

Harish Vs The Deputy Commissioner and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 19, 1993

Acts Referred: Constitution of India, 1950 " Article 226, 227

Citation: (1993) 104 PLR 26

Hon'ble Judges: Jawahar Lal Gupta, J

Bench: Single Bench

Advocate: G.S. Sandhu, Jaswant Singh Phogat, for the Appellant; P.S. Saini and Rajnish Narula, for the Respondent

Judgement

Jawahar Lal Gupta, J.

The petitioner, a Sarpanch of the Gram Panchayat Malikpur Banger, hereinafter referred to as "the Panchayat") is

aggrieved by the co-option of Smt. Reshma respondent No. 5 as a member of the Panchayat. A few facts relevant for the decision of the case may

be briefly noticed.

2. Elections to the Panchayat were held on December 24, 1991. Five Panches and a Sarpanch were elected. No woman candidate was elected.

As a result and in view of the provisions of the Haryana Gram Panchayat (Co-option of Women Panches) Rules, 1971, a woman Panch had to be

co-opted. The Block Development and Panchayat Officer, Chhachhrauli fixed a meeting and directed that the co-option of a woman panch shall

take place on February 1, 1992. One Jai Pal Singh was appointed as the Presiding Officer. On January 31, 1992 this meeting was postponed and

fixed for March 14, 1992. Piare Lal was appointed as the Presiding Officer. It is averred that on March 13, 1992, the petitioner received a letter

from the Block Development and Panchayat Officer in which it was inter alia stated that a few persons had met the Deputy Commissioner, who

had ordered that "due to certain official irregularities, the co option fixed for 14.3.92 is postponed." Thereafter vide letter dated March 18, 1992

the Block Development and Panchayat Officer fixed the meeting for March 30, 1992. A copy of this letter has been produced as Annexure P. 1

However, vide letter dated March 20, 1992 the letter dated March 18, 1992 was cancelled. On enquiry, it was revealed that the co-option had

taken place on March 14, 1992. Respondent No. 5 had been co-opted. This co-option has been challenged through this petition primarily on the

ground that the Block Development and Panchayat Officer having postponed the meeting fixed for March 14, 1992, no co option could have

taken place. It has also been averred that on account of the postponement of the meeting, the petitioner and two other Panches namely, Ramesh

Chand and Prem did not attend the meeting.

3. Two separate written statements have been filed. In the written statement filed on behalf of respondent No. 1 to 4 by the Block Development

and Panchayat Officer, It has been inter alia averred that the petitioner has an effective alternative remedy by way of an Election Petition u/s 13 of

the Act. It has been further averred that the meeting was initially fixed for February 1, 1992. As the notices could not be properly served, the

meeting was postponed and was fixed for February 4, 1992. In the meantime, one of the Panches, namely, Prem Chand filed an election petition

against Ramzan Panch u/s 13 of the Act before the Sub Divisional Magistrate, Jagadhri. On January 27, 1992, the Sub Divisional Magistrate

passed an order restraining Ramzan from participating in the election of Co-option of Woman Panch. The order passed by the Sub Divisional

Magistrate was challenged before Shri Pritam Pal, learned Additional District Judge, Yamunanagar by Ramzan. On February 1, 1992 a stay order

was passed by the Court. The operation of the order dated January 27, 1992 was stayed and even the holding of co-option of a woman Panch

was stayed. When this order was brought to the notice of the Block Development and Panchayat Officer, the meeting fixed for February 7, 1992

was postponed. Thereafter the meeting was fixed for March 14, 1992. It is averred that before that date ""petitioner himself appeared before

respondent No. 1 and represented that the meeting of the Panches fixed for 14.3.1992 may be postponed.

