(1994) 04 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition 3227 of 1994

Babu Ram, Chairman, Panchayat Samiti		APPELLANT
	Vs	
The State of Haryana and Others		RESPONDENT

Date of Decision: April 21, 1994

Acts Referred:

- Punjab Panchayat Samiti and Zila Parishad Regulations - Regulation 20
- Punjab Panchayat Samitis and Zila Parishads Act, 1961 - Section 113A, 18(1), 19(1)

Citation: (1995) 1 ILR (P&H) 45

Hon'ble Judges: H.S. Brar, J; Amrit Lal Bahri, J

Bench: Division Bench

Advocate: Ram Kumar, for the Appellant; Arun Nehra, Addl. A.G. and K.S. Sidhu, for the Respondent

Final Decision: Allowed

Judgement

A.L. Bahri, J.

Babu Ram, Chairman, Panchayat Samiti, Pinjore, challenges resolution Annexure P-4 dated February 21, 1994, passed by the Panchayat Samiti in the meeting held on that date whereby resignation submitted by the Petitioner from chairmanship of the Samiti was considered in spite of the fact that the same had been withdrawn and, ultimately the Samiti accepted the resignation in view of the provisions of Section 19(1) of the Punjab Panchayat Samiti and Zila Parishad Act, 1961 (hereinafter called ''the Act'') and the Petitioner was removed from the post of Chairman in accordance with the Rules. Vide this resolution Shri Kanwarjit Singh was appointed as Chairman. The resignation letter was submitted by the Petitioner on February 9, 1994, to the Block Development and Panchayat Officer. On February 21, 1994, he submitted another letter withdrawing his resignation. He also sent a telegram to this effect to the Director, Panchayats, Deputy Commissioner, Ambala, Sub Divisional Magistrate,

Kalka and the Block Development and Panchayat Officer, Pinjore. The letter was also placed before the Panchayat Samiti at the time resolution-Annexure P.4 was passed. The Petitioner moved the Deputy Commissioner,--vide letter dated March 6, 1994 Annexure P.5 for withdrawal of his resignation. Annexure P.3 is the letter dated February 20, 1994, copies of which were sent to different Respondents. Similar letter is Annexure P.2. The agenda for the meeting which was circulated to the members of the Panchayat Samiti, Pinjore, is contained in Annexure P.I. The first item was regarding the acceptance of the resignation of the Chairman, Panchayat Samiti and the other item was "any other with the permission of the Chairman."

2. On notice of motion having been issued, written statements have been filed by the Respondents. Respondent No. 5 Kanwarjit Singh filed a separate written statement. The official Respondents appear to have taken an alternative plea. According to them the resolution passed by the Samiti, was in fact related to removal of the Petitioner from chairmanship on the requisition submitted by members of the Panchayat Samiti. Annexure R.1 is copy of the letter written by different members of the Samiti to the Deputy Commissioner to convene meeting for passing ''no confidence motion'' against Babu Ram, the Chairman. Annexure. .R.2 is copy of the affidavit of Kanwarjit Singh in support of application Annexure R.1. The Deputy Commissioner conveyed the order Annexure R.3 on February 17, 1994 to call meeting of the Panchayat Samiti and proceed in accordance with Section 18(1) of the Act for taking necessary action. Annexure R.4 is the copy of the resolution dated February 21, 1994. Respondent No. 5 Kanwarjit Singh took up preliminary objections, inter alia, asserting that the Petitioner had; concealed material facts that 23 members of the Samiti had given the application for expressing ''no confidence motion'' against the Chairman. The Deputy Commissioner had ordered on February 13, 1994 giving direction to the Sub Divisional Officer (C), Kalka, to convene meeting u/s 18(1) of the Act. Thus, meeting was called on February 21, 1994, wherein the resignation as well as ''no confidence motion'' were considered. 20 members out of 25 raised their hands for removal of the Petitioner. Further details of the resolution passed are given. It is further alleged that the Petitioner was estopped by his own act and conduct to challenge his election as Chairman as he had participated in the nomination of another candidate Giani Sukhdev Singh against the Petitioner. On merits similar pleas have been taken.
3. Sections 18(1) and 19(1) of the Act read as under:

