

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

CWP-9977-2020 (O&M)
Date of decision : 21.07.2020

Manjit Singh and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

ANIL KSHETARPAL, J.

The prayer is to issue a writ in the nature of certiorari for quashing of proceedings of the Gram Panchayat held on 07.07.2020 and 10.07.2020. Respondent No.5-Pardeep Kumar was elected as a working Sarpanch on 10.07.2020 in the absence of regular Sarpanch, who had resigned.

The brief facts of the case are that in January 2016, the elections of the Gram Panchayats located in State of Haryana were held as provided under the Haryana Panchayati Raj Act, 1994 (hereinafter to be referred as "the 1994 Act"). Smt. Pushpa Devi was elected as Sarpanch of Gram Panchayat, Dabodha Khurd, Block Bahadurgarh, District Jhajjar. The post of Sarpanch was reserved for the Scheduled Caste Women. 13 Panches were also elected. Smt. Pushpa Devi, the elected Sarpanch submitted her resignation, which was accepted by the Director, Panchayat on 18.06.2020.

It is pleaded that CWP No.8888 of 2020 filed by Smt. Pushpa Devi is pending before this Court.

After the acceptance of the resignation of the elected Sarpanch, the proceedings were initiated on 01.07.2020 by the Block Development and Panchayat Officer, Bahadurgarh (hereinafter to be referred as “the BDPO”) for electing the working/acting Sarpanch. For that purpose, the BDPO held a meeting of the Panches under his Chairmanship in the presence of Social Education and Panchayat Officer, Bahadurgarh (hereinafter to be referred as “the SEPO”) on 07.07.2020. However, on that day, quorum of the meeting of the Panches present was not complete. Consequently, the meeting was adjourned. Thereafter, the BDPO, again issued notice for holding a second meeting regarding election of the working/acting Sarpanch on 10.07.2020. On that day, the meeting was held in the Hall situated in the Block Office, Bahadurgarh under the chairmanship of the BDPO assisted by the SEPO. 8 Panches of the Gram Panchayat attended the meeting. Respondent No.5-Pardeep was elected as acting/Working Sarpanch. It was also noticed that Naresh Kumar, SC Panch has also given an affidavit in favour of Pardeep Kumar by solemnly affirming that he does not want to become the acting Sarpanch. In the proceedings of the meeting, it is noticed that although, the post of Sarpanch in the Village is reserved for Scheduled Caste Women, however, since it was the second meeting, therefore, Pardeep, Panch was elected as a working/acting Sarpanch.

The present Civil Writ Petition has been filed by two Panches namely Manjit Singh and Babli. Although, they had attended the meeting on

07.07.2020, however, did not opt to attend the meeting on 10.07.2020. It is not the case of the petitioners that they did not receive information or were not permitted to attend the meeting held on 10.07.2020.

It would be important to note here that neither Smt. Suman, a lady Panch belonging to Scheduled Caste Category nor Naresh, a Panch belonging to Scheduled Caste Category, have filed the present writ petition. The petitioners do not claim that they have any preferential right.

Learned counsel for the petitioners has submitted that as per Section 51(6)(i-a) of the 1994 Act, only charge could be handed over to the Panch belonging to the reserved category, but, acting Sarpanch could not be elected. He further submitted that merely on the basis of the affidavits, the election of working/acting Sarpanch could not be held. In support thereof, he has relied upon a judgment passed by this Court in the case of **Rita Devi and others Vs. State of Haryana and others, CWP No.22230 of 2017.** Learned counsel has also forwarded a brief note of the same through E-mail to this effect.

Before examining the arguments raised by the learned counsel for the petitioners, it is important to note that in the present case, Section 51 of the 1994 Act, has no application. Section 51 of the 1994 Act, is extracted as under:-

“51. Suspension and removal of a Sarpanch or Panch--(1)
The Director or the Deputy Commissioner concerned may, suspend any Sarpanch or Panch, as the case may be,--
(a) where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director or Deputy

Commissioner's concerned the charge made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves moral-turpitude or defect of character;

(b) during the course of an enquiry for any of the reasons for which he can be remove, after giving him adequate opportunity to explain.

