courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 04/11/2025

(1993) 104 PLR 26

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4280 of 1992

Harish	APPELLANT
Vs	
The Deputy Commissioner and Others	RESPONDENT

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 relevent 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 3l, 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 Deve- lopment 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 pri- marily on the ground that the Block Development and Paccbayat Officer having postponed the meeting fixed for March 14, 1992, no co option could have taken place. It has also peen 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 interalia 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, 992. As the notices could not be pr6perly 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 ware 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 circumstences 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.