
(2013) 08 P&H CK 0298
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14418 of 2013 (O and M)

Balraj Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Punjab State Election Commission Act, 1994 — Section 67, 67(2)(a), 89, 89(1)(d)(iv)

Citation : (2013) 172 PLR 501

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Gurminder Singh, for the Appellant; V. Ramsawroop, Addl. A.G., Mr. Prateek Pandit, Advocate for Respondent Nos. 4 and 5, Mr. D.V. Sharma and Mr. Divik Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—Petitioner has challenged the legality of the action of Returning Officer in recording the proceedings in Form - 9 in violation of the provisions of the Punjab State Election Commission Act, 1994 (hereinafter referred to as the "Act") and has prayed for direction to the State Election Commission, Punjab to hold fresh polling after countermanding the election, on the ground of booth capturing, before the declaration of the result. In brief, the elections of various Gram Panchayats in the State of Punjab were notified by the State Election Commission, Punjab, on 19.06.2013 and the votes were polled on 03.07.2013. The election of Sarpanch of Gram Panchayat of village Gurusar, Tehsil Gidderbaha, District Muktsar, Punjab, was also held on 03.07.2013 in which there were 5 candidates in the fray. The votes were polled for the post of Sarpanch in booth nos. 53, 54, 55, 56, 57 & 58. After conclusion of the poll, the ballot papers in respect of 11 Panches, from different wards were counted and thereafter, the votes polled for the election of Sarpanch were also counted in booth no. 53 under the supervision of the Assistant Returning Officer.

2. According to the petitioner, while the counting was in progress, at around

10.30 p.m., about 100 persons entered the booth forcibly, vandalized the booth and took away the entire material including the ballot papers, ballot boxes and concerned documents. In this regard, the Presiding Officer-cum-Returning Officer of booth no. 53 got registered FIR No. 79 dated 04.07.2013 in Police Station Gidderbaha. It is alleged by the petitioner that it was admitted in the FIR that the counting process was in progress when the incident took place. It is also alleged that the information about that incident was passed on to the Senior Officers including the Sub Divisional Magistrate, Deputy Superintendent of Police and the Deputy Commissioner. It is further averred in the petition that in the early hours on 04.07.2013, the Returning Officer, under the political pressure to declare respondent no. 6 elected, as he belongs to the ruling party, filled Form - 9 while recording fictitious entries of votes in complete violation of Section 67 of the Act and Rules 33 of the Punjab Panchayat Election Rules, 1994 (hereinafter referred to as the "Rules").

3. The contention of the counsel for the petitioner is that as per Section 67 of the Act, the Returning Officer was required to report the matter to the Election Commission forthwith, who would either stop the counting of votes or declare the poll to be void and appoint a day or fix the hours, for taking a fresh poll by notifying the date so appointed and hours so fixed in such manner, as it may deem fit. He has also submitted that the petitioner is not in a position to file an election petition because there is no such ground provided u/s 89 of the Act.

4. In reply filed by respondent no. 6, it is alleged that he contested the election as an independent candidate and has won it with a margin of 205 votes. Once his election has been declared, it could have only been challenged by way of an election petition and the writ petition is not maintainable. He has denied to have contested the election on the backing of Akali Dal (Badal) which is evident from the nomination paper filed by him. It is further averred that the vandalism in the polling station was at the instance of the petitioner who was losing the election. It is also submitted by him that Section 67 is not applicable to the facts and circumstances of the present case because it deals with the situation where such type of incident occurs before the counting of votes is completed, whereas in the FIR, which has been strongly relied upon by the petitioner, the Returning Officer has categorically mentioned that the incident took place when the counting was over and only the declaration of the winning candidate was pending.

5. In reply filed by respondent no. 4-Returning Officer, he has averred that he was deputed as Returning Officer-III, Gram Panchayat Election 2013, Block 97 Gidderbaha and there were 9 villages under his charge. He has categorically stated that after completion of the poll and counting of votes, the alleged occurrence, as detailed in the FIR, took place. He further averred that Form - 9 regarding counting of votes of Sarpanch of all the votes, i.e. booth nos. 53 to 58, was submitted to the Sub Divisional Magistrate, Gidderbaha after compiling the same.