18. Term of office of Chairman and Vice-Chairman.--(1) The term of office of the Chairman and Vice-Chairman of a Panchayat Samiti shall be three years, and after the "first general election of Primary Members and Co-option of Members of a Panchayat Samiti is held and made u/s 113-A, the term of office of the Chairman and Vice-Chairman of such Panchayat Samiti shall be five years:

Provided that an outgoing Chairman or Vice-Chairman shall unless the Government otherwise directs, continue to hold office until the election of his successor is

notified:

Provided further that the Chairman or Vice-Chairman shall cease to be the Chairman or Vice-Chairman if he ceases to be a Member of the Panchayat Samiti or if by a resolution passed by not less than two-thirds of the total number of its Members the Panchayat Samiti decides at a meeting convened in the manner prescribed, that he shall vacate his office. In such case the Panchayat Samiti shall elect a new Chairman or Vice-Chairman at the same meeting at which the aforesaid resolution is passed:

Provided further that no such meeting shall be convened before the expiry of one year from the date on which the election of the Chairman or Vice-Chairman, as the case may be, was notified and, after the expiry of such period, whenever such a meeting is convened during his term of office and the "proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the Chairman or Vice-Chairman unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.

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19. Resignation of Chairman and Vice-Chairman.--(1) The Chairman or Vice-Chairman of the Panchayat Samiti may resign his office by notifying in writing, his intention to do so to the Panchayat Samiti and on such resignation being accepted by the Panchayat Samiti he shall deemed to have vacated his office.

4. The pleadings of the parties aforesaid are required to be considered keeping in view the provisions of the Act aforesaid. The first question for consideration is as to whether the resignation letter of the Petitioner which had been admittedly withdrawn before the meeting of the Members of the Samiti was held on February 21, 1994 could be accepted so that .the Petitioner could cease to be Chairman, learned Counsel for the Petitioner has referred to the decision of this Court in Virinder Paul Sharma v. Food Corporation of India and Ors. 1992 (2) S.L.R. 104. In this case Virinder Paul Sharma who was working as (Assistant with the Food Corporation of India had submitted his resignation (telegram), stating "with immediate effect." A letter was also, written in this respect He was advised to submit his resignation in a proper way and also to deposit three months'' salary. In July 1985, he submitted his representation to the District Magistrate to treat the resignation as withdrawn. He was informed.--vide letter dated January 8, 1986 that his resignation was accepted with effect from December 13, 1983. It was held by the High Court that after to resignation was withdrawn the same could not be accepted. Such acceptance of resignation was unsustainable in law. It was observed that before acceptance of the resignation, the same was withdrawn. The other decision relied upon by counsel for the Petitioner is of Supreme Court in Punjab National Bank v. Shri P.K. Mittal submitted his resignation to be effective from June, 1986. The

Bank accepted it from the date of the resignation and it was held that it amounted to forcing termination on an employee. In para 7 of the judgment it was held that since the resignation was withdrawn Shri Mittal continued to be in service of the Bank. It was observed as under:

It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the regulation become effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That it why, in some cases of public, services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in Raj Kumar v. Union of India 1968 (3) S.C.R. 337, Union of India v. Gopal Chandra Misra 1973 (3) S.C.R. 12 and Balram Gupta v. Union of India 1987 (2) S.L.J. 280 (CAT).

5. This Court also considered the question of withdrawal of resignation in Ramesh K. Srivastava v. Guru Nanak University Amritsar and Ors. ILR 1994 P&H 48. It was held as under:

The resignation in the present case could be accepted only by the Syndicate and there is no quarrel with the proposition that before acceptance of resignation, the same can be successfully withdrawn. The Petitioner had withdrawn his resignation before it was accepted by the syndicate. Consequently shall be deemed to be in service for all this while.

