
(2012) 05 P&H CK 0145
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 725 of 2012 (O and M)

Parmila Yadav

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-05-2012

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 121, 123

Citation : (2013) 1 RCR(Civil) 148

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : O.P. Goyal, with Mr. J.P. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The instant Letters Patent Appeal has been directed against the judgment dated 16.04.2012 passed by the learned Single Judge, whereby the writ petition (CWP No. 1632 of 2012) filed by the appellant challenging the proceedings of no-confidence motion passed against her by two third members of the Zila Parishad resulting in her removal from the office of President of the Zila Parishad, has been dismissed. The brief facts of the case are that the election of the Members of the Zila Parishad, Rewari was held on 6.7.2010. The appellant and other 15 Members were duly elected as Members of the Zila Parishad. Later on, the appellant was also elected as President of the Zila Parishad on 2.8.2010 in the first meeting of the newly elected Members of the Zila Parishad u/s 121 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as "the Act"). She was administered oath and sworn in as President of the Zila Parishad, Rewari on 30.8.2010.

2. After about one year in office, on 16.9.2011, 12 elected members of the Zila Parishad submitted a requisition in the shape of affidavit to the Deputy Commissioner (Prescribed Authority) expressing no confidence in the appellant and for convening the meeting of the Zila Parishad for considering no-confidence motion against the appellant. On the said requisition, the Deputy Commissioner

issued a notice dated 14.10.2011 for convening the meeting of the Zila Parishad on 21.10.2011 for considering the no-confidence motion against the appellant. The appellant challenged the said notice by filing CWP No. 19725 of 2011 on the ground that the notice for convening the meeting for considering no confidence motion was not proper as seven days clear notice was not given as required by Rule 10 of the Haryana Panchayati Raj Rules, 1995 (hereinafter referred to as "the Rules"). Realizing the illegality committed while issuing the notice, the Deputy Commissioner through Additional Advocate General, Haryana had made a statement that the said notice be treated to have been withdrawn. Consequently, the said writ petition was dismissed as having become infructuous vide order dated 10.1.2012.

3. Thereafter, on 17.1.2012, a fresh notice for convening the meeting for considering the no-confidence motion on 30.1.2012 was issued by the Deputy Commissioner as the requisition made by 12 elected members of the Zila Parishad against the appellant was standing. The appellant again challenged the said notice by filing the writ petition (CWP No. 1632 of 2012). On 27.1.2012, notice of motion was issued and after hearing the counsel for respondents/caveator, who was present in the Court, an interim order to the following effect was passed:-

Meanwhile, meeting may be conducted but secret ballots shall be obtained from the voters and kept in a sealed cover till the next date of hearing.

4. Later on, during the course of hearing, the result of the noconfidence motion carried out in the meeting held on 30.1.2012, which was ordered to be kept in a sealed cover, was opened and perused, which disclosed that out of 16 members, 12 members of the Zila Parishad had voted for the motion of no-confidence against the appellant, three members remained absent and the appellant did not participate in the motion. So, according to sub-section (2) of Section 123 of the Act, the motion of noconfidence was carried out with two-third of the total elected members of the Zila Parishad and the appellant deemed to have vacated the office of President of the Zila Parishad.

5. Before the learned Single Judge, the appellant challenged the proceedings of no-confidence motion on two grounds. Firstly, that the notice dated 17.1.2012 for convening the meeting for considering the noconfidence motion was received by the appellant on 24.1.2012. Therefore, the said notice was short of seven days period which is a mandatory requirement for convening the meeting for considering the no-confidence motion under Rule 10. It was argued that the date of issuance of such notice is not relevant, but the relevant date for counting the requisite period of seven days is the date of receipt of the notice. It was further contended that the word "issue" of notice mentioned in Rule 10 of the Rules should be construed as "received" otherwise the very purpose of holding the meeting would be lost.

