
(1993) 08 P&H CK 0117
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1788 of 1993

Balbir Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 11-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Gram Panchayat Act, 1952 — Section 101, 6, 6(4)
Punjab Gram Panchayat Election Rules, 1960 — Rule 14A, 15(1), 15(2), 31
Representation of the People Act, 1951 — Section 135

Citation : AIR 1994 P&H 105

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Mrs. Surjit Bindra and Ms. Sunita Jain, for the Appellant; A.G. Masih, AAG, G.K. Chatrath, Advocate General and G.S. Gandhi, for the Respondent

Judgement

1. Balbir Singh and two others who had contested for the offices of Sarpanch and Panches of Gram Panchayat, Kukarpind, District Jalandhar seek a declaration of result of election held on 18-1-1993. They further pray for restraining the respondents from taking contemplated action of holding fresh elections in the said village, through present petition filed by them under Arts. 226/227 of the Constitution of India.

2. The facts on which the directions, as noticed above, have been demanded reveal that petitioner No. 1 contested for the office of Sarpanch, petitioners Nos. 2 and 3 contested for the office of Panches of Gram Panch Kukarpind, District Jalandhar. The election for the Gram Panchayat was held in the month of January, 1993. The publication for the election, as required under the Punjab Gram Panchayat Act (hereinafter to be referred as the Act, and the Punjab Gram Panchayat Election Rules, 1960 (hereinafter to be referred as the Rules) was made. Nominations were invited and filed on 17-1-1993 and the elections were to be held on 18-1-1993. According to the election programme, the result of the election was to be declared on the same very day i.e. on which the election was

held. The Deputy Commissioner had appointed a Presiding Officer for the polling booth of village Kukarpind and the elections were held from 8.00 a.m. to 4.00 p.m. on the date fixed. A total number of eight Panches were to be elected excluding the Sarpanch.

3. As made out from the petition, Balbir Singh is stated to be belonging to Akali faction and is senior Vice-President of Shiromani Akali Dal. He contested General Assembly Elections held in 1990 at Jalandhar which is stated to be the constituency of the present Chief Minister. It is further averred that one Kasturi Lal had contested for the office of Sarpanch and is very close to Chief Minister of Punjab Shri Beant Singh. The contestant of petitioner was, thus, supported by the Congress party. It is further averred that in the State of Punjab, the Congress party had taken a decision that no person other than persons belonging to Congress party would be allowed either to contest or would be elected in the elections especially for the office of Sarpanch. The polling that took place on 18-1-1993 was stated to be peaceful and there was no incident worth reporting. The voters of the village, according to their conscience, had voted without any fear or favour. However, at about 3-00 p.m. i.e. just an hour before the close of the polling, the Deputy Commissioner accompanied by the Sub Divisional Magistrate and the Senior Superintendent of Police visited the spot and met the presiding officer of the polling station. The Deputy Commissioner directed the polling officer so as not to declare the result if the Congress candidate could not secure majority. It is further averred that when the election was over, the Presiding officer had counted the votes, according to which Balbir Singh, petitioner No. 1 had polled 713 votes whereas respondent No.4 who was contesting against him had polled only 308 votes. Similarly, Mohinder Singh, petitioner No. 2 had polled 201 votes whereas Gursaran Singh petitioner No. 1 had polled 215 votes. The Presiding Officer submitted his report to the Deputy Commissioner on 18-1-1993 which clearly supports the averments of the petitioners with regard to polling of number of votes, as has been mentioned above. More than 15 days had gone by but the result of the election was not declared. It is further averred that the petitioners met the Deputy Commissioner and apprised him of the lapse but the Deputy Commissioner refused to listen to their genuine demands. Not only he refused to consider the request of the petitioners but even told them about cancellation of election and holding of fresh election. It is in these facts that the petitioners pray for issuance of various directions to the respondents as have been indicated in the earlier part of the judgment.

