

(1995) 10 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14330 of 1994

Bawa Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-10-1995

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 228

Citation : (1996) 112 PLR 550

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : M.S. Gill, for the Appellant; J.R. Sidhu, D.A.G., H.S. Mattewal and Sukhbir Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—Petitioners seek issuance of a writ of certiorari quashing Annexures P-2 and P-3 as well as writ of mandamus seeking direction to the respondents to hold the election of Gram Panchayat in accordance with the election programme Annexure P-1 and also a restrain order against the respondents directing them not to allow the bogus voters shown in Annexure P-6 to vote or grant of such appropriate writ, order or direction as the Court may deem fit and proper in the peculiar circumstances of the present case.

2. According to the petitioners, election programme was published stipulating the date for nomination of Panch/Sarpanch, date for objection, if any, withdrawal of nomination, allotting of election symbol, holding of election on a particular date and declaration of result etc. According to the schedule, nomination was to, be submitted on 29.9.1994 and after scrutiny, withdrawal etc., the election was to be held on 13.10.1994. Pursuance to the notification issued by the concerned authorities, the petitioners submitted their nomination papers like others. It is subsequently that Punjab State Election Commission vide communication addressed to Additional Deputy Commissioner, Annexure P-3, suspended the election programme invoking the provisions of Section 35 of Punjab State

Election Commission Act, 1994, thereby stalling the process of election already set in motion. This was presumably done on account of decision of this Court in CWP No, 2749 of 1993 as therein a direction was issued that election of the gram panchayat be held on the basis of the electoral rolls as in existence on the date of filing of nomination papers i.e. January 21, 1993 and not on the basis of the electoral rolls which came into existence thereafter. Feeling aggrieved by this decision, the petitioners approached the Additional Deputy Commissioner, Faridkot, and submitted that there has been inclusion of bogus voters as shown in Annexure P-6 and so prayed that their names be deleted before election is held. With these broad averments, the petitioners sought a direction from the Court that election be held as per election programme, Annexure P-1, prepared under the Punjab Panchayati Raj Act, 1994 and the respondents be further restrained by not allowing the bogus voters as shown in Annexure P-6 included in the voter list prepared in the year 1988-89.

3. Pursuance to the notice of motion issued by the Court, the respondents put in appearance and filed written statement. Gurdial Singh, added respondent, also filed written statement. Respondents No. 1 to 4 in their short reply in the form of affidavit of Sh. Kishan Singh, PCS. stated that election has already been held in compliance with the order of the High Court and hence the present petition is not maintainable. Other material averments made in the petition were replied in the corresponding paragraphs of the written statement. It was prayed that there was no substance in the writ petition and the same may be dismissed.

4. The added respondent besides raising some preliminary objections with regard to maintainability of the present petition; effect of the Division Bench judgment pursuance to which election has already been held and the effect of the repeal clause in Section 228 of the Punjab Panchayati Raj Act, 1994, replied to the contentions made in the writ petition on merits as well. According to Gurdial Singh, added respondent, the election of Gram Panchayat Midhu Khera was to be held on 21.1.1993 for which nomination papers were submitted and the polling was to be held on 22.1.1993. This polling was postponed as some ballot papers were found in possession of the Polling Officer. However, neither the election programme which was issued earlier nor nomination papers were cancelled. It is in this context that notification Annexure P-3 superseding the earlier notification on Annexure P-1 was issued fixing the date for holding election on 13.10.1994. In fact, the error which crept in Annexure P-1 was rectified vide Annexure P-3. The matter otherwise also stands settled in view of decision of this Court in CWP No. 2749 of 1993 wherein a direction was issued to the respondents to hold the election on the basis of electoral rolls as were in existence on the date of filing of nomination papers i.e. 21.1.1993 and not on the basis of electoral rolls which came into existence thereafter. Since the election has already been held in compliance with the directions of the Court and even the result has been announced, the writ petition deserves to be dismissed on this short ground.

