
(2012) 08 P&H CK 0259
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1093 of 2012 (O and M)

Swaran Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 13A, 19, 19(1), 19(3), 22

Citation : (2013) 1 RCR(Civil) 529

Hon'ble Judges : Satish Kumar Mittal, J; Inderjit Singh, J

Bench : Division Bench

Advocate : Sushma Chopra, for the Appellant;

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This Letters Patent Appeal has been directed against the order dated 18.7.2012, passed by the learned Single Judge, whereby Civil Writ Petition No. 13315 of 2012 filed by appellant Swaran Kaur, praying for quashing the proceedings dated 21.2.2012 (Annexure P-7) vide which in the meeting of the Gram Panchayat, Village Bhambota, Block Talwara, District Hoshiarpur, called u/s 13-A of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as "the Act"), Smt. Anita Rani (respondent No. 11 herein) was elected as Sarpanch; and the notification dated 3.4.2012 (Annexure P-9) whereby name of the said elected Sarpanch was notified in the Gazette, has been dismissed. We have heard learned counsel for the appellant and gone through the impugned order as well as the other documents annexed with the writ petition.

2. In this case, in the first meeting of the Members of the Gram Panchayat Village Bhambota convened u/s 13-A of the Act, the appellant was elected as Sarpanch of the Gram Panchayat in May, 2008. She assumed the office of Sarpanch on 27.8.2008, after her name was notified. Subsequently, on 5.8.2010, two-third members of Gram Panchayat passed "no confidence motion" against the appellant u/s 19 of the Act. Since the said resolution dated 5.8.2010 (Annexure P-1) was passed within two years of assuming the office of Sarpanch,

therefore, it was illegal and void, because as per proviso to sub-section (1) of Section 19 of the Act, no application to move a motion of no-confidence against a Sarpanch shall be made unless a period of two years has elapsed from the date on which the Sarpanch assumed his office.

3. About two months thereafter, i.e. on 30.9.2010, in a validly convened meeting for consideration of "no confidence motion" after giving seven clear days notice to all the members of the Gram Panchayat, two-third majority of the total number of Panches passed "no confidence motion" against the appellant. On passing of the said resolution dated 30.9.2010 (Annexure P-2), in view of sub-section (3) of Section 19 of the Act, the appellant was deemed to have been removed from her office and a new Sarpanch was to be elected in her place.

4. The appellant challenged the above said resolution dated 30.9.2010 by filing Civil Writ Petition No. 4146 of 2012. In the meanwhile, on 21.2.2012, Smt. Anita Rani (respondent No. 11) was elected as Sarpanch of the Gram Panchayat. In view of this development, on 4.7.2012, the appellant withdrew the said writ petition with liberty to challenge the election of new Sarpanch, as permissible in accordance with law.

5. Thereafter, instead of filing the election petition challenging the election of respondent No. 11 as new Sarpanch of the Gram Panchayat, the appellant filed Civil Writ Petition No. 13315 of 2012, challenging the proceedings dated 21.2.2012 (Annexure P-7), whereby respondent No. 11 was elected as new Sarpanch of the Gram Panchayat, as well as the notification dated 3.4.2012 (Annexure P-9) whereby her name was notified as new Sarpanch of the Gram Panchayat. The said writ petition has been dismissed by the learned Single Judge, while observing as under:

I am not able to comprehend this manner of challenge now raised by the petitioner. Though the petitioner is challenging the notification, appointing Anita Rani as Sarpanch but has not raised any challenge to the "no confidence motion" passed against her on 9.9.2010. Once that "no confidence motion" stands, the respondents were bound to act on the same, which they have now done by holding the election for electing the Sarpanch of the Gram Panchayat and in this process, Smt. Anita Rani has been so elected. The petitioner having been removed as a Sarpanch and having remained unsuccessful to challenge the said "no confidence motion", she obviously is misconceived in challenging the present notification on the grounds as pleaded that she continued to be the Sarpanch. There is no illegality in the procedure and election of Smt. Anita Rani, which would call for any interference in exercise of writ jurisdiction. The liberty was given to the petitioner to challenge this election on any grounds that may be available to her. Election petition is an efficacious alternative remedy, which the petitioner has not chosen to invoke. Neither any case is made out for exercising the writ jurisdiction nor any valid ground is noticed in this regard, which may call for any interference. The petitioner, if so advised, may invoke her alternative remedy, if otherwise permissible under law.

The writ petition is, however, dismissed.

Hence, this Letters Patent Appeal.

6. Learned counsel for the appellant argued that the election of Smt. Anita Rani as Sarpanch of the Gram Panchayat is bad, as no valid "no confidence motion" was passed against the appellant on 30.9.2010 removing her from the office of the Sarpanch, because two years had not elapsed from the date of the first "no confidence motion", passed on 5.8.2010, in view of the proviso to sub-section (3) of Section 19 of the Act, which provides that the second "no confidence motion" could not have been passed against the Sarpanch before the expiry of two years from the date of the first "no confidence motion" having been lost. Learned counsel further argued that even after removal of the appellant from the office of Sarpanch of the Gram Panchayat by passing "no confidence motion" against her, she continued to work as Sarpanch, therefore, new Sarpanch could not have been elected in her place. In this regard, she has placed on record resolution dated 15.2.2012 (Annexure P-4), in which it was recorded that she had presided over the Gram Panchayat meeting. Learned counsel further argued that the appellant could not have filed any election petition against Smt. Anita Rani, because she is not a defeated candidate. According to the learned counsel, the appellant is questioning the election of Smt. Anita Rani as new Sarpanch of the Gram Panchayat, because there was no vacancy of the office of Sarpanch, for which she could have been elected. Learned counsel further argued that the appellant was occupying the office of Sarpanch even after passing of "no confidence motion" against her, therefore, new Sarpanch could not have been elected.