4. This petition has been opposed and three separate written statements have been filed. One written statement has been filed on behalf of respondent No. 1 by respondent No. 2, whereas the second written statement has been filed by respondent No. 3 and the third by respondent No. 4. In the written statement filed on behalf of respondent No. 1, it has been averred that the polling did not proceed smoothly. It was marred by disputes and unruly behaviour amongst the contesting candidates. The Block Development and Panchayat Officer, Jalandhar

East and the Sub Divisional Officer (Civil) were deputed to visit the spot and report. They reported that at about 10-00 a.m., dispute arose as it was alleged that one party tried to cast votes by impersonating others and situation became so tense that the Presiding Officer had to close down the polling booth for about half an hour which gave signals to the voter and they thought that the polling had been called off. Some of the candidates protested that their voters could not cast votes due to the closure of the polling both. The Block Development and Panchayat Officer recommended the cancellation of poll. Some of the candidates raised demands for adjourning the poll. Thinking that the situation might not take an ugly turn, the Deputy Commissioner along with the Senior Superintendent of Police Jalandhar visited the spot at about 3-00 p.m. Enquiries were made at the spot from the Presiding Officer and Presiding Officer as also the police officials were deputed to maintain law and order. A number of persons from the public were also heard and on the basis of information received at the spot and after going through the report of the Block Development and Panchayat Officer, it was decided to report the matter to the Government. Before the enquiry could be completed, polling time had finished and the result was not declared because of the unusual and uncommon incidents which happened at the polling booths. As no specific advice was received from the Government, it was felt that there was no alternative but to take decision on the basis of facts which surfaced during the enquiry conducted by the Block Development and Panchayat Officer/ Sub Divisional Officer (C) as well as by the Deputy Commissioner along with the Senior Superintendent of Police. It is further averred that as the polling booth had been closed down for some time and some people had left the village to seek interference by the authorities, it was not fair to treat the election as fair and the election was adjourned.

5. The Presiding Officer, as mentioned above, filed written statement opposing the cause of the petitioners. Maintainability of this petition on account of availability of alternative remedy of Election Petition has been challenged by way of preliminary objections. On facts, it has been averred that in village Kukarpind, there were two booths. The election started at 8-00 a.m. with normal turn out but at about 10-00 a.m., polling agents of Balbir Singh petitioner alleged that a girl was impersonating as her elder sister who was away in her in-laws village. This led to a dispute between the rival agents of both the candidates inside the polling station. The repeated requests and warnings of the Presiding Officer did not yield any result. In these circumstances, it was neither possible nor fair to hold the polling. The polling was, thus, suspended for about 30 minutes. With the intervention of Station House Officer, Police station Sadar Jalandhar, more police force came and they ensured that no further trouble would be there. The polling, thus, restarted at 10-00 a.m. However, respondent No. 4 came with some candidates and voters and pressed for fresh polling by emptying the ballot boxes. They were told that it was not possible being against the Rules and not within the jurisdiction of the Presiding Officer. At about 10-40 a.m., respondent No. 4 along with some candidates approached respondent No. 3 with an application to stop

polling. Again, respondent No. 4 and his supporters were told that under such circumstances, he cannot postpone the election or hold fresh elections. At about 12 noon, Sub Divisional Magistrate Jalandhar accompanied by the Block Development and Panchayat Officer visited the polling booth and enquired about the incident from the polling staff and the people present there. The Sub Divisional Magistrate enquired about the polling of votes during the first two hours before the trouble started and two hours polling after the trouble. The required information was given to the S.D.M. The Deputy Commissioner Jalandhar accompanied the Senior Superintendent of Police visited booth No. 1 at 3-00 p.m. and made enquiries. After enquiries, the Deputy Commissioner gave instructions to the Presiding Officer to count the votes after the stipulated polling time. The Deputy Commissioner is stated to have given oral orders to him through the Station House Officer, Police Station Sadar Jalandhar not to announce the result after counting. In ultimate analysis, it is pleaded that the result of the Panchayat elections was not announced due to the oral orders of Deputy Commissioner Jalandhar who is the incharge of District Panchayat Election. There being orders by the Deputy Commissioner, the Presiding Officer acted in accordance with the same.

