

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.W.P No. 16577 of 2017 (O&M)

Date of Decision:- 30.10.2017

Yafar Hussain & Ors.

....Petitioners

Versus

State of Haryana & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. M.D. Khan, Advocate, for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Saleem Ahmed, Advocate, for respondent No.4.

RAKESH KUMAR JAIN, J. (Oral)

The Petitioner has prayed for the issuance of a writ in the nature of Mandamus to decide his representation dated 29.05.2017 in which he has prayed that the Panch having majority in the Gram Panchayat may be elected as authorised Panch.

In brief, the Election for the post of Sarpach of Gram Panchayat Hunchpuri Kalan was held on 17.01.2016 in which respondent No.4 was returned. The election was challenged by Shabana by way of Election Petition filed under Section 176(4) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act'). Simultaneously, a complaint was also filed that respondent No.4 has contested the election for the post of Sarpanch by submitted a fake 8th Class certificate, which is the necessary qualification to contest the election. On the said complaint, an enquiry was marked to the District Education Officer Palwal, who had prima facie found

respondent No.4 guilty of submitting the fake 8th class education certificate. The Deputy Commissioner, Palwal, vide his order dated 21.12.2016, exercised his power under Section 51 of the Act and placed respondent No.4 under suspension. Against the order of suspension, respondent No.4 filed the statutory appeal under Section 51(4) of the Act.

Counsel for respondent No.4 has submitted that order of suspension has already been set aside in the appeal and the matter is remanded back to the Deputy Commissioner, Palwal. In the meantime, the election petition filed by Shabana was allowed by the Additional Civil Judge (Sr. Division) on 30.03.2017, setting aside the election of respondent No.4 and directing that fresh election for the post of Sarpanch be held. The said order dated 30.03.2017 was challenged by respondent No.4 vide C.W.P. No. 13293 of 2017, which was dismissed on 11.08.2017. Counsel for respondent No.4, however, submits that appeal against the order dated 30.03.2017 has been filed. Be that as it may, in the absence of any stay granted by the appellate Court in favour of respondent No.4 to continue as Sarpanch, the post of Sarpanch has become vacant and, therefore, the petitioner has filed the application for allowing one of the Panch to take the reins of the Panchayat for its management as an authorised Panch during this interregnum till the appeal of respondent No.4 is decided one way or the other, as the said office cannot be kept vacant for an indefinite period. Counsel for respondent No.4 has argued that the appeal filed by respondent No.4 is still pending against the order dated 30.03.2017, therefore, the office of Sarpanch is being wrongly considered to have become vacant and the

State counsel has also submitted that since the appeal is pending, therefore, the authorised Panch has not been elected.

I have heard learned counsel for the parties and pursued the records with their assistance.

Learned counsel for the petitioners has submitted that as per Section 51(6)(1) of the Act, in case of removal of the Sarpanch, the records, money or any other property of the Gram Panchayat in his possession or under his control is to be handed over to the Panch commanding majority in the Gram Panchayat. Section 51(6) is reproduced as under:-

“ Section 51(6):- Any Sarpanch or Panch , as the case may be, removed under sub-section (3), shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control --

(i)if he is Sarpanch to a Panch commanding majority in the Gram Panchayat ; and

(ii)if he is a Panch to Sarpanch. ”

It is well settled that a Mandamus can be issued if the petitioner has a right and the respondent has a corresponding duty. In this case, the petitioner is a Panch of the Gram Panchayat. His agitation is that when a Sarpanch has already been removed by the Civil Court in the Election Petition as her election has been set aside, therefore, she does not have any right to keep in her possession the record, money or any other property of the Gram Panchayat, which is to be given to any of the Panch of Gram Panchayat who has commanding the majority. This is the prayer which has

been made in this petition for which the petitioner had to first make a representation which has not been decided by the competent authority. The question is as to whether the pendency of the appeal at the instance of respondent No.4 would have any effect at this stage when there is no stay granted by the appellate Court to her? The answer is in negative and, therefore, the records, money and any other property of the Gram Panchayat cannot be allowed to remain in possession of respondent No.4, who has been sacked from the post of Sarpanch and has to be handed over to the Panch of the same Gram Panchayat commanding majority.

Thus, in view of afore-said facts and circumstances, the present petition succeeds and a direction is issued to the Deputy Commissioner, Palwal to direct the holding of a meeting of the Panches immediately so as to elect the Panch commanding majority in the Gram Panchayat to perform the functions of Sarpanch during the absence of the Sarpanch who is now in litigation much less in appeal.

With these observations the present petition is disposed of.

A copy of this order be given to the learned counsel for the State under the signatures of the Court Secretary for compliance.

October 30, 2017

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(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No