7. All the aforesaid contentions raised by learned counsel for the appellant are not tenable at all.

8. In the writ petition, the appellant did not question the validity of the resolution dated 30.9.2010 whereby "no confidence motion" was passed against her by two-third majority of the total number of Panches. Even otherwise, when the earlier writ petition filed by the appellant challenging the said resolution was withdrawn by her, without any liberty to challenge the same in the writ petition, she could not have question the validity of the said resolution. The ground, on which the appellant wants to question the validity of the aforesaid resolution is also not tenable. Section 19 of the Act reads as under:

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 Officer 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 authorised 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, and 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 its having been lost.

As per proviso to Section 19(1), no application regarding intention to move a motion of no-confidence against a Sarpanch shall be made unless a period of two years has elapsed from the date on which the Sarpanch assumed his office. In the present case, the appellant assumed the office of Sarpanch on 27.8.2008, therefore, the passing of first "no confidence motion" on 5.8.2010 was not valid, as by that time, period of two years had not elapsed from the date on which the appellant assumed the office of Sarpanch. It is pertinent to mention here that in these circumstances, it cannot be said that the first "no confidence motion" passed against the appellant had been lost. The passing of the first "no confidence motion" was not given effect, because the same could not have been passed prior to the expiry of two years from the date on which the appellant assumed the office of Sarpanch. Subsequently, after about two months, meeting for considering the "no confidence motion" was convened on 30.9.2010 and "no confidence motion" against the appellant was carried by two-third majority of the total number of Panches. It is not the case of the appellant that said meeting for considering "no confidence motion" was not valid because of improper notice. Therefore, we do not find any substance in the contention of learned counsel for the appellant that in view of the proviso to Section 19(3) of the Act, the resolution dated 30.9.2010 removing the appellant from the office of the Sarpanch could not have been passed against her. The said provision is applicable only in case the first "no confidence motion" against the Sarpanch is lost. But it is not the case here. Therefore, on the aforesaid ground, it cannot be said that the resolution dated 30.9.2010, passing "no confidence motion" against the appellant, was not legal and valid.

9. Sub-section (3) of Section 19 clearly provides that if the "no confidence motion" is carried by two-third majority of the total number of Panches, the Sarpanch shall be deemed to have been removed from his office and a new Sarpanch shall be elected in his place.

10. Section 22 of the Act provides for filling of casual vacancies of Sarpanches and Panches, which are to be filled up by way of election. Section 22(1) reads as

under:

22. Filling of casual vacancies of Sarpanches 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) x x x x

Once the appellant was deemed to have been removed from the office of the Sarpanch, the vacancy of the Sarpanch was to be filled up by holding election in accordance with the provisions of the Act. Merely because after passing of the "no confidence motion" against the appellant in a validly convened meeting on 30.9.2010, she presided over some meeting of the Gram Panchayat, it cannot be said that she continued to hold the office of the Sarpanch and the office of the Sarpanch was not vacant, and the election of Smt. Anita Devi as new Sarpanch of the Gram Panchayat was not valid. During the course of hearing, an argument was raised that until and unless the removal of the appellant from the office of the Sarpanch was not notified and her name was not de-notified from the list of Sarpanch of the Gram Panchayat, it cannot be said that she had vacated the office. Similar controversy came up for consideration before this Court in Harjinder Singh and others v. State of Punjab and others, LPA No. 2157 of 2011, decided on 29.2.2012. In that case, in the meeting of the Panches held on 1.11.2010, "no confidence motion" was passed against the Sarpanch of the Gram Panchayat by two-third majority of the total number of Panches, but his name was not formally de-notified in the Official Gazette, and the learned Single Judge quashed the resolution of "no confidence motion" passed against the Sarpanch, while holding that mere passing of "no confidence motion" against the Sarpanch is not sufficient for his removal from his office, until and unless the other formalities, particularly de-notifying of his name from the office of Sarpanch in the Official Gazette, are completed. The Division Bench in that case, while reversing this finding of the learned Single Judge in this regard, held that there is no statutory requirement of de-notifying the name of removed Sarpanch on passing "no confidence motion" against him. The provision of election of the Sarpanch and procedure as well as manner in which the election of Sarpanch will be held are entirely different from the provision regarding removal of Sarpanch from his office by passing "no confidence motion" against him. Section 19(3) of the Act clearly postulates that in case the "no confidence motion" against the Sarpanch is carried in the meeting convened under sub-section (2) by twothird 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 and a new Sarpanch shall be elected in his place. Neither for removal of the Sarpanch after carrying "no confidence motion" nor for election of a new Sarpanch, any de-notification is required. After election of the new Sarpanch, in accordance with

the provisions of the Act, his election is required to be notified, but it is not mandatory or a condition precedent that before his name is notified, name of the earlier Sarpanch, against whom "no confidence motion" has been carried, and who is deemed to have been removed from his office, shall be de-notified.

11. In view of the above, we do not find any substance in the argument of learned counsel for the appellant. Thus, on the passing of the "no confidence motion" against the appellant, she was deemed to have been removed from the office of the Sarpanch and by following the procedure u/s 22(1) of the Act, this vacancy was filled up by electing Smt. Anita Devi as new Sarpanch. Thus, we are of the opinion that the learned Single Judge has rightly dismissed the writ petition, while upholding the proceedings dated 21.2.2012 (Annexure P-7) electing Smt. Anita Rani (respondent No. 11) as Sarpanch of the Gram Panchayat, as well as the notification dated 3.4.2012 (Annexure P-9) whereby her name was notified in the Gazette.

No merit. Dismissed.