6. Respondent No. 4 in his written statement besides raising some preliminary objections like maintainability of joint petition as also that the petitioner had not come with true facts has further pleaded that neither Balbir Singh petitioner belongs to Akali faction nor respondent No. 4 belongs to Congress party. In reality, he has always been a supporter of the Bahujan Samaj Party and belongs to Scheduled Caste. The village is predominantly inhabited by the Backward and Scheduled Caste members. In the last general elections, he had openly supported Shri Bipan Kumar, who was the present Municipal Counsellor and in the Vidhan Sabha elections, he had supported Shri Gulzara Ram from Jalandhar Cantt. Constituency from where ultimately the present Chief Minister of Punjab has won. He has vehemently denied the averments of the petitioner that he was close to the Chief Minister. On the contrary, respondent No. 4 has averred that petitioner Balbir Singh is very close to the Presiding Officer as they are very close friends. The Presiding Officer is stated to have stayed at night with petitioner Balbir Singh prior to the date of polling.

7. In so far as the incidents on the date of election are concerned, it is averred that the election process started very late and from the very beginning, there was bungling. He along with other candidates who contested for the office of Panch protested against the conduct and partisan attitude of respondent No. 3 at about 10-00 a.m. but he did not care to listen and rather threatened him and others that they could do anything they liked and nobody could stop him from acting in the manner he liked. In this situation, he had no choice but for to knock the doors of Deputy Commissioner. All those who were aggrieved of partisan attitude of the Presiding Officer, apprised the Deputy Commissioner who, in turn, directed them to mention the matter in writing and assured them that necessary action would be taken in the matter. It is further averred that the Presiding

Officer closed the doors of the Polling Station and forcibly kicked out his supporters and other Pariches supporting him and in between, he transferred votes in favour of the petitioners from his boxes and of other candidates. On the advice of the Deputy Commissioner, he and his supporters came back and handed over a petition to the Presiding Officer which was received at 11-00 a.m. A copy of the request letter that was submitted to the Deputy Commissioner has also been placed on the records. Simultaneously, a representation was given to the Sub Divisional Officer copy of which has been attached as Annexure" R 4/3. The Sub Divisional Officer sent the copy to the Block Development and the Panchayat Officer for enquiry and enquiry was conducted on the same date. Copy of the same is produced on the records as Annexure R 4/4. A decision was taken to get the matter referred to the Government through the special messenger for immediate action. Respondent No. 3 along with other officers came on the spot. Being satisfied that bungling had taken place and the Presiding Officer was not acting in accordance with law, the Deputy Commissioner directed the Presiding Officer not to declare the result. It is further averred that the Deputy Commissioner cancelled the election vide his order dated 24-1-1993. Copy of the same has been placed on the records as Annexure R 4/5. Fresh dates for election have been announced not only in respect of the village of the petitioners but as many as 5 or 6 other villages where irregularities and illegalities were committed. Annexure R 4/1 shows that application regarding closure of polling booth of village Kukkar was received at 11-00 a.m. Annexure R 4/2 is a letter written by respondent No. 4 and nine others wherein it has been averred that the Presiding Officer forcibly turned out the agents of the opposite party, closed the doors of the polling booth for 10 minutes and bolted from inside and in this way, he changed the votes from the boxes. It has also been mentioned that application was submitted to the Presiding Officer for stopping the polling at 11.00 a.m. Election process also started at 9-15 a.m. instead of 8-00 a.m. Annexure R 4/3 is again a letter addressed by respondent No. 4 and four others to the Sub Divisional Officer Jalandhar, where allegations against the Presiding Officer were made. Annexure R 4/4 is a report regarding polling in Gram Panchayat Kukkarvind given by the Block Development and Panchayat Officer Jalandhar. It is recited in the report aforesaid that the polling for the Gram Panchayat of viuage Kukkarvind started on 18-1-1993. After sometime, trouble arose and the Sub Divisional Officer-cum-District Election Officer, Jalandhar informed the Block Development and Panchayat Officer on telephone that the Block Social Welfare and Panchayats Officer be sent on the spot to enquire into the matter. After some time, the Block Development and Panchayat Officer and the Sub Divisional Officer also reached there. On reaching there, it came to their notice at about 10.00 a.m. that one party was raising noise that the other party was casting bogus votes. During this trouble, the Presiding Officer stopped the polling and got the doors of the Polling Booth closed on which one party thought that now the election has been stopped and this process of non-polling continued for about half an hour. After some time, the process of polling was again got started by the Sub Divisional Officer (Civil) Jalandhar which continued up to 4-00

