

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

**C.W.P. No.18923 of 2017
Date of Decision:12.09.2017**

Smt. Neelam Kumari and others Petitioners

Vs.

State of Haryana and others Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. S.P. Chahar, Advocate for the petitioners.

Mr. Saurav Mohunta, DAG, Haryana.

Rakesh Kumar Jain, J. (Oral)

This petition is filed by 12 members of the Panchayat Samiti, Block Kalanaur (for short, 'the Panchayat Samiti'), District Rohtak for seeking a direction to respondent No.3 (Deputy Commissioner, Rohtak) to convene a meeting for discussing 'No Confidence Motion' against the Chairman/ respondent No.5.

In brief, there are total 18 elected members of the Panchayat Samiti. Respondent No.5 is the elected Chaiman. Eleven petitioners, i.e. petitioners No.1 to 8 and 10 to 12 filed affidavits on 28.07.2017 and petitioner No.9 submitted his affidavit on 02.08.2017 to the SDM, Rohtak asking him for convening a meeting for considering 'No Confidence Motion' against respondent No.5 as they were not satisfied with her work. Respondent No.4 vide his letter No.916 dated 28.07.2017 sent the affidavits to respondent No.3 for further action. However, despite various requests, no action was taken by respondents No.3 and 4 for convening the meeting.

The petitioners then filed representation on 16.08.2017 to respondent No.4

and since the representation also fell on deaf ears of respondent No.3, therefore, they have approached this Court for seeking a direction.

Counsel for the petitioners has submitted that the term of the Panchayat Samiti is of five years. The Chairman or the Vice Chairman can be removed from his post by passing a resolution of 'No Confidence Motion' by 2/3rd of total number of elected members in a meeting convened in a manner prescribed. However, it is also submitted that no such meeting can be convened before the expiry of one year from the date on which the election of the Chairman or Vice-Chairman as the case may be, was notified. He has also argued that procedure for holding the meeting of 'No Confidence Motion' is provided in Rule 10 of the Haryana Panchayati Raj Rules, 1995 (for short, 'the Rules'). After notice, the respondents have put in their appearance and filed reply on behalf of respondent No.3 today in Court in which he has made the following averments:-

“3. That again on 28.07.2017 the twelve members of Panchayat Samiti, Kalanaur had submitted their affidavits before the Sub Divisional Officer (Civil), Rohtak/ respondent No.4 regarding call no confidence motion against Chairman, Panchayat Samiti, Kalanaur but on 31.07.2017 Shri Vikas s/o Shri Lala Ram had withdrawn his affidavit which was submitted on 28.07.2017 and instead submitted his affidavit in favour of Chairman, Panchayat Samiti, Kalanaur. Shri Rajesh s/o Shri Tilak Raj submitted his affidavit on 02.08.2017 against the Chairman, Panchayat Samiti, Kalanaur. All these affidavits were sent to Block Development and Panchayat Officer,

Kalanaur for verification of the same.

4. That on 16.08.2017 twelve members had submitted their representation to call the meeting for no confidence motion against the Chairman, Panchayat Samiti, Kalanaur but out of these 12 members one member Sh. Vikas Kumar s/o Sh. Lala Ram member of Panchayat Samiti, Kalanaur submitted his affidavit in favour of Chairman, Panchayat Samiti, Kalanaur thereby (6 members + Chairman) were in favour of present Chairman on 21.08.2017 and 11 (Eleven members) are against the Chairman, Panchayat Samiti, Kalanaur. So, the quorum for calling the meeting for no confidence was not completed on 21.08.2017. So, keeping in view of the above facts and circumstances the deponent filed the representation for calling the meeting for no confidence motion on 23.08.2017. The copies of the above said six affidavits are attached herewith as Annexure R.1 to R.6 and their true English translation as Annexure R.1/T to R.6/T.

5. That it is submitted that if the petitioners submit their affidavits with 2/3 majority against the Chairman for calling the meeting for no confidence motion the meeting will be called immediately under the provisions given in Haryana Panchayati Raj Act, 1994. The deponent is working property and in due course of law. So, the present writ petition of the petitioners is liable to be dismissed.”

According to the respondents, on 16.08.2017, 12 members of

the Panchayat Samiti had submitted their representation to call the meeting for seeking 'No Confidence Motion' against the Chairman but out of those 12 members, one member Vikas Kumar submitted his affidavit in favour of Chairman (respondent No.5) and thus the strength of the members who were seeking 'No Confidence Motion' was reduced from 12 to 11 and the strength on the other side in favour of the Chairman swelled from 6 to 7. In this manner, the Deputy Commissioner has thus averred in para 5 of the reply that the 'No Confidence Motion' would be called as soon as he would receive affidavits of 2/3rd members of the Panchayat Samiti.

Learned counsel for the petitioners has submitted that Section 62 of the Haryana Panchayati Raj Act, 1994 (for short, 'the Act') provides that the Chairman or the Vice Chairman of the Panchayat Samiti can be removed by not less than 2/3rd total number of the elected members. He further submits that nothing has been prescribed either in the Act or the Rules as to how many members of the Samiti can send the requisition for calling the meeting to discuss the agenda of 'No Confidence Motion' against the Chairman or the Vice Chairman. It is also submitted that 'No Confidence Motion' can be passed only when the members of Panchayat Samiti by 2/3rd majority vote in favour of 'No Confidence Motion' against the Chairman or the Vice Chairman and that strength of the Members has to be seen during the meeting and not before that.