(2) Any Sarpanch or Panch, as the case may be, suspended under sub-section (1), shall not take part in any act or proceeding of the Gram Panchayat during the period of his suspension and 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 a Sarpanch to a Panch commanding majority in the Gram Panchayat;

(ii) if he is a Panch to Sarpanch:

Provided that the suspension period of a Panch or a Sarpanch, as the case may be, shall not exceed one year from the date of handing over the charge in pursuance of the suspension order except in criminal cases, involving moral turpitude.]

(3) The Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or a Panch, as the case may be, ask him to show cause against the action proposed to be taken against him, and by order remove him from his office --

(a) if after his election he is convicted by a criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months;

(b) if he was disqualified to be a member of the Gram Panchayat at the time of his election;

(c) if he incurs any of the disqualifications mentioned in section 175 after his election as member of the Gram Panchayat;

(d) if he is absent from five consecutive meetings of the Gram Panchayat without prior permission or leave of Gram Panchayat; and

(e) if he has been guilty of misconduct in the discharge of his duties and his continuance in the office is undesirable in the public interest.

(4) A person who has been removed under sub-section (3) may be disqualified for re-election for such period as may be mentioned in the order but not exceeding the period of six years.

(5) Any person aggrieved by an order passed under sub-sections (1) , (3) and (4), may within a period of thirty days from the communication of the order, perfer an appeal to the Government.

(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. ”

On careful reading of Section 51 of the 1994 Act, it is apparent that it comes into operation when the Director or the Deputy Commissioner suspends or removes a Sarpanch or Panch. The present case is not of

suspension or removal of a Sarpanch or a Panch. As noticed above, here is a case where the elected Sarpanch had submitted a resignation from the office of the Sarpanch, which was accepted on 18.06.2020. Thus, Section 51 of the 1994 Act, has no application in the facts of the present case.

Next argument of learned counsel for the petitioners is with reference to a judgment passed in Rita Devi's case (Supra). Learned counsel contends that the election of acting Sarpanch could not be held on the basis of affidavits. To examine this contention, it would be appropriate to carefully read the proceedings of the meeting held on 10.07.2020 (Annexure P-5) when respondent No.5-Pardeep Kumar was elected as working/acting Sarpanch. It has been noticed that out of total 13 Panches, 8 Panches were physically present. The Officers waited upto 01.30 PM, but remaining Panches did not come present. The election was held in the presence of the Panches present at the time of the meeting. It was not held on the basis of affidavits of the Panches. In the meeting, it has been noticed that Naresh Kumar, a Panch belonging to a Scheduled Caste who was physically present on 10.07.2020, has already given an affidavit in favour of Pardeep Kumar-respondent No.5, Sarpanch to the effect that he does not want to become acting Sarpanch. Thus, the contention of learned counsel that elections of Sarpanch have taken place on the basis of affidavits of the Panches, is not factually correct.

Now the stage is set for examining the judgment passed in Rita Devi's case (Supra). In that case, Section 51 of the 1994 Act was applicable because Mohit Kumar, the elected Sarpanch was disqualified from the post of Sarpanch, hence, removed. The Court examined two issues, one was that

whether the Deputy Commissioner has the jurisdiction to direct the election of respondent No.3 as acting Sarpanch. It was projected before the Court that the provision for electing a working/acting Sarpanch has been omitted by Act No.10 of 1999. In that case, counsel appearing for respondent No.3 also did not dispute this fact.

This Court has carefully examined the amendment brought by Haryana Act No.10 of 1999 [the Haryana Panchayati Raj (Amendment) Act 1999]. On careful reading of the Haryana Act No.10 of 1999, it is apparent that in the amending Act, the expression "acting/Working Sarpanch" has not been used. Only the office of *Up Sarpanch* (Deputy Sarpanch) was omitted. This Court could not find out any provision omitting the office of working/acting Sarpanch. It appears that both the counsels, who had assisted the Court while deciding Rita Devi's case (Supra), failed to bring this fact to the notice of the Court.

Second issue which the Court examined was whether the elected working Sarpanch could claim support of majority of Panches on the basis of affidavit. As noted above, in the present case, respondent No.5 does not claim support on the basis of affidavit. Out of 13 elected Panches, 8 Panches were physically present in the meeting and they had elected respondent No.5 as working Sarpanch.

