
(1982) 08 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.M.P. (M) No. 70 of 1981

Amar Nath

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 19-08-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Himachal Pradesh General Clauses Act, 1968 — Section 2(25)
Himachal Pradesh Panchayati Raj Act, 1968 — Section 168, 172, 9(5)

Citation : AIR 1982 HP 123 : (1982) 11 ILR HP 562

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : Ramesh Chand, for the Appellant; L.S. Panta, Dy. A.G. and Kultar Chand Rana, for the Respondent

Final Decision : Dismissed

Judgement

Vyas Dev Misra, C.J.—This is a petition under Article 227 of the Constitution of India challenging the orders passed by the Divisional Commissioner Kangra Division, Dharamsala and the Additional Deputy Commissioner, Dharamsala rejecting the petitioner's application for amendment.

2. The relevant facts are these. There was an election of Pradhan of Gram Panchayat Khaira. The petitioner was one of the candidates. However, it was Jagjiwan Paul, respondent No. 3, who won the election and became the Pradhan. The petitioner filed an election petition u/s 168 of the Himachal Pradesh Panchayati Raj Act, 1968 (referred to as the Act). Various grounds challenging the election were raised. It may be noticed that the result of the election was declared on 20-11-1978, immediately after the elections were held on the same day. The election petition could be filed within a period of 30 days of the publication of the result. The application for amendment was filed on 9-7-1980, that is, long after the period of limitation for filing the election petition had expired.

3. Now, the amendment asked for may be noticed. By the application for amendment a new ground for challenging the election was sought to be introduced. This ground reads :

"2-A. That the respondent was a whole time salaried servant of Kasba Khaira Agricultural Co-operative Service Society at the time of filing his nomination papers and at the time of polling. Thus the respondent never qualified to contest the election of Pradhan of Gram Panchayat Khaira u/s 9 of the Act. This fact was deliberately concealed by the respondent at the time of filing nomination papers and afterwards."

Mr. Ramesh Chand, learned counsel for the petitioner, contends that though the amendment asked for was indeed a belated one but, in the interest of justice, it should have been allowed and the party compensated in terms of costs. In the instant case, as already observed, a valuable right had accrued to the petitioner inasmuch as that after the expiry of the period of limitation, his election could not be challenged on a ground which was not the basis of the election petition. By allowing the amendment, this right would have been taken away and it cannot be compensated in terms of money.

4. My attention has been drawn to two judgments of the Punjab and Haryana High Court. The first is reported in *Kesho Ram v. Barbhagwan Singh* 1967 Cur LJ 812. This case was under the Representation of the People Act, 1951. It was observed that if the petitioner had asked for amendment by introducing a ground for setting aside the election which was not found in the original petition, that amendment could not have been allowed. The next case is of *Inder Nath Bassi v. The Sub-Divisional Magistrate, Nawanshahr* AIR 1976 Pan 90. In that case S. D. M. had allowed the amendment of the election petition so as to introduce a new ground for setting aside the election. The ground sought to be introduced was one which would have disqualified the successful candidate from contesting the election. It may be noticed that the election was held under the Punjab Gram Panchayat Act which is similar to one which is in force in this State. It was found that the amendment sought to be introduced in respect of the alleged disqualification of the successful candidate could have been made a ground for setting aside the election at the time when the election petition was filed, and that the amendment could not be allowed after the time for filing the election petition had expired.

5. The application for amendment made by the petitioner was, therefore, rightly rejected.

6. Even on the question whether the amendment sought for is relevant or not, my attention has been invited to Section 9 (5) (g) of the Act which prescribes the disqualification. The disqualification consists of the candidate being "a whole time salaried servant other than the persons employed casually or on daily wages, of any local authority or State Government or the Union of India." Mr. Ramesh Chand contends that being a salaried servant of Kasba Khaira Agricultural Co-

operative Service Society the respondent is either a salaried servant of the local authority or State Government. Now the words "local authority" are defined by Section 2 of the Himachal Pradesh General Clauses Act, 1968. Sub-section (25) of Section 2 reads :

"Local authority shall mean a municipal committee, district board, zila parishad, panchayat samiti, notified area committee, gram panchayat, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

A co-operative society does not obviously fall under the definition of local authority. It may be noticed that this definition is exhaustive. After specifying various bodies it refers to an authority being legally entitled to or entrusted by the government with the control or management of municipal or local fund. I have not been shown how a cooperative body is entitled to control or manage a municipal or local fund. Therefore, respondent No. 3 cannot be said to be a salaried servant of a local authority.

7. The only reason why Mr. Ramesh Chand insists that respondent No. 3 is a salaried servant of the State is that the cooperative societies are under the State Government. To me it appears to be a farfetched argument. Admittedly, the co-operative societies are supervised by the State Government. But then the question is whether a person who is employed by the society as a whole time servant can be said to be a "salaried servant of the State Government". Before a person can be said to be a salaried servant of the State Government, the pay of that servant must come out of the funds of the State. I am informed that indeed the salaries of whole time government employees are paid out of the consolidated fund of the State. Be that as it may, I have not been shown that the salaries of the whole time employees of the co-operative societies are being paid out of the funds of the State. Therefore, respondent No. 3 cannot be said to fall under the disqualification mentioned in Clause (g) reproduced above. From that point of view, the amendment sought was indeed frivolous.

8. The result is that the application is dismissed with costs.