

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4176-2021 (O&M)
Date of Order:22.02.2021

SOMESH AND OTHERS

..Petitioners

Versus

STATE OF HARYANA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Samarth Sagar, Addl. A.G.,Haryana

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing
on account of restricted functioning of the Courts.

The following question needs adjudication:-

*“Once the term of elected office bearers/Sarpanches of
the Gram Panchayat has come to an end, can a writ be
issued to facilitate their continuance in the offices only
because a new body of elected representative has not yet
been elected?”*

The petitioners are elected Sarpanches of various Gram
Panchayats in the State of Haryana. They have filed this writ petition with
the following substantive relief:-

*“i) Issue a writ in the nature of Certiorari for setting
aside the order dated 12.02.2021 (Annexure P-1) passed
by respondent No.1 vide which Administrators have been
directed to take the charge from the petitioners of the
post of Sarpanch”*

It is not in dispute that the Sarpanches/Panches of the Gram
Panchayats are elected for a period of 5 years as per Section 3 of the
Haryana Panchayati Raj Act, 1994 (hereinafter referred to as “the 1994
Act”).

Section 3 of the 1994 Act is extracted as under:-

“3. (1) Every Gram Panchayat, Panchayat Samiti and Zila Parishad unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer :

Provided that all the Gram Panchayats and Panchayat Samitis existing immediately on the commencement of the Constitution (Seventy-third Amendment) Act, 1992 shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Assembly.

(2) An election to constitute a Gram Panchayat, Panchayat Samiti and Zila Parishad, as the case may be, shall be completed—

(a) before the expiry of its duration specified in sub-section (1) ;

(b) before the expiry of a period of six months from the date of its dissolution :

Provided that where the remainder of the period for which the dissolved Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, would have continued is less than six months, it shall not be necessary to hold any election for constituting the Gram Panchayat, Panchayat Samiti or Zila Parishad for such period, as the case may be.

(3) A Gram Panchayat, Panchayat Samiti or Zila Parishad constituted upon the dissolution of a Gram Panchayat, Panchayat Samiti or Zila Parishad before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be would have continued under sub-section (1) had it not been so dissolved.

[(4) If a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, is not reconstituted before the expiration of its duration laid down in sub-section (1), it shall be deemed to have been dissolved on the expiry of the said duration and, thereupon, provisions of sub-section (2) of section 52, sub-section (1) of section 111 or sub-section (4) of section 158, as the case may be, shall be applicable.”

It is not in dispute that the term of the petitioners is going to come to an end on 23.02.2021.

Learned counsel for the petitioners contends that since the State has not taken steps to constitute a new body of elected representatives of

Gram Panchayats, therefore, the order passed by the respondent-State directing the Administrator/Block Development and Panchayat Officers of the area to take over the charge from the elected representatives is not correct.

Learned counsel for the petitioners further contends that Sub-Section 2 of Section 52 of the 1994 Act, is not applicable.

Learned counsel does not dispute that the period for which the writ petitioners were elected comes to an end on 23.02.2021. Once that is not in dispute, then they have no right to continue in the elected offices. Attention of this Bench has not been drawn to any provision conferring right on the elected Sarpanches/Panches to continue in the office once their term/tenure comes to an end. In absence of provision in the Act or the Rules framed thereunder, the office bearers have no right to continue in the offices after their tenure comes to an end only because next elections have not been held. In this case, the petitioners have not prayed that a direction be issued to hold fresh elections as mandated by the provisions of the Constitution as well as the 1994 Act.

In view thereof, no ground to issue the writ, as prayed for, is made out. Still further, in any case it is well settled that merely because in the order a wrong provision of the Act has been mentioned does not 'ipso facto' lead to set aside the same.

Disposed of accordingly.

February 22, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No