

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 10352 of 2017

Date of decision : July 24, 2017

Anju and others

..... Petitioners

Versus

Deputy Commissioner, Kaithal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Bhoop Singh, Advocate
for the petitioners.

Mr. Amit Khatkar, Advocate
for respondent Nos. 3.

Mr. Saurav Mohunta, DAG., Haryana.

RAKESH KUMAR JAIN, J (oral).

This petition is filed by the members of Zila Parishad, Kaithal who have challenged the proceedings of the meeting dated 20.4.2017(Annexure P-4) held for consideration of No Confidence Motion against the President and Vice President, Zila Parishad, Kaithal, in violation of Rule 10(3) of the Haryana Panchayati Raj Rules, 1995 (hereinafter referred to as 'the Rules of 1995') and issuance of a direction to respondent No.1 to hold the meeting afresh strictly in terms of the provisions of the Rules of 1995.

In short, the Zila Parishad comprised of 21 elected members. The members elected the President and the Vice President from amongst themselves. Respondent No.3 was elected as the President and respondent No.4 as Vice President of the Zila Parishad against whom 2/3rd members of the Zila Parishad brought a requisition for consideration of a No

Confidence Motion in terms of Section 123 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the 1994 Act'). On requisition a meeting was called by the prescribed authority, namely, the Deputy Commissioner, Kaithal. The meeting was called by the Deputy Commissioner on 20.4.2017 at 11.00 A.M. in the meeting hall of Zila Parishad, Kaithal. However, he himself did not preside over the meeting. The Deputy Commissioner, Kaithal, vide his order dated 19.4.2017 appointed the Additional Deputy Commissioner, Kaithal to preside over the meeting. The contents of the letter dated 19.4.2017 are reproduced as under:-

“On the subject cited above, you are hereby informed that a notice regarding the Meeting for No Confidence Motion moved by 14 members against the President/Vice President has already been issued by this office vide Memo No.2818-44/Panchayat on 12.4.2017. In order to conduct the proceedings of this meeting, the undersigned appoint you as the authorized officer.

Therefore, you are requested to ensure to conduct the meeting to be held at 11.00 a.m. on 20.4.2017 as per the provisions contained in Haryana Panchayati Raj Act, 1994 and Haryana Panchayati Raj Rules, 1995.”

Accordingly, the Additional Deputy Commissioner, Chief Executive Officer, Distt. Development & Panchyat Officer and other officials attended the meeting. The meeting started at 11.00 A.M. but the members did not come till 11.30 A.M. and thus meeting was declared as dissolved (Samapat) in terms of Rule 10 (5) of the Rules of 1995 and notice of No Confidence Motion as lapsed.

The grievance of the petitioners is that respondent No.1-

view of the proviso to Section 123 (2) and respondents No. 3 and 4 who do not enjoy the confidence of the house would continue to act as President or Vice President respectively.

It is argued by learned counsel appearing on behalf of the petitioners that the meeting dated 20.4.2017 is to be declared as 'Non est' as it is contrary to the provisions of law and could not be declared as dissolved and the no confidence motion as having been lapsed rather, it should be declared that no such meeting was ever held because it was not presided over by the competent person, namely, the Deputy Commissioner.

On the other hand, learned counsel appearing on behalf of respondent Nos. 3 and 4 has submitted that there is no error on the part of the Deputy Commissioner, much less in passing the impugned order because the Deputy Commissioner has the jurisdiction to delegate his powers as the Deputy Commissioner also includes Addl. Deputy Commissioner as well. In this regard, he has referred to the definition of the Deputy Commissioner provided under Section 2 (xviii) of the 1994 Act.

Learned counsel appearing on behalf of the petitioners has submitted that there are separate authorities provided under the statute for the purpose of holding election and for holding No Confidence Motion. In this regard, he has submitted that for the purpose of election the Deputy Commissioner has been given the authority to delegate his power to another officer as provided under under Rule 77 of the 1995 Rules but for the purpose of No Confidence Motion, rule 10 of the rules of 1995 provide that the Deputy Commissioner would be the prescribed authority and would also be the presiding authority in the case of considering the No Confidence Motion against the Vice President and President of the Zila Parishad. In

this regard, rule 10 of the Rules of 1995 is relevant which is reproduced as under:-

“(10) No confidence motion against [* * *] Chairman, Vice Chairman, President, Vice President, Section [* *] **62 and 123** (***)

For purpose of sections 10 and 123 the concerned

(1) [District Development and Panchayat Officer] and the Deputy Commissioner respectively shall be the prescribed authority.

(2) The notice of meeting for considering motion of no confidence shall be issued at least seven days before the date fixed for the meeting, intimating the date, time and place of meeting by proclamation by beat of drum, in the sabha 2 [areas] concerned and by affixing a copy same on the notice 2 [boards of offices of concerned Gram Panchayat, Panchayat Samiti, or Zila Parishad] and at other conspicuous places in the village. 2 [The] notice shall also be issued to all the members by registered (A.D.) post at their ordinary place of residence and also by affixing a copy of the same at the notice board of office of Block Development and Panchayat Officer, Additional Deputy Commissioner and through any other expedient manner deemed proper. No confidence motion against Sarpanch 3[* * *] Chairman, Vice Chairman, President, Vice President, Section [* * *] 123.

(3) The presiding authority of the meeting, referred to in sub-rule (2), shall be 1 [District Development and Panchayat Officer], Additional Deputy Commissioner in case of Vice-Chairman, and Chairman and the Deputy Commissioner in case of vice- President and President.

