
(2011) 04 P&H CK 0274

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 23113 of 2010

Malook Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: April 18, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Panchayat Election (Amendment) Rules, 2008 - Rule 45, 45A
- Punjab Panchayati Raj Act, 1994 - Section 19, 19(1)(2), 23, 9

Citation: (2011) 3 RCR(Civil) 16

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Judgement

Mehinder Singh Sullar, J.

Succinctly, the relevant facts, which require to be noticed for deciding the core controversy, involved in the instant writ petition and emanating from the record, are that in the wake of general Gram Panchayat election, the petitioner was elected as a Sarpanch of Gram Panchayat of village Amir Shahwala, Block Makhu, Tehsil Zira, District Ferozepur, on 19.07.2008, in view of the provisions of The Punjab Panchayati Raj Act, 1994(hereinafter to be referred as "the Act").

2. The petitioner claimed that the rival group of Panches started making efforts, to get him illegally removed from the post of Sarpanch due to political Vendetta and get elected their own Sarpanch. In order to fulfill their evil design, respondent Nos. 5 to 7 approached The Block Development and Panchayat Officer, Makhu(respondent No. 4)(for short "the BDPO") and filed an affidavit to initiate No. Confidence Motion" proceedings against him(petitioner) on the ground that he did not enjoy confidence of majority of the Panches.

3. The case set-up by the petitioner, in brief, insofar as relevant, was that the BDPO vide notice dated 20.10.2010(Annexure P-1) called a meeting of Sarpanch and all

Panches, scheduled to be held on 29.10.2010 at 11.00 AM in his office, for the discussion of "No Confidence Motion" proceedings. When notice (Annexure P-1) was served, then the petitioner made an endorsement on it that as he had to go out of station due to urgent household work from 28.10.2010 to 31.10.2010, therefore, he would not be in a position to attend the meeting on 29.10.2010. It was claimed that the meeting scheduled to be held on 29.10.2010 was postponed. It was further alleged by the petitioner that on 01.11.2010, he along with respondent No. 8 went to the office of the BDPO, remained there and enquired about the proceedings and the BDPO told him that he had called a meeting for discussion on "No Confidence Motion" on 29.10.2010. But since, he (petitioner) had expressed his inability to attend the meeting, so it was not held on that day. The BDPO assured that he will hold a fresh meeting, after intimating him (petitioner) and all other Panches, by sending the fresh notice in this behalf.

4. The case of the petitioner further proceeds that the BDPO with a mala fide intention, in connivance with respondent Nos. 5 to 7 and under political pressure, allegedly held a secret meeting on 01.11.2010 and stated to have passed the impugned Resolution(Annexure P-2) of "No Confidence Motion" against the petitioner and elected respondent No. 5 as an authorised Panch to exercise the powers of Sarpanch.

5. The petitioner did not feel satisfied and preferred the present writ petition, challenging the impugned Resolution(Annexure P-2),; invoking the provisions of Articles 226/227 of the Constitution of India, inter alia, on the ground that neither any "seven clear days", notice was issued to him, nor any proper meeting was convened on 01.11.2010. He has illegally been removed from the office of Sarpanch, by way of illegal and arbitrary Resolution(Annexure P-2), which was passed in complete violations of Sections 19 and 23 of the Act, without issuing any notice to him(petitioner) and respondent No. 8 and without convening/holding any valid meeting in this regard. On the basis of aforesaid grounds, the petitioner sought the quashment of the impugned Resolution (Annexure P-2) in this respect.

6. The respondents contested the claim of the petitioner. Respondent Nos. 1 to 4 filed their joint written statement, while private respondent Nos. 5 to 7 filed their separate written statement, inter alia, pleading certain preliminary objections of, maintainability of the writ petition, cause of action and locus standi of the petitioner. According to the contesting respondents, the petitioner intentionally and deliberately did not participate in the meeting, scheduled to be held on 01.11.2010. The meeting was earlier fixed for 29.10.2010, in which he (petitioner) showed his inability to attend the same. The meeting on 01.11.2010 was stated to have been legally convened by respondent No. 4, in which resolution of "No Confidence Motion" (Annexure P-2) was passed against the petitioner.

7. The contesting respondent Nos. 1 to 4 have further pleaded (in para 4) of their written statement that in pursuance Of the affidavit filed by private respondent Nos.

