
(1998) 02 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13378 of 1997

Smt. Roop Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 175(1)

Citation : (1998) 119 PLR 179 : (1998) 2 RCR(Civil) 451

Hon'ble Judges : S.C. Malte, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Nirmaljit Kaur, for the Appellant; M.S. Gill, A.A.G. for Respondent
Nos. 1 to 3 and Ashok Singla, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—The only question that arises for our consideration in this petition filed under Article 226 of the Constitution is whether the two-thirds majority referred to in Section 175(1) of the Punjab Panchayati Raj Act, 1994 (for short the Act) which is necessary to remove a Chairman or Vice Chairman from his office would mean two-third of the total number of the elected members of the Zila Parishad including the Panchayat Samitis of the district or two-third of the existing members at the time of passing the no confidence motion.

2. The undisputed facts giving rise to this petition lie in a narrow compass and these may first be noticed. Petitioner was elected Chairperson of Zila Parishad, Sangrur in the year 1994. At that time there were a total of 37 seats of the Zila Parishad excluding the ex-officio members. Out of these 25 members were directly elected from the territorial constituencies in the district and the remaining 12 were the Chairmen of the Panchayat Samitis. However, when the Zila Parishad was constituted in the year 1994, it consisted of only 36 members as election to one of the seats had been stayed by this Court in civil writ petition 15124 of 1994 (Tufail Mohammad and Anr. v. State of Punjab). That petition is still pending and the stay order operative. On 20.3.1997 the members of

Panchayat Samiti, Sangrur passed no confidence motion against its Chairman Shri Mohinder Singh Namol and, there fore, he ceased to be a member of the Zila Parishad, Panchayat Samiti, Malerkotla II had been abolished and its Chairman also ceased to be a member of the Zila Parishad. There were thus 34 existing members excluding the ex-officio members of the Zila Parishad in September, 1997. On 4.9.1997 22 members of the Zila Parishad moved a requisition for convening a special meeting for removing the Chairperson and Vice Chairperson (in this case we are only concerned with the Chairperson, as the members had no confidence in them. This requisition was delivered to the Deputy Commissioner, Sangrur who directed the Additional Deputy Commissioner to convene a special meeting as required by Section 175 of the Act. A special meeting was consequently held on 16.9.1997 under the Chairmanship of the Additional Deputy Commissioner and it was attended by 23 members. As per the proceedings of that meeting all the 23 members present expressed their no confidence against the petitioner and it was recorded that she had vacated her office in terms of Section 175(1) of the Act. It is against this resolution that the present petition has been filed.

3. According to Section 162 of the Act every Zila Parishad consists of the members directly elected from territorial constituencies in the district, each constituency electing one member, all Chairmen of Panchayat Samitis, the members of the House of People and members of the State Legislative Assembly representing a part or whole of the district where major part of their Lok Sabha Constituency or Assembly constituency falls and the members of the Council of States and the members of the State Legislative Council, if any, who are registered as electors within the district. All the directly elected members of the Zila Parishad including the Chairman of the Panchayat Samitis of the district elect a Chairman and Vice Chairman of the Zila parishad in their first meeting convened for the purpose. Section 175 of the Act deals with the no confidence motion moved against the Chairman and the Vice Chairman which reads as under ;-

Section 175 : No-confidence motion against Chairman and Vice Chairman of Zila Parishad.

(1) Every Chairman and Vice-Chairman shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a two-thirds majority of the total number of elected members of the Zila Parishad including the Panchayat Samitis of the district at a meeting specially convened for the purpose.

(2) The requisition for a special meeting referred to in Sub-section (3) of Section 136 shall be signed by not less than one-fifth of the total number of elected members of the Zila Parishad shall be delivered to the Deputy Commissioner and the Deputy Commissioner on the receipt of such requisition shall within seven days from the date of receipt of the requisition himself convene a special meeting of the Zila Parishad or authorise an officer not below the rank of Extra Assistant

Commissioner to convene such a meeting.

(3) The special meeting under this section shall be held, on a day not later than fifteen days from the date of issue of the notice of the meeting and shall be presided over by the Deputy Commissioner or an Officer authorised by him under Sub-section (2) and if the motion is carried out against the Chairman or Vice-Chairman, he shall cease to hold office of the Chairman and Vice-Chairman, as the case may be;

Provided that no requisition for no-confidence shall be made under this section unless a period of two years has elapsed from the date on which the Chairman or Vice-Chairman, or both, as the case may be, assumed office.

(4) If the motion of non-confidence against the Chairman and the vice-chairman or both is once rejected, no fresh motion of no-confidence against the Chairman or the vice-chairman or both, as the case may be, shall be brought before the Zila Parishad within a period of two years from the date of such rejection of the motion."

