
(1972) 10 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2669 of 1972

Anup Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-10-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Agricultural Produce Markets Act, 1961 — Section 2
Punjab Gram Panchayat Act, 1952 — Section 5
Punjab Panchayat Samitis and Zila Parishads Act, 1961 — Section 5
Representation of the People Act, 1951 — Section 11

Citation : AIR 1973 P&H 472

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Judgement

1. This is a petition under Articles 226 and 227 of the Constitution. The petitioners have been elected as Primary Members of the Panchayat Samiti, Jind. Respondent No. 4 was nominated as a member of the Market Committee, he was duly elected as a member of the Panchayat Samiti, Jind. A meeting of the elected members of the Panchayat Samiti was held on August 3, 1972, for co-opting five members of the Samiti representing the scheduled castes and women folk. The present petition has been filed by the petitioners challenging the nomination of respondent No. 4 as also the co-option of respondents Nos. 5 to 9, mainly on four grounds.

Firstly, it is alleged that respondent No. 4 contested election to the Haryana Legislative Assembly from the Julana constituency in the year was challenged by Shri Dal Singh, the defeated candidate, whose petition filed under the Representation of the People Act succeeded. Respondent No. 4 was held guilty to have committed corrupt practices and he was disqualified for a period of six years. It is stated that u/s 11A of the Representation of the People Act (hereinafter called the People Act) he was disqualified for voting at any election.

Secondly, it is urged that the Sarpanches and Panches elected under the Punjab

Gram Panchayat Act are eligible to be elected as members of a Panchayat Samiti. u/s 5(a) of this Act, a person who is not qualified to be elected as a member of the Legislative Assembly cannot be elected as a Sarpanch or a Panch. The election as a member of a Panchayat Samiti included in its ambit the election of a person to any of the institutions which furnish elected members of a Panchayat Samiti. Because respondent No. 4 was debarred to become a member of the Sabha u/s 5(a) of the Gram Panchayat Act, he could also not be elected or nominated as a member of the Panchayat Samiti representing the Market Committee.

Thirdly, because respondent No. 4 could not be validly nominated as a member of the Market Committee, Jind, on the ground of being a producer, it is submitted that he is working as a Principal of the Jat High and J. B. T. School, Jind, on whole time basis for the last 8/9 years and that his normal course of avocation is teaching profession instead of a producer of agricultural produce as laid down in Section 2(o) of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called the Markets Act). Fourthly, the co-option of Respondents Nos. 5 to 9 is challenged on the ground that no statutory notice was given for the meeting held for the purpose of co-opting them.

2. In the return filed on behalf of the respondents, it is admitted that respondent No. 4 disqualified under the People Act but this disqualification did not debar him to become a member of the Market Committee. Respondent No. 4 has also stated that he owns agricultural land in his own name and cultivates the same himself. He has further stated that he was an agriculturist in the normal course of his avocation. Being an educated person, he has adopted the teaching profession so as to bring about social uplift of the rural population. He derived uplift of the rural population. He derived major part of his income from agriculture, i.e., by selling agricultural produce in the market at Jind.

3. Coming now to the points urged before me, it may be stated that there appears to be no substance in the first contention advanced by the learned counsel. Section 11A of the People Act lays down that a person found guilty of a corrupt practices by an order u/s 99 shall, for a period of six years from the date on which the order takes effect, be disqualified for voting at any election, but the same Act gives the following definition of the word "election" in Section 2(d), which runs as follows:--

""election" means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir."

The use of the words "any election" in Section 11A of the People Act merely relates to an election to either of the Houses of the Parliament or of a State Legislature. Election to a particular institution or a corporation is governed by the statute which governs such an institution or the corporation. If the Markets Act does not expressly provide that a particular disqualification under the People Act

would also be regarded as a disqualification under it, then a person cannot be disqualified to seek election under the Markets Act.

4. Section 5 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Samitis Act), lays down that Primary members of a Samiti shall be elected out of the-

(i) Panches and Sarpanches of Gram Panchayats in the Block;

(ii) Members of the Co-operative Societies within the jurisdiction of the Samiti;

and will also include a member representing the Market Committee in the Tehsil. The qualifications for becoming a Panch or a member of a Co-operative Society or a member of a Market Committee are entirely different because the election of these members is governed by different statutes. Section 5(a) of the Gram Panchayats Act lays down that no person who is not qualified to be elected as a member of the Legislative Assembly shall be entitled to stand for election or continue to be a Sarpanch or a Panch. This provision merely lays down that a person who is disqualified u/s 11A of the People Act and who because of this reason is disqualified for voting shall not be eligible to become a Panch or a Sarpanch.