5. Learned counsel for the petitioners argued that election process earlier set in

motion stood impliedly cancelled in view of Annexure P-3 vide which voters were called upon to file fresh nomination papers for the election to be held on 13.10.1994. This was necessitated as earlier election programme stood impliedly cancelled and in the intervening period new Punjab Panchayati Raj Act came into existence and so the authorities thought of holding it on the basis of fresh electoral rolls. Thus, notification for issuing a fresh election programme was, in fact, necessitated. The authorities were able to exclude bogus voters which had crept in the earlier list of 1988-89 as well as include the names of persons who had not been included though were resident of the village. In any case, the election programme having been set in motion, the same could not be cancelled by an executive order Annexure P-3. Even otherwise, it is inconceivable to hold an election on the basis of old voters list thereby depriving the petitioners and alike of their rights to participate and contest the election of the Gram Panchayat of the village. The State Government did not comply with the direction of the Court dated August 3, 1993 and the same has become inexecutable on account of changed circumstances. The counsel further argued that since the election which is alleged to have been held is in contravention of the directions of this Court, the same is non est and does not bind the petitioner in any manner.

6. Learned Deputy Advocate General, Punjab briefly made reference to the order of the Court pursuant to which election has been held by the authorities. According to the counsel, since the election has already been held and result declared, the only remedy available to the petitioners is to file election petition, if so aggrieved.

7. Learned counsel for Gurdial Singh added respondent, has argued that the present petition is wholly misconceived and deserves to be dismissed. According to the counsel, election was to be held on 22.1.1993. Since some ballot papers were found in possession of the Polling Officer, the polling was adjourned. However, neither the election programme which was earlier issued nor the nomination papers were cancelled. It is in this context that this Court issued a direction to the respondents to hold the election of the Gram Panchayat on the basis of electoral rolls as in existence on the date of filing of nomination papers i.e. 21.1.1993 and pursuant to this direction election, in fact, has already taken place and result declared and hence this writ petition has become infructuous. Otherwise too, as per Section 228 of the Punjab Panchayati Raj Act, 1994, such a repeal of the Act does not affect any right, privilege, obligation or liability occurred, accrued or incurred under the Act and as the process of election has already been set in motion, the same is to culminate by holding of election and declaration of result. At best the petitioners can challenge the election by filing an election petition in case any such cause has accrued to them.

8. I have heard learned counsel for the parties and perused the various documents referred to by them during their submissions. The facts which have emerged on reading of the writ petition have already been briefly noticed. Admittedly, election to the Gram Panchayat was to be held on 22.1.1993 for

which various persons had submitted their nomination papers which were scrutinised and thereafter symbols allotted to respective candidates. On the date of election a few ballot papers were found in possession of the Polling Officer which necessitated postponement of the poll. Subsequently, for one or the other reason, no exact date could be fixed for holding of poll by the concerned authority which led to the filing of CWP No. 2749 of 1993. The Division Bench while deciding the petition-issued the following directions to the respondents which read as under:-

"The writ petition is allowed. A mandamus is issued to respondent Nos. 1 to 4 to hold the election of the Gram Panchayat, in question, on the basis of the electoral rolls as in existence on the date of the filing of the nomination papers, that is, January 21, 1993 and not on the basis of the electoral rolls which came into existence thereafter. We further make it clear that it will be open to the State Government, if conditions precedent exist, to exercise power under Rule 14-B of the Rules. No costs."

Sd/-(S.D. Agarwala)

Sd/-(Jawahar Lal Gupta)

Judge"

As per direction of this Court, the election was to be held as per nominations already submitted and on the basis of electoral rolls which then existed. It was specifically made mention that the election shall be held as per electoral rolls then existed on the date of filing of nomination i.e. 21.1.1993 and not on the basis of electoral rolls which came into existence thereafter. This direction specifically deals with the objection of the petitioners that the authorities be directed to hold election on the basis of revised list of voters. It is keeping in view the directions of this Court that the authorities thought, though belated, of withdrawing the election programme as per Annexures P-1 and P-2 and rightly so. It has also come on record that only date of election was postponed i.e. neither the election programme which was issued earlier nor the nomination papers were cancelled. This being so, the election could be held only on the basis of then existing voters list and as per nomination papers then submitted. It has been stated by the respondents that the election, in fact, has already taken place and even result has been announced. This being so, the only course open to the petitioners is to file election petition if a case is made out in terms of the provisions of the Act. Thus, finding no merit in this writ petition, the same is dismissed. Parties to bear their own costs.