
(1996) 10 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 2030 of 1996

Arun Kumar

APPELLANT

Vs

The Commissioner Prescribed Authority (Regional Deputy
Director, Local Bodies) and Others

RESPONDENT

Date of Decision : 03-10-1996

Acts Referred:

Citation : (1996) 10 P&H CK 0141

Hon'ble Judges : Sarojnei Saksena, J.

Bench : Single Bench

Judgement

Sarojnei Saksena, J.—Appellant Arun Kumar has filed this appeal against the order dated 4.4.1996 passed by Dr. Karamjit Singh, Prescribed Authority (Regional Deputy Director, Local Bodies), Ludhiana, where by the appellant's election petition filed under the Punjab Municipal Act/Punjab Municipal Election Rules was rejected.

2. The relevant facts of the case are that the appellant was one of the three candidates from ward No. 3 for election of Municipal Committee, Nakodar. The elections of the Municipal Committee, in the State of Punjab were announced to be held in the month of July, 1992: the election programme to be followed at Nakodar was declared on 27.7.1992 the date fixed for filing of nomination papers was upto 12.8.1992: the date for scrutiny of nomination papers was 20.8.1992: 24.8.1992 was the date for deciding to file the revision petition against any order, if any, of the Returning Officer and objections thereto; nomination papers were to be withdrawn by 25.8.1992; the polling was to be held on 6.9.1992.

3. The appellant was enrolled as a voter at Serial No. 852 in the voters' list. On 18.8.1992 the appellant filed his nomination paper from Ward No. 3 Municipal Committee, Nakodar. Respondents 1 and 2 also filed their nomination papers from this ward. The Sub Divisional Officer (Civil), Nakodar, was to act as Returning Officer for election of the Municipal Committee, Nakodar. The Returning Officer was to scrutinise the nomination papers to satisfy himself that

the names and electoral roll number of the candidate and his proposer as entered in the nomination papers are the same as those entered in the Electoral Rolls. On 20.8.1992 an objection was raised by respondent No. 1 that the appellant's nomination paper does not tally with the particulars given at Serial No. 852 in the voters' list of Ward No. 3 because after rectification/correction, entry at Serial No. 852 reads as "Arun Kumar son of Bakhshish Chand", whereas in the nomination paper filed by the appellant "Arun Kumar son of Shri Balbir Chand" is written. On being asked, the appellant told the Returning Officer that his father's name is Balbir Chand and by error correction is made in the voters' list without any notice to him. He never applied for this correction because his father's name was correctly recorded as Balbir Chand. He also pointed out that in House No. 122 in Ward No. 1 Nakodar, no person named Arun Kumar son of Shri Bakhshish Chand is residing. Without making any summary enquiry, the Returning Officer rejected his nomination paper. The appellant challenged the order of the Returning Officer in revision petition filed under Rules 16(3) of the Punjab Municipal Election Rules, 1952 (in short "the Rules") before the Deputy Commissioner, Jalandhar. The Deputy Commissioner, Jalandhar also rejected his revision petition. Respondent No. 4 - Tarlok Chand withdrew from the contest and thus, respondent No. 3 Brij Bhushan was declared elected uncontested.

4. The appellant filed Civil Writ Petition No. 11471 of 1992 in the High Court, which was dismissed in limine on the ground that the matter can be more appropriately gone into in an appropriate proceeding. The appellant filed election petition before the Prescribed Authority under the Punjab Municipal Act, but that too was rejected on 4.4.1996.

5. The appellant's contention is that he brought to the notice of the prescribed Authority that his name was rightly recorded at serial No. 852 in the voters' list pertaining to Ward No. 3 of the Municipal Committee, Nakodar and his father's name was also rightly recorded as Balbir Chand. He never applied for rectification. It was brought to his notice that a fictitious person, Bakshish Chand, made an application on 15.5.1991 before the Sub Divisional Officer (Civil) Nakodar for rectification of entry made with regard to vote No. 852 and in that application, it was mentioned that father's name of Arun Kumar is not Balbir Chand but Bakhshish Chand; correction was made without issuing any notice to the appellant. Satwant Singh made a report that the correction is deemed appropriate and on the said report, the correction was allowed by the Sub Divisional Officer (Civil) Nakodar on 20.5.1991. He also submitted that no other person except the appellant could file an application for correction of the entry as per Rule 8(G)(4)(b) of the said Rules. He pleaded that the said correction in the aforementioned entry was made in order to debar him from contesting the election. He also averred in the election petition that his nomination paper was wrongly rejected by the Returning Officer without holding any enquiry and his revision was also dismissed by the Deputy Commissioner, Jalandhar. Hence, he prayed that the election petition be allowed.