On the other hand, counsel for the respondents has argued that though nothing has been provided in the Act or the Rules, as to how many members can call 'No Confidence Motion' but since the resolution can be passed only with the majority of two third members, therefore, it is

presumed that the meeting can also be called by 2/3rd members.

I have heard learned counsel for the parties and perused the record. In order to appreciate the rival contentions, it would be relevant to refer to certain provisions of the Act and the Rules. Section 2(xii) defines Chairman of the Panchayat Samiti elected under the Act and Section 2 (xlv) defines the prescribed authority which means authority as may be prescribed under the Act. Section 62 of the Act and Rule 10 of the Rules which are relevant for the purpose of this case are reproduced as under:-

62. Term of office of Chairman and Vice-Chairman.--(1) The term of office of the Chairman and Vice-Chairman of a Panchayat Samiti shall be five years :

Provided that the Chairman or Vice-Chairman shall cease to be the Chairman or Vice-Chairman if by a resolution passed by not less than two-thirds of the total number of its elected members, the Panchayat Samiti decides at a meeting convened in the manner prescribed that he shall vacate his office :

Provided further that no such meeting shall be convened before the expiry of one year from the date on which the election of the Chairman or Vice-Chairman, 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 Chairman or Vice-Chairman unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.

(2) An outgoing Chairman or Vice-Chairman shall be eligible for fresh election if otherwise qualified.”

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10. Disposal of claims and objections.—(1) On the date and at the place fixed under rule 9-A, the District Electoral Officer shall give hearing to concerned persons and decide the claims and objection within three days from the date of its receipt, after hearing the parties concerned or their authorised agents and, in case any person objects to the admission of such claim, he shall after considering such evidence as may be produced or may appear necessary to him,

(a) reject any claim or objection which does not comply with any of the provisions of these rules or pass such orders as he may deem fit;

(b) dismiss any case in which the claimant or objector is not present or is not represented.

(2) Any person aggrieved by any such order may, within five days, from the date of order apply to the District Election Officer (Panchayat) for revision, who shall within seven days, either confirm such order, or set it aside or pass such other order with respect to the claim or objection, as he may deem fit.

(3) The decision of the District Election Officer (Panchayats) on appeal, and subject to such decision, the order of the District Electoral Officer under sub-rule (1), shall be final.

10-A. Final publication of voters list.—(1) The District Electoral Officer, as soon as he has disposed of all the claims

and objections presented to him, shall forward a list of such claims and objections alongwith his orders thereon to the District Election Officer (Panchayat), who shall cause the voters list to be corrected, in accordance with the orders passed by the District Electoral Officer or by him in revision under sub-rule (2) of rule 10, as the case may be. The voters list so amended shall be final and two copies thereof duly signed by the District Electoral Officer and District Election Officer (Panchayat) shall be kept in their offices and shall be published in the manner prescribed under rule 9 together with list of additions and corrections prepared in accordance with the said orders.

(2) Any final voters list published under the provisions of sub-rule (1), with or without a list of additions and corrections, shall come into force from the date of such final publication.”

There is no dispute that 'No Confidence Motion' can only be passed if it is voted in its favour by $\frac{2}{3}$ rd of the total number of elected members. Since there is a total strength of 18 members of the Panchayat Samiti, therefore, 'No Confidence Motion' has to be passed by at least 12 members. However, there is nothing mentioned either in the Act or the Rules that how many members can ask for a meeting to be held for discussing the 'No Confidence Motion'. The strength of the Members to vote in favour or against 'No Confidence Motion' has to be seen when the meeting is held and not before that, therefore, in my considered opinion there is a fallacy in the approach of respondent No.3 that he would call the meeting only when there is a strength of $\frac{2}{3}$ rd members of the Samiti for

calling for a 'No Confidence Motion' meeting. Supposing in a given case, 12 members or more than 12 members have joined hands to remove the Chairman or the Vice Chairman of the Samiti and for that matter, they ask for a meeting to convene but at the time of voting, the group disintegrates and they did not vote in favour of 'No Confidence Motion' then their effort would fail. Conversely, if there are less than 12 members who ask for meeting to be held and at the time of voting, some other members who are sitting on the fence joins then the 'No Confidence Motion' can be passed. Thus, in my considered opinion, the strength of 2/3rd members has to be seen only at the time when the agenda for the 'No Confidence Motion' is to be considered and not at the time when the meeting is to be called by the members for seeking 'No Confidence Motion'. In this Regard, the Act and the Rules are totally silent as to what should be the strength of the members of the Samiti for calling 'No Confidence Motion'. I would also add that the meeting was called by 12 members on 28.07.2017 by submitting their affidavits. Respondent No.3 did not react and did not call for the meeting immediately and when one of the members was won over by the other side on 21.08.2017 and the strength was reduced from 12 to 11, he has replied that the meeting cannot be held because there were less than 2/3rd majority. This type of tactics should not be played by the respondents while holding such an Office.

With these observations, the present petition is hereby allowed and direction is issued to respondent No.3 to hold the meeting of the Panchayat Samiti in order to consider the request of the members who are not in favour of the Chairman, on account of her style of working, to

consider the 'No Confidence Motion'. The needful shall be done within a period of one month in accordance with the provisions of law.

September 12, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No