6. Though there is no specific provision in the Act for withdrawal of the resignation by the Chairman, however, the resignation was to be effective only after a resolution was passed by the Samiti accepting the same. The Petitioner, thus, continued to be Chairman upto the date of passing of the resolution i.e. February 21, 1994. Annexure P. 4 resolution itself indicates that the resignation had been withdrawn earlier thereto. Thus after withdrawal of the resignation there could not be any agenda to consider the resignation by the Samiti. The resolution aforesaid accepting the resignation of the Petitioner cannot be sustained in law.

7. Taking into consideration the alternative argument put forward by the Respondents that out of 25 members of the Samiti, 23 had submitted requisition for showing no confidence against the Chairman and the Deputy Commissioner having forwarded the same to the Sub-Divisional Officer and ultimately the matter having been brought to the notice of the Samiti, on February 21, 1994, it could consider the same and the resolution having been passed, the Petitioner stood 1 removed from Chairmanship, u/s 18(1) Proviso second as reproduced above. No dobut the resolution-Annexure P. 4 also purports to indicate that the Petitioner was removed from Chairmanship, the question for consideration is whether such removal, if so taken, is in accordance with law or not. The second proviso to Section 18(1), if closely

read, would show that such a requisition submitted for considering ''no confidence motion'' is to be decided by the Samiti at a meeting convened in the manner prescribed. The meeting which was held on February 21, 1994, was not called to consider no confidence motion. The two items of agenda already referred to above indicate that the only matter to be considered by the Samiti in that meeting was the resignation letter. The meeting had been called on February 16, 1994, whereas the Deputy Commissioner''s letter for taking appropriate action u/s 18(1) is dated February 17, 1994, which was received in the office of the Sub-Divisional Magistrate and subsequently before the Samiti on February 21, 1994. This would indicate that no meeting was specifically called to consider "no confidence motion". The Punjab Panchayat Samitis (Vacation of Office by Chairman and Vice-Chairman) Rules, 1963 are relevant for consideration. Rule 3 prescribes notice of intention to move ''no confidence motion'' against the Chairman or the Vice-Chairman by one-third of the total Members of the Samiti. Such a notice is to be addressed to (a) the Chairman, if the resolution is moved against the Vice-Chairman; (b) the Vice-Chairman, if the resolution is to be moved against the Chairman; (c) the Execution Officer of the Panchayat Samiti, if the resolution is to be moved against the Chairman as well as the Vice-Chairman. In the present case, as noticed above, such a resignation was submitted to the Deputy Commissioner who forwarded it to the Sub-Divisional Magistrate for taking necessary action u/s 18(1) of the Act. Ultimately the said resignation came to the Panchayat Samiti. Rule 4 of the Rules provides for convening a meeting within a period of 15 days from the date of receipt of notice. Rule 5 provides as to how such a meeting could be called if the authority concerned failed to call such a meeting. Rule 6 provides that such a meeting is to be called giving not less than 7 days notice before the appointed date of meeting and such a notice has to be in Form II and to be served on the Members of the Samiti in the manner given under Rule 6.

8. The contention of learned Counsel for the Respondents is that by not following the Rules of procedure as above strictly no prejudice is caused as out of 25 Members, 23 participated in the meeting and 20 voted in favour of the ''no confidence motion''. There is fallacy in this argument. The election of members of the Samiti and office bearers i.e. Chairman and the Vice-Chairman is a democratic process. For removal of such members or office bearers, the Rules are required to be strictly followed. They are mandatory and not directory in nature. The fact cannot be lost sight of that at least 7 days time is allowed for consideration of such a ''no confidence motion''. The purpose of providing such a time is for canvassing as the question of passing ''no confidence motion'' is to be determined on the number of votes polled, in favour or against it. If suddenly such a matter is taken up by the Samiti, this right of canvassing or satisfying the voters is frustrated. Though in the resolution-Annexure P.4 it is not specifically mentioned that the same was passed u/s 18(1) of the Act. however, it is mentioned that the Petitioner stood removed. It was argued on behalf of the Respondents. It is the substance of the matter which is