6. Respondent No. 3 contested the election petition and inter alia denied all the allegations made therein. He pleaded that the petitioner is estopped from filing the election petition by his own act and conduct as the petitioner's name finds mention at serial No. 852 of the voters' list as Arun Kumar son of Bakhshish Chand. Hence, the Returning Officer rightly rejected his nomination paper and his revision was also rightly dismissed by the Deputy Commissioner, Jalandhar. Petitioner filed writ Petition in the High Court, which too was dismissed on 25.8.1992. Thus, the petitioner has availed all the remedies available to him. Hence, the election petition is not maintainable and is also barred by the principle of res judicata.

7. Respondent No. 4 filed his separate written statement and averred that before the election to Municipal Committee, Nakodar, voters' list was amended from time to time and sufficient opportunities were given for inclusion of new names and for correction of existing names in the voters' list. At that time Petitioner Arun Kumar's father's name was corrected as Bakshish Chand in place of Balbir Chand. That application was submitted by Bakhshish Chand and after proper verification of facts by the competent authority, the correction was made therein. Petitioner already availed all the legal remedies open to him to challenge the order of rejection of his nomination paper. Hence, this appeal is not maintainable.

8. Before the Prescribed Authority, parties adduced their evidence. Petitioner-appellant examined Baldev Raj, Balbir Chand, K.K. Khattar, Advocate and Darshan Lal. He also produced Matriculation Examination certificate, passport, driving licence, ration card, and partnership deed of his firm to prove that his father's name is Balbir Chand. In rebuttal, respondent No. 3 examined Fateh Chand, Satinder Pal Singh, Anil Kumar besides respondents 3 and 4 themselves.

9. The learned Prescribed Authority scanned the evidence; held that when the corrections were made in the voters' list, petitioner also submitted application for inclusion of new names in the voters' list and at that time, he actively participated in the preparation of new voters' list. Hence, he held that it cannot be believed that someone else applied for the change of name of his father. He relied on the evidence adduced by the respondents and held that the Returning Officer had rightly rejected the petitioner's nomination paper as in the voters' list his father's name was recorded as Bakhshish Chand, while in the nomination paper, his father's name was mentioned as Balbir Chand.

10. The appellant's learned counsel valiantly argued that under rule 8(G)(4)(B) of the said Rules, such a correction in the voters' list can be made only by a person to whom that entry relates. He produced copy of that application which was submitted by Bakhshish Chand on 15.5.1991 before the Returning Officer alleging that in the electoral list at serial No. 852, the name of Balbir Chand is not correctly recorded, it should be corrected and his name should be recorded therein. On the recommendation of one Satwant Singh made on 18.5.1991, the correction was made by the Sub Divisional Officer (Civil), Nakodar, on 20.5.1991. The counsel valiantly argued that this correction was not brought to the

knowledge of appellant Arun Kumar neither at that time when the said correction was made nor at any later point of time. The Prescribed Authority has wrongly assumed that as the petitioner himself got included new names in the voters' list, he actively participated in the preparation of new voters' list and as such, it cannot be said that someone else applied for the change of name of his father. The learned counsel read over paras 7 and 8 of the impugned order and made scathing criticism of the way in which the evidence is weighed. According to him, petitioner-appellant filed documentary evidence to prove that his father's name is Balbir Chand. He examined his father and other witnesses to prove his contention that his father's name is Balbir Chand. Shri K.K. Khatlar, Advocate (Municipal Commissioner) was also examined by him, but the learned prescribed Authority did not rely on the petitioner-appellant's evidence and relied on the statements of the witnesses examined by the respondents simply on the ground that they are petitioner's neighbours. He also contended that the learned Prescribed Authority was also influenced by his fact that the petitioner filed the writ petition against the order of the Deputy Commissioner in the High court, which was also rejected. Thus, holding that the petitioner has availed all the remedies available to him under the law, upto the High Court he has failed to get verdict against the rejection of his nomination paper. On the these findings, he upheld the order of the Returning Officer rejecting petitioner's nomination paper and thus, his election(sic) tion was wrongly rejected.

11. The appellant's learned counsel strongly stressed that in view of the documentary and oral evidence adduced by the petitioner, the Prescribed Authority should have allowed his election petition. To support his contention, he has relied on Sri Masood Vs. Bikram Singh, .

