
(2012) 10 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12602 of 2011

Sarda Singh Sidhu and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 199, 2(m), 20(1)(d), 22, 23

Citation : (2013) 171 PLR 728

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : Rahul Sharma, for the Appellant; B.B.S. Teji, Addl. A.G. Punjab and Mr. Nakul Sharma, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ranjit Singh, J.—Office of the Sarpanch of Village Kahma, Block Banga, District S.B.S. Nagar (Nawanshahr) Punjab was reserved for

Scheduled Caste (Woman). Smt. Sunita Devi being a Scheduled Caste Woman candidate was duly elected as Sarpanch of the Village Kahma. As

per the allegations made in the petition, Smt. Sunita Devi has left India on 27.10.2010 without seeking any permission from the Authorities and

thereafter has not returned till date. On 31.07.2012, the counsel for respondent No. 5 had sought time to find if Smt. Sunita Devi has returned

from foreign country or not. He has confirmed that she has still not returned.

2. The petitioners who are Panches of the Village have approached this Court alleging that absence of the Sarpanch has led to a casual vacancy of

the office of Sarpanch and this is required to be filled up in terms of Section 22 of the Punjab Panchayati Raj Act, 1994 (for short "the Act") by

holding election to the post of Sarpanch.

3. The grievance of the petitioners is that instead of holding elections in the manner as provided u/s 22 of the Act, official respondents have issued

letters Annexure P-7 and P-8 whereby the charge of the Panchayat of village Kahma has been handed over to respondent No. 5 on the basis of

Resolution (Annexure P-2). It is stated that this resolution was passed without notice to the petitioners and is in derogation to the provisions of

Section 23 of the Act. Counsel will also join issue in regard to the view formed by the respondents holding that a person can be delegated the

powers of Sarpanch u/s 87(1) of the Act and can be handed over the charge of the Panchayat to justify their action in handing over the charge of

Panchayat of Village Kahma to respondent No. 5. It is further pointed out that respondent No. 5 is neither a Scheduled Caste nor is woman

whereas the post of Sarpanch is reserved for Scheduled Caste Woman. Thus, it is pleaded that the reservation has also been violated by making

respondent No. 5 as Authorised Panch. The petitioners, therefore, have filed the present writ petition to challenge the communication Annexures

P-7 and P-8.

4. Reply on behalf of State has been filed by Block Development and Panchayat Officer, Banga, District S.B.S. Nagar (Nawanshahr). By way of

preliminary submissions, it is stated that challenge against resolution dated 27.10.2010 (Annexure P-2) is maintained u/s 199 of the Act and the

Director is competent to cancel or suspend the resolution passed by the Panchayat. Accordingly, it is pleaded that the petitioners have an

alternative remedy which they have not invoked before filing the present writ petition. Otherwise, it is disclosed that the elected Sarpanch Smt.

Sunita Devi was to go abroad for some personal work. Meeting of the Panchayat was convened on 27.10.2010 which was headed by Smt. Sunita

Devi, Sarpanch alongwith Panches Santokh Singh, Tarilochan Singh, Ram Parkash and Gardawar Singh where a resolution was passed authorising

respondent No. 5 Panch as Authorised Panch to perform duties of Sarpanch in the absence of Sarpanch. Sarpanch Smt. Sunita Devi proposed the

name of respondent No. 5 and the remaining Panches gave their consent in his favour. Respondent No. 5 was, accordingly, elected Authorised

Panch to act as Sarpanch of the Panchayat. This, accordingly, was justified as such. The answering respondent, therefore, would not find any

culpable violation of process of law to call for interference in exercise of writ jurisdiction.

5. Separate reply has been filed by respondent No. 5. Similar preliminary objection is raised on the basis of Section 199 of the Act which is stated

to be an alternative remedy. Respondent No. 5 has also taken a similar stand that he was elected as Authorized Panch to carry out duties in the

absence of Smt. Sunita Devi. In the reply, respondent No. 5 has also relied upon the same method and manner showing his election as Authorized

Panch which is justified as per the provisions of Section 87(1) of the Act.

6. The short question that would arise for consideration on the basis of the pleadings is whether absence of the duly elected Sarpanch can be

termed as casual vacancy or not. The term "casual vacancy" is defined in Section 2(m) of the Act to mean "casual vacancy" means a vacancy

occurring otherwise than by efflux of time.

7. In the event of casual vacancy, Section 22 of the Act would come into play which is as under:-

8. Section 22: Filling of casual vacancies of Sarpanch and Panches.

(1) Whenever a vacancy occurs by death, resignation, removal or otherwise of a Sarpanch or of a Panch the vacancy shall be filled up by way of

election:

Provided that if the vacancy relates to the Scheduled Castes, Backward Classes or to Women, the vacancy shall be filled up out of the persons

belonging to the category to which category of person the vacancy relates.

(2) A person elected to fill a casual vacancy under subsection (1) shall be elected for the remainder of his predecessor's terms of office:

Provided that where the remainder of period for which a Panch or Sarpanch is to be elected is less than six months, it shall not be, necessary to

hold any election under this section to fill such a vacancy.