p.m. After the counting of the votes, the trouble again started on which the Deputy Commissioner reached the spot and ordered not to declare the result as one party was claiming re-poll due to the closure of the doors of the polling booth and throwing out the agents of that party and they had doubt in their mind of changing the votes in favour of other party. In the end, the Block Development and Pancha-yat Officer has stated that as he understood a large number of voters of one group had not been able to cast their votes. Because of the facts mentioned above and keeping in view the situation, the election of the village was cancelled and the Government was requested for fixing the date for re-polling in the village.

8. Annexure R 4/5 is the order passed by the Deputy Commissioner on 24-1-1993 wherein after discussing the facts that the polling booth had been closed down for some time and many voters had left the village scurrying for intervention by the higher authorities including that of Deputy Commissioner, the Deputy Commissioner felt that it will not be fair to treat the election held as valid or in accordance with the Rules and instructions and perhaps, more importantly, in consonance with the spirit of fairness and openness, which is expected to prevail at the polling booth.

9. Mrs. Bindra, learned counsel appearing for the petitioners vehemently contend that once the election process was over, there was no jurisdiction whatsoever with the authorities including Deputy Commissioner so as not to declare the result and instead order repoll. In support of her aforesaid contention, she has placed reliance on Rule 31 of the Rules and S. 6 of the Act. Rule 31 deals with counting of votes and to the extent it is relevant the same reads as follows :-

"31. Counting of votes-- (1) In a Sabha area where there is only one polling station and the returning Officer acts as the Presiding Officer under sub-rule (1) of rule 15 the procedure contained in sub-rule (2) shall be followed for the counting of votes and the declaration of results:

Provided that the counting of votes and declaration of result for the office of Sarpanch shall take place first.

(2) The Presiding Officer shall, as soon as practicable, after the close of the poll and in the presence of any candidate or polling agent who may be present -

xx xx xx xx xx xx xx

(d) count the valid votes given to each candidate with the aid of persons appointed to assist in the counting of votes and declare the election of the candidate who is found to have obtained the largest number of valid votes, or, if more than one member is to be elected for the Sabha area, then the candidates who are found to have obtained the largest number of valid votes shall be declared to have been elected in accordance with the provisions of S. 6 of the Act;

10. In so far as S. 6 is concerned, the relevant part of same is reproduced

below:--

6. Constitution of Gram Panchayats and disqualification to be member thereof.
(1) Every Sabha shall in the prescribed manner, elect from amongst its members a Gram Panchayat bearing the name of its Sabha consisting of a Sarpanch and such number of panches not being less than four and more than ten, as the Government may determine taking into account the population of the Sabha area:

Provided that the number so determined shall be exclusive of the number of women Panches deemed to have been elected under sub-sec. (4) or co-opted under that subsection.

xx xx xx xx xx xx xx

(3) The election shall be held in the prescribed manner by secret ballot and direct vote and the candidate for the office of Sarpanch and the number of candidates determined under sub-sec. (1) securing the highest number of valid votes shall be deemed to have been duly elected."

11. In the wake of provisions quoted above, it is argued that once the votes have been counted then the candidate who is found to have obtained the largest number of valid votes had necessarily to be declared elected in accordance with the provision of S. 6 which mandates that the candidate who had secured highest number of votes shall be deemed to have been elected.

