
(1974) 12 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 467 of 1974

Sheo Chand

APPELLANT

Vs

Jee Ram

RESPONDENT

Date of Decision : 16-12-1974

Acts Referred:

Citation : (1975) PLJ 4 : (1985) RRR 593

Hon'ble Judges : B.R.Tuli, J and A.S.Bains, J

Advocate : Mr. M.L. Sarin, Advocate, Mr. H.L. Sarin, Senior Advocate,, Advocates for appearing Parties

Judgement

B.R. Tuli, A.C.J.

1. Jee Ram (respondent 1) was elected Sarpanch of the Gram Panchayat, Dhanuda, in 1971. The Panchayat consisted of 9 Panches including the Sarpanch. Five of the Panches, who are appellants before us, obtained approval of the Director of Panchayats in terms of section 9(2) of the Punjab Gram Panchayat Act, 1952, (hereinafter called the "Act"), for convening an extraordinary general meeting of the Panchayat to consider the motion of noconfidence against the Sarpanch. The Director of Panchayats, while according sanction to the appellants to convene a meeting for passing a resolution of noconfidence, directed that any one of the Panches could preside over that meeting. In pursuance of that direction, the appellants convened the meeting for September 26, 1973, and one of them presided thereat. The resolution of noconfidence was passed with a majority of 5 to 4 and the resolution was forwarded to the Director of Panchayats for approval. The approval was granted on December 10, 1973. Thereafter, respondent 1 filed a civil suit and obtained a temporary injunction on February 7, 1974. That injunction was vacated by the Civil Court on February 21, 1974, and thereafter March 6, 1974, was fixed as the date for holding a meeting for election of the Sarpanch. On March 5, 1994, respondent 1 filed a civil writ petition in this court challenging the approval accorded by the Director of Panchayats to the resolution of noconfidence passed against him by the appellants on September

26, 1973, and prayed for ad interim stay order against the appellants restraining them from holding the meeting which was fixed for March 6, 1974, for the election of a new Sarpanch. The writ petition was admitted but the stay was refused. The learned Single Judge accepted the writ petition by order dated July 19, 1974, and the present appeal under Clause 10 of the letters patent is directed against that order.

2. A preliminary objection was raised before the learned Single Judge by the appellants that in view the judgments of this Court in *Attar Singh v. State of Haryana and others*, 1973 P.L.J. 90 and *Ram Nath v. Ramesh and others*, 1973 P.L.R. 819, respondent 1, having taken part in the election held on March 6, 1974, was estopped from filing the writ petition. The objection was rightly overruled by the learned Single Judge. The ratio of those decisions would have applied if Jee Ram (respondent 1) had filed the writ petition after having taken part in the election and failed. In the instant case, Jee Ram came to the Court a day earlier than the day fixed for holding the meeting and prayed for staying the holding of that meeting. The say was refused by this Court but by inference the validity of that meeting was subject to the decision of the writ petition. Jee Ram (respondent 1) could not, therefore, be said to have lost the right to continue his writ petition because he contested the election of Sarpanch in the meeting held on March 6, 1974.

3. On merits, the learned Single Judge decided that the meeting convened by the five Panches for September 26, 1973, was not in accordance with rule 38 of the Haryana Gram Panchayat (Ist Amendment) Election Rules, 1971, and, therefore, the resolution passed at that meeting was of no effect. While coming to this conclusion, the learned Single Judge relied on a judgment of this Court in *Dharam Singh and another v. The State of Haryana and others*, 1973 P.L.J. 554, which was affirmed on appeal under clause 10 of the Letters Patent and is reported as *Dharam Singh and Risal Singh v. The State of Haryana and others*, 1974 P.L.J. 365. Our learned brother, Jain, J., also followed that judgment in *Yad Ram v. Director of Panchayats etc.* (Civil Writ No. 4068 of 1973) decided on March 29, 1974. What was held in those judgments was that since no procedure had been prescribed in the Act or the Rules for holding of an extraordinary general meeting for the removal of a Sarpanch, the same procedure had to be followed as was prescribed for holding a meeting to elect a Sarpanch by reference to section 21 of the General Clauses Act. In the meeting held on September 26, 1973, the Block Development and Panchayat Officer was neither present in person nor had authorised any other officer to preside over that meeting. The meeting was also not summoned by him and thus there was violation of rule 38. The resolution passed at the extraordinary general meeting held on September 26, 1973, was thus invalid and the approval of the Director of Panchayats could not validate it. In this view of the matter, there was no removal of Jee Ram (respondent 1) Sarpanch from his office and, therefore, no fresh election to that office could be held in the meeting convened for March 6, 1974. The order of the learned Single Judge cannot, therefore, be interfered with. That

order is affirmed and the appeal is dismissed, but the parties are left to bear their own costs.