5 to 7, respondent No. 4 issued letter dated 31.05.2010 to convene a meeting in his office for 04.06.2010. Thereafter, vide another letter dated 04.06.2010, the meeting was called in his office on 11.06.2010. The meeting was again adjourned to 15.06.2010, in which the petitioner and other Panches were present, but nothing could be decided in it. Therefore, vide letter dated 20.10.2010, last opportunity was granted to the Panches to participate in the meeting scheduled to be held on 29.10.2010, which was stated to have been adjourned to 01.11.2010, in which the petitioner and respondent No. 8 did not participate and the impugned resolution(Annexure P-2) was passed.

8. Sequelly, the private respondent Nos. 5 to 7 toed the lines of defence, as pleaded by the official respondents in their written statement. However, it will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal. That is how, I am seized of the matter.

9. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

10. As is evident from the record that the BDPO issued notice dated 20.10.2010(Annexure P-1) to the Sarpanch and all Panches of the indicated Gram Panchayat, to convene the meeting, scheduled to be held on 29.10.2010, to consider the "No Confidence Motion", but no meeting was held on that day. The meeting was stated to have been held on 01.11.2010, in which the impugned Resolution(Annexure P-2) was passed against the petitioner. Admittedly, no notice/intimation was issued to him(petitioner) to participate in the meeting scheduled to be held on 01.11.2010.

11. Such, thus, being the position on record, now the sole question that arises for determination in this case, is as to whether the impugned Resolution (Annexure P-2) is legal or not?

12. Having regard to the rival contentions of the learned counsel for the parties, to me, the obvious answer is in the negative and such impugned Resolution (Annexure P-2) of "No Confidence Motion" without issuance of any statutory notice, cannot possibly be termed as a legal Resolution in this relevant connection.

13. As is clear that Section 19 (since omitted) of the Act regulated the provisions of passing of "No Confidence Motion" against the Sarpanch in this regard. Section 19(2) of the Act postulated that The Block Development and Panchayat Officer shall, within a period of fifteen days of the receipt of application under sub-section(1), convene a meeting of the Gram Panchayat by giving seven clear days in notice, for discussing and taking decision on the no-confidence motion. Meaning thereby "seven clear days" notice is legally required to be issued to the Panches to participate in the meeting to consider the "no confidence motion".

14. As indicated earlier, no notice/intimation was issued to the petitioner by the BDPO to participate in the meeting, scheduled to be held on 01.11.2010. It means, no such notice by giving "seven clear days" was given to the petitioner in the instant case, which was mandatory in nature. Thus, there was a complete violation of the statutory and mandatory provisions of the Act. This matter is not res Integra and is well settled.

15. An identical question came to be decided by a Division Bench of this Court in case Mohinder Singh v. State of Punjab and others, 2006 (2) R.C.R. (Civil) 349. Having interpreted the provisions of Section 19(2) and Section 9 of General Clauses Act, it was ruled as under :-

Now advertent to the second contention raised by the counsel for the petitioner that the notice issued to the petitioner did not give seven clear days as envisaged in sub section (2) of the Act. We find force in the stand of the petitioner. Sub-Section (2) provides that the Block Development and Panchayat Officer shall within a period of 15 days of the receipt of the said application convene a meeting of Gram Sabha by giving seven clear days in notice for discussing and taking decision on the "no-confidence motion."

The Apex Court in M.N. Abdul Rawoof's case (supra) in para 10 has held that for calculating clear days the first and last date should be excluded. Para 10 of the judgment reads thus :-

The High Court has referred to the decision of this Court in [The Pioneer Motors \(Private\) Ltd. Vs. The Municipal Council, Nagercoil](#), where the expression was which was being interpreted, "not being less than one month." This Court held that in order that a notice should be valid the expression "not being less than one month" would mean that there must be notice of 30 clear days. This would be possible only if the 1st and the last day on which the notice is issued is excluded. Rather than helping the respondent in our opinion the said decision fortifies the view which we have taken namely, that the period specified is the minimum period. Not less than one month meant that 30 clear days" notice had to be given and it is only in order to ensure that 30 clear days" notice is given that, basing on Section 9 of the General Clauses Act, it was observed that the 1st and the last date should be excluded.

Therefore, the notice issued on 25.8.2005 for 1.9.2005 does not give seven clear days" notice as envisaged u/s 19 of the Act. The meeting of 1.9.2005 thus, cannot be said to have been legally held and accordingly, no-confidence motion" passed on that date is untenable. Accordingly, the same is set aside. However, it is directed that the respondents shall issue fresh notice of holding the meeting of no confidence after following due procedure as prescribed under the Act and the same shall be held within two months from today.