12. The respondents' learned counsel contended that the election petition was rightly rejected by the Prescribed Authority as the petitioner himself got his father's name corrected in the electoral roll and when he filed his nomination paper showing his father's name as Balbir Singh, which was against the corrected entry made at serial No. 852 in the electoral roll, the Returning Officer rightly rejected his nomination paper. Against that order, he filed revision, which was dismissed; he filed writ petition before the High Court, which was also dismissed. Thus, the election petition is barred by principle of res judicata. He also contended that the respondents adduced evidence, examined neighbours of the petitioner, who proved that the petitioners father name is Bakhshish Chand and not Balbir Chand. According to him, the Prescribed Authority has rightly commented on the conduct of the petitioner. According to him, it cannot be believed that when the petitioner was actively participating in the inclusion of new voters' names in the voters' list, at that time when the correction, / rectification was being made therein, he had no knowledge of the said correction. Rather he himself got his father's name corrected. It cannot be believed that some body else got it corrected.

13. So far as legal objection of res judicata is concerned, I am not impressed by

the submission made by the respondents" learned counsel. When the petitioner's revision was rejected by the Deputy Commissioner, Jalandhar, he filed the writ petition No. 11471 of 1992. It this judgment, the Division bench of this High Court has held that" in election jurisprudence, it is axiomatic that right to be elected is a statutory right and can be enforced in accordance with the statute and all remedies can be availed of under the statute alone. It is neither an action at law nor a suit but is purely a statutory proceedings unknown to common law and the Court possesses no common law power." The Division bench further observed that Rule 52 of the Punjab Municipal Election Rules, 1952, specifically provides that "no election to the Municipal Committee can be called in question except by way of an election petition." The writ petition was rejected on the count that the election process has been set in action and remedy has been provided by way of an election petition to get the election set aside. Thus, the power under Article 226 of the Constitution of India was not exercised holding that the rejection of nomination papers etc. can be gone into in an appropriate proceeding hence this question was not decided by the High Court whether the nomination paper of the petitioner-appellant was rightly or wrongly rejected. Thus, the legal objection of res judicata has no bearing.

14. So far as merits of the case are concerned, the petitioner has produced copy of application which was submitted by one Bakshish Chand on 15.5.1991 seeking correction in the electoral roll at serial No. 852 making a prayer that his name be recorded in place of Balbir Chand. One Satwant Singh recommended the correction and on the basis of that recommendation, the Sub Divisional Officer (Civil), Nakodar, allowed the correction to be made in the electoral roll at serial No. 852 on 20.5.1991. From the Rule 8(G)(4)(B), it is evident that when such a correction is to be made in the electoral roll; such a petition is to be submitted in form (c) by the person to whom that entry relates. The petitioner-appellant categorically stated that he never submitted this application. No such application could be produced by the respondents to show that the said correction was made at the instance of the petitioner. It is also surprising to note that at the time when the said correction was made, the petitioner-appellant was neither noticed nor informed. Respondents have not examined the said Bakhshish Chand and Satwant Singh when the election petition was under trial. Thus, it becomes apparent that surreptitiously and mischievously some person got the said entry No. 852 in electoral roll corrected at the back of the petitioner. The learned Prescribed Authority has observed that at the time when the correction/rectifications were made in the electoral roll, the petitioner actively participated and got new voters enrolled therein, but no such documentary evidence was produced before the said authority. Even if for the argument's make, it is to be, believed that Arun Kumar at that point of time made certain efforts to get the names of new voters included in the voters' list, that will not ipso-facto prove that he came to know or he was instrumental in getting the entry No. 852 corrected in the manner stated above. There was no reason for him to get the said entry corrected because his father's name is Balbir Chand and not

Bakhshish Chand. No person would change his father's name. Under Rule 11(4) of the said Rules, on presentation of the nomination papers, the Deputy Commissioner is required to satisfy himself that the names and electoral numbers of the candidates and his proposer as entered in nomination paper are the same as those entered in the electoral rolls. Its clause (a) provides that he may permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them in conformity with the corresponding entries in the electoral rolls and clause (b) provides "where necessary, direct that any clerical or printing error in the said entries shall be overlooked." Thus, the Returning Officer had an authority to overlook the said correction in view of the averments made by the petitioner-appellant at that time that his father's name is Balbir Chand and not Bakhshish Chand, he never got this entry corrected and no notice of the said correction was ever given to him at that time. Rule 16 provides that when scrutiny on nomination papers is made and if any objections are raised, the Returning Officer should decide those objections and while deciding the same objections, he should hold summary enquiry.

