

(2012) 03 P&amp;H CK 0039

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Writ Petition No. 10623 of 2011

Darshan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** March 22, 2012**Acts Referred:**

- General Clauses Act, 1897 - Section 21
- Punjab Panchayati Raj Act, 1994 - Section 19, 19(2)

**Hon'ble Judges:** Rajiv Narain Raina, J**Bench:** Single Bench**Advocate:** R.K. Garg, for the Appellant; Sushant Maini, DAG, Punjab, Advocate for the Respondents Nos. 1 to 3 and Mr. N.P.S. Mann, Advocate for the Respondent No. 4, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Rajiv Narain Raina, J.

Following the elections to Gram Panchayat Gajjevas, Block Samana, District Patiala in June, 2008, nine Panches were elected. The Panches in turn elected the petitioner as Sarpanch. Six panches made an application to the Block Development and Panchayat Officer, Samana, District Sangrur (for short "the BDPO") for convening a meeting u/s 19 of the Punjab Panchayati Raj Act, 1994 (for short "the Act") for consideration of passing a no confidence motion against the petitioner. The notice was issued by the BDPO on 13.8.2010 for meeting to be held on 19.8.2010. The notice period laid down u/s 19 of the Act demands 7 clear days gestation period. It is not disputed that the notice was short by two days. The meeting was held on 19.8.2010 chaired by the BDPO. The motion was carried on the basis of the application presented by 6 out of 9 Panches. There was, therefore, 2/3rd majority against the petitioner. The motion was carried. The petitioner was removed as Sarpanch. The present petition has been filed for quashing the notice dated 13.8.2010 (Annexure P-1) and the resolution dated 19.8.2010 (Annexure P-2). I have

heard learned counsel for the parties and have gone through the paper-book with their assistance.

2. Mr. R.K. Garg, learned counsel for the petitioner submits that violation of the procedure laid down u/s 19 of the Act is the main plank of attack by the petitioner. It is the case of the petitioner that 7 days clear notice u/s 19(2) of the Act is meaningful inasmuch as gestation period has been prescribed for the Panches to discuss and take decision on the no-confidence motion. He submits that the provisions of Section 19(2) of the Act are salutary, mandatory and normally, a motion of no-confidence carried in breach of Section 19(2) of the Act ought to be nullified. In support of this submission, learned counsel relies on a number of judgments which are referred to here in below.

3. On the other hand, Mr. Mann, learned counsel appearing on behalf of respondent No. 4 submits that there is no dispute with regard to the condition of 7 days clear notice period envisaged u/s 19(2) of the Act, however, there is an exception carved out by two Division Bench decisions of this Court in the case of Harpal Singh v. Paramjit Kaur and others (LPA No. 129 of 2011 decided on 29.8.2011) and Raj Kaur Panch v. State of Punjab and others (LPA No. 1387 of 2011 and another connected LPA No. 1126 of 2011 decided on 15.12.2011). In the case of Harpal Singh (supra), the Division Bench had a matter before it in which notice was served on 24.9.2010 and meeting was held on 1.10.2010. The method of calculation of seven days has been clarified by another Division Bench decision of this Court in the case of Mohinder Singh v. State of Punjab and others, 2006(1) PLJ 290 laying down that 7 days clear notice has to be calculated after excluding the date of notice and the date of meeting. In the case of Harpal Singh, (supra), the factual position before the Court was that there was clear 7 days notice period. The Division Bench, while relying on the case of Mohinder Singh (supra), made an exception that where the Sarpanch has notice of the meeting, knowledge of the proposed no-confidence motion and yet participates in the meeting, he would be deemed to have waived objection of 7 days notice period. The Division Bench in turn relied on the following decisions of the Supreme Court to reach the conclusion:-

(i) [Krishna Bahadur Vs. Purna Theatre and Others,](#)

(ii) [Babulal Badriprasad Varma Vs. Surat Municipal Corporation and Others,](#)

(iii) [Jaswant Singh Mathurasingh and another Vs. Ahmedabad Municipal Corporation and others,](#)

(iv) [Shri Lachoo Mal Vs. Shri Radhey Shyam,](#)

4. In the case of Raj Kaur (supra), the Division Bench while relying on the case of Harpal Singh (supra), applied the principle of "waiver". This case, too, was a case of short notice. It was held that "in a case where no objection regarding notice was taken by a person likely to be affected, there would be deemed "waiver". In the said

case, the Division Bench further held that "We see no public law element involved in a notice being short mathematically by one day when receipt of notice is not denied or knowledge of date of meeting and its purpose". In both the cases i.e. Harpal Singh (supra) and Raj Kaur (supra), the aggrieved party had participated in the meeting of no confidence. In the present case as well, Mr. R.K. Garg, learned counsel for the petitioner has admitted that his client did participate in the meeting.

5. The next submission of Mr. Mann, learned counsel is that there is a legislative purpose of incorporating seven days clear notice, and therefore, the entire period would be necessary for the Panches to reflect upon the discussion and debate that would follow at the meeting. In support of this argument, Mr. Maan, learned counsel relies on a decision of the learned Single Judge in the case of Pirthi Chand v. State of Punjab and others, (CWP No. 17614 of 2010 decided on 18.11.2010). The learned Single Judge, though elaborated on the issue of "discussion and debate" as being two essential parts of the democratic process, but yet held that "this part of discussion and debate cannot overwrite the will of the majority". In the end, the learned Single Judge held as under: -

Therefore, once the vote is cast, it necessarily is to be assumed that a decision has been taken in the right earnest. Though the discussion and debate are the essential parts of a democratic process, yet recording of the minutes that discussion and debate was held can only be said to be directory and not mandatory. What is important is the mandate of the elected representatives. Once eight out of the nine members have voted against the Sarpanch, the no confidence motion cannot be set aside on the ground that in the proceedings book it has not been recorded that the matter was discussed and a debate was held.