4. A perusal of the aforesaid provision would show that for moving a no-confidence motion a requisition for special meeting has to be signed by not less than one-fifth of the total number of elected members of the Zila Parishad which has to be delivered to the Deputy Commissioner who on receipt of the same shall within seven days convene a special meeting of the Zila Parishad and authorise an officer not below the rank of Extra Assistant Commissioner to convene such a meeting. After such authorisation the special meeting has to be convened within fifteen days from the date of issue of notice of the meeting. In that meeting if a resolution expressing want of confidence in the Chairman is passed by a two-thirds majority of the total number of elected members of the Zila Parishad including the Panchayat Samitis of the district then the Chairman shall be deemed to have vacated his office forthwith. In the present case the special meeting was held on 16.9.1997 under the Chairmanship of the Additional Deputy Commissioner and all the 23 members who were present in the meeting expressed their non-confidence in the Chairperson (petitioner).

5. The argument of the learned counsel for the petitioner is that the resolution as passed by the members in the special meeting held on 16.9.1997 was not by a two-thirds majority of the total number of elected members of the Zila Parishad including the Panchayat Samitis of the district and, therefore, the petitioner cannot be deemed to have vacated her office. In other words, it is argued that the total number of elected members of the Zila Parishad including the Panchayat Samitis is 37 and 23 members who have expressed want of confidence in the petitioner do not constitute two-third majority out of the total number, on the other hand, it is contended on behalf of the respondents that at the time of moving the requisition there were 34 existing members and Chairman of the Panchayat samites of the district and, therefore, 23 members out of them expressed want of confidence in the petitioner, the resolution was carried by the

requisite majority. The argument is that 23 members constitute more than two-third of the 34 existing members of the Zila Parishad.

6. We have given our thoughtful consideration to the rival contentions of the parties and find merit in what is urged on behalf of the petitioner. The language used in Section 175(1) of the Act is clear and unambiguous and provides that a Chairman shall be deemed to have vacated his office only if a resolution expressing want of confidence in him is passed by a "two-third majority of the total number of elected members of the Zila Parishad including the panchayat samites of the district. The requisite two-third majority has to be calculated with reference to the total number of existing members. If the intention was otherwise, the Legislature would have inserted the word "existing" or "actual" instead of the word "total". This not having been done, we cannot read the word "existing" or "actual" in Section 175(1) of the Act. Reading the word "actual or "existing" in place of "total" would be doing violence to the plain language of Section 175(1) of the Act. This provision deals with the removal of an elected Chairman from his office. In the very nature of things it has to be construed strictly. When so construed, the total number of elected members of the Zila Parishad including the Chairman of the Panchayat samites will have to be taken as 37 and not 34 which is the existing number. It is not in dispute that the total number of the elected members including the Chairmen of the Panchayat samites in district Sangria is 37 and that there are three vacancies and the existing members constituting the Zila parishad are 34. A two-third majority of 37 members can validly remove a Chairman from his office which would mean that at least 24.66 members must vote for the non-confidence motion before it can be validly passed. In the instant case, only 23 members were present in the meeting who have passed the resolution. This being so, the resolution cannot be said to have been passed with the requisite majority and it must be deemed to have failed. In this view of matter, the impugned proceedings of the meeting held on 16.9.1997 declaring the petitioner to have vacated her office cannot be sustained. The view that we have taken finds support from a Division Bench judgment of the Assam High Court in Samiruddin Ahmed v. S.D.O. Mangaldoi and Ors. AIR 1971 Gau 163 and also from a Single Bench decision of the Karnataka High Court in S. Shivashankarappa and Others Vs. The Davangere City Municipality, Davangere and Others, .

7. Before concluding we may mention that after the petitioner was removed and during the pendency of this writ petition a special meeting of the Zila Parishad was convened for 7.10.1997 for electing a new Chairperson. The petitioner then amended her writ petition and challenged the notice convening the meeting for 7.10.1997. A prayer was made to stay the holding of the meeting but instead of granting that prayer the Motion Bench directed that the result of the election would be subject to the final decision in the writ petition. Consequently, the special meeting was held on 7.10.1997 and one Ms. Surinder Kaur was elected the Chairperson of the Zila Parishad, However, the proceedings of that meeting have not been given effect to with the result that Ms. Surinder Kaur has not

taken over as the Chairperson.

8. In the result, the writ petition is allowed and the proceedings of the meeting dated 16.9.1997 in so far as they record that the petitioner has vacated her office u/s 175(1) of the Act quashed. It is declared that non-confidence motion moved against the petitioner had failed in the said meeting. There is no order as to costs.