Although, it is correct that there is no provision in the 1994 Act for electing a working/acting Sarpanch, however, the functions of the Sarpanch are required to be performed by someone. As per the amendment in the Constitution of India, Part-IX has been added by the Constitution (73rd Amendment) Act, 1992 w.e.f 24.04.1993, exclusively dedicated to the

Panchayats. The importance of Gram Sabha in the management of the affairs of the Panchayat at Village level has substantially increased. Article 243(d) of the Constitution of India recognizes Panchayats to be an Institution of Self-Governance constituted under Article 243(B), for the rural areas. Still further, Section 19 of the 1994 Act, enumerates powers, functions and duties of the Sarpanch. In the absence of an elected Sarpanch, it is provided under Section 6 of the 1994 Act that efforts shall be made to fill the casual vacancy. Section 6 of the 1994 Act is extracted as under:-

“6. Filling of casual vacancy-- (1) Whenever a vacancy occurs by death, resignation, removal or otherwise of a Panch, Sarpanch, Member, Chairman, Vice-Chairman, President or Vice-President, as the case may be, a new Panch, Sarpanch, Member, Chairman, Vice-Chairman, President or Vice-President, as the case may be, shall be elected in the manner as may be prescribed.

(2) Any person elected to fill up a vacancy under this section shall hold office for the unexpired portion of the term for which the person in whose place he is elected would have otherwise continued in office.”

The State of Haryana has notified the Haryana Panchayati Raj Election Rules, 1994 (hereinafter to be referred as “the 1994 Rules”), to regulate the holding of elections and other matters connected thereto. Rule 79 of the 1994 Rules, reads as under:-

“79. Filling of casual vacancy.- Casual vacancy of a Panch, Sarpanch, member of Panchayat Samiti, member of Zila Parishad, Chairman, Vice-Chairman, President and Vice-President shall be filled up by election in the manner prescribed for election to the said offices if the unexpired portion of the term of such vacancy is not less than six

months.”

From the careful reading of the above extracted rule, it is apparent that election to fill a casual vacancy for the offices specified in Rule 79 is to be held in the same manner which is prescribed for election to the said offices. However, it has been provided that such steps would be taken to fill up casual vacancy in accordance with the procedure prescribed if the unexpired portion of the term of such vacancy is not less than six months. The procedure prescribed for holding an election for the office of Sarpanch is lengthy. First of all, there is a provision for preparation of voter list under Chapter IV, which in turn provides preliminary publication of the voter's list, invitation of objections and decision thereon, entertaining appeal, if any, filed against such decision and thereafter publication of final voter list. It is further provided that the voter list shall be liable to be revised in accordance with Rule 12 of the 1994 Rules. Rule 12-A of the 1994 Rules, makes a provision for correction of errors in the Voter list. Rule 12-B of the 1994 Rules, provides inclusion of name in the voter list finally published. Thereafter, the officials for holding the elections are to be notified. The State Election Commissioner, is required to frame a program for election in accordance with the time schedule prescribed by the State Election Commission. Thereafter, the provision has to be made for filing nomination of the candidates, scrutiny thereof, provision for withdrawal of the candidature, preparation of list of contesting candidates, allotment of symbols and final publication of list of contesting candidates. For each stage, certain minimum time limit has been prescribed. On the day, the vacancy of Sarpanch fell vacant, there was unexpired period of barely six

months. However, it appears that the competent authority thought that by the time the elections are held, the unexpired period would be substantively less than six months. The present writ petition was filed on 13.07.2020. It has been listed for preliminary hearing on 17.07.2020. Thus, on the day when the writ petition has come up for preliminary hearing, the remaining unexpired period is less than six months as the election to the office of Sarpanch of Gram Panchayat in the State of Haryana took place in the month of January, 2016. As per Section 3 of the 1994 Act, the term of the office bearer of the Gram Panchayat is five years. Thus, the elections are due to be held in January, 2021. In these circumstances, it would not be appropriate for this Court to direct the Election Commission to hold an election for the office of Sarpanch of the Gram Panchayat for the period which will be substantially less than six months. Even if this Court decides to issue notice in the writ petition for short duration, it would still take sometime to decide the writ petition. Notice of the petition will also have to be served on respondent No.5, the working Sarpanch.

In view thereof, this Court does not find it appropriate to interfere. Hence, the writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.07.2020*Pawan***(ANIL KSHETARPAL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**