

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 22230 of 2017

Date of decision : October 4, 2017

Rita Devi and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

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

Mr. S. K. Yadav, DAG., Haryana
for respondent Nos. 1 and 2.

Mr. Dinesh Arora, Advocate
for respondent No.3.

RAKESH KUMAR JAIN, J (oral).

The petitioners are aggrieved against the order dated 5.9.2017 passed by the Deputy Commissioner vide which he has appointed respondent No.3 as acting Sarpanch after removal of the previous incumbent, namely, Mohit Kumar.

Shorn of the unnecessary details, the elections of the Panchayat took place on 24.1.2016 in which Mohit Kumar contested for the office of Sarpanch as a scheduled caste candidate. One Saravjeet Singh made a complaint against him that he does not belong to scheduled caste but

is Arora by caste. The matter was taken up to the National Commission for Scheduled Caste, and directed Deputy Commissioner, Yamunanagar, to hold an enquiry to find out as to whether Mohit Kumar belongs to scheduled caste or not. The Deputy Commissioner, after a fact finding enquiry, cancelled the certificate of scheduled caste obtained by Mohit Kumar on 25.7.2016.

Apropos, Mohit Kumar was also dis-qualified from the post of Sarpanch on 4.8.2016. He challenged the order of his dis-qualification, before the Financial Commissioner and filed a writ petition against the order of cancellation of his caste certificate. In the writ petition he was un-successful but his appeal bearing LPA No. 1641 of 2016 was pending. In the meantime, the Financial Commissioner allowed the revision filed by Mohit Kumar and remanded the case back to the Deputy Commissioner, by setting aside the order of his removal dated 4.8.2016/10.8.2016. The Deputy Commissioner ordered for a fresh inquiry. Thereafter Saravjeet Singh filed a writ petition No. 17977 of 2017 to challenge the order of the Financial Commissioner in which notice of motion was issued on 16.8.2017. The operation of the impugned order passed by the Financial Commissioner was stayed. Thereafter on 5.9.2017 the Deputy Commissioner, Yamunanagar passed the impugned order and held that election of respondent No.3 as acting Sarpanch shall take place with immediate effect which lead to the filing of the present writ petition by the Panches on the ground that there is no provision for the election of acting Sarpanch as the office of acting Sarpanch as the office of acting Sarpanch is no more available after the act No. 10 of 1999 dated 5.3.1999 came into effect. It is further submitted that in the absence of Sarpanch, the

reins of the Panchayat is handed over to the Panch who command the majority. In this regard he has referred to the provisions of Section 51 (6) of the Haryana Panchayati Raj Act, 1994 which are reproduced as under:-

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;

“(i-a) if he is Sarpanch belonging to reserve category, to a Panch of that reserve category commanding majority, and if no Panch in that category is available, to a Panch of general category commanding majority in the Gram Panchayat; and

(ii) if he is a Panch to Sarpanch.”

Learned counsel appearing on behalf of respondent No. 3 has admitted that the office of the acting Sarpanch is no more in existence after it was omitted by Act No.10 of 1999 dated 5.3.1999. He has further submitted that since the case pertains to the Sarpanch of reserved category, therefore respondent No.3 is commanding the majority which is proved by various affidavits filed by Panches.

Counsel for the petitioner has submitted that merely filing of the affidavits before this Court would not suffice because the majority has to be proved in the meeting to be specially convened for the purpose of appointment/election of authorized Panch.

I have heard learned counsel for the parties and perused the record.

The only issue involved in this case is as to whether the Deputy Commissioner has the jurisdiction to direct the election of respondent no.3 as acting Sarpanch.?

The conceded position is that there is no office of acting

Sarpanch in the act, having been omitted by Act No. 10 of 1999 dated 5.3.1999. The only office, for the purpose of managing the affairs of the Gram Panchayat, in the absence of the Sarpanch, is of a Panch commanding the majority. In general, parlance, he may be called an authorized Panch, though it is not so provided in the Act as well.

Be that as it may, the second question which arises is as to whether respondent No.3 could claim support of majority of panches on the basis of affidavits?

To my mind, the affidavits would not prove support of majority in favour of a particular Panch because the Panches have to vote, either in favour or against the person, who would contest for the office of authorized Panch, in the meeting to be convened for this purpose. In my considered opinion, the impugned order, insofar as it relates to the words “election of Rakesh Kumar as acting Sarpanch subsequent to the removal of the accused Sarpanch shall take place with immediate effect ” is illegal and is set aside to that extent only.

Now the question again arises is as to whether the Panchayat would be left without any person to head the Gram Panchayat?

Since the Gram Panchayat has to hold meetings under the chairmanship of the Sarpanch as has been done in the past , therefore the Deputy Commissioner is directed to convene the meeting of Panches for electing the authorized panch, in accordance with law for the purpose of looking after the affairs of the Panchayat, in the interregnum when the Sarpanch is out of office. It is further directed that the needful shall be done by the Deputy Commissioner within a period of 15 days from the date of receipt of certified copy of this order.

Copy of this order be given dasti to the learned counsels
for the parties, under the signatures of the Special Secretary attached to this
Bench.

(RAKESH KUMAR JAIN)
JUDGE

October 4, 2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No