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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19615-2018
Date of Decision : October 22 , 2018

Nand Lal Petitioner.

Versus

State of Haryana and another.
.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sudhanshu Makkar, Advocate
for the petitioner.

Mr. S.K. Vashisth, DAG, Haryana.

Mr. R.S.Mamli, Advocate,
for the applicants.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for setting-aside impugned notice/order dated 1.8.2018 (Annexure P/3) passed by respondent No.2, whereby No Confidence motion was brought against the petitioner, which is absolutely illegal and the same has been issued arbitrarily and against the provisions of Haryana Panchayati Raj Act, 1994 (for short, “the Act”) and Haryana Panchayati Raj Rules, 1995 (for short, “the Rules”).

2. Petitioner is an elected Chairman of the Panchayat Samiti, Block Loharu, District Bhiwani. In all, there are 16 members from different

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wards of Panchayat Samiti, Block Loharu. As per provisions of Section 63 (1) of the Act, if any member of a Panchayat Samiti, who absents himself or herself from four consecutive meetings of the Panchayat Samiti without the leave of the said Panchayat Samiti, his/her membership would be ceased and his office would be deemed to vacated. As per the petitioner, out of 16 members of the Panchayat Samiti, two members namely, Smt. Shakuntala of Ward No. 6 and Smt. Pinki of Ward No. 13, absented themselves for 4 consecutive meetings of the Panchayat Samiti and have thus, ceased to be the members of the Panchayat Samiti as per provisions of Section 63(1) of the Act. On receipt of information in the office of respondent No.2, said Smt. Shakuntala and Smt. Pinki maneuvered affidavits of some other members and submitted the same to the competent authority for bringing No Confidence motion against the petitioner, who has since issued the impugned notice dated 1.8.2018 (Annexure P/3) whereby he has asked all the members to come present for No Confidence motion on 10.08.2018 at 11.00 AM. As per the petitioner, the impugned notice, Annexure P/3, is against the law and facts on the ground that a No Confidence motion could be brought against the Chairman when 2/3rd of its members pass a resolution. In the present case, there was no such resolution and those 11 members included the two members, whose membership had already ceased as per provisions of Section 63(1) of the Act as they failed to attend the meetings of the Panchayat Samiti. As such, only 9 members had submitted their affidavits to bring No Confidence motion and the said strength does not constitute 2/3rd of the total number of existing members of the Panchayat Samiti, as laid down under Section 62 of the Act. As due

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procedure as laid down under Rule 10 of the Rules for bringing No Confidence motion has not been followed, the impugned notice is liable to be rejected. As such, the petitioner prayed that action of respondent No. 2 while issuing the No Confidence motion is preposterous in nature as respondent no. 2 has considered two affidavits of those members, whose membership had already been ceased to exist as per provisions of Section 63(1) of the Act. It is prayed that the impugned notice, dated 1.8.2018 (Annexure P/3) be set-aside.

3. In the reply filed by way of affidavit of respondent No.2, i.e. Additional Deputy Commissioner, Bhiwani, it has been admitted that the petitioner is duly elected Chairman of Panchayat Samiti, Loharu since March, 2016. On receiving the applications with affidavit from the members of Panchayat Samiti, Loharu for initiating the No Confidence motion against the petitioner-Chairman, respondent No.2 passed the impugned order dated 1.8.2018 legally and as per provisions of Section 62 of the Act. Respondent No.2 also admitted that the strength of Panchayat Samiti, Block Loharu is 16 members and out of them, two members were absent from four consecutive meetings of the Panchayat Samiti. As per report (Annexure R/1) of Executive Officer of Panchayat Samiti, Loharu, the notice for meetings dated 10.6.2017, 26.03.2018 and 09.05.2018 were not issued as per the time prescribed (10 days) under Section 67 of the Act. Letter bearing No. 3775 of the petitioner dated 27.7.2018 was addressed to the Deputy Commissioner-cum-District Election Officer, Bhiwani was received in the office of respondent No.2 on 3.8.2018, i.e., after passing of the impugned order dated 1.8.2018 and respondent No. 2 not the

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competent authority to take decision under Section 63(1) of the Act, rather the Government is the competent authority to take a decision against the Samiti Members as per Section 64 of the Act. Respondent No.2 also took the plea that on 27.7.2018, there were total 16 members of Panchayat Samiti, Loharu and 11 members had submitted their affidavits by appearing personally before him (respondent No.2) for No Confidence motion against the petitioner-Chairman and the petitioner submitted Annexures P/1 and P/2 dated 27.7.2018 before respondent No.2 only to take undue benefit.