15. In this case it is obvious that when the nomination paper of the petitioner-appellant was rejected by the Returning Officer, no such enquiry was held by him. Rule 16(d) provides "that the candidate of any proposer is not identical with the person whose number on the roll is given in the nomination paper as the number of such candidate or proposer as the case may be." Thus, if at that stage, the Returning Officer would have held summary enquiry to find out whether the candidate and proposer's name is identical with the person whose number on the roll is given in the nomination paper as number of such candidate and proposer, the controversy would have ended there only. But without holding any enquiry, the Returning Officer rejected the petitioner-appellant's nomination paper.

16. On the same ground, his revision was rejected by the Deputy Commissioner, Jalandhar.

17. When the petitioner-appellant filed election petition and adduced documentary and oral evidence to prove that his father's name is Balbir Chand, he never got the electoral roll corrected and therefore, without holding any enquiry, his nomination paper was wrongly rejected, the Prescribed Authority without marshalling his evidence and simply relying on the evidence adduced by the respondents rejected his election petition.

18. Appellant's learned counsel has placed on record the original electoral roll entry at serial No. 852 wherein the petitioner's father's name is shown as Balbir Chand, but later on Balbir Chand's name was corrected as Bakhshish Chand. The appellant also produced before the Prescribed Authority his Matric Examination certificate dated 2.2.1960 issued in his name by the Punjab School Education Board wherein his name is shown as Arun Kumar son of Balbir Chand Gupta. He also produced his driving licence which was issued on 26.9.1989 showing his

father's name as Balbir Chand. He also produced copy of partnership deed dated 8.4.1992 wherein also it is recorded as Arun Kumar son of Balbir Chand. He produced passport of his father, which was issued on 6.9.1994, wherein his father, Balbir Chand's photograph is affixed. He also produced his ration card, wherein his father's name is recorded as Balbir Chand. All these documents came into existence before this controversy arose. Apart from this documentary evidence, he also examined his own father, K.K. Kalhar, Advocate (Municipal Commissioner) and Darshan Lai to prove that his father's name is Balbir Chand. As his father's name is Balbir Chand, there was no reason for him to get the electoral roll corrected and get his father's name changed from Balbir Chand to Bakhshish Chand. The respondents examined alleged neighbours of Arun Kumar, whose testimony was relied on by the Prescribed Authority.

19. In Sri Masood's case (*supra*), Masood was the candidate for Assembly Election, Agota. When he filed his nomination paper, he found that his name was wrongly entered in the electoral roll. He filed three nomination papers, he wrote his name as Masood alias Madood Ali. The objection was that Madood is his elder brother's name, this objection was upheld and his nomination paper was rejected. Then he filed election petition under Section 81 of the representation of People Act, 1951. The Allahabad High Court interpreted the word "misnomer" appearing in proviso to Section 33(4). It was held that "misnomer" really means giving an incorrect name to a person even in a legal document. The High Court also repelled this contention that when the petitioner came to know about the mistake in printing his name in the electoral roll of 1973, it was his duty to bring this mistake to the notice of the Returning Officer and through him get the mistake corrected and as the petitioner did not get it done, his nomination paper was rightly rejected by the Returning Officer. High Court held that of course the petitioner could have taken such a course but omission on his part to take steps to get the electoral roll rectified did not absolve the Returning Officer of his duty to apply the proviso to sub-section (4) of Section 33 of the Act to admit the first two nomination papers because of the reasons discussed. Hence, the election petition was allowed; election was set aside and was declared void.

20. Taking into consideration all the above facts and material, in my considered view, the Prescribed Authority has fallen into an error in rejecting the election petition of the petitioner. In my considered view, the electoral roll was clandestinely got corrected by some one at the back of the petitioner. He was never noticed. Even subsequently, no such information was given to him. He never came to know about the said correction till he filed his nomination paper. When he filed his nomination paper and came to know of this correction, he made all efforts to satisfy the Returning Officer that his father's name is Balbir Chand, but without holding any summary enquiry, the Returning Officer rejected his nomination paper. He was unsuccessful before the Deputy Commissioner, Jalandhar also. On wrong assumption and without marshalling the evidence properly, the Prescribed Authority also rejected his election petition. If the procedure adopted by the Returning Officer in this case is granted judicial

recognition, it can be used as a strong lever bygone candidate to oust another from the election arena by simply secretly getting some correction made in his name or parentage in the electoral roll.

21. Hence, I hereby allow the appeal with cost of Rs. 3000/- to be paid by respondent No. 3 to the appellant; set aside the impugned order and declare that the election of respondent No. 3 is void and the same is hereby declared to be void.

22. Copy of this order be sent to the Commissioner, Jalandhar/Punjab Government. Let the Commissioner/Punjab Government be informed about the result of this appeal/election petition in accordance with Section 69 of the said Rules and a copy of this judgment be also sent to the Punjab State Election Commission as soon as possible.