Accordingly, whenever a vacancy of a Sarpanch or of a Panch occurs by death, resignation, removal or otherwise the vacancy shall be filled up by

way of election as given in Section 22 of the Act.

9. Learned counsel for the petitioners has also emphasized the proviso u/s 22 of the Act which states that if the vacancy relates to the Scheduled

Castes, Backward Classes or to Women, the vacancy shall be filled up out of the

persons belonging to the category to which category of person

the vacancy relates. A person elected to fill a casual vacancy under sub-section (1) shall be elected for the remainder of his predecessor's terms of

office. It is further provided that where the remainder of period for which a Panch or Sarpanch is to be elected is less than six months, it shall not

be necessary to hold any election under this Section to fill such a vacancy.

10. On the basis of the above provisions, it is first to be seen whether the present position can be said to have led to vacancy or not. If it is held

that there is no vacancy then it may not call for examination if it is a casual vacancy or not. The casual vacancy, as already noticed is when the

vacancy occurs otherwise than by efflux of time. Obviously, if a term gets over by efflux of time for which the election had been held that will not

be a casual vacancy. Whether the absence of Sarpanch may be on the ground that he or she has left the country for considerable period can be

termed as a casual vacancy thus would be a question? The vacancy occurring on account of death, resignation, removal or otherwise can be

termed as a casual vacancy in terms of the definition.

11. There is word "otherwise" used in Section 22 of the Act which is emphasized by counsel for the petitioners to urge that in such a situation the

vacancy would be a casual vacancy as even if it is not on account of death, resignation or removal but would be such a vacancy covered by a

situation which is caused "otherwise". It would not be reasonable to hold that mere absence, may be for a considerable period, can lead to causing

a vacancy. "Vacancy" means when the seat is vacated. Absence can be on account of various reasons. Sarpanch or Panch duly elected may

remain absent and not attending to the work of Panchayat while being present in the village. There can be various other reasons for which such a

Panch or Sarpanch may not be available for attending to Panchayat work. Suppose a Sarpanch is so sick that he is not able to function. Will it be a

vacancy or her incapacity to function. It would be difficult to say that mere absence can lead to a vacancy. Death, resignation and removal would

clearly show that these situations would lead to cause a vacancy. The word "otherwise" when especially joined by word "or" can not be in my

view given entirely different meaning then the preceding word with which it is joined by use of word "or". The words "death" and "resignation" are

separated by "comma" whereas otherwise is joined with word removal by word "or". The principle of ejusdem generis may apply. The situation as

it exists could only show that Sarpanch who was duly elected is not available to perform duties and it is not certain when she is likely to return.

Obviously such Sarpanch would be absent and not attending the meetings. No provision has been pointed out before me to show if duly elected

Sarpanch or Panch can seek leave to remain away from the consecutive meetings which may lead to his/her absence continuously for more than

two consecutive meetings within two months. Reference can be made to Section 20(1)(d) of the Act which clearly provides that Sarpanch or

Panch who remain absent without reasonable cause for two consecutive meetings of Gram Panchayat then this can lead to his or her removal.

Pleading on the record would show that there is no such permission taken either to leave the country or remain absent from the meetings. It was for

the respondents to see if any action was needed u/s 20(1)(d) of the Act against Smt. Sunita Devi. The petitioners have not so far approached the

respondent authority for taking any action against Smt. Sunita Devi on this ground.

12. The difficulty expressed by the counsel in not doing so perhaps is justified. As per counsel, respondent No. 5 had filed writ petition before this

Court with the grievance that despite resolution in his favour the charge of the Authorized Panch was not handed over to him. It is then that charge

was handed over to respondent No. 5. Because of this reason, the official respondents have not perhaps proceeded further to take action in this

regard. There is no order passed by this Court restraining the respondents to act against the absent Sarpanch. The writ petition which was filed by

respondent No. 5 was rendered infructuous when the charge was handed over to him.

13. The grievance of the petitioners that post is meant for Scheduled Caste Female and could not had been handed over in this manner by

authorizing some person who is neither Scheduled Caste nor a female to act as Authorized Panch to perform the duties of Sarpanch may also call

for attention. It is not certain whether any Scheduled Caste Female otherwise is available in the village. One of the Panch before this Court is a

female i.e. petitioner No. 3 but whether she belongs to Scheduled Caste or not is not certain. It can be noticed that this method of allowing

Authorized Panch to perform the duties of Sarpanch by ignoring the reservation made for women and scheduled caste would lead to defeating the very purpose of making reservation if any other person not of such category is allowed to act as Sarpanch in this manner. It has to be considered by the official respondents and they have to act in accordance with law. Petitioners, if so advised, may approach Director Panchayat with all their grievance in this regard and manner in which respondent No. 5 has been allowed to act as Authorized Panch or whether he would be eligible to so perform the duties when the post is reserved for Scheduled Caste Female. If any party aggrieved against any order so passed would be at liberty to take action in accordance with law. The writ petition is, accordingly, disposed of.