to be considered and not merely its form. Mentioning of wrong provision of law or non-mentioning thereof will make no difference. On principle it may be so. However, while considering legal aspect and applying the provisions of the Act and the Rules to the facts of the present case, taking resolution Annexure P.4 to be of passing ''no confidence motion'' against the Petitioner, the same cannot be sustained in law.

9. It has been argued on behalf of the Respondents that an alternative remedy of election petition against the election of Respondent No. 5 Bawa Kanwarjit Singh as Chairman of the Samiti is available and no interference in the writ petition is called for. This contention again cannot be accepted in the facts and circumstances of the present case. In an election petition to challenge the election of Respondent No. 5 as Chairman of the Samiti the Petitioner could not get any relief either that his resignation was wrongly accepted by the Samiti or that he was wrongly removed from the Chairmanship. These matters could only be considered in the writ petition.

After holding as above that Petitioner''s resignation was wrongly accepted and that his removal from Chairmanship was also wrong, the election of Respondent No. 5 as Chairman of the Samiti cannot be sustained in law. Such a relief would be corollary.

10. It has been argued by learned Counsel for the Respondents that after acceptance of the resignation of the Petitioner, he participated in the proceedings and against Respondent No. 5 he proposed the name of Giani Sukhdev Singh. Thus, the Petitioner accepted his removal and now he is estopped from challenging the same. This contention again cannot be accepted. He could do nothing when the Samiti Members took the matter for consideration either for acceptance of his resignation in spite of withdrawal letter or taking up the matter of his removal. He continued to remain as Member of the Samiti. From his act of proposing another person''s name when the game was on will not debar him from challenging his removal from chairmanship of the Samiti or illegal acceptance of his resignation which had already been withdrawn. In Rajbir Singh v. The Haryana State Cooperative Development Federation Ltd. C.W.P. 13868 of 1990 decided on 24th April, 1992, the matter was considered. A notice of retirement was given. The period of the notice was June 19, 1990 to August 9, 1990. His resignation thus could be effective from August 9, 1990 and such a resignation could not be accepted before that date. He is alleged to have accepted salary for that period. He was relieved,--vide order Annexure R.1 to which he submitted a protest Annexure R.2 which was before the date aforesaid. It was observed:

Even if it is accepted for the sake of argument that the Petitioner did not lodge any protest against his being relieved on 15th June, 1990, that is prior to 9th August, 1990 that is the date from which his resignation was to be made to his consent for being relieved from the office prior to the date fixed by him for making his resignation effective. It would further make no difference even if he was paid salary from 16th June, 1990 to 9th August, .1990 by Way of adjustment towards the outstanding dues payable by him to the State Government.

11. The contention of counsel for the Respondents that the Petitioner is estopped from challenging resolution-Annexure P.4 on the ground of his participation in the nomination for the new Chairman is repelled.

The decision of this Court in Raj Kishore Sharma and Ors. v. State of Punjab and Ors. 1993 (4) S.L.R. 12, is not applicable to the case in hand. In that case the candidate participated in the selection process and having failed, was held, could not challenge the selection headed by a Chairman against whom bias was suggested. The decision is on its own facts. On the same ground the decision of the Supreme Court in Manak Lal v. Dr. Prem Chand Singhvi and Ors. AIR 1937 S.C. 425, is not applicable wherein bias was suggested against the Bar Council Tribunal.

For the reasons recorded above, this writ petition is allowed. Resolution Annexure P.4 dated February 21, 1994 accepting resignation of the Petitioner or removing him from Chairmanship and further electing Respondent No. 5 Bawa Kanwarjit Singh as new Chairman of the Samiti is quashed. There will be no order as to costs.