12. The learned Advocate General Punjab appearing for respondents Nos. 1 to 3 and Mr. Gandhi Advocate for respondent No. 4, however, have joined serious issue with the counsel for the petitioners while contending that counting of votes is only a process towards declaration of result and till such time the result has been declared, it is always open to the authorities competent under the Act and the Rules to cancel or postpone the election. Attention of the Court has been invited to Rule 14-A which was inserted in the Rules through the Rules known as Punjab Gram Panchayat Election (First Amendment) Rules, 1993 vide notification issued on that behalf on January 6, 1993, The said Rule reads as follows:--

"14-A Adjournment of poll in Emergencies-

(1) The Returning Officer, the Presiding Officer, the Deputy Commissioner or the Government may adjourn the poll in a sabha area at any time in case the poll is interrupted or obstructed by,--

(i) any riot or violence; or

(ii) a direct or indirect threat to the election process or conduct of poll; or

(iii) an action of snatching or destroying the ballot-papers; or

(iv) any type of natural calamity; or

(v) booth capturing at the polling station or at a place fixed for polling; or

(vi) any other sufficient reason to be recorded in writing.

(2) Whenever the polling in a sabha area is adjourned in terms of the provisions of sub-rule (1), the Returning Officer shall, as soon as practicable, report the matter to Deputy Commissioner, who shall appoint a day for a fresh poll in such sabha area and shall fix the time at which such poll shall be held.

Explanation:-- For the purpose of this rule, the expression "booth capturing" shall have the same meaning as is assigned to it in the Explanation to S. 135A of the Representation of the People Act, 1951.

13. After hearing the learned counsel for the parties and going through the records of the case, I am of the view that there is no merit" in the points raised by Mrs. Bindra and, therefore, this petition must fail. Rule 31 talks of counting of votes. Sub-clause (d) of Rule 31 talks of counting of valid votes given to each candidate and declaration of election of the candidate who has obtained largest number of valid votes. Sub-cl. (e) of the same Rule talks of recording of statements separately in form V after the counting of ballot papers contained in all the ballot boxes has been completed. Obviously, the power that vests with the Returning Officer, Presiding Officer or Deputy Commissioner under Rule 14-A can be exercised any time before the declaration of result. In the instant case, the Presiding Officer had although counted the votes but had not declared the result. The case of petitioners as well is that votes have been counted but the result has not been declared. It is in the wake of this fact only a prayer is made for directing the respondents to declare the result. Further the very report of the Presiding Officer, Annexure P-I, clearly shows that it is in Appendix IX and is not in the prescribed form V which has been appended to the Rules. Once the power vests with the authorities to postpone the result even during the currency of the poll if the same is interrupted or obstructed for any of the reasons spelled in Rule 14-A, then it cannot be said on any cogent grounds that the Presiding Office had no choice when the votes had been counted but for to declare the result. Rule 14-A came into being on 6-1-1993 that is prior to the election in the present case. The vires of Rule 14-A have not been even remotely challenged either in the pleadings or in the arguments addressed by learned counsel for petitioners.

14. Faced with this situation, an effort has been made by learned counsel for petitioners to show that the ground that compelled the Deputy Commissioner to postpone the election, thus, does not fall in any of the clauses mentioned in S. 14-A, as none of the emergencies as have been enumerated in various clauses of S. 14-A, was in existence.

15. In the facts of the present case, I am unable to agree with this argument of learned counsel for the petitioners. The Deputy Commissioner's report, contents whereof, have been mentioned in the earlier part of judgment clearly state that the polling booth had been closed down for some time and many voters had left the village scurrying for intervention by the higher authorities. The aforesaid finding was arrived at on the report of Block Development & Panchayat Officer

and the Sub-Division Officer (Civil). The Block Development and Panchayat Officer in his report clearly mentioned that a large number of voters of one group had not been able to cast their votes. While giving the facts, the Block Development & Panchayat Officer said in his report that when the doors were closed, one party alleged that its agents have been thrown out and the votes have been changed. Assuming that the kind of allegation that was held proved was only that the polling could not take place for half an hour and, therefore, the case may not fall under clauses (i) to (iv) of Rule 14-A, it would however, certainly fall under clause (vi) of the aforesaid Rule.

16. Mrs. Bindra, as last resort tried to show on facts that the allegations ought to be projected by the respondents were not correct. She further contends that all these allegations came into being on account of influence which respondent No. 4 exercises in the corridors of power. There is complete denial of even the basic facts and this Court in writ jurisdiction would not like to go into such hotly disputed facts.

17. Finding no merit in this petition, I dismiss the same. However, the parties are left to bear their own costs.

18. Petition dismissed.