
(2008) 05 P&H CK 0021
In the Punjab And Haryana At Chandigarh

Balraj Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Constitution of India, 1950 — Article 171E, 171F, 243O, 376C, 376D

Electricity Act, 2003 — Section 139, 38, 41

Penal Code, 1860 (IPC) — Section 153A, 376A, 376B, 406, 498A

Citation : (2008) 152 PLR 640 : (2008) 4 RCR(Civil) 198

Hon'ble Judges : K.S. Garewal, J;Daya Chaudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Garewal, J.—This judgment shall dispose of this petition and C.W.P. No. 7669 of 2008 Sudesh Rani v. State of Punjab, C.W.P. No. 7670 of 2008 Gurdip Singh v. State of Punjab C.W.P. No. 7671 of 2008 Salwinder Singh v. State of Punjab C.W.P. No. 7672 of 2008 Paramjit Singh v. State of Punjab and C.W.P. No. 7673 of 2008 Jagir Singh v. State of Punjab as common question of law is involved in all these petitions.

2. It was the arch conservative Winston Churchill who saw an election as a small booth which a small man enters with a pencil to put a mark on a piece of paper. As a proud, independent and liberal democracy we too cherish free, fair and impartial elections because that is how true democracy is born.

3. The constitutional promise contained in Part IX has introduced constitutional governance at the village, intermediate and district levels through Gram Panchayats, Panchayat Samitis and Zila Parishads. These institutions are the creation of the Punjab Panchayati Raj Act, 1994 (herein after referred to "Panchayat Act"). Elections to the Panchayats are conducted by the Punjab State Election Commission formed under the Punjab State Election Commission Act, 1994 (hereinafter referred to the "Election Act") and the Punjab Panchayat Election Rules 1994 (hereinafter referred to "the Rules") which have been made

under the provisions of Section 139 of the Election Act.

4. The six cases before us are the petitions filed by various candidates to complain against different types of violations of election rules and procedures. The constant refrain is that the petitioners' nomination papers have been improperly rejected and thereby they have been denied the right to contest elections. In these cases we are concerned with elections to Panchayat Samitis and Zila Parishads which are under way in Punjab. The election programme dated April 28, 2008 is given below:

- a) May 2, 2008 (Friday) last date for filing nomination:
 - b) May 3, 2008 (Sunday) scrutiny of nominations;
 - c) May 5, 2008 (Monday) last date for withdrawal of candidates:
 - d) May 12, 2008 (Monday) polling day shall, if necessary taken
 - e) May 15, 2008 (Thursday) the date by which the election shall be completed.
- Balraj Singh.

C.W.P. No. 7668 of 2008.

5. Balraj Singh filed his nomination papers on May 2, 2008, but learnt on May 3, 2008 that his nomination papers had been rejected. The petition was filed on May 8, 2008 seeking quashing of the notice dated May 3, 2008 whereby his nomination papers stood rejected.

Notice of motion was issued on May 8, itself. The Bench directed that "The petitioner shall be permitted to participate in the election, subject to the final decision of this petition, on the basis of the nomination papers that he has already filed since we are prima facie of the view that the nomination paper had been received complete in all respects and no discrepancy had been noticed." (Similar order were passed in the other five case as well).

6. The original file regarding the rejection of nomination papers was placed before us on May 13. There is an entry on the reverse of the nomination paper that the candidate had been convicted, accordingly papers have been rejected.

7. The record contains a certified copy of an order passed by learned Additional Sessions Judge, Gurdaspur dated May 2, 2002 in the appeal filed by Balraj Singh and another when the appeal was admitted. This order shows that Balraj Singh had filed the appeal against the judgment of conviction dated April 15, 2002 in FIR No. 79 dated July 30, 1997 registered at Police Station Kanhuwan u/s 406 I.P.C. The order also shows that the appellant was convicted and sentenced to undergo for 2 years. Copy of the F.I.R. is on the record.

8. Section 208(1)(c) of the Panchayat Act disqualifies a person from being chosen as a member of a Panchayat if he has been convicted of any offence involving moral turpitude or an offence implying any defect of character unless a period of five years has passed since his conviction.

