

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

CWP-31907-2024
Reserved on: 28.11.2024
Pronounced on: 13.12.2024

Nisha Devi
.....Petitioner

Versus

The State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Ramesh Kumar Jha, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana,
Ms. Kushaldeep K. Manchanda, Advocate and
Mr. Siddhant Arora, Advocate.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for quashing the impugned proceedings and order dated 13.11.2024 (Annexure P-7), passed by respondent No.5, whereby the no confidence motion introduced in the appositely convened meeting was declared to become successfully passed. Subsequent thereto the petitioner became removed from the post of Chairman, Panchayat Samiti, Morni, District Panchkula. She also prays for staying the operation of impugned proceedings and is seeking the staying of the order dated 13.11.2024 (Annexure P-7). She further prayed that the respondent No.5 be restrained from conducting elections to the post of Chairman, Panchayat Samiti, Morni, District Panchkula.

Facts of the case

2. The petitioner contested the election of Member, Panchayat Samiti, Morni, District Panchkula from Ward No.6 and won the election. There were total 10 members of Panchayat Samiti, Morni, District Panchkula. The petitioner having the majority was elected as Chairman of Panchayat Samiti, Morni, District Panchkula. During the tenure of 02 years, there has been no complaint of any sort against the work and conduct of the petitioner.

3. On 05.11.2024, 07 members namely (1) Kamal Singh from Ward No.3, (2) Sonia from Ward No.4, (3) Partap Singh from Ward No.5, (4) Poonam Kumari from Ward No.7, (5) Baldev Singh Rana from Ward No.8, (6) Kusum Lata from Ward No. 9 and (7) Sat Pal from Ward No.10, allegedly moved an application before the Deputy Commissioner, Panchkula, for immediately convening a meeting for the purpose of considering the passing of No Confidence Motion against the Chairman and Vice Chairman Panchayat Samiti, Morni, District Panchkula.

4. On the same day, the Deputy Commissioner, Panchkula passed the following orders on the (supra) application, whereby the ADC, Panchkula, was directed to do the needful.

“To issue notice for the meeting as per act after ensuring his/her satisfaction that pre-requisites are met for such a meeting under relevant act and rules and the respondent No.5 fixed the meeting on 13.11.2024.”

5. The notices were allegedly issued to all the members through registered post and the notices were also sent to all members through BD & PO, but owing to non-availability of members, in their

houses or on account of refusal, the notices were allegedly pasted on their respective houses.

6. In fact, the said story is averred to be completely concocted and is also averred to be falsified, from the fact, that notices were not sent to three members i.e. the petitioner as well as the one Gulab Singh from Ward No.1 and the one Anjana Sharma from Ward No.2, through WhatsApp, on 05.11.2024, though the notices are also shown to have been sent to all members through registered post on 05.11.2024. Although, notices are also shown to have been pasted on the houses of 07 members, but they are not shown to have been pasted on the house of the petitioner as well as on the houses of Gulab Singh and Anjana Sharma. Therefore, it is averred that once the notices are shown to have been pasted on the house of 07 members, thereby there emerges no valid reason for the non pasting thereof rather on the respective house(s) of the petitioner as well as of Gulab Singh and of Anjana Sharma. Resultantly, it is averred that the apposite non pastings, do engender some suspicion. The notices dated 05.11.2024 are also shown to have been pasted on the notice board of office of Deputy Commissioner, ADC as well as BD & PO, but the (supra) apposite pastings are also stated to be false.

7. On 13.11.2024, a meeting is shown to have been convened in the office of the Deputy Commissioner, Panchkula at 12:30 noon, wherein 07 members are shown to have participated and all the 07 members are alleged to have voted in favour of the No Confidence Motion. Since 07 members out of total 10 members have voted in favour of the No Confidence Motion, thus the same was declared to

become successfully passed on 13.11.2024, but irrespective of the non participation therein of three members.

8. Moreover, it is averred that without obtaining the apposite de-notification, from State Election Commission, the Deputy Commissioner, Panchkula through letter No.121-130 dated 18.11.2024 has arbitrarily fixed the election of new Chairman, on 26.11.2024, whereas, such an election can only be declared but only after obtaining the apposite de-notification from the State Election Commission, which however has not been obtained.

9. On the same day, the Deputy Commissioner, Panchkula vide another letter No.432-435 dated 18.11.2024 fixed the election of new Chairman on 25.11.2024 at 2:30 p.m.

10. On having knowledge of all these proceedings, the petitioner went to the office of Deputy Commissioner, and Addl. Deputy Commissioner, Panchkula, and demanded the copy of proceedings of meeting dated 13.11.2024 but she was not supplied the copy thereof. Accordingly, the petitioner sought the copy of proceedings dated 13.11.2024 under RTI Act-2005 from the office of PIO-cum-ADC, Panchkula, vide application dated 19.11.2024 (Annexure P-5).

11. The DD & PO Panchkula, vide its letter No.149-156 dated 20.11.2024 (Annexure P-6), addressed to all the 10 members, informed them that the meeting as was fixed for 26.11.2024 at 12:00 noon, stands postponed till further orders of the Election Commission, Haryana.

12. Since the meeting scheduled to be held on 26.11.2024 thus has been postponed till further orders of the State Election Commission, thereupon in response to application dated 19.11.2024, the petitioner has

been supplied on an application filed under RTI Act 2005, thus the copy of proceedings dated 13.11.2024 on 22.11.2024.

13. It is a matter of great concern that initially, the meeting was scheduled to be held on 26.11.2024 but on the same day, vide another letter of same date i.e. 18.11.2024, the meeting was rescheduled to be held on 25.11.2024 but later on vide letter dated 20.11.2024, the meeting as rescheduled on 26.11.2024 thus become postponed.

