

## CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.**JAI LAL,—Petitioner.**Versus**THE STATE OF HARYANA AND OTHERS,—Respondents.***Civil Writ No. 821 of 1968**

July 17, 1969

*Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Sections 17, 18 and 20—Punjab Panchayat Samitis (Vacation of office by Chairman and Vice-Chairman) Rules (1963)—Rules 3 and 6—Removal of Chairman by a resolution and election of new Chairman at a meeting of a Samiti—Such meeting—Whether must be called by the Deputy Commissioner—Vice-Chairman—Whether competent to summon or preside over the meeting—Notices issued under Rule 6—Deputy Commissioner not issuing any direction—New Chairman elected after removal of the old one—Such election—Whether valid—Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules (1961)—Rule 3—Whether applies to election held under sections 18 and 19.*

*Held*, that section 17 of Punjab Panchayat Samitis and Zila Parishads Act, 1961, provides for the manner of the election of the Chairman and Vice-Chairman when the Panchayat Samiti is constituted and section 20 provides that the provisions of section 17 will apply to the election of Chairman or Vice-Chairman on the occurrence of any vacancy in that office otherwise than in the manner specified in section 18 or section 19 of the Act. Section 18 provides that if by a resolution, passed by not less than two-thirds of the number of its members, the Panchayat Samiti decides at a meeting convened in the manner prescribed, that he shall vacate his office, the Chairman or Vice-Chairman shall cease to hold that office, and in such a case the Panchayat Samiti shall elect a new Chairman or Vice-Chairman at the same meeting at which the aforesaid resolution is passed. It is thus evident that the manner of election provided in section 17 does not apply to the election of Chairman or Vice-Chairman when either is removed by resolution passed by the Samiti. It is not necessary that the meeting for the election of a new Chairman in place of the old one who has been removed under section 18 must be summoned by the Deputy Commissioner in accordance with section 17 of the Act. The Vice-Chairman of the Samiti can summon such a meeting and preside over it. (Para 4)

*Held*, that a notice under Rule 6 of Punjab Panchayat Samitis (Vacation of office by Chairman and Vice-Chairman) Rules, 1963, is issued to the members by the Vice-Chairman summoning the meeting and that notice contains the agenda for the motion to be considered at that meeting. There is nothing for the Deputy Commissioner to do for convening that meeting.

Jai Lal v. The State of Haryana, etc. (Tuli, J.)

Since a Chairman or Vice-Chairman in place of the Chairman or Vice-Chairman, who is removed at the meeting, has to be elected in that very meeting, it is open to the Deputy Commissioner to direct that if 'No Confidence Motion' is carried and the item with regard to the election of a new Chairman or Vice-Chairman is to be considered, the meeting shall be presided over by a person nominated by him, but if he does not give any such direction, the meeting which passes the 'No Confidence Motion' can elect a new Chairman or Vice-Chairman in place of the one removed. The election of the new Chairman is perfectly valid and legal. (Para 6)

Held, that in view of the provisions of section 20 of the Act, the Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961, can only refer to elections held either under section 17 or section 20 of the Act and not to elections held under section 18 or section 19 of the Act. The meeting for the removal of the Chairman or for the election of his substitute under section 18 of the Act had to be summoned by the Presiding Officer as defined in Rule 2(d) of the Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961. (Para 5)

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus, prohibition or any other appropriate writ, order or direction be issued quashing the proceedings of the Panchayat Samiti, Jind, held by Respondent No. 6 to 29 and resolution No. 52 adopted in the meeting of the Panchayat Samiti removing the petitioner from the office of the Chairman and the Panchayat Samiti, Jind, electing Respondent No. 7 as Chairman of the Panchayat Samiti, Jind, in place of the petitioner and directing that the election of the Respondent No. 7 as Chairman of the Panchayat Samiti was illegal, ultravires and void and that the petitioner continues to be the duly elected Chairman, of the Panchayat Samiti and for-barring the respondent No. 2 to 29 for restraining or interfering with the petitioner's right to continue as Chairman of the Panchayat Samiti for the full term of the office of the Chairman of the Panchayat Samiti, Jind.*

M. S. JAIN, H. L. SARIN AND A. L. BAHL, ADVOCATES, for the Petitioner.

P. S. JAIN, V. M. JAIN AND J. S. NARANG, ADVOCATES, for Respondents No. 2 to 29.

HARBHAGWAN SINGH, ADVOCATE, for Respondents 6, 11, 12, 14, 17 to 20 and 22.

