
(1986) 03 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 502 of 1985

Phul Kali

APPELLANT

Vs

Deputy Commissioner, Rohtak

RESPONDENT

Date of Decision : 03-03-1986

Acts Referred:

Citation : (1986) PLJ 323 : (1986) RRR 122

Hon'ble Judges : D.S.Tewatia, J and M.M.Punchhi, J

Advocate : Mr. K.S. Kundu, Advocate., Advocates for appearing Parties

Judgement

D.S. Tewatia, J.

1. Smt. Phool Kali petitioner, an elected primary member of the Panchayat Samiti, Jhajjar Block, has impugned the cooption of respondents No. 14 to 18 carried through in the meeting of the primary members, held on 25.1.1985, on the ground that there was no clear three days' notice to the primary members. It is alleged in the petition that 19 primary members were summoned to meet on 19.1.1985 for coopting five members, four from Scheduled Castes/Scheduled Tribes and one woman, to the Samiti. On that day, quorum not being complete, the meeting was adjourned by SubDivisional Officer (Civil), Jhajjar, respondent No. 2, who presided over the meeting. On 25.1.1985, respondents No. 14 to 18 were coopted. For this meeting, notice by the petitioner and some other members of her group was allegedly received only on 23.1.1985 and thus there was no clear notice of statutory period.

2. Two separate written statements have been filed on behalf of respondents No. 1 to 3, and 4, 6 to 13. Official respondents have taken the stand that all the members had been served on 21.1.1985 and their signatures were obtained on a sheet of paper in token of the acceptance of the notices. To these, the petitioner had filed a replication reiterating her relevant assertions in the writ petition and also filed a copy of the letter sent by the Block Development and Panchayat Officer (Jhajjar), Rohtak to the Deputy Commissioner respondent No. 1, in response to his letter dated 14.2.1985, wherein it was mentioned that it was on

22.1.1985 that he had received a direction from the SubDivisional Officer (Civil) that a meeting for cooption was fixed for 25.1.1985 and that notices on the members of the Samiti be got served. He accordingly through Ram Singh peon got the notices served on 23.1.1985 by affixation at their houses.

3. On behalf of the respondents, two preliminary objections have been raised at the time of arguments : (i) that the petitioner ought to have resorted to the statutory remedy of electionpetition and, (ii) that, even if it is assumed that three days" clear notice was not given to the members, the petitioner cannot succeed unless it is established that, as a result of short notice, prejudice has been caused to her.

4. In support of the first preliminary objection, the counsel for the respondents placed reliance on *Nanhoo Mal v. Hira Mal*, AIR 1975 SC 2140; *Jagraj Singh v. State of Punjab*, AIR 1985 P&H 64 : 1986 R.R.R. 162 (Full Bench); and *Indrajit Barua v. Election Commissioner of India*, AIR 1986 SC 103.

5. There is now by a judicial consensus on two propositions : (i) that existence of statutory remedy is not an absolute bar to the entertainment of a writpetition, and (ii) that in election matters, alternative remedy of electionpetition must be resorted to invariably unless some exceptional circumstances exists. There is also the authority for the proposition that, once a writpetition is entertained after hearing both the sides and also after hearing the objections to the entertainment of the writpetition on the ground that the petitioner had not availed himself of the statutory remedy, then, at the final hearing, the High Court would not throw away the writ petition on the ground that the petitioner had not exhausted the statutory remedy.

6. In the present case, the Prescribed Authority is the Deputy Commissioner who was to hear and decide the election petition. He is respondent No. 1 to the writ petition. In the petition, an allegation has been made against him as also against respondent No. 2 that they were helping the other group, which allegation cannot be dubbed as mere imaginary though we are not prepared to positively say that it is, in fact, true or has been established to our satisfaction and, for this reason, we would not throw away the writpetition on the ground that the petitioner had the remedy by way of election petition which she has not availed.

7. As to the second objection that the petitioner has not alleged any prejudice nor has she placed any material on the record to show any prejudice having been caused as a result of the notice of the meeting being short to her. It may be observed that, in the meeting on 25.1.1985 in which cooption took place, ten out of nineteen primary members, i.e., majority of the primary members, were present. The jurisdiction of this Court on the writ side is not larger than that of the Prescribed Authority under the Act. The Prescribed Authority could set aside the election if, as a result of violation of any rule, there had occurred a failure of justice. If the majority of the total membership was not present in the meeting, say only nine members were present and they had coopted respondents 14 to 18

and if it was established on the record that some members were away and could not have reached and attended the meeting after receiving the short notice, then perhaps it could be said that there had been a failure of justice.

8. The petitioner has not alleged any prejudice nor has placed any material on the record from which prejudice or failure of justice to her could be inferred.

9. However, the counsel for the petitioner has placed reliance on a Division Bench judgment of this Court rendered in Letters Patent Appeal No. 116 of 1967 (Didar Singh v. Deputy Commissioner etc.) decided on 17th August, 1967.

10. The facts of that case are entirely different. In that case, a meeting was called to pass a resolution of "no confidence" against the petitioner and, in that very meeting, his substitute was elected. The petitioner in that case called in question the validity of the meeting in which the motion of "no confidence" was passed against him, on the ground that the meeting was invalid as there had been noncompliance of the mandatory provisions in regard to the legal notice of the meeting. In that context, it was held that the meeting was illegal as mandatory notice of the requisite period was not given and, as a consequence thereof, the election of the person elected in his place in that meeting was also set aside. This case is clearly distinguishable as, in the present case, violation of the rule by itself is not enough. The petitioner has further to establish failure of justice.

11. For the reasons aforementioned, we find no merit in the petition and dismiss the same with no order as to costs.