9. Section 11(e) of the Election Act mentions certain other offences as being disqualifications. These are Sections 153A, 171E, 171F, 376A, 376B, 376C, 376D, 498A, 505 I.P.C. or any offence punishable under Chapter XIII of the Act but it further provides that the disqualification shall continue for a period of six years from the date of conviction.

10. In the present case the petitioner was convicted u/s 406 I.P.C. on April 15, 2002 and sentenced to imprisonment for 2 years, Therefore, it is apparent that the petitioner did not stand disqualified as the conviction was more than 5 years ago. His nomination papers appear to have been improperly rejected. However, would it not have been better if, the candidate had himself volunteered information about his conviction to show that the cooling off period had parsed.

Sudesh Rani

C.W.P. No. 7669 of 2008.

11. Sudesh Rani had filed her nomination papers for election to Zila Parishad, Gurdaspur, but her papers were rejected on the ground that she had not deposited the requisite amount of Rs. 400/- as security. Petitioner filed this petition on May 8, 2008.

12. An interim direction had been issued for her nomination papers to be accepted provisionally and she being permitted to participate in the election subject to final decision of this petition.

13. Records of the Returning Officer were produced before us and show that originally Sudesh Rani had furnished security of Rs. 200/- and mentioned this in figures and words. Later the figure 200 appears to have been changed to 400 but the amount in words was not changed. The petitioner has placed on record a Photostat copy of the receipt dated May 2, 2008 showing that she had deposited Rs. 400/- in the District Election Office. The petitioner's contention is that her nomination paper has been improperly rejected even though she had furnished the full amount. Her only fault was failure to mention the correct amount of security in words.

Gurdeep Singh

C.W.P. No. 7670 of 2008

14. Gurdeep Singh had filed his nomination papers for Panchayat Samiti Kahnuwan. He is not aware of the reasons why his nomination papers were rejected on May 3, 2008. He has relied upon a photostat copy of the check list Annexure P-2 and order of the Returning Officer Annexure P-3. The petitioner complains that his nomination papers were rejected due to political mala fides. He states that he is affiliated to the Congress party.

15. The petitioner has pleaded that scrutiny of nomination papers was to take place on May 3, 2008 between 11 A.M. and 3.00 P.M. During this period the Assistant Returning Officer was not present in his office which remained closed.

At 3.30 P.M. the Assistant Returning Officer came to the office and pasted a notice on the board to show the names of the candidates whose papers had been rejected. The petitioner video-taped the entire sequence of events to show that no scrutiny had been done in front of him or any other candidate.

16. In the absence of any positive proof regarding wrong rejection of nomination papers we are unable to say why petitioner's papers had been rejected.

Salwinder Singh

C.W.P. No. 7671 of 2008

17. Salwinder Singh has filed his nomination papers on May 2, 2008 for election to Zila Parishad, Gurdaspur. He had deposited Rs. 200/- only as security where the prescribed security was Rs. 400/-. In his petition the petitioner was not able to attach the Photostat copy of the receipt. In the record produced before us as well the receipt of fee is not with the nomination papers. Quite obviously the petitioner had not deposited the requisite fee of Rs. 400/-. Therefore, his nomination papers appear to have been justifiably rejected.

Paramjit Singh

C.W.P. No. 7672 of 2008

18. Paramjit Singh filed his nomination papers for election to Panchayat Samiti, Kahnuwan on May 2, 2008. His papers were rejected because he had not attached a declaration as per Annexure I. This is as per the original record produced before us.

19. According to Section 38 of the Election Act read with Rule 9 of the Election Rules, nomination papers have to be presented to the Returning Officer in form IV. This form contains the nomination paper, declaration by candidate, undertaking by candidate and certificate of scrutiny. There is no other declaration that a candidate is expected to attach with the nomination papers.

20. Therefore, it appears prima facie that Paramjit Singh's papers were wrongly rejected but it is not possible to come to a definite conclusion as regards the ground on which they were rejected.

Jagir Singh.

C.W.P. No. 7673 of 2008.

21. Jagir Singh had filed nomination papers for election to Panchayat Samiti Kahnuwan on May 2, 2008. His papers were rejected on May 3, 2008 vide notice Annexure P-2. According to the petitioner no real scrutiny of the nomination papers was done on May 3. The sequence of events was video-graphed as in the case of Gurdeep Singh's case above. The petitioner was unable to say why his nomination papers were rejected. The record of the nomination was not produced before us.