6. Secondly, it was argued that as per Rule 10 the notice for convening the

meeting for considering the no-confidence motion was to be served on all the elected members by registered (A.D.) Post, but in the present case the notice was sent by the Deputy Commissioner by Speed Post, Therefore, the service of notice by Speed Post was contrary to the procedure prescribed for serving such notice. Thus, non-compliance of the mandatory Rules invalidates the issuance of the notice itself.

7. The learned Single Judge vide elaborate judgment, which is under challenge, has rejected both the contentions raised by the appellant. It was held that Rule 10 speaks of issue in the context of notice, therefore, the date for counting clear seven days notice shall be taken from the date of issuance of notice and not from the receipt of notice. The contention of the appellant that the words "issue" and "received" are interchangeable, was not accepted. It was found as a fact that in this case when the appellant was avoiding to receive the notice issued on 17.1.2012, the notice was also published in the two newspapers on 20.1.2012 and again on 23.1.2012 it was published in the print media. The notice was also served on the appellant by Speed Post on 24.1.2012, which is an admitted fact. On these findings, it was held that proper notice as per Rule 10 was issued for convening the meeting for considering the no-confidence motion.

8. On the second issue, it was held that merely because the notice was served through Speed Post and not through registered (A.D.) Post would not itself furnish a ground for upsetting the proceedings. The service by Speed Post was held to be as good as registered (A.D.) Post. In this regard, it was also found that the procedure prescribed in Rule 10 for serving the notice was duly complied with.

9. In the present appeal, the learned Senior Counsel for the appellant did not question the correctness of the impugned judgment on the aforesaid two grounds. Though the learned counsel questioned the service of notice through Speed Post and not through registered (A.D.) Post, but when asked he could not point out any illegality in the same. He has tried to assail the impugned judgment on two grounds which were not taken before the learned Single Judge, firstly that as per sub-rule (2) of Rule 10, the prescribed authority is required to issue the notice of meeting for considering the motion of no-confidence at least seven days before the date fixed for the meeting, intimating the date, time and place of meeting by adopting two methods: (a) by proclamation by beat of drum, in the Sabha areas concerned and by affixing a copy of same on the notice boards of the offices of concerned Gram Panchayats, Panchayat Samiti(s) and Zila Parishad and at other conspicuous places in the village; and (b) the notice shall also be issued to all the members by registered (A.D.) Post at their ordinary place of residence and also by affixing a copy of the same at the notice board of Office of Block Development and Panchayat Officer, Additional Deputy Commissioner and Deputy Commissioner. This sub-rule further provides that the prescribed authority may adopt any other expedient manner as deemed proper by him. According to the learned counsel, both the methods are mandatory and

required to be followed by the prescribed authority, only then the notice for convening the meeting for considering the no-confidence motion will be deemed to be valid.

10. Learned counsel tried to argue that in this case the first method of issuing notice, i.e., by proclamation by beat of drum, in the Sabha areas concerned and by affixing a copy of same on the notice boards of the offices of concerned Gram Panchayats, Panchayat Samiti(s) and Zila Parishad and at other conspicuous places in the village, was not followed, therefore, the notice issued for considering no-confidence motion was contrary to the mandatory requirement of sub-rule (2) of Rule 10. When it was asked as to whether such plea was taken by the appellant in the writ petition filed by him stating therein as a matter of fact that no proclamation by beat of drum in the Sabha areas concerned and by affixing a copy of same on the notice boards of the offices of concerned Gram Panchayats, Panchayat Samiti(s) and Zila Parishad and at other conspicuous places in the village, were made, it was clearly conceded by the learned counsel that no such plea was taken by the appellant in the writ petition. On the other hand, in the written statement filed by the private respondents, it was clearly pleaded that while issuing the notice of no-confidence motion on 17.1.2012, all the statutory requirements were followed. The proclamation of the notice was effected on 19.1.2012 through Annexures R-3 and R-5. In view of this factual position, it cannot be said that the first method of issuing the notice by proclamation by beat of drum in the Sabha areas, was not followed and there was illegality in issuing the notice of the meeting for considering the noconfidence motion as prescribed in sub-rule (2) of Rule 10.

