

(2010) 09 P&H CK 0314

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 5673 of 2009 (O and M)

Lachhman Dass and
Others

APPELLANT

Vs

Sharda Devi and
Others

RESPONDENT

Date of Decision: Sept. 16, 2010

Acts Referred:

- Punjab Panchayat Election (First Amendment) Rules, 2008 - Rule 45(2), 45(6)

Citation: (2011) 3 RCR(Civil) 451

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

This appeal is directed against the order of Sub Divisional Magistrate-cum-Presiding Officer, Election Tribunal, Dasuya (for short "Election Tribunal") dated 27.08.2009 by which the election petition filed by the appellants has been dismissed.

2. Gram Panchayat Budhabarh, Tehsil Mukerian, District Hoshiarpur comprises of 9 Panches. All the Panches took oath on 11.07.2008. Thereafter, in order to elect the Sarpanch, a meeting was convened on 17.07.2008 at 10.00 a.m. at Government Elementary School, Chanaur. In this meeting, the appellants, who are 5 in number, came present but the other four Panches absented from the meeting, as a result of which, due to lack of quorum, the meeting was postponed to 18.07.2008. On 18.07.2008 again, the appellants were present in the meeting but the other four Panches were conspicuous by their absence. The Presiding Officer informed the appellants, who were present in the meeting, that the Deputy Commissioner, Hoshiarpur vide his letter No. RFA/1972 dated 18.07.2008 has ordered for postponing the meeting to 21.07.2008 without assigning any reason therein.

Accordingly, the meeting was again scheduled to be held on 21.07.2008 at 10.00 a.m. in the Government Elementary School, Chanaur. For the ready reference, the true translated proceedings of the meetings dated 17.07.2008 as well as dated 18.07.2008 are reproduced as under :-

Proceeding Book Date: 17.07.2008.

Today on 17.07.2008, the meeting held for the election of Gram Panchayat Sarpanch (General Category) under the Presidentship of Presiding Officer Pargat Singh Bajwa at 10.00 a.m. in Government Elementary School, Chanaur. All the members were informed through a letter by the Presiding Officer. The following members are present:-

Sr. No.	Name of Panch	Signatures
1.	LachhmanDass	Sd/-
2.	Tehal Singh	Sd/-
3.	Rattan Chand	Sd/-
4.	Baldev Singh	Sd/-
5.	Baskha Singh	Sd/-

The above five members of the Panchayat are present. The quorum is not complete, therefore, the election is postponed. Now this election will be held on 18.07.2008 at 10.00 am. The members present have been informed and absent members have been informed vide notice that they should be present at Elementary School on time.

Proceeding Book Date: 18.07.2008.

Today on 18.07.2008, meeting is held for the election of Sarpanch (General Category) of Gram Panchayat Budhabarh under the Presidentship of Presiding Officer Pargat Singh Bajwa at 10.00 a.m. in Government Elementary School, Chanaur. Notices were issued to all the members vide letter by the Presiding Officer. The following members are present:-

1.	Tehal Singh	Sd/-
2.	LachhmanDass	Sd/-
3.	Rattan Lal	Sd/-
4.	Baldev Singh	Sd/-
5.	Baskha Singh	Sd/-

The above mentioned members are present, whereas the other four members are absent. The present members are informed of the order of D.C. vide letter No. RFA/1972 dated 18.07.2008 wherein the election of the Sarpanch to be held today, has been postponed to 21.07.2008. The election is postponed vide this letter but no reason has been given for postponing the election. The present members have been informed that the election meeting will be held on 21.07.2008 at 10.00 a.m. in Government Elementary School, Chanaur. The absent members may be informed.

3. It is pertinent to mention that in the meetings dated 17.07.2008 and 18.07.2008, the Presiding Officer was Pargat Singh Bajwa, whereas in the 3rd meeting dated 21.07.2008, the Presiding Officer was Vinod Kumar Gupta. According to the appellants, they had gone to attend the meeting on 21.07.2008 at the given time and place, but neither the Presiding Officer nor the other Panches came present to attend the meeting. After waiting till afternoon, the appellants had sent complaints through fax to the Deputy Commissioner and SDM, Mukerian etc. Later on, the appellants came to know that proceedings of the meeting have been written somewhere else and accordingly Sharda Devi (respondent No. 1) was declared elected as Sarpanch of the Gram Panchayat. The appellants, thus, challenged the election of respondent No. 1 by way of election petition on the ground of fraud and partisan attitude of the election staff. In support of their case, the appellants had tendered the proceedings of the meeting dated 17.07.2008 as Ex.P1, dated 18.07.2008 as Ex.P2, dated 21.07.2008 as Ex.P3, photocopies of notices dated 17.07.2008 and 21.07.2008 as Ex.P4 to Ex.P12, application dated 21.07.2008 as Ex.P13, copy of fax receipt as Ex.P14, photocopies of majority letters as Ex.PW2/1 and Ex.PW3/2, photocopies of the affidavits of Bashakha Singh, Tehal Singh, Rattan Singh and Baldev Singh as Ex.P15 to Ex.P18 respectively, photocopy of application dated 21.07.2008 Ex.P19, copy of newspaper Jagran City as Mark "X" and copy of Hoshiarpur Kesari dated 22.07.2008 as Mark "Y". Appellant No. 1 appeared as PW1, Anita Devi as PW2 and Gurinderpal Singh as PW3. On the other hand, respondents had examined Tilak Raj as RW1, Mukhtiar Singh as RW2 Sucha Singh as RW3 Arvind Thakur as RW4, Ujjagar Singh as RW5 and Ragunath Singh as RW6.