14. Since the respondents were adamant to conduct election of the new Chairman in a hot haste manner and without following due procedure, thereupon the petitioner made a representation dated 21.11.2024 to the State Election Commissioner, Haryana, alleging that she was illegally removed from the post of Chairman, on 13.11.2024, rather by introducing a flawed no-confidence motion. However, thereafters elections of new President was fixed as 26.11.2024 vide letter No.121-130 dated 18.11.2024, despite such an election could be so fixed but only after obtaining the apposite de-notification from the Election Commission. The petitioner has requested that proceedings for the election may kindly be promptly stayed and in future, in the event of the apposite de-notification becoming issued by the Election Commission, thereupons hers being an affected party, thus she be informed about the same, but in response she did not received any reply.

Submissions of the learned counsel for the petitioner

15. The action of the respondents is in violation of rule 10(4) of the Haryana Panchayati Raj Rules, 1995, (hereinafter referred to as ‘the Rules of 1995’) provisions whereof becomes extracted hereinafter,

“10. No confidence motion against Chairman, Vice-Chairman, President, Vice-President.

1) xxx

4) The voting in the meeting shall be by the secret ballot for which the presiding authority shall make the necessary arrangements. The presiding authority shall also record the proceeding of the meeting, setting forth therein.

a) the names of 1 members who gave the requisition and the date thereof;

(b) the dates on which the notice was issued and served under sub- rule (2);

(c) date, time and place of meeting;

(d) number of votes polled against the motion;

(e) number of votes polled in favour of motion; and

(f) result.”

16. Therefore he submits that, since it is very much clear from the above rule 10(4) of the Rules of 1995, that voting for the no-confidence motion should be held by secret ballot and not by the open raising of hands. He further submits that the above statutory contemplation is for ensuring the protection of Freedom of Expression, for Ensuring Fairness, Transparency and for endowing thereto Legitimacy and besides from Preventing Political Interference. Although in the present case, it is alleged that voting was held through ballot papers, but it is only an eye wash. Only 07 persons who had moved the application for no confidence motion were called in the meeting, whereas, the petitioner as well as two more persons were neither informed nor was called to participate in the meeting and to the knowledge of the petitioner, the no confidence motion was passed through open raising of hands by only 07 members.

17. He further submits that no notice was ever served upon the petitioner as well as other members before holding the meeting on 13.11.2024. Moreover, since the proceedings have been conducted at the behest of the Ruling Party besides when all the relevant provisions of

breached, thereupon the said convened meeting is flawed. Resultantly, it is contended that the entire proceedings and the declaration of results, thus become completely vitiated.

Reasons for rejecting the submissions of the learned counsel for the petitioner

18. Be that as it may, the (supra) ground raised by the present petitioner, that the convening of the meeting for conducting elections to the democratic offices concerned, is vitiated on the ground, that the apposite denotification was not issued, thus does not hold any force, as no rule to the said effect has been placed on record.

19. Consequently, the further effect thereof, but is that, the convening of the meeting on 13.11.2024, wherein, the no confidence motion becomes declared to become successfully passed against the present petitioner, rather remains unvitiating, thus merely on the purported ground that the apposite denotification is not issued. The further effect thereof, is that, the pursuant thereto meetings, as become convened for enabling the elected members of the electoral college to elect the new Chairman, Panchayat Samiti, Morni, District Panchkula, thus naturally also not becoming vitiated, nor also if in the said convened meeting a new Chairman becomes elected, thereby the election of the new Chairman, Panchayat Samiti, Morni, District Panchkula, by the members of the electoral college, also does not become rendered flawed.

20. Even otherwise, the said non issuance of the apposite denotification would become consequential, but only if the present petitioner, succeeds in establishing, the espousal, that contrary to the contemplations made in the hereinabove extracted rules, whereby it

rather the members of the electoral college proceeding to successfully pass the no confidence motion, through the open raisings of hands. However, even the said espousal becomes falsified from a reading of the impugned order, relevant portion whereof becomes extracted hereinafter.

“After that, voting was started at 12:45 p.m. Every member had cast his/her vote in favour of no-confidence motion against President, Panchayat Samiti, Morni and this vote was put inside the election box.

After voting, 07 votes were found to have been cast in favour of no-confidence motion against President, Panchayat Samiti Mornni while 00 vote was found to have been cast against the same.

There being 2/3rd majority in favour of no-confidence motion against President, Panchayat Samiti, Morni i.e. vote having been cast by 07 members, the motion became successful.”

21. Imperatively, an incisive reading of the above echoings, as occur in the impugned order, openly suggest, that the members of the electoral college successfully passed the no confidence motion, through casting secret ballots. In sequel, the arguments (supra) raised by the learned counsel for the petitioner, that the said evidently adopted appropriate procedure, rather purportedly derogated, from thus the adoptions of the contra thereto impermissible procedure vis-a-vis the members of the electoral college, rather passing the no confidence motion through the open raising of hands, but naturally suffers a casualty.

22. Moreover, since it is accepted by the learned counsel for the petitioner that though the total strength of the electoral college was 10, and, from the said strength of 7 members participated and also theirs

through casting secret ballots, ensured the successful passage of the no confidence motion, as became tabled against the present petitioner in the convened meeting. Resultantly, therebys even if 3 members of the electoral roll, did not participate, on account of theirs purportedly not being well informed about the scheduled date for the convening of the apposite meeting, yet thus the said ground also becomes rendered insignificant.

Final Order of this Court

23. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

13.12.2024
Ithlesh

(SUDEEPTI SHARMA)
JUDGE

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