11. Secondly, learned counsel argued that the convening of the second meeting on 30.1.2012 was contrary to the proviso to sub-section (2) of Section 123 of the Act as on 30.1.2012 no meeting could have been convened as the period of one year had not expired from the earlier meeting, i.e. 21.10.2011, which was convened for the said purpose. It has been argued that in the present case first time the Deputy Commissioner issued notice on 14.10.2011 for convening the meeting of the Zila Parishad on 21.10.2011 for considering the no-confidence motion against the appellant. The said meeting was not held and the notice issued for convening the said meeting was withdrawn and consequently the earlier writ petition filed by the appellant had become infructuous and the same was dismissed as such. It is the contention of the learned counsel for the appellant that the second meeting for the said purpose could not be convened "unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened" as provided in the Proviso to sub-section (2) of Section 123 of the Act. We have considered this submission of the learned counsel and do not find any force in the same. Section 123 of the Act, which deals with the term of office of President and Vice-President and motion of no-confidence against President and Vice-President, reads as under:-

123. Term of office of President and Vice-President and Motion of no-confidence

against President and Vice-President--(1) The term of the office of President and vice LPA President of a Zila Parishad shall be five years unless sooner removed.

(2) If by a resolution passed against the President or Vice-President, as the case may be, two-third of the total number of its elected members of the Zila Parishad decide at a meeting convened by the prescribed authority in the manner prescribed, that the President or Vice-President, as the case may be, shall vacate the office and in such case the Zila Parishad shall elect the new President or Vice-President as the case may be, as specified in section 121 of this Act.

Provided that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice-President, as the case may be, was notified, and after the expiry of such period, whenever such a meeting is convened during his term of office and the proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the President or Vice-President unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.

Undisputedly, in the present case, for the first time, 12 elected members of the Zila Parishad made a requisition by way of affidavit to the Deputy Commissioner (Prescribed Authority) on 16.9.2011 expressing no confidence in the appellant and for convening the meeting of the Zila Parishad for considering no-confidence motion against him. On that requisition, the Deputy Commissioner issued the notice on 14.10.2011 for convening such meeting on 21.10.2011. Apparently, the said notice was short of the clear seven days notice period. The appellant challenged the said notice by filing CWP No. 19725 of 2011. Before the meeting could be held, the stay order was passed by this Court and the meeting could not be held due to the stay order. Ultimately, during the pendency of the writ petition, the said notice was withdrawn and writ petition was dismissed. It is a fact that no meeting of the Zila Parishad was held and the requisition of no-confidence motion submitted by 12 elected members was neither put to the house nor it was considered. The contention of the learned counsel for the appellant that in between the meeting, which was to be held on 21.10.2011, and the meeting convened on 30.1.2012, there was no gap of one year, therefore, the second meeting on 30.1.2012 could not have been held and the resolution of no-confidence motion passed in the said meeting is bad in law, cannot be accepted. Proviso to subsection (2) of Section 123 provides for two situations where no meeting for consideration of no-confidence motion can be convened: (a) that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice-President, as the case may be, was notified; and (b) after the expiry of one year from the date of notification of the election of President or the Vice-President, when such meeting is convened and the no-confidence motion for vacating the office fails, then no further meeting for considering the similar proposal of no-confidence motion against the President or the Vice-President unless a period of at least one year

intervenes between the last failure and the date on which such further meeting is convened. In our opinion, second part of the proviso, which deals with the second situation, does not apply in the present case, as in the present case the first meeting which was to be held on 21.10.2011, was never held and the proposal of no-confidence motion was never put, considered or decided. In fact, the said meeting was never convened and the notice issued for convening the said meeting was withdrawn on the same requisition. After giving the clear seven days notice, the fresh meeting was called on 30.1.2012 in which no-confidence motion was carried out against the appellant by two-third majority of the elected members of the Zila Parishad. Thus, there is no substance in the second submission made by the learned counsel for the appellant.

No other point was argued.

In view of the above, we do not find any merit in the appeal and the same is hereby dismissed.