6. Mr. Garg, learned counsel has relied upon a decision of a Division Bench of this Court in the case of Mohinder Singh (supra), in which strict construction has been resorted to with respect to 7 days clear notice period. In the said case, the issue of participation and waiver was neither pressed nor decided. As a matter of fact, the latter Division Bench in the case of Harpal Singh (supra) considered Mohinder Singh's case (supra) and went on to introduce the principle of "waiver". Therefore, Mohinder Singh's case (supra) cannot come to the assistance of the petitioner. Mr. Garg, learned counsel next relies on the decision of another Division Bench of this Court in the case of Dharam Singh and Risal Singh v. The State of Haryana and others, 1974 PLJ 365 to contend that the manner in which a meeting is to be called and conducted for discussing no-confidence motion against a Sarpanch had not been prescribed in the Punjab Gram Panchayat Act (4 of 1953) as was then in force in the State of Haryana. The Division Bench held that "the procedure ought to be the same as at a meeting for election of a Sarpanch". Section 21 of the General Clauses Act, 1897 was pressed into service while considering the impact of Rules 38 and 39 of the Haryana Gram Panchayat Election Rules, 1971. I do not see how this decision helps the petitioner. Mr. Garg, learned counsel also relies upon another Division

Bench decision of this Court in the case of [Hardatt Singh Vs. The Block Development and Panchayat Officer and Others](#), with particular reference to paragraphs 5 and 6 thereof. This was also a case relating to Rules 38 and 39 of the old Haryana Gram Panchayat Election Rules, 1971. In paragraph 5 of the judgment, the Division Bench dealt with the issue of voting by show of hands and voting by secret ballot and the significance between the two. This is not an issue which would detain this Court in the present case. However, paragraph 6 of the judgment requires to be quoted:-

6. Mr. M.S. Liberhan and Mr. S.C. Kapoor, Advocates for the respondents, have, however, contended that even if the conduct of the impugned meeting was not proper and legal, the petitioner is now estopped from challenging the same in view of the fact that he actually participated in the meeting and took a chance of succeeding at the voting by show of hands, without raising any objection to such a procedure being followed. Reliance is placed in this connection on two Division Bench judgments of this Court in [Attar Singh and others Vs. State of Haryana and others](#) , and [Ram Nath Vs. Ramesh and Others](#), None of those cases arose under the Act or the rules with which we are concerned in the present case. Mr. Surinder Sarup has, on the other hand, invited our attention to the judgment of a Division Bench of this Court in Sheo Chand v. Jee Ram 1975 Pun LJ. 4. B.R. Tuli, A.C.J., (as he then was) and A.S. Bains, J., held in that case that where it is contended that the petitioner having taken part in the election of a new Sarpanch was estopped from challenging the legality of the no-confidence meeting, the objection would not be valid if the petitioner does not take part in the reelection which is held as a consequence of the Sarpanch being outvoted at the no confidence meeting. The judgment of the Division Bench in Sheo Chand's case appears to us to be on all fours with the present case. Sitting in Division Bench, we are bound by that judgment and following the same we overrule the objection of the learned counsel for the respondents.

7. There is a difference between election of new Sarpanch and challenge as to the legality of no-confidence meeting.

8. Mr. Garg, learned counsel further relies on the decisions of the learned Single Judges in the cases of Gurmail Kaur and another v. state of Punjab and others (CWP No. 17617 of 2010 decided on 15.11.2010) and Sukhchain Singh v. State of Punjab and others (CWP No. 18361 of 2010 decided on 13.12.2010) on the question of short notice which are also of no help to the petitioner since the issues of participation and waiver were neither canvassed nor decided by the learned Single Judges. Mr. Garg has still further relied on the decision of the Hon"ble Supreme Court in the case of [M.N. Abdul Rawoof Vs. Pichamuthu and Others](#), This decision was rendered in the context of the Tamil Nadu Debt Relief Act (40 of 1979). The issue involved was relating to Property Tax. The Hon"ble Supreme Court relied upon its two earlier decisions while dealing with taxation laws where the Hon"ble Supreme Court had to consider the expression "of a period not less than 7 years" and held that "the period

cannot be even one minute less than 7 years". Interpretation of Taxation Statutes, in my view, cannot be applied to Section 19(2) of the Act and this decision is, therefore, clearly distinguishable on law and facts.

9. Mr. Garg, learned Counsel admits that the motion was carried by 2/3rd majority. Mr. Garg, learned counsel further submits that the proceeding book does not record any reason as to why the opposition Panches did not want the petitioner to continue as Sarpanch. This also does not help the petitioner. Non-recording of reason cannot supersede the will of the 2/3rd majority and this would not to my mind furnish ground for quashing the resolution. In view of the above discussion and the law enunciated on the principle of participation and waiver, this Court is of the considered view that there is no merit in this petition. The impugned notice dated 13.8.2010 (Annexure P-1) and the resolution dated 19.8.2010 (Annexure P-2) stand protected. Consequently, the writ petition is dismissed with no order as to costs.