

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

**LPA No.274 of 2020 (O&M)
Date of Decision :02.03.2020**

Irshad

.....Appellant

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Rajeev Godara, Advocate with
Mr. Talim Hussain, Advocate for the appellant.

Arun Palli, J.:

This is an *intra Court* appeal, under Clause X of the Letters Patent, against a judgment and order dated 06.02.2020, rendered by the learned Single Judge, vide which the writ petition preferred by respondent No.5 was disposed of with a direction to the Deputy Commissioner, Nuh (respondent No.3) to convene a meeting to consider motion of no confidence against the appellant.

Respondent No.5 is a Member and appellant is the Chairman of the Panchayat Samiti of Block and Tehsil Punhana, District Nuh. Seventeen (17) Members of the Samiti i.e. respondent No.5 and 16 others had moved the authorities, vide a representation dated 04.11.2019 (Annexure P-2) to initiate an inquiry against the appellant, for, by abusing his official position he had usurped the government funds. Further, to convene a meeting for considering motion of no confidence against him, for, the appellant did not have the required quorum of elected members to support him. However,

Block Development and Panchayat Officer-cum-Executive Officer, Punhana (respondent No.4), in connivance with the appellant, issued a notice dated 19.11.2019 (meeting agenda) for convening the general meeting of the Panchayat Samiti scheduled to be held on 29.11.2019. Resultantly, respondent No.5 approached this Court vide a writ petition, referred to above.

As opposed to this, the case set out by the appellant, in defense, was that alleged signatures by the 17 members of the Samiti on the complaint dated 04.11.2019 were forged. In fact in a general meeting held on 29.11.2019, 17 of the 30 elected members of the Samiti expressed their support in favour of the appellant and even furnished specific affidavits in this regard. Thus, the petition was required to be dismissed.

Upon consideration of the matter in issue and the material on record, the learned Single Judge concluded that meeting held on 29.11.2019 was invalid, being in apparent violation of the procedure prescribed under Rule 10 of The Haryana Panchayati Raj Rules, 1995 (for short 'the Rules of 1995'). For, reading of sub rule 1 of Rule 10 would show that for the purpose of initiating a 'No Confidence Motion' against Chairman, Vice Chairman, President and Vice President, the Deputy Commissioner was the prescribed authority. Sub rule-2 required at least 7 days notice of the scheduled meeting for considering motion of no confidence in the manner prescribed. In terms of sub rule 3, the authority to preside such meeting, in the case of a Chairman of the Samiti, was the Additional Deputy Commissioner. The mode of voting or the method to be followed was envisaged under sub Rule 4. However, without taking recourse to the procedure in terms of Rule 10 *ibid*, only on the basis of a notice dated

19.11.2019, a meeting dated 29.11.2019 was held to consider motion of no confidence. Particularly, when the issue concerning 'No Confidence Motion' against the appellant was not even a part of the meeting agenda/notice dated 19.11.2019. It is not disputed either that the presiding authority under the rules did not participate or preside over the alleged meeting.

Learned counsel for the appellant submits that the learned Single Judge erred in issuing directions to the Deputy Commissioner to convene a meeting to consider motion of no confidence against the appellant pursuant to the complaint/representation dated 04.11.2019. For, in terms of Section 62 of The Haryana Panchayati Raj Act, 1994 (for short 'the Act') even to move a motion of no confidence, a requisition in writing was required to be made by not less than 1/3rd of the total elected members of the Samiti. Thus, he asserts that the impugned judgment is unsustainable.

We have heard learned counsel for the appellant and perused the records.

Before we proceed any further it would be apposite to refer to the provisions of Section 62 of the Act, which reads thus:-

**Terms 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 to fresh election if otherwise qualified.

A bare reading of Section 62, reveals that it does not even remotely postulate that even for moving a requisition to consider motion of no confidence against the Chairman of the Samiti the requisition itself is required to be signed by at least 1/3rd of the elected members. Apparently, the mechanism and/or the procedure envisaged under Section 62 is required to be followed for the purpose of removal of the Chairman and Vice Chairman. Thus, the provision has no relevance vis-a-vis the requisition to convene a meeting for considering motion of no confidence. In fact the matter could be looked at from yet another perspective: once the meeting purportedly held on 29.11.2019, was declared invalid, the requisition/representation dated 04.11.2019 moved by the elected members of the Samiti was required to be processed and considered in terms of Rule 10.

Upon being pointedly asked, if either under the Act or the Rules of 1995, there was any such provision that postulates that a requisition to convene a meeting for considering 'No Confidence Motion' was required to

be moved by at least 1/3rd of the total elected members of the Samiti, learned counsel for the appellant fairly submits that there was none. We are also reminded to point out, at this juncture, that finding recorded by the learned Single Judge as regards the meeting dated 29.11.2019, being invalid, was not even questioned, during the course of hearing.

In the wake of the above, the only and the inevitable conclusion that could be reached: the appeal being bereft of merit is dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

02.03.2020
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No