The Samitis Act does not lay down that everybody who has to become its member must be qualified to become a Panch or a Sarpanch. The members of a co-operative society as also of a market committee are eligible to become its members. In the instant case we are concerned with the Markets Act which does not provide that a person in order to be eligible to become a member of a Market Committee must be qualified as a voter under the People Act. Consequently, if respondent No. 4 can validly be nominated as a member of the Market Committee, his membership of the Panchayat Samiti as a representative of the Market Committee cannot be struck down merely on the ground that he was disqualified to become a Panch or a Sarpanch. In view of these reasons, I am of considered view that there is no merit in the second contention raised by the learned counsel.

5. The third submission raised by the learned counsel is based upon the definition of the word "producer" as given in Section 2(o) of the Markets Act, which runs as under:--

"(o): "producer" means a person who in his normal course of avocation grows, manufacturers, rears or produces as the case may be agricultural produce personally, through tenants or otherwise, but does not include a person who works as a dealer or a broker or who is a partner of a firm of dealers or brokers or is otherwise engaged in the business of disposal of agricultural produce other than that grown, manufactured, reared, or produced by himself, through his tenants or otherwise. If a question arises as to whether any person is a producer or not for the purposes of this Act, the decision of the Deputy Commissioner of the District in which the person carries on his business or profession shall be

final."

6. It is, no doubt, true that a person in order to be styled as a "producer" must be one who in his normal course of avocation manufacturers, rears or produces agricultural manufacturers, rears or produces agricultural produce. The controversy, however, enters round the phrase "in his normal course of avocation." It is admitted by the parties that respondent No. 4 has been serving as the Principal of the Jat High and J. B. T. School, Jind, for the last 8/9 years. The petitioners alleged that his normal course of avocation was teaching profession. On the other hand, respondent No. 4 has submitted that he has taken to this profession in order to satisfy his zeal for the rural uplift. According to him, he owns land which is under his personal cultivation and he fulfills the qualifications of a "producer" as given in the relevant Act. Such a serious controversy cannot be effectively resolved in proceedings under Article 226 of the Constitution.

The legislature was perhaps alive to this situation and has for that purpose laid down that if such a question arises, then the certificate given by the Deputy Commissioner concerned in that behalf shall be final. Respondent No. 4 has filed Annexure R4/1 which is a certificate dated August 18, 1972, issued by the Deputy Commissioner, Jind. It mentions that the said officer considered all the evidence produced by Shri Narain Singh as also the report submitted by the Sub-Divisional Officer (Civil). From this data, he was satisfied that respondent No. 4 was a "producer". The petitioners did not file any replication challenging the basis on which the Deputy Commissioner granted this certificate to respondent No. 4.

Even otherwise, merely because this respondent is also working as the Principal of a privately managed school, it cannot be said that he cannot be styled as a "producer" within the meaning of the statute. The petitioners are claiming relief under the Markets Act. One of the conditions of this Act is that when a dispute arises about the status of a person as a producer, then the opinion of the Deputy Commissioner in this behalf shall be final. The rights of the petitioners are subject to this condition and it is doubtful whether it would be open to them to challenge the certificate granted by the Deputy Commissioner. The nomination of respondent No. 4 as a member of the Market Committee, Jind, could therefore not be held to be unjustified.

7. The meeting for the co-option of respondents Nos. 5 to 9 was held on August 3, 1972. The notices for this meeting were issued on July 29, 1972. It is submitted that these notices were served upon petitioners Nos. 1 and 4 on August 2, 1972. Rule 4(3) of the Rules framed under the Samitis Act lays down that at least three days' clear notice should be given to the members for holding a meeting for co-opting the members representing the scheduled castes and the women folk. Prima facie, the meeting held on August 3, 1972, in which respondents Nos. 5 to 9 were co-opted, cannot be said to have been held in accordance with law. It is however, admitted that ten members including

respondent No. 4 attended this meeting and the co-option was made unanimously. The question which falls for determination is whether the co-option held in such a meeting deserves to be quashed or not. A similar matter arose in *Didar Singh v. Deputy Commr., Hoshiarpur*, L. P. A. No. 116 of 1967, decided by this Court on 17-8-1967 Speaking for the Bench, S. B. Kapoor, the learned Acting Chief Justice, observed as follows:--

"The contention of Mr. Sibal, that the notice in question fell short by only one day cannot be allowed to prevail, because one would then not know where to draw the line and it might as well be argued that even if the notice fell short by two or three days, the proceedings at such a meeting could not be challenged unless a petitioner proved by positive evidence that prejudice had been caused to him. That in my view would be bye-passing the statute and perhaps even lead to flout it with impunity."