4. Interestingly, none of the 4 Panches (respondent Nos.1 to 4) dared to enter the witness box. The learned Election Tribunal, while dismissing the election petition, has observed that the proceedings were carried out in the meeting dated 21.07.2008 by Vinod Kumar Gupta who has not been impleaded as a party. The absence of the appellants in the meeting dated 21.07.2008 has been testified by the witnesses examined by the respondents and the appellants have not examined any official from the office of Deputy Commissioner, Hoshiarpur and SDM, Mukerian etc. in order to prove that they had sent fax messages to them or they have received the fax messages about the alleged excesses committed by the Returning Officer while holding the meeting dated 21.07.2008.

5. Learned counsel for the appellants has submitted that the Election Tribunal has erred on facts in observing that the appellants have not impleaded Presiding Officer Vinod Kumar Gupta as a party. It is submitted that Vinod Kumar Gupta is arrayed as respondent No. 9 in the election petition. Secondly, the witnesses of the respondents cannot be believed in order to hold that the appellants had not reached at the venue of the meeting on the given date and time specially when they (appellants) had attended both the meetings dated 17.07.2008 and 18.07.2008 and are in majority till date. It is also submitted that examination of any official from the office of Deputy Commissioner or SDM etc. for the purpose of proving fax is without any consequence, rather it is submitted that the learned Election Tribunal has not appreciated the evidence available on record and the attending circumstances from which it is proved that no meeting was held on 21.07.2008 at the time and place given by the Presiding Officer and the election of respondent No. 1 as Sarpanch was declared in the evening after recording the proceedings at some other place by the Presiding Officer.

6. On the other hand, learned counsel for the respondents has submitted that as per Rule 45(2) of the Punjab Panchayat Election (First Amendment) Rules, 2008 [for short "Rules"], quorum of 2/3rd is required in the first meeting and 2/3rd strength out of the 9 Panches would come to 6 Panches and since in the first meeting, only 5 Panches came present, the said meeting dated 17.07.2008 was rightly adjourned by the Presiding Officer at that time. It is also submitted that as per Rule 45(6) of the Rules, in the second meeting, no quorum is required, therefore, on 21.07.2008, out of 4 members, who though were in minority, had elected their Sarpanch since the appellants did not attend the said meeting despite notice. It is, thus, submitted that there is no error in the order of the learned Election Tribunal and prayer is made for dismissal of the appeal.

7. I have heard learned counsel for the parties, carefully gone through the record and considered their respective submissions.

8. In this case, the Court has found that how the members in minority group in a Panchayat can usurp the post of Sarpanch with the help of the election staff and, of course, the electoral officer. Undisputedly, the Deputy Commissioner of the District is the Electoral Officer. After dissecting the facts and circumstances of the case, this Court has found the following salient features which are required to be highlighted:-

i) Gram Panchayat comprises of 9 members, out of which 5 members are on one side and 4 members are on the other side.

ii) 5 members (appellants) are still together who had filed the election petition and the present appeal.

iii) First meeting was held on 17.07.2008. The minority group, who have elected respondent No. 1 as Sarpanch on 21.07.2008, knew very well that if they attend the first meeting, then the appellants, who are in majority, would be able to elect their

own Sarpanch and if they do not attend the first meeting, the said meeting would fail due to lack of quorum. Thus, they did not attend the said meeting without any rhyme or reason.

iv) On 17.07.2008, the meeting was adjourned to 18.07.2008 at the same time and place. Rule 45(6) of the Rules provides that quorum is not required in the second meeting. Therefore, in the second meeting when all the 5 Panches (appellants) came present, the minority group of 4 Panches understood that in this meeting they would elect their Sarpanch as there would be no hurdle of the incomplete quorum.

v) They played a novel trick by approaching the Deputy Commissioner who, on the same day, sent a letter to the Presiding Officer of the meeting to adjourn the meeting to 21.07.2008 and did not give any reason for the said adjournment. This fact is very clearly recorded by the Presiding Officer of the meeting dated 18.07.2008. The reason is not far fetched to reach because the minority group wanted to hold the meeting under a Presiding Officer who could be easily influenced because the Presiding Officer of the meetings dated 17.07.2008 and 18.07.2008 Pargat Singh Bajwa remained uninfluenced from the minority group of 4 Panches of the Panchayat. On 21.07.2008, the earlier Presiding Officer Pargat Singh Bajwa was removed and a new Presiding Officer, namely, Vinod Kumar Gupta was appointed. This Presiding Officer was dancing on the tunes of the members of the minority group and, accordingly, he did not come present at the time and place fixed for the meeting where all the 5 appellants were present and waiting. Ultimately, no meeting was held on 21.07.2008 and the proceedings were recorded somewhere else in which respondent No. 1 was declared elected as a Sarpanch despite the fact that the majority is with the appellants.

vi) It appears that the minority group had not only influenced the Presiding Officer of the meeting dated 21.07.2008 but had also influenced the Election Tribunal who happened to be the SDM, Dasuya as it is evident from the impugned order in which he has not dealt with the aforesaid aspects at all and had rather dismissed the election petition by recording facts which are contrary to the record because he observed that the appellants have not impleaded Vinod Kumar Gupta as a party, whereas the said officer is impleaded as respondent No. 9 in the election petition.

9. Thus, the resume of the aforesaid facts and circumstances shows that it is a sheer mockery of the democratic process of election in which the persons in power have captured the post of Sarpanch by adopting unfair means. This Court is, thus, of the view that the present appeal is not only meritorious to be allowed but respondent No. 1 is liable to be burdened with costs of Rs. 50,000 so as to set an example for the unscrupulous person like her to be afraid of indulging in unfair means in the election. Accordingly, the present appeal is allowed subject to payment of costs of Rs. 50,000 to be paid by respondent No. 1 to the present appellants, which shall be shared by them equally.