
(2012) 09 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18324 of 2011

Nirmala Devi and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 20

Citation : (2013) 169 PLR 88 : (2013) 2 RCR(Civil) 990

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : B.S. Ichhewal, for the Appellant; Yatinder Sharma, DAG Punjab for the State, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh, J.—The petitioners were elected Member Panchayat of Gram Panchayat, Lubana Teku, Block Nabha, District Patiala during the general election held in May, 2008. On 16.3.2011, Gram Panchayat and Panchayat Officer made a complaint against the petitioners to respondent No. 3 that they had not remained present in the meeting of the Gram Panchayat. Respondent No. 3 - Block Development and Panchayat Officer, Nabha forwarded a report to respondent No. 2 - Director Panchayat stating that the petitioners had remained absent from the meeting of Gram Panchayat which has led to interruption of the development work. Respondent No. 3, accordingly, recommended that both the petitioners be suspended from the post of Panches. Respondent No. 2 then issued notices to the petitioners. The petitioners Filed their written replies on 28.04.2011. The petitioners pointed out that they had no hidden intention to remain absent from the meeting of the Gram Panchayat. Their plea was that they did not get notice regarding the meeting which was statedly held on 16.03.2011. As per the allegations, the petitioners had also remained absent from the meeting which had also earlier been held on 14.01.2011 as per the notice but as per counsel for the petitioners actually this meeting was held on 17.01.2011.

2. Petitioner No. 1 has infact given reason as to why she could not attend the meeting held on 17.01.2011. On this day, she had statedly gone to Bhadson for checkup with her husband who was seriously sick and was suffering from cancer. Petitioner No. 1 would disclose that her husband was in very critical condition at that time and has ultimately died on 24.09.2011. Because of this reason, petitioner No. 1 could not participate in the meeting which was held on 17.01.2011.

3. Still without considering this plea in any legal or sympathetic manner respondent No. 2 has decided to suspend both the petitioners vide his order dated 14.06.2012. Aggrieved against this order, the petitioners had filed two appeals before the Secretary, Rural Development and Panchayat Department which were dismissed on 08.08.2011 and, accordingly, petitioners have approached this Court through the present writ petition.

4. The Counsel has made submission that no meeting actually was held on 17.01.2011 as is alleged and in this regard has relied upon certain affidavits filed by the Incharge of Anganwari Centre disclosing that no meeting on this date was ever held in any of the two Anganwari Centres existing in the village.

5. Justifying the grounds for being not present on the part of Petitioner No. 2, counsel would submit that she is an old lady and had not attended the meeting because of her old and infirm age on that particular. Otherwise counsel would disclose that prior to these meetings, the petitioners had attended SO meetings of the Gram Panchayat and in this regard the counsel is in possession of relevant record which is available for examination of the Court.

6. Notice of motion was issued in this case and the operation of the impugned order was stayed. Reply on behalf of State is filed by Block Development and Panchayat Officer, Nabha. The Director who actually has placed the petitioners under suspension has chosen not to file any reply. The reply is found bereft of any detail and a usual denial is offered. Except for denial and not admitting the contents, nothing else is found reflected in the reply.

7. The Director or the other officials concerned with exercise of power under the Punjab Panchayati Raj Act ought to realise that interference by suspending or removing an elected representative is an exercise which should not be resorted to lightly. No doubt the power to suspend Panch or Sarpanch is provided u/s 20 of the Punjab Panchayati Raj Act but this has to be exercised strictly as per the provisions of the Section or in accordance with law. The Sarpanch or a Panch can be suspended or removed on the ground that he had absented for more than two consecutive months from the meeting of Gram Panchayat but in addition the Officer exercising the powers has to see that the absence is without a reasonable cause. What could be a better cause and how it was not reasonable to say that the petitioner could not come present as was required to attend to her sick husband who was suffering from deadly disease like cancer. If this is not a reasonable cause perhaps no case in the eyes of a Director would be reasonable.

It may need emphasis that mere absence can not lead to suspension or removal. Only such absence which is without reasonable cause can lead to suspension or removal. Legislation does not use any word superfluously. Each word used in the Section has to be assigned a meaning. When the legislation has provided that suspension has to follow when absence is without reasonable cause, the authority has to consider this aspect of law and then pass an order. If a particular member happens to absent himself or herself in an odd meeting because of his or her old age or sickness, obviously he can not be faulted to be suspended or removed. The Director ought to realise that absence, which is with cause like in this case, can not be termed without reasonable cause as these were beyond the control of the petitioners. If the petitioners had any intention to remain absent with intention to interrupt work then they could not be expected to participate in 50 meetings. To me the exercise of power of the Director apparently is not bonafidely done. If the Director had applied his mind to the facts of this case, obviously he could not have been so harsh to petitioner No. 1 whose husband was suffering from cancer and ultimately breathed his last. Suspending such a Panch would not only show non application of mind but appear to be a result of some cruel consideration actuating with considerations other than merits. If such a case did not deserve any sympathetic consideration which were legally also due to the petitioners then perhaps there may not be any other case where a reasonable cause for absence from meeting by a Panch can be shown. Attitude shown by the Director and upheld by the Secretary is nothing short of being inhuman besides being illegal reflecting non-application of mind. It is an abuse of process to suppress the play of democracy at grass root level. The order passed by the Director, therefore, can not be sustained. The same is set aside. The Director who had passed this order and Secretary, who upheld it, are saddled with costs of Rs. 10,000/- to be equally shared and recovered personally from them for being paid to the petitioners.

The writ petition is, accordingly, allowed.