4. Plea was also taken by respondent No.2 that the petitioner reproduced the old provisions of the Rules which were amended vide Government notification No. GSR/70/HA 11/94/S/209/2000 dated 19.10.2000, whereby new provisions were introduced. For ready reference, relevant rule 10 is extracted below :-

“Rule 10 :- No confidence motion against Chairman, Vice-Chairman, President, Vice President. Sections 62 and 123 -

(1) for purposes of Sections 123, Deputy Commissioner 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 areas concerned and by affixing a copy of same on the notice Boards of the offices of concerned Gram Panchayat, Panchayat Samiti(s) and Zila Parishad and at other conspicuous places in the village. 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

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Panchayat Officer, Additional Deputy Commissioner and Deputy Commissioner and through any other expedient manner deemed proper.

(3) The presiding authority of the meeting, referred to in sub-rule (2), shall be **Additional Deputy Commissioner** in case of **Vice-Chairman and Chairman** and Deputy Commissioner in case of Vice- President and President.”

5. Respondent No. 2 also took a stand that if two members of the Samiti have failed to attend four consecutive meetings, then as per the provisions of Section 62(2) of the Act, the Chairman should inform the Zila Parishad, the State Election Commission and the Government, which has not been done in the present case.

6. Learned counsel for the parties have advanced their respective arguments in the above lines.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the matter in controversy involves around the issue – Whether the impugned order, dated 1.8.2018 (Annexure P/3) passed by respondent No.2 is as per the provisions of the Act or not.

8. Undisputed facts of the case are that the petitioner is an elected Chairman of the Panchayat Samiti, Loharu and there are total 16 members. As per Section 62 of the Act, the term of office of the Chairman and Vice-Chairman of a Panchayat Samiti shall be five years unless by a resolution passed by not less than 2/3rd of the total number of elected members, decides in a meeting that he/she should vacate his office. For ready reference, Section 62 of the Act is extracted below:-

62. Term of office of Chairman and Vice-Chairman.-

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(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.”

9. In the present case, 11 elected members of Panchayat Samiti, Loharu had moved a resolution of No Confidence motion against the petitioner-Chairman and on that basis, respondent No. 2 had passed the impugned order and accordingly on 27.7.2018, 11 Samiti members, out of 16, submitted their affidavits by appearing personally before respondent No.2 for No Confidence motion and the notice dated 1.8.2018 (Annexure P/3) was issued by respondent no.2. As per the amended provisions of Rule 10 of the Rules (reproduced above), notified vide notification dated 19.10.2000, detailed procedure has been laid down.

10. The petitioner has taken a plea that two members, namely, Smt. Shakuntala and Smt. Pinki were not attending the meetings of the Panchayat Samiti and respondent No.2 was duly informed vide Panchayat Samiti's letter dated 27.7.2018 to the effect that two members of the

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Panchayat Samiti ceased to be the members of the Samiti and vacancies be filled by way of elections. As such, the resolution was not moved by 2/3rd of the strength, as required under Section 62 of the Act. However, the said contention is not the correct version because though, the petitioner had submitted the case and made recommendations to respondent No.2 thereby intimating that Smt. Shakuntala and Smt. Pinki, two members of the Panchayat Samiti ceased to be the members of the Samiti as Smt. Shakuntala absented in the last four consecutive meetings held on 21.08.2017, 02.01.2018, 31.03.2018 and 16.5.2018 and the other member, Smt. Pinki absented herself on even more than 10 days i.e., 4.7.2016, 30.8.2016, 8.11.2016, 30.1.2017, 21.03.2017, 15.6.2017, 21.08.2017, 02.01.2018, 31.03.2018 and 16.5.2018.

11. In the reply submitted by respondent No.2, as per the report (Annexure P/2) of the Executive Officer of the Panchayat Samiti, Loharu, notice for meetings dated 10.6.2017, 26.03.2018 and 09.05.2018 were not issued as per the time prescribed (10 days) under Section 67 of the Act.

12. The most important point involved in this case is that the letter dated 27.7.2018 addressed to the Deputy Commissioner-cum-District Election Officer, Bhiwani was received in the office of respondent No.2 on 3.8.2018, i.e., after passing of the impugned order dated 1.8.2018 and respondent No. 2 is not the competent authority to take decision under Section 63(1) of the Act, rather the Government is the competent authority to take a decision against the Samiti Members as per Section 64 of the Act, meaning thereby that on the date of issuance of notice, dated 1.8.2018 (Annexure P/3), Smt. Shakuntala and Smt. Pinki were the elected

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members of the Panchayat Samiti, Loharu because the decision had not been taken by the competent authority on the said date. There is absolutely no illegality in the notice dated 1.8.2018 (Annexure P/3) having been issued by respondent No.2 in this case and the present writ petition is without any merit and the same stands dismissed.

13. In view of the above, this Court is of the considered view that the application bearing CM-12833-2018 under Order I Rule 10 CPC for impleading Smt. Shakuntala and Smt. Pinki as party-respondents in this case, is without any merit as the applicants are not the necessary parties because the matter in controversy could be effectively adjudicated even without their impleadment. As such, the said application is disposed of accordingly.

(SHEKHER DHAWAN)
JUDGE

October 22, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes