



In the High Court of Punjab and Haryana at Chandigarh

CWP-22662-2024 (O&M)
Date of Decision: 03.10.2024

Jaswinder Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

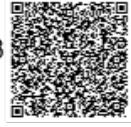
Present: Mr. Rajdeep Singh Gill, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

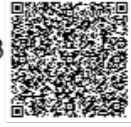
1. In the instant petition, the petitioner seeks quashing of the impugned notification dated 27.2.2024 (Annexure P-8), and, the impugned order dated 28.2.2024 (Annexure P-2) passed by the respondents concerned, whereby the Gram Panchayats, whose term of five years is completed, have been ordered to be dissolved from the date of their first meeting in terms of Article 243-E of the Constitution of India and Section 15 of the Punjab Panchayati Raj Act, 1994 (for short 'the Act of 1994'), and, Administrators have been appointed for the Gram Panchayats. The petitioner has also sought the quashing of the impugned order dated 21.5.2024 (Annexure P-13) passed by the respondent concerned, whereby the representation of the petitioner has not been considered.

2. The learned counsel for the petitioner submits, that the time of election for the post of Sarpanch of Gram Panchayat of village Bhamme



Kalan, District Mansa, petitioner Jaswinder Kaur and her opponent namely Jasbir Kaur had submitted their nomination papers for the post of Sarpanch of the village concerned, however their nomination papers were rejected, and, the post of Sarpanch of village (supra) remained vacant. Subsequently, the petitioner approached the authorities concerned, to conduct the bye-elections, however, when the authorities concerned, failed to do so, thereby the petitioner approached this Court by way of CWP No. 35054 of 2019, which became disposed of by this Court on 4.12.2019, on the statement of the learned State counsel, that the bye-election for the post of Sarpanch of village Bhamme Kalan, District Mansa, would be conducted expeditiously along with the bye-elections to the Legislative Assembly. It is further submitted, that when the authorities concerned, even after the passing of the order (supra) failed to conduct the bye-elections for the post of Sarpanch of the village (supra), thereupon the petitioner filed COCP No. 399 of 2021, whereons, notice became issued to the respondents concerned. In the meantime, the authorities concerned, preferred a miscellaneous application bearing No. CM-1127-CWP-2022 seeking extension of time to conduct the bye-elections. Vide order dated 13.1.2023 (Annexure P-2), the said application became disposed of, but with a direction upon the respondents concerned, to conduct the bye-elections to the Gram Panchayat concerned, but within a period of two months. Since the respondents authorities again failed to conduct the bye-elections in the time bound manner (supra), therefore, this Court summoned the State Election Commissioner, Punjab, and imposed a cost of Rs. 50,000/-, upon him, for his deliberately and willfully disobeying the order (supra).

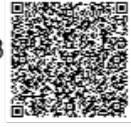
3. The learned counsel further submits, that subsequently, the bye-



election for the post of Sarpanch of Gram Panchayat Bhamme Kalan was held on 24.12.2023, and, the petitioner was elected as Sarpanch of the said Gram Panchayat, and, the first meeting of the Gram Panchayat, village Bhamme Kalan was held on 5.1.2024.

4. Be that as it may, during the pendency of the contempt petition (supra), thus on 26.5.2022, respondent No. 6 called the meeting of the elected members of the Gram Panchayat, village Bhamme Kalan, and, in the said meeting of the members of the Gram Panchayat, one Gurmeet Kaur was elected as the authorized Panch of the Gram Panchayat concerned. The learned counsel further submits, that vide the impugned order, the respondent concerned, has dissolved the gram Panchyats, who have completed the tenure of 5 years from the date of its first meeting and administrators became appointed vide Annexure P-9. Being aggrieved therefrom, the petitioner preferred CWP no. 6554-2024 before this Court. However, on 21.3.2024, the said petition was disposed but with a direction upon the petitioner to make a fresh representation, whereafter the respondent concerned became directed to decide the said representation within two weeks from the date of makings of such a representation. Pursuant to the said direction, the petitioner moved a representation Annexure P-12 before the authorities concerned. However, the representation (supra) vide order dated 21.05.2024 rather became dismissed by the authorities concerned.

5. The learned counsel for the petitioner also submits, that since the first meeting of the Gram Panchayat concerned, had taken place on 5.1.2024, and, also subsequently on 26.5.2002, therefore, the tenure of five years starts from 5.1.2024 or from 26.5.2002. Consequently, it is prayed that the tenure of five years of the Gram Panchayat concerned, did not expire,



and, that the impugned notification (supra) and the impugned order (supra) be quashed and set aside.

6. On the other hand, the learned State counsel submits, that though the election for the post of Sarpanch and other panches was declared to become held in the year 2018. However, owing to the rejection of the nomination papers of the petitioner and other contesting candidates rather the seat of the Sarpanch remained vacant. However, yet the other Panches of the Village Panchayat were elected on 27.02.2019, and in the first meeting of the Panchyat also then became held in the presence of BDPO Jhunir and in the presence of the Panchyat Secretary. Consequent thereto the gram panchayat was dissolved on 27.02.2024 (Annexure P-8), in terms of the provisions carried in Article 243-E of the Constitution, and, in terms of Section 15 of the Act of 1994. Moreover the Election notification regarding the filling up of the the post of the Gram Panchayat Bhamme Kalan, clearly states it to be a Bye-Election.

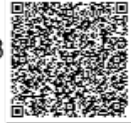
7. He further submits, that the election were also held as per Section 22 of the Act of 1994, wherein, particularly in sub section 1 thereof, it becomes specifically spoken, that whenever a vacancy occurs by death, resignation, removal or otherwise of a Sarpanch, thereupon the vacancy shall be filled up by way of bye-elections.

8. The provisions of Article 243-E of the Constitution of India becomes extracted hereinafter:-

243E. Duration of Panchayats, etc.

(1) Every Panchayat, 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.

(2) No amendment of any law for the time being in force shall



have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed

(a) before the expiry of its duration specified in clause (1);

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

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.”

9. The provisions of Sections 14, 15 and 22 of the Act of 1994 also become extracted hereinafter.

“14. Term of office of Sarpanch and Panch.

Term of offices of Sarpanch and Panch of a Gram Panchayat shall, have as otherwise provided in this Act, co-terminate with the term of the Gram Panchayat.

15. Term of office of Gram Panchayat

(1) Every Gram Panchayat unless dissolved earlier under this Act, shall continue for a term of five years from the date of its first meeting.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Gram Panchayat which is functioning immediately before such amendment, till the expiration of its duration specified in sub-section (1).

(3) An election to constitute a Gram Panchayat shall be completed-

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

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



Provided that where the remainder of the period for which the dissolved Gram Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Gram Panchayat for such period.

(4) *A Gram Panchayat constituted upon the dissolution of a Gram Panchayat before the expiration of its duration, shall continue only for remainder of the period for which the dissolved Gram Panchayat would have continued under sub-section (1) had it not been so dissolved.*

x x x x

22. Filling of casual vacancies of Sarpanch and Panches-

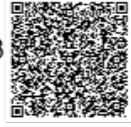
(1) *Whenever a vacancy occurs by death, resignation, removal or otherwise of a Sarpanch or of a Panch the vacancy shall be filled up by way of election:*

Provided that if the vacancy relates to the Scheduled Castes, Backward Classes or to Women, the vacancy shall be filled up out of the persons belonging to the category to which category of persons the vacancy relates.

(2) *A person elected to fill a casual vacancy under sub-section (1) shall be elected for the remainder of his predecessor's term of office :*

Provided that where the remainder of period for which a Panch or Sarpanch is to be elected is less than six months, it shall not be necessary to hold any election under this section to fill such a vacancy.”

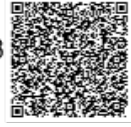
10. Sub Article 1 of Article 243E of the Constitution of India explicitly declares, that the term of every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years, from the date appointed for its first meeting and no longer. The conclusion therefrom, is that, the term of every democratically elected Gram Panchayat, shall last upto a period of 5 years, unless dissolution thereof earlier takes place, through the valid invocation of any subsisting law. Moreover, thereupons a conclusion also



becomes sparked, that the tenure of 5 years whereupto the term of a democratically elected Gram Panchayat is to last, thus shall be computed from the date of the first meeting and shall not last beyond the said term of 5 years.

11. Moreover, Section 14 of the Act of 1994, declares that the term of office of Sarpanch and of the Panch of a Gram Panch, shall co-terminate with the term of the Gram Panchayat. Furthermore, Section 15 of the Act of 1994 also carries an explicit speaking, that the term of every Gram Panchayat, unless validly dissolved earlier under the Act of 1994 rather shall continue for a term of 5 years from the date of its first meeting. Cumulatively therebys there is co-termini inter se the tenure of functionings of the democratically elected Sarpanch and of the Panches to Gram Panchayat, thus vis-a-vis the term of the Gram Panchayat, term whereof is to be not lasting for a period more than 5 years, since the apposite first meeting takes place. Resultantly, any democratically elected Sarpanch or Panch to a Gram Panchayat, thus cannot claim that his/her term is to last longer, than the term of the Gram Panchayat concerned, nor can any Sarpanch or a Panch who becomes elected to a Gram Panchayat, can claim that beyond the period of 5 years since general elections, or bye-elections become conducted to the Gram Panchayat concerned, rather he or she is to continue, nor can claim that beyond five years from the first apposite meeting, thus he/she is to be permitted to serve as such. In case such a latitude is provided, therebys the effective declarations (supra) as made both in sub Article 1 of Article 243E of the Constitution of India and also in Sections 14 and 15 of the Act of 1994, would become rendered completely ineffective, and/or would become redundant. The said ill-effectivity or redundancy is to be avoided.

12. Even otherwise, sub Section 1 of Section 22 of the Act of 1994, thus naturally falls in alignment with the explicit declarations (supra), to the



extent, that whenever any vacancy occurs by death, resignation or removal or otherwise of a Sarpanch or Panch, thereupon the so created vacancy shall be filled up by way of election. The signification to be imparted to the above statutory provision, is naturally that, when any democratically elected Sarpanch or Panch dies, resigns or is removed, thereupon the vacancy which become so created by the occurrence of the events (supra), would result in bye-elections, being held. However, yet the conducting of bye-elections, in the event of the above situations arising, thus would not endow any right either to the Sarpanch or to the Panch, who is elected in a bye-election, to claim that he/she be permitted to continue for 5 years from the date of the conducting of such bye-elections or from the date of holding of the first apposite meeting, as arises on accrual of situation (supra), as therebys the mandate enclosed in sub Article 1 of Article 243E of the Constitution of India and also in Sections 14 and 15 of the Act of 1994, would become completely defeated, besides would lead to ill redundancy thereof becoming generated.

13. Though, in the instant case the vacancy arose not on account of death, resignation or removal of the Sarpanch or of the Panch, but arose on account of delays in the holding of elections. The said became spurred from the rejection of nomination papers, whereafter through orders (supra) becoming made by this Court, to validly conduct bye-elections, thus the bye-elections became held. Consequently, if bye-elections were conducted on account of rejection of the nomination papers and when the conducting of the said bye-elections were under the orders passed by this Court, on 13.01.2023 in CM-1127-CWP-2022 in CWP-35054-2019. Resultantly, the conducting of bye-elections but in the event of the nomination papers becoming rejected at the initial stage, but would fall within the ambit of the statutory coinage “or otherwise” as occurs in sub Section 1 of Section 22 of the Act of 1994.



14. Therefore, the present petitioner who became elected as a Sarpanch in a bye-election, which was conducted in the year 2023, thus cannot claim that she is to be bestowed with a right to continue for a period of 5 years from the date of hers becoming elected as Sarpanch, or from the date of the apposite first meeting being held, as therebys the purposeful explicit declaration carried in sub Article 1 of Article 243E of the Constitution of India and also in Sections 14 and 15 of the Act of 1994, would become completely defeated.

Final order

15. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned notification (Annexure P-8) and the impugned order (Annexure P-9) are maintained and affirmed.

16. The miscellaneous application(s), if any, is/are also disposed of.

**(SURESHWAR THAKUR)
JUDGE**

**(SUDEEPTI SHARMA)
JUDGE**

October 03, 2024
Gurpreet/Ithlesh

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