(4) The voting in the meeting shall be by the secret ballot for which the presiding authority shall make the necessary arrangements. The presiding authority shall also record the proceeding of the meeting, setting forth therein-

(a) the name of 1 [* * *] members who gave the requisition and the date thereof;

(b) the dates on which the notice was issued and served under sub-rule (2);

(c) date, time and place of the meeting;

(d) number of votes polled against the motion;

(e) number of votes polled in favour of motion, and

(f) result.

(5) If within half-hour after the time appointed for the meeting, there is no quorum, the meeting shall stand dissolved and the notice shall lapse.”

It is further submitted that the Deputy Commissioner had no jurisdiction to delegate his power to the Addl. Deputy Commissioner as the said power vests with the State Government. In this regard, he has also referred to the definition of Deputy Commissioner provided under Section 2 (xviii) which is read as under:-

2. Definitions: In this Act, unless the context otherwise requires:

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xviii) *"Deputy Commissioner" means the Deputy Commissioner of a district and includes any officer not below the rank of an Assistant Commissioner appointed by the Government to perform the functions of a Deputy Commissioner under this Act. "*

It is also submitted that if the meeting dated 20.4.2017 is not declared as illegal, the petitioners would not be in a position to ask for holding a fresh meeting immediately for the consideration of 'No Confidence Motion' in view of proviso to Section 123. Section 123 is reproduced as under:-

“(1) The term of the office of President and Vice-President of a Zila Parishad shall be five years unless sooner

removed.

(2) If by a resolution passed against the President or Vice-President, as the case may be, two-third of the total number of its elected members of the Zila Parishad decide at a meeting convened by the prescribed authority in the manner prescribed, that the President or VicePresident, as the case may be, shall vacate the office and in such case the Zila Parishad shall elect the new President or Vice-President as the case may be, as specified in section 121 of this Act : Provided that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice-President, 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 President or Vice-President unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.”

I have heard learned counsel for the parties and perused the record with their able assistance.

In order to decide the controversy from the facts and circumstances of the case, following questions arise for consideration of this Court:-

i) Whether the meeting dated 20.4.2017 is to be considered as a validly held meeting in which the requisition of 'No Confidence Motion' is stated to have been lapsed and the meeting has been ordered to be dissolved in terms of Rule 10 (5)?

ii) Whether if the meeting dated 20.4.2017 is held to be illegally held then whether the embargo under Section 123(2) of the 1994 Act is applicable?

iii) If there is no embargo then whether the petitioners

have a right to ask for holding a meeting of 'No Confidence Motion' against the Vice President or President?

The facts are not in dispute. The only dispute in this case is about interpretation of the provisions of law. There is no dispute that the Deputy Commissioner is the prescribed authority in the matter of election of the President and Vice President. Rule 77 of the Rules of 1995 which is reproduced as under provides that in the matter of election, the Deputy Commissioner concerned, may authorize any other person on his behalf to act as a prescribed authority:-

“Election of President or Vice President:-

- 1) The Deputy commissioner concerned (or any other officer authorised by him) shall be the prescribed authority for purposes of sub section (1) of section 121 of the Act.*
- 2) The provisions of rule 76 for election of Chairman and Vice Chairman shall mutatis mutandis apply for election of the President and Vice President.*
- 3) The Deputy Commissioner (or any other officer authorised by him) shall inform the District Election Officer (Panchayat) of the result of election the same day.”*

However, in the matter of consideration of 'No Confidence Motion', rule 10 of the Rules of 1995 specifically provide that the prescribed authority would be the Deputy Commissioner who would issue notice for this purpose after receipt of requisition and would also be the presiding authority. Section 123 (2) of the Act provides that in case the meeting for the 'No Confidence Motion' fails then again 'No Confidence Motion' meeting has to take place after expiry of a period of one year. The definition of Deputy Commissioner as provided under Section 2 (xviii) of the 1994 Act provides that “Deputy Commissioner” means the Deputy Commissioner of a district

and includes any officer not below the rank of an Assistant Commissioner

appointed by the Government to perform the functions of a Deputy Commissioner under this Act meaning thereby that the Deputy Commissioner should be any other person not below the rank of Assistant Commissioner and he has to be appointed as such by the State Government to perform the functions of the Deputy Commissioner under the Act but insofar as the Deputy Commissioner himself is concerned he had no jurisdiction, much less competence to delegate his powers for presiding over of 'No Confidence Motion', to the Addl. Deputy Commissioner, as has been done by him on 19.4.2017.

Thus, in view of the aforesaid discussion, it is evident that the letter dated 19.4.2017 was totally illegal by which the Deputy Commissioner had appointed Addl. Deputy Commissioner as the presiding authority which has to be held by the Deputy Commissioner himself under Rule 10 (3) of the Rules of 1995 and secondly the meeting presided over by the said authority is also 'Non est' in the eyes of law.

In view thereof, all the three questions which have been posed in the aforesaid order are hereby answered in favour of the petitioners and it is held that the powers delegated by the Deputy Commissioner to the Addl. Deputy Commissioner on 19.4.2017 to hold a special meeting for considering 'No Confidence Motion' was illegal and the meeting presided over by the Addl. Deputy Commissioner, Kaithal declaring the No Confidence Motion to have been lapsed and the meeting to be dissolved is also 'Non est'.

The Deputy Commissioner/the prescribed authority shall issue fresh notice to the members for the purpose of holding a meeting for considering the 'No Confidence Motion' against respondent Nos. 3 and 4

immediately but not later than 15 days from the date of receipt of a certified copy of this order and shall himself preside over the meeting until and unless he is replaced by the State Government by specific orders in this regard.

With these observations the present petition is allowed and Annexure P-4 is declared as illegal.

(RAKESH KUMAR JAIN)
JUDGE

July 24, 2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No