#### JUDGMENT.

TULI, J.—The petitioner was elected as a Primary Member of the Panchayat Samiti, Jind, in January, 1965. Thereafter he was elected Chairman of the said Samiti on February 16, 1965. On January 18, 1968, some members of the Panchayat Samiti sent a requisition to

respondent No. 6, who was the Vice-President of the Samiti, for convening a meeting of the Panchayat Samiti under section 18(1) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Act), for considering their motion requiring the petitioner to vacate the office of the Chairman of the Panchayat Samiti. Respondent No. 6 summoned a meeting of the Panchayat Samiti for January 31, 1968, at 2.30 p.m. for considering that motion. Notices of the meeting were issued by respondent No. 6 on January 19, 1968. The petitioner filed a civil suit in the Court of Subordinate Judge, 1st Class, Jind, on January 29, 1968, for permanent injunction against all the members of the Panchayat Samiti, Jind, restraining them from holding the meeting summoned for January 31, 1968. The learned Subordinate Judge granted an ad-interim injunction and respondent No. 7 filed an application for vacating the same on January 30, 1968. That application was fixed for arguments on the following day. During the course of the arguments the petitioner tendered his resignation and thus no meeting was held on January 31, 1968. He, however, withdrew his resignation the following day on the ground that it had been obtained from him under coercion and undue influence by misrepresenting the facts.

(2) On February 5, 1968, eleven members of the Panchayat Samiti again sent a motion under Rule 3 of the Punjab Panchayat Samitis (Vacation of Office by Chairman and Vice-Chairman) Rules, 1963, for the removal of the petitioner from the office of the Chairman of the Panchayat Samiti, Jind. On receipt of this requisition, respondent No. 6 issued notices to all the members on February 6, 1968, for the meeting to be held on February 14, 1968. Notices to five members were served personally and to the others notices are alleged to have been sent under certificates of posting. The petitioner filed an application in the Court of the Subordinate Judge where his suit was pending for an ad-interim injunction restraining the members of the Samiti from holding any meeting on February 14, 1968. On February 13, 1968, in the early hours of the day, the learned Subordinate Judge granted ad-interim injunction, but vacated the same in the afternoon on an application made by respondent No. 7. The meeting was thus held on February 14, 1968, as summoned, and all the members excepting the petitioner attended the same. There were in all twenty-five regular members and two *ex-officio* members, out of which twenty-four regular members and two *ex-officio* members attended. They passed unanimously the

resolution removing the petitioner from the office of the Chairman. In his place, respondent No. 7 was unanimously elected as the Chairman of the Panchayat Samiti. The election of respondent No. 7 as Chairman was gazetted on the following day. The petitioner then filed the present writ petition in this Court on February 28, 1968, which was admitted on the following day, but stay was refused.

(3) Returns to the writ petition have been filed by respondents No. 2, 5, 6, 7 and 19 and by respondent No. 17 on behalf of respondent No. 8 to 29.

(4) The learned counsel for the petitioner has argued that the meeting held on February 14, 1968, was neither valid nor legal, as it contravened the mandatory provisions of the Act and the Rules. The learned counsel has referred to sections 17 and 20 of the Act. Section 17 provides for the manner of the election of the Chairman and Vice-Chairman when the Panchayat Samiti is constituted and section 20 provides that the provisions of section 17 will apply to the election of Chairman or Vice-Chairman on the occurrence of any vacancy in that office otherwise than in the manner specified in section 18 or section 19 of the Act. Section 18 provides that if by a resolution passed by not less than two-thirds of the total number of its members the Panchayat Samiti decides at a meeting, convened in the manner prescribed, that he shall vacate his office, the Chairman or Vice-Chairman shall cease to hold that office, and in such a case the Panchayat Samiti shall elect a new Chairman or Vice-Chairman at the same meeting at which the aforesaid resolution is passed. It is thus evident that the manner of election provided in section 17 does not apply to the election of Chairman or Vice-Chairman when either is removed by resolution passed by the Samiti. The petitioner had been removed from the office of the Chairman under section 18 and the new Chairman in his place had to be elected at that meeting. It cannot, therefore, be held that this meeting for the election of a new Chairman in place of the petitioner had to be summoned by the Deputy Commissioner in accordance with section 17 of the Act and that the Vice-Chairman could not summon the meeting or preside over it. I, therefore, find no force in this argument of the learned counsel.

(5) The learned counsel has then referred to Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961. Rule 3 of these Rules states that the election of the

Chairman and Vice-Chairman of a Panchayat Samiti shall be held in the office of the Panchayat Samiti or such other place as may be specified in that behalf by the Presiding Officer, who shall convene and preside over the meeting called for that purpose. 'Presiding Officer' has been defined to mean the Deputy Commissioner concerned, or such Gazetted Officer, not below the rank of Extra Assistant Commissioner, as may be appointed by the Deputy Commissioner for the purposes of these Rules. In view of the provisions of section 20 of the Act, these Rules can only refer to elections held either under section 17 or section 20 of the Act and not to elections held under section 18 or section 19 of the Act. It cannot, therefore, be held that the meeting for the removal of the Chairman or for the election of his substitute under section 18 of the Act had to be summoned by the Presiding Officer as defined in Rule 2(d) of the Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961, referred to above. There is thus no force in the argument of the learned counsel that the meeting had to be called by the Deputy Commissioner or any Gazetted Officer who might have been appointed by him.