22. Mr. D.S. Patwaia, the learned Counsel for the petitioners has argued that the above cases were such where this court must interfere by quashing the impugned notice dated May 3, 2008 on the basis of which nomination papers of the candidates were rejected and further direct the Returning Officer to accept the papers and allow the petitioners to participate in the elections. The learned Counsel took us through various judicial pronouncements commencing with Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. 1978(2) Supreme Court Cases 405. This indeed is the main judgment which has been the basis of many subsequent judicial views on the subject. We have carefully gone through the entire judgment but for the purpose of the present cases confine ourselves to what their Lordships held in paragraph 28 that "...any decision sought and rendered will not amount to "calling in question" an election if it sub-serves the progress of the election and facilitates the completion of the election." According to the learned Counsel any judicial action which facilitated the election process did not amount to questioning the election.

23. The petitioners were aggrieved by wrong rejection of nomination papers and were entitled to approach the Court under Article 226 to seek a direction to the Returning Officer to accept their nomination papers and allow them to participate in the election.

24. The petitioners are faced with a formidable objection raised by the learned Advocate General appearing for the State of Punjab. It has been forcefully argued that improper rejection of nomination papers is a ground on which an election can be declared void by the Election Tribunal u/s 89(1)(c) of the Election Act. The petitioners could also perhaps challenge the result of the election in terms of Section 89(1)(d)(iv) and seek a declaration that the election of the returned candidate is void but it was extremely doubtful if the petitioners can maintain a petition under Article 226. There is a specific bar contained in Article 243-O of the Constitution which provides that no election to any panchayat shall be "called in question" except by an election petition. The learned Advocate General also placed reliance on the Supreme Court judgment in Mohinder Singh Gill's case (supra) as well as on Harnek Singh Vs. Charanjit Singh and Others, and Full Bench judgment of our court in Prithvi Raj v. State Election Commission, Punjab and Ors. 2007(3) R.C.R. (Civil) 817. Reference was also made to Full Bench judgment of Andhra Pradesh High Court in Kalla Ramakrishna v. State Election Commission, Hyderabad and Ors. 2005(2) R.C.R. (Civil) 794.

25. The question to be determined by us is whether or not a direction to the Returning Officer at this stage is permissible in law. The nomination papers of the six candidates indeed have been rejected and we have noticed prima facie the nomination papers of Balraj Singh, Sudesh Rani and Jagir Singh were probably wrongly rejected. We have also noted that the Election Act provides relief for wrong rejection of nomination papers through the medium of election petition.

26. We would like to refer to the provision of Section 41 of the Election Act relating to scrutiny of nomination papers. Sub-section (4) lays down that the

Returning Officer shall not reject nomination paper on any ground which is not of substantial character. Returning Officers are expected to know the provisions of the Election Act, the Panchayat Raj Act and the Election Rules. They are supposed to be properly trained and briefed in the onerous task of conducting elections.

27. But sometimes they may be remiss in their duties which may lead to wrong rejection or nomination papers. It is unfortunate that some papers have been wrongly rejected but law provides relief to the candidate through an election petition before the Election Tribunal which may declare the election to be altogether void on the ground of wrong rejection of the nomination papers.

28. Furthermore, an election petition is a far more effective relief. Our reason for saying this is that all the parties are represented before the tribunal, documents are presented and statements of witness are recorded. It is true that the Full Bench in Prithvi Raj's case (supra) has observed that the power of the High Court under Article 226 is available where exercise of the said power sub-serves the progress of election, facilitates its completion and is exercised to further the election process. However, the Full Bench in paragraph 26 aptly summed up the legal position that an election can only be challenged through an election petition though the High Court under Article 226 is empowered to act in order to facilitate the election and further the election process. This has been the consistent view since Mohinder Singh Gill's case (supra) and we are bound by settled law.

29. We do not think that in the present case any direction by us would further the progress of the election. We may observe that the petitioners may ultimately file election petitions before the Election Tribunal and this court may at some later stage also have an occasion to consider the conduct of the elections and particularly that of the Returning Officer but at the present intermediate stage we are unable to grant any relief to the petitioners.

In view of the above, we find no merit in these petitions and the same are dismissed.