On representation of petitioner, respondent No. 1 passed order on 13.3.1992 to the effect that co-option of woman Panch scheduled for

14.3.1992 be postponed as some formalities have been left out"" These orders passed by the Deputy Commissioner (respondent No. 1) were

received by the Block Development and Panchayat Officer on March 13, 1992 at 5 00 P. M. It is averred that intimation with regard to these

orders could not ""be given to the Presiding Officer and Panches on 13.3.1992. Next day i.e. 14.3.1992 was Saturday and it was a holiday. Peon

of the office of Respondent No. 2 did not come to the office and as such intimation with regard to order dated 13.3.92 could not be given to the

Presiding Officer or Panches till 10.30 A M. on 14.3.1992. Though respondent No. 2 issued letters to respondent No. 4, Presiding Officer,

Sachiv Gram Panchayat and Panches but later on it came to the notice of respondent No. 2 that Presiding Officer respondent No. 4 conducted the

co option of woman Panch on 14-3 1992 before he could receive intimation of order dated 13-3-1992 and in that election respondent No. 5 was

declared as co-opted woman panch of Gram Panchayat Malikpur Bangar." It is further averred that respondent No. 2 had issued a notice on

March 18, 1992, by which the meeting was fixed for March 30, 1992. However, the result of the meeting held on March 14, 1992 was brought to

the notice of the Block Development and Panchayat Officer by respondent No. 4 on March 19, 1992. As a result, respondent No. 2 passed

orders dated March 20, 1992 whereby the letter dated March 18, 1992 was cancelled. It is averred that the action was in strict conformity with

the provisions of the rules and that no interference in the exercise of writ jurisdiction was called for.

4. Respondent No. 5 has also filed a written statement substantially to the same effect. It has been inter-alia averred that intimation regarding the

postponement of the meeting fixed for March 14, 1992 had not been received and as such the meeting was validly held and the co option was

legal.

5. I have heard Mr. G.S. Sandhu for the petitioner, Mr. Jaswant Singh and Mr. P. S. Saini for the respondents.

6. A perusal of the pleadings of the parties shows that originally the meeting had been fixed for February 1, 1992, but after postponement/s it was

fixed for March 14, 1992. It is not suggested that the notices of this meeting had not been served on various members in accordance with the rules

governing the matter. A day before this meeting was scheduled to be held, on March 13, 1992, the Deputy Commissioner is alleged to have

ordered the postponement of this meeting. The orders in this behalf appear to have been received in the office of the Block Development and

Panchayat Officer at 5.00 P.M. on the same day. However, it has been categorically averred by respondent No. 2 that he could not serve these

orders or the letter postponing the meeting fixed for March 14, 1992 on the Panches and the Presiding Officer, respondent No. 4. That being so,

the Panches were entitled to hold the meeting and co-opt a woman member. This is precisely what they did. It has not been shown that there was

any infirmity or violation of the rules in this process. Under the provisions of Rule 4, a quorum has been fixed It is provided that "not less than half

of the elected Panches shall constitute a quorum for the co-option of woman Panch." It is not averred that half of the elected Panches had not met

on March 14, 1992. In such a situation, there was no legal infirmity in the meeting held on the said date. Consequently, there is no ground to set

aside the co-option of respondent No. 5

7. Mr. Sandhu contends that the story put forward by the respondents is unbelievable. Inquiry into the disputed question of fact is not normally

within the realm of writ jurisdiction For his purpose, the Act provides an effective remedy by way of an election petition. The petitioner is not

entitled to dispute the facts as averred in the written statement. This is all the more so as the petitioner has not controverted the factual averments in

the written statement by filing a replication Since the petitioner himself has not disputed the facts as averred in the written statement, the inevitable

conclusion is that the letter dated March 13, 1992 was not served on various Panches and they were thus entitled to hold the meeting on March

14, 1992.

8. Taking the totality of circumstances into consideration no ground for interference is made out. The writ petition is wholly lacking in merit and is

dismissed. In the circumstances of the case, the parties are left to bear their own costs.

9. It may be noticed that in the written statement filed by respondent No. 2 there are various typographical mistakes. However, so far as the

material dates are concerned these are agreed to between the parties. Accordingly, the case has been decided in the admitted facts.