

(2010) 10 P&H CK 0210
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1324 of 2010

Ravinder Singh, Sarpanch Gram Panchayat	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 19, 19(1), 19(2)
Representation of the People Act, 1951 — Section 33(5)

Citation : (2011) 161 PLR 488 : (2011) 2 RCR(Civil) 261

Hon'ble Judges : Mukul Mudgal, C.J.;Ajay Tewari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukul Mudgal, C.J.—This appeal challenges the judgment of the learned single Judge, dated 23.09.2010.

2. The primary grievance of the writ petitioner/appellant was that No Confidence Motion against him was moved or carried and the notice did not provide for seven clear days" notice as per provisions of Section 19 of the Punjab Panchayati Raj Act, 1994, (in short "the Act"). The said section reads as follow:

Section 19 - No-Confidence motion against Sarpanch:

(1) An application regarding intention to move a motion of no-confidence against a Sarpanch be made to the Block Development and Panchayat Officer by a majority of Panches.

Provided that no such application shall be made unless a period of two years has elapsed from the date on which the Sarpanch assumed his office.

(2) The Block Development and Panchayat Office shall, within a period of fifteen days of the receipt of application under Sub-section (1) convene a meeting of the Gram Panchayat by giving seven clear days in notice, for discussing and taking decision on the no-confidence motion.

(3) If the no-confidence motion is carried in the meeting convened under Sub-section (2) which shall be presided over by the Block Development and Panchayat Officer or an officer not below the rank of Social Education and Panchayat Officer authorized by the Block Development and Panchayat Officer in this behalf, by a two-third majority of the total number of Panches holding office for the time being, the Sarpanch shall be deemed to have been removed from his office, a new Sarpanch shall be elected in his place;

Provided that if the no-confidence motion is lost another such motion shall not be moved against that Sarpanch before the expiry of two years from the date of it having been lost.

3. Learned single Judge has taken the following view:

Without going into the merits of the case, this Court, noticing the contentions made by Learned Counsel for the petitioner, is of the view that a fresh meeting be held so that the Sarpanch, who is in minority, should not continue in office, as out of four members, including the petitioner-Sarpanch, three are against him and have also impleaded themselves as respondents No. 5 to 7.

Thus, the meeting held on 26.08.2010 is ordered to be nonest and void ab initio as no seven days" clear notice was given, in view of the provisions of Section 19 of the Punjab Panchayati Raj Act, 1994. The case of the petitioner is that notice was issued to him on 20.08.2010 and the meeting was fixed for 26.08.2010. Learned Counsel for the petitioner has relied upon a judgment rendered in Mohinder Singh v. State of Punjab 2006 (2) RCR 349 to say that seven days" clear notice ought to be given excluding the day when notice is issued and the day when the meeting is to be held.

Accordingly, respondent No. 4-Block Development and Panchayat Officer, Block Dharamkot, is directed to issue a fresh notice within a period of one week from today. In the notice, seven days clear time shall be given to the members of the Panchayat including the present petitioner. The Presiding/Returning Officer shall exclude the day when the notice is issued and the day when the meeting is to be held while computing seven days. In the meeting so held, the No Confidence Motion earlier submitted by Balwinder Singh, Harjit Kaur, and Charanjit Kaur shall be put to vote as this Court has held that the meeting held on 26.08.2010 is nonest, void ab initio and any resolution passed in the meeting held on 26.08.2010 will have no effect and it will be assumed that the same is of no consequence and effect.

4. The Learned Counsel for the appellant has challenged the above judgment of the learned single Judge on the ground that the proviso to Section 19 comes into play and since the motion was lost, no motion can be brought for his removal within a period of two years. For this purpose, he relied upon the judgment of the Hon"ble Supreme Court in the case of Narbada Prasad Vs. Chhaganlal and Others, , a particular paragraph-5 thereof reads as follow:

5. He did not produce the kind of evidence which Section 33(5) of the Representation of the People Act, 1951, requires to be produced when a candidate is registered as a voter in some other constituency. Section 33(5) of the Representation of the People Act requires that where the candidate is an elector of a different constituency, a copy of the relevant part thereof or a certified copy of the relevant entries in such roll, shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny. The nomination paper of Ram Kishen was 21st of the same month. Ram Kishen had two alternatives before him. One was to produce any of the documents mentioned before the returning officer or to have filed it earlier with his nomination paper. He did neither. He produced a certificate from an officer who it is not proved to our satisfaction had the authority to issue a certified copy of the electoral roll. He also added an affidavit on his own part in which the gist of the entry was given. Indeed the certificate of the Tehsildar was based on the affidavit which was annexed to the certificate. There was no compliance with the provisions of Section 33(5) of the Representation of the People Act and there was no power in the court to dispense with this requirement. It is a well-understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all. Other modes of compliance are excluded. Even the certificate of the Tehsildar was not a certified or a true copy of the entry. It only gave the gist of the entry taken from the affidavit. It contains a mistake because the village "Dholgaon" is mentioned without the addition of the word "Kalan". It appears that there are two villages, Dholgaon Kalan and Dholgaon Khurd. The entry in the electoral roll clearly shows that it is Dhalgaon Kalan. In other words the certificate was inaccurate. The affidavit of Ram Kishen was also inaccurate inasmuch as it described the house as No. 91 whereas in electoral Roll the house is given the number 91/2. We, however, do not go by these small inaccuracies because again the law is that which can be made certain is certain, but the fact is clear that the requirements of Section 33(5) had to be and were not complied with. The rejection of the nomination paper of Ram Kishen by the Returning Officer was thus justified. Ram Kishen explained that he was running about trying to get the other evidence and indeed he did arrive at 5 p.m. having earlier sent a telegram that he was coming with the required evidence. Unfortunately both the telegraph and Ram Kishen arrived after the rejection of the nomination paper and therefore the Returning Officer could not recall what he had ordered. We are satisfied that the learned Single Judge erred in holding that the nomination paper of Ram Kishen was wrongly rejected. It was rightly rejected.

5. In our view, the judgment relied upon by the Counsel infact is against the appellant. Infact, the learned single Judge has meticulously followed the mandate of Section 19 of the Act by giving seven clear days" notice. The proviso clearly states that the motion must be lost before a bar of two years comes into play. Infact, the motion was carried, but the decision was set aside on the ground of seven clear days" notice was not given. Nevertheless, a direction was given to

hold fresh meeting after seven clear days" notice.

6. In our view, the motion which though carried without seven clear days" notice cannot be said to have been lost so as to attract the bar of two years. Accordingly, there is no merit in the present appeal and the same stands dismissed.