16. That means, in the present case, since, no statutory notice of the meeting by giving "seven clear days" was given to the petitioner, so, the impugned

resolution(Annexure P-2) passed against him(petitioner) is not only illegal, but against the statutory provisions of the Act as well. The ratio of law laid down in the aforesaid judgment is fully attracted to the facts of the instant case and is the complete answer to the problem in hand. Therefore, the argument of counsel for the petitioner that the impugned resolution (Annexure P-2) is illegal, arbitrary and against the statutory provisions of the Act, has considerable force and the contrary submissions on behalf of contesting respondents deserve to be and are hereby repelled under the present set of circumstances.

17. Not only that, it is not a matter of dispute that the petitioner was elected as a Sarpanch on 19.07.2008 and respondent Nos. 5 to 7 filed the affidavit for passing the resolution of "No Confidence Motion" against the petitioner. In the wake of affidavit, respondent No. 4 first convened the meeting for 04.06.2010 vide letter dated 31.05.2010. Thereafter, another meetings were scheduled to be held on 11.06.2010 and 15.06.2010, but no resolution of "No Confidence Motion" was carried out. The meeting was again adjourned to 29.10.2010, whereas the position remained the same. Ultimately, respondent No. 4 was stated to have convened another meeting on 01.11.2010, in which the impugned resolution(Annexure P-2) of "No Confidence Motion" was stated to have been passed in the absence of the petitioner.

18. Therefore, it is absolutely clear that private respondent Nos. 5 to 7 filed an affidavit and respondent No. 4 called the first meeting to consider the "No Confidence Motion" on 04.06.2010 by means of letter dated 31.05.2010 within a period of less than two years from the date of assuming of charge of Sarpanch by the petitioner, which is not legally permissible u/s 19 (since omitted) of the Act, which envisaged that an application regarding intention to move a motion of no-confidence against a Sarpanch be made to the Block Development and Panchayat Officer by a majority of Panches.

Proviso to this Section further escalated that no such application shall be made unless a period of two years has elapsed from the date on which the Sarpanch assumed his office.

19. Meaning thereby, neither respondent Nos. 5 to 7 could move the affidavit, nor the BDPO was competent to call a meeting to consider the Resolution Annexure P-2) of "No Confidence Motion" against the petitioner, unless a period of two years had elapsed from the date, on which the petitioner has assumed his office of Sarpanch. Therefore, the entire proceedings of passing the Resolution(Annexure P-2) against the petitioner are vitiated and are against the statutory provisions of Section 19 of the Act.

20. This matter can be viewed from a different angle. Admittedly, Section 19 of the Act prescribing the removal of Sarpanch by passing a resolution of "No Confidence Motion", has already been omitted w.e.f. 14.12.2010 by the State Government. As,

the removal of the petitioner from the office of Sarpanch has not yet been de-notified, therefore, to me, the mere passing of the alleged Resolution(Annexure P-2) of No Confidence Motion", ipso-facto is not sufficient for the removal of the petitioner from the post of Sarpanch, unless all other formalities, including the statutory formality of de-notifying the name of Sarpanch in official gazette are complete. In that eventuality, the petitioner(earlier elected as Sarpanch) will be deemed to continue as Sarpanch of the Gram Panchayat of the village.

21. Similar question came to be disposed of by this Court in case Baljit Kaur v. State of Punjab and others, (2011) P.L.R. 560, wherein, having noticed the provisions of Section 19 of the Act, Rule 45 and amended Rule 45-A of the Punjab Panchayat Election (Amendment) Rules, 2008 and other relevant legal provisions, it was held that "mere passing of a resolution of No Confidence Motion is not sufficient, unless name of the earlier elected Sarpanch is de-notified by the State Government and he will be deemed to be a Sarpanch of Gram Panchayat of his village." The law laid down in the aforesaid judgment "mutatis mutandis" is applicable to the facts of the present case as well.

22. In this manner, thus seen from any angle, the impugned Resolution (Annexure P-2) cannot legally be maintained, in the obtaining circumstances of the case.

23. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

24. In the light of aforesaid reasons, the instant writ petition is accepted. Consequently, the impugned Resolution (Annexure P-2) is hereby set aside in this behalf.

25. Needless to mention here that the natural consequences will follow accordingly.