the contrast to understand how the wording used in this section may have to be appreciated. The little bigger portion is appearing in one column but certainly it is not a greater or great in size and one appearing in the lower column certainly is not inconsiderable or lessor that it can pass off as negligible.

21. The major portion in my view would be something where portion of stamp mark just happens to touch the dividing line or may be even a slight spill over appearing in a second column to a very negligible extent and thus would depict the intention of the voter in clear manner. A stamp mark touching dividing line would convey that major portion is in one column whereas some insubstantial portion spilled over to the other. Here it cannot be said that minor portion has spilled over to second column. It is certainly not so in the case at hand.

22. The choice of the voter cannot be deciphered from this vote in any clear manner. There are only two columns on this ballot paper. One was in support of "No Confidence Motion" whereas second was to oppose it. There is sufficient space given for each column. The stamp mark to express vote is very small in size compared to the space provided in the two columns and can easily be affixed leaving much space on both sides of the stamp. 19 voters had clearly shown their intentions by clearly expressing their choice. There is enough space for this mark to be marked in the centre or even on one side and there would be sufficient space still left if the stamp is marked to vote in clear manner. The

manner in which this disputed vote is marked, his choice cannot be ascertained to say if this vote was for or against the motion. This appear to have been done by the voter purposely. It could not have been an innocent act. The voter is not an ordinary voter and is a member of the Block Samiti. He could be expected to be wise enough to mark the vote in a proper manner. This centre line of the (sic) on the centre dividing line of the two column and the centre portion of the stamp is on the dividing line of the two column. Two of the arrows of the stamp are in the column meant to support "No Confidence Motion" whereas remaining two arrows out of total four are falling in the column against the "No Confidence Motion" in a slight tilted manner. Because of this, perhaps, a slightly more portion of the stamp has spilled in the column for the "Motion" whereas remaining portion of the stamp mark is in the lower column against the "Motion". The manner in which this mark appears on the vote certainly would not clearly show that this voter intended to support or oppose the "No Confidence Motion". This cannot be considered to be a vote where major portion appears in one column. As already noticed, major portion would mean if there is a slight touch on the line dividing the column or may be little bit or a very Utile spill to the other column. Slightly larger portion may be appearing in one column but equal good part of stamp is appearing in the opposite column as well. This vote in my view cannot be said to be considered valid under the proviso which has been relied upon by the learned State Counsel.

23. To me, it appears that the proviso relied by the State counsel is only to further supplement the position in Rule 65(1)(g). The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein, which, but for the proviso would be within the purview of the enactment. When one finds a proviso to a Section, the natural presumption is that, but for the proviso, enacting part of the Section would have included the subject matter of the proviso. Reference here may be made to *Mullins v. Treasurer of Survey*, 1880 (5) QBD 170. This was referred to in the cases of *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbhash Chandra Yograj Sinha*, . Proviso is a qualification of the preceding enactment, which is expressed in terms too general to be quite accurate. Generally proviso is added to qualify or create an exception to what is contained in the enactment. A proviso is not to be interpreted as stating a general view. If the language of the enacted part of the statute does not contain the provisions, which are said to occur in the proviso, one can not derive these provisions by implication from the proviso. (See *West Durbi Union v. Metropolitan Life Insurance Company*, (1897) AC 647 (HL). Normally a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it is enacted as a proviso and to no other. If an earlier clause is followed by later, which destroys altogether the obligation created by the earlier clause, then the later clause is to be rejected as repugnant and the earlier clause only would prevail. The ordinary and proper function of a proviso coming after general enactment is to limit the general enactment in certain instances. A proviso to a Section can not be used to

import into the enacted part, something which is not there but where the enacted part is susceptible to several possible meanings, it may be controlled by the proviso. (See *Jennings v. Kelly*, (1940) A.C. 206. The "true" principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of enacting clause, saving clause and proviso, taken and construed together is to prevail. A proviso should not be interpreted so as to have greater effect than strict construction of the proviso necessary.

24. Construing the proviso in this light it cannot be taken that the proviso is for covering different situation and it cannot be interpreted to have greater effect on the section itself.

25. Applying the above rule of interpretation, the meaning sought to be assigned to the proviso by the State counsel can not be accepted. If this view is accepted then it would mean that the proviso is referring to altogether different situation, which can not be a purpose of the proviso. As already noted, proviso is enacted to qualify something enacted in the enactment. Proviso is to a something, which is enacted in the part of a Section. It is to qualify the preceding enactment and it can not normally travels beyond the provisions to which it is a proviso. If the submissions of the State counsel are accepted, then the proviso would travel much beyond the enacted provision in the Section. This can not be used to import into the enacting part something, which is not there. The submissions advanced by the State counsel, therefore, can not be accepted.

26. If the stamp mark happen to spill over slightly in two columns then instead of rejecting the same under Rule 65(1)(g) this may be counted as a valid vote as per the proviso. For this, the major portion of the mark has to be in one column. The major portion would be, as already noticed, where very insignificant or a slight touch over the dividing line is seen. The very definition of word "major" and "minor" would fully justify this view. Minor would mean very slight, insignificant and the major has to be something where almost entire portion is in one column and not where substantial portion is in the second column. Accordingly, I can not accept the submissions advanced by the State counsel. This vote was required to be rejected as it did not give any clear indication whether the voter was voting "for" or "against" the "No Confidence Motion".

27. The result is that "No Confidence Motion" received a support of 19 votes. For constituting 2/3rd majority, such a motion was required to have the support of 20 members. The total strength of the Block Samiti is 30. 2/3rd of 30 would be exact 20. Since "No Confidence Motion" was not carried by 2/3rd majority, it held that the same was not validly passed.

28. The writ petition is, therefore, allowed. No Confidence Motion which is taken to have been passed against the petitioner is set aside. The necessary consequences flowing therefrom would follow. The parties are left to bear their own costs. Sealed record which was opened in Court, is resealed and handed over to the representative of the Presiding Officer through State Counsel.