(6) The learned counsel for the petitioner has also relied on Rules 3, 4, 6 and 7 of the Punjab Panchayat Samitis (Vacation of Office by Chairman and Vice-Chairman) Rules, 1963. Rule 3 provides that a notice of intention to move a resolution, requiring the Chairman to vacate his office, has to be addressed to the Vice-Chairman who has to convene a meeting within fifteen days of the date of receipt of the notice under Rule 4. Rule 6 gives the mode of serving notice on the members and Rule 7 is as under :—

“As soon as the notices under Rule 6 have issued, the Deputy Commissioner concerned also will be informed of the time, date and place of the meeting so as to enable him to make arrangements for holding election of Chairman or Vice-Chairman, or both, as the case may be, as required under the proviso to sub-section (1) of section 18 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, if necessary.”

The learned counsel interprets this Rule to mean that on receipt of intimation of the notice issued under Rule 6, the Deputy Commissioner has to make arrangements for holding a meeting for the election of Chairman or Vice-Chairman. I regret my inability to

agree with this interpretation. It is to be noted that notice under Rule 6 is issued to the members by the Vice-Chairman summoning the meeting and that notice contains the agenda for the motion to be considered at that meeting. There is nothing for the Deputy Commissioner to do for convening that meeting. Since a Chairman or Vice-Chairman in place of the Chairman or Vice-Chairman who is removed at the meeting has to be elected in that very meeting, it is open to the Deputy Commissioner to direct that if 'No-Confidence Motion' is carried and the item with regard to the election of a new Chairman or Vice-Chairman is to be considered, the meeting shall be presided over by a person nominated by him, but if he does not give any such direction, the meeting which passes the 'No-Confidence Motion' can elect a new Chairman or Vice-Chairman in place of the one removed. In the instant case the Deputy Commissioner, Jind, has filed his return and he has stated that he received a notice of the time, date and place of the meeting and he deputed Shri R. S. Aggarwal, Executive Magistrate, 1st Class, to attend the meeting as observer and to submit a report. Shri Aggarwal attended the meeting and submitted a report, a copy of which is annexed as Annexure 'A' to the return of the Deputy Commissioner. In that report Shri Aggarwal stated that the meeting was held smoothly and the resolution removing the petitioner from the office of Chairman was passed unanimously. Similarly respondent No. 7 was elected as Chairman unanimously and the meeting in that connection too had been held smoothly. Every member other than the petitioner attended. I, therefore, hold that the Deputy Commissioner could have issued the directions for the holding of the meeting for the election of the new Chairman in place of the petitioner once he was removed, but as he did not do so, the meeting, which had been convened by the Vice-Chairman and which was held on February 14, 1968, was within its right to elect a new Chairman. The election of respondent No. 7 as new Chairman is, therefore, perfectly valid and legal. It does not contravene any provision of the Act or the statutory rules on the subject of election of a new Chairman in place of the one who has to vacate his office.

(7) The learned counsel for the petitioner has submitted that the meeting held on February 14, 1968, was illegal because the notice was not served on all the members in accordance with Rule 6 of the Punjab Panchayat Samitis (Vacation of Office by Chairman and Vice-Chairman) Rules, 1963. It is stated that the notice had to be issued not less than seven days before the appointed date of the meeting and it had to be served on the members personally

by giving or tendering it to them. That was done only in the case of five members. To the others notices were issued under certificates of posting. Notice through post could be sent only if any member did not reside in the Panchayat Samiti area and his address elsewhere was known to the Chairman or Vice-Chairman and the notice had to be sent by registered post. There is no provision to send the notice under certificate of posting. If a member is not found at his place of residence, the notice has to be left at his place, but cannot be issued to him through post. I am of the opinion that the sending of the notices by post under certificates of posting and not delivering them at the place of residence of the members was a mere irregularity of which no complaint can be made by the petitioner, because all the members attended the meeting. They have filed their written statements and have not complained that they were in any way prejudiced by the manner of the serving of the notice. The petitioner knew about the holding of the meeting as he had made an application for ad-interim injunction restraining the holding of that meeting. Moreover from the proceedings held at that meeting I find that excepting the petitioner every other member attended and voted for the petitioner's removal and for the election of respondent No. 7 as Chairman. It is also apparent that the petitioner did not have majority of the members on his side and that is why he did not want to face the 'Motion of 'No-Confidence'. No injustice—much less manifest injustice—has been done to the petitioner and I am not inclined to hold that the meeting was illegal because of the irregularity committed in the mode of service of the notice on the members.

(8) For the reasons given above, I find no merit in this writ petition, which is dismissed. But in the circumstances of the case I do not wish to burden the petitioner with costs.

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K. S. K.

APPELLATE CIVIL

Before A. D. Koshal, J.

JAGDEV SINGH AND OTHERS,—Appellants.

Versus

PRITAM SINGH AND ANOTHER,—Respondents.

**Regular Second Appeal No. 573 of 1959**

July 25, 1969

*Law of Torts—Damages for malicious prosecution on a Criminal charge—Code of Criminal Procedure (V of 1898)—Section 107—Proceedings under—Whether amount to Criminal charge—Assessment of damages—Person being*