8. In *Jai Bhagwan Sharma and Another Vs. Matu Ram Bholu Ram and Others*, question regarding the publication of election programmed under the Punjab Municipal Election Rules, 1952 came for consideration. Grover J., as his Lordship then was observed as follows:--

"It was held that fourteen clear days must elapse between the dates of service and that of return. It is, therefore, quite obvious that in the present case ten clear days had to intervene between the date of publication of the election programme and the first of the dates specified in it, namely, 29th July, 1961 and 8th August, 1961. Admittedly, in this view of the matter there was a contravention of the mandatory provisions of the aforesaid rule."

9. In views of these authoritative pronouncements, it must be held that the authorities concerned must make rigid compliance with Rule 4(3) of the Rules framed under the Samitis Act. Under our system of elections, some time is always allowed to the voters and those who seek election for making canvassing in their favour. The denial of this right to the voters may sometimes defeat the very purpose for which the elections are held. In a suitable case, it could be validly urged by a voter or a candidate that the result of an election has been materially affected because of non-compliance with this rule. But can we say that the co-option of respondents Nos. 5 to 9 is void merely because the meeting held on August 3, 1972 was not strictly in accordance with law? The process of co-option of members is no different from their election. In the case of co-option an electoral college elects the members whereas in an ordinary election members are usually elected by a secret ballot. The election of a member who comes in by the process of co-option can equally be challenged by filing an election petition. Section 121 of the Samitis Act reads as under:--

"121. Election petition:

(1) Any person who is a voter for the election of a Member may on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the date of announcements of the result of an election, present to

the prescribed authority, an election petition in writing, against the election of any person as a Member Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned.

(2) The prescribed authority may-

(a) if it finds, after such inquiry as it may deem necessary, that a failure of justice has occurred, set aside the said election, and a fresh election shall thereupon be held;

(b) if it finds that the petition is falls, frivolous, or vexatious, dismiss the petition and order the security to be forfeited to the Panchayat Samiti or Zila Parishad concerned, as the case may be.

(3) Except as provided in this Section, the election of a Member, Vice-Chairman or Chairman shall not be called in question before any authority or in any Court."

Rule 3 of the Rules framed under this Act runs as follows:--

"3. Grounds on which election may be called in question:

The election of any person as a Member, Vice-Chairman or Chairman of a Panchayat Samiti or Zila Parishad, as the case may be, may be called in question by an elector through an election petition on the ground that such person has been guilty of a corrupt practice specified in the Schedule or has conceived at, or abetted the commission of any such corrupt practice or the result of whose election has been materially affected by the breach of any law or rule for the time being in force or there has been a failure of justice."

10. A reading of the aforementioned rule shows that an election can be set aside where the result of the election has been materially affected by the breach of any law or the rules applicable to the case. The result of the late service of notice upon petitioners Nos. 1 and 4 for the meeting held on August 3, 1972, was that they were deprived of their right casting their votes. In law, it can at the most tantamount to rejection of their votes, but in spite of this infirmity it has to be seen whether the rejection of these votes has materially affected the result of the election of respondents Nos. 5 to 9. When the facts and circumstances of the present case are kept in view, it becomes obvious that no such finding can be given.

It is not disputed that ten members who attended the meeting on August 3, 1972, situated the majority of the total elected or nominated members of the Samiti. The co-option held by them was unanimous. Even if all the other elected or nominated members of the Samiti had attended the meetings the result of the election could not have been any different. It is also well settled that an election cannot be set aside on lighter grounds. In *Onkar Singh v. State of Haryana* (1972) 74 P&H LR 378 a similar matter came to be considered by a Division Bench of this Court. D. K. Mahajan, J., speaking for the Bench, observed as follows:--

"In the present case there is no manifest injustice inasmuch as the election was unanimous and even if the petitioner was not duly served and did not attend or there was no proper notice, it resulted in no injustice to him. On this short ground I would reject the first contention of the learned counsel for the petitioner."

11. The above-mentioned observations apply with greeted force to the facts and circumstances of the instant case because the respondents Nos. 1 and 4 had actually been served.

12. In view of what has been discussed above, I find no merit in this petition, which is dismissed.

13. Petition dismissed.