
(1975) 07 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Civ. Writ Petition No. 1070 of 1975

Zile Singh, Panch

APPELLANT

Vs

Deputy Commissioner, Sonapat and Others

RESPONDENT

Date of Decision : 08-07-1975

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 5

Citation : AIR 1976 P&H 91 : (1976) 2 ILR (P&H) 647

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : Surinder Sarup, for the Appellant; H.S. Hooda, for the Respondent

Final Decision : Allowed

Judgement

D.S. Tewatia, J.—The short point, though an interesting one. that arises for determination in this writ petition is as to whether a co-opted member of the Gram Pan-chayat could continue to be the member of the Gram Panchayat even after the election of all the Banches. who had elected her, was set aside as illegal and fresh election is held for the Gram Panchayat

in Question.

2. To appreciate the point, the back-ground in which this Question has arisen be noticed. The petitioner along with others was elected Panch to Gram Panchayat of village Ohirasmi in the election held in the month of June. 1971. In a co-option in pursuance of Section 5 of the Punjab Gram Panchayat Act as amended by Haryana Legislature Amendment Act No. 29 of 1971 (hereinafter referred to as the Panchayat Act), Shrimati Shanti (respondent No, 3) was co-opted as the woman Panch. The relevant provision of Section 5 of the Panchayat Act is in the following terms:--

"5 (1) * " * *

(2) Every such Gram Panchayat shall consist of such number of Panches not

being less than five or more than nine as Government may determine taking into account the population of Sabha area and such Panches shall be elected by the Sabha. in the prescribed manner, from amongst its members.

Provided that if no woman is elected as a Panch of any Gram Panchayat the elected Panches shall co-opt, in the manner prescribed, as Panch a Woman member of the Sabha who is qualified to be so elected, and

(3) Every woman co-opted as a Panch under the proviso to Sub-section (2) shall have the right to vote at a meeting of the Gram Panchayat

(4) ***

(5) * **

(6) Immediately after the election of Panches and co-option of woman Panch. if any. a Sarpanch shall be elected by the Panches from amongst themselves in the manner prescribed."

3. prior to her co-option, one Hari Chand. an unsuccessful candidate, challenged the validity of the entire election held in June 1971 on the ground that his nomination papers had been wrongly and illegally rejected. The prescribed authority, vide its order dated 6-8-1973, allowed his election petition and set aside the election held in June. 1971. The petitioner in the present writ petition and others challenged the order of the prescribed authority by way of Zile Singh and Others Vs. The State of Haryana and Others, , which petition was finally decided by a Full Bench of this Court wherein the order of the prescribed authority was sustained, and that led to the holding of fresh elections to the aforesaid Panchayat on 19-1-1975 in which the present petitioner, along with respondents Nos. 4 to 8. was elected a Panch.

4. The petitioner moved the Deputy Commissioner, Sonapat (respondent No. 1) through an application dated 30-1-1975. to fix a date for the co-option of the woman Panch. The Deputy Commissioner, instead of fixing the date for the co-option of the woman. Panch, ordered the holding of the election of the Sarpanch on 15-3-1975 at 10 A. M., notice whereof was issued to the petitioner and other Panches by the Block Development and Panchayat Officer (respondent No. 2), which is annexed to the petition as An-nexure P-4. The petitioner then moved this Court by way of the present writ petition for the issuing of a mandamus to the Deputy Commissioner to fix a date for the co-option of the woman Panch before ordering the election of the Sarpanch.

5. In the return filed on behalf of Shrimati Shanti (respondent No. 3). the plea taken is that once co-opted as a member of the Gram Panchayat. she was entitled to continue as a member for 5 years -- the term fixed for a member of the Panchayat u/s 9 of the Panchayat Act -- unless the co-option was set aside by the prescribed authority.

6. Neither the Act nor the Rules framed thereunder provide for the contingency

which has arisen in the present case; nor prior to this, any Court has had the occasion to pronounce upon the controversy of the kind. So. the point being truly *res Integra* shall have to be decided on first principles and on the basis of a view appealing to reason and common-sense.

7. Apparently, co-option is nothing but the election of a Woman member as one of the members of the Gram Panchayat; the only difference from her male counter-part lay in the fact that in her case electoral college consists of the Panches elected by Gram Sabha. while in regard to the elected male members thereof every adult member not less than 21 years of age of Gram Sabha forms" the electoral college which elects the Panches to the Gram Panchayat.

8. Once it is ruled that none of the Panches who constituted the electoral college which co-opted Shrimati Shanti (respondent No. 3) as woman member of the Gram Panchayat. was legally elected as Panch. then the co-option of Shrimati Shanti (respondent No. 3) by them stood automatically rendered as void ab initio.

9. As to the plea of respondent No. 3 that she was entitled to enjoy full term of 5 years envisaged by Section 9 of the Panchayat Act unless her co-option as Lady member was set aside by the prescribed authority, it must be observed that the said plea has no legs to stand on. Her co-option being rendered void ab initio by implication as a result of the order of the prescribed authority by which it set aside the entire election to the Gram Panchayat held on 29th June. 1971. it was not at all necessary to challenge her co-option as lady member through a formal application before the prescribed authority.

10. Since the election of the Sar-panch could be held only after the co-option of lady member as envisaged by Sub-section (6) of Section 5 of the Pan-chayat Act. the notice. Annexure P-4. to the Panches to assemble in e meeting on 15th March, 1975 at 10 A. M. to elect the Sarpanch was clearly in contravention of the aforesaid provisions of the Panchayat Act.

11. For the reasons stated, I allow this writ petition and direct the Deputy Commissioner. Sonapat to fix a date for the co-option of a woman Panch by the Panches and only thereafter require the Panches to assemble in a meeting to elect the Sarpanch. The Deputy Commissioner is further directed that the entire process culminating in the election of the Sarpanch be completed within two months from today. The parties are, however, left to bear their own costs.