6. It is also argued by counsel for the respondents that petitioner has otherwise

got an alternate remedy of filing an election petition in terms of Section 89(1)(d) (iv) of the Act as the question involved in the present case is more of facts than of law. In this regard, they have relied upon a judgment of the Supreme Court in the case of Harnek Singh Vs. Charanjit Singh and Others, two Division Bench judgments of this Court in the case of Rajwinder Kaur and Others Vs. The State of Punjab and Others, and in the case of Rajpreet Singh v. State of Punjab and others, 2010(4) PLR 254, and a Larger Bench judgment of this Court in the case of Prithvi Raj Vs. State Election Commission and Others,

7. I have heard learned counsel for the parties and perused the record.

8. The allegation of the petitioner that the act of vandalism at the time of counting of votes was the handiwork of respondent no. 6, who is a candidate supported by the ruling party, has been strongly denied by respondent no. 6 who has alleged that the candidate of the ruling party was one Gurmeet Singh who has contested the election on the symbol of table and has procured 1191 votes, whereas the petitioner has polled 1232 votes and respondent no. 6, who had contested the election as an independent candidate, polled 1437 votes. In support of his submission, he has also attached the pamphlet of Gurmeet Singh as Annexure R-6/1. Although the petitioner has also attached the pamphlet of respondent no. 6 in order to show that he was sponsored by the ruling party but respondent no. 6 has strongly denied this fact in his reply alleging that he was an independent candidate and the said fact has not been countered by the petitioner by way of filing a rejoinder/replication.

9. Besides this, the case set up by the petitioner is that the occurrence took place when the counting was in progress as mentioned in para 8 of the writ petition that "it was admitted in the FIR that counting process was in progress". However, this fact is contrary to the statement recorded in the FIR of the Returning Officer who had stated that "during counting the concerned candidates and their polling agents were present there and the counting was completed and only the declaration of the winning candidate was pending and suddenly at about 08.30 p.m., a huge number of people forcefully entered in the room". Meaning thereby, the averments made in the writ petition are incorrect.

10. Counsel for the petitioner has relied upon Section 67 of the Act in support of his submission to contend that in such case where there is a destruction, loss etc. of the ballot papers at the time of counting, the Returning Officer is required to report the matter to the Election Commission forthwith and it is the Election Commission who has to decide about the future course of action, either by stopping the counting of votes or declaring the poll afresh on a day to be fixed by it, but the Returning Officer had no jurisdiction to declare respondent no. 6 to be elected in Form - 9 only by informing Deputy Commissioner/Deputy Superintendent of Police etc. about the incident which had taken place.

11. This argument of the learned counsel for the petitioner, to my mind, is totally misplaced because Section 67 of the Act deals with the situation where any such

incidence of destruction and loss of the ballot papers occurs before counting of votes is completed and not after the counting is over. For better understanding of this issue, it would be relevant to refer to Section 67 of the Act, which reads thus:-

67. Destruction, loss etc. of ballot paper at the time of counting.-- (1) If at any time before the counting of votes is completed, any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the Returning Officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the Returning Officer shall forthwith report the matter to the Election Commission. (2) The Election Commission shall, after taking all material circumstances into account, either-

(a) direct that the counting of votes shall be stopped or declare the poll at the polling station or place to be void and appoint a day and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner, as it may deem fit; or

(b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election, issue such directions to the Returning Officer, as it may, deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted.

(3) The provisions of this Act and of any rules or orders made thereunder shall apply to every fresh poll ordered to be taken under clause (a) of sub-section (2) as they apply to the original poll.

12. It is specifically mentioned in Section 67(2)(a) of the Act that if such an incident occurs, it is to be brought to the notice of the Election Commission forthwith and the Election Commission would direct the counting of votes to be stopped. This provision by itself suggests that Section 67 operates in the area where the counting of votes is in progress and not completed, whereas it has been categorically mentioned in the FIR as well as in the reply of the Returning Officer that the occurrence took place when the counting was over.

13. Thus, provisions of Section 67 of the Act, which has been strongly relied upon by the petitioner, are not applicable to the facts and circumstances of the present case. It may also be mentioned that the declaration of result in Form - 9 was announced as the counting was already over and the votes polled in all the booths were within the knowledge of the Returning Officer which he counted and declared the result of the returning candidate thereafter.

14. Now advertent to the argument of the respondents about the alternate remedy, it is no doubt that it is a question of fact as to who was the preparator of the occurrence. Moreover, the election petition is maintainable u/s 89(1)(d)(iv) of the Act as the case of the petitioner is that the result of the election has been

affected because of the non-compliance of the provisions of the Act which he has referred to in the writ petition and more particularly Section 67 of the Act and Rule 33 of the Rules.

15. The judgment in Harnek Singh's case (supra) is directly on this issue according to which the election petition is the remedy. Similarly, it has been held in Rajpreet Singh's case (supra) that once the result is declared in Form - 9, the only remedy available to the aggrieved candidate is to file the election petition u/s 89 of the Act.

16. Looking from any angle, the petitioner does not have any case on the question of law that the Returning Officer had no jurisdiction to declare the result in Form - 9 in view of Section 67 of the Act and also that the petitioner has no alternate remedy of the election petition, which is available to him in view of Section 89(1)(d)(iv) of the Act. In view of the aforesaid discussion, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.