
(1982) 09 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 6665 of 1974

Bir Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-09-1982

Acts Referred:

Citation : (1983) PLJ 16 : (1985) RRR 390

Hon'ble Judges : S.S.Kang, J

Advocate : Bhoop Singh, Advocate., Advocates for appearing Parties

Judgement

S.S. Kang, J. (Oral)

1. This is a petition under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari quashing order dated 21.11.1974 passed by the Deputy Commissioner, Jind, removing the petitioner from membership of Gram Panchayat, Kharl, Tehsil Narwana, District Jind.

2. Briefly, stated the facts of the case are that Bir Singh, petitioner contested election to the office of Panch of Gram Panchayat, Kharl, held in June, 1971. No objection was raised by anybody that he was ineligible to contest the election. The Block Development and Panchayat Officer made a report dated 28.2.1973 to the Deputy Commissioner that the petitioner had illegally occupied the Gram Panchayat Land. A notice was issued to the petitioner. He filed a reply on 21.12.1972. A chargesheet was issued to the petitioner on 30.10.1973 by the Deputy Commissioner, in which the principal allegation was that it has been prima facie proved against Bir Singh that he had incurred disqualification from the membership of Gram Panchayat under section 5(5)(1) of the Punjab Gram Panchayat Act as applicable to Haryana (hereinafter called the Act). Section 5(5) (1) thereof is as under :

"5. (5) No person who is not a member of the Sabha and who..... (1) is a tenant or lessee holding a tenancy or lease under Gram Panchayat or is in arrears of rent of any lease or tenancy held under the Gram Panchayat or is a

contractor of the Gram Panchayat..... shall be entitled to stand for election as or continue to be a panch."

On the asking of the Inquiry Officer the Block Development and Panchayat Officer, Narwana, reported vide his letter dated 4.10.1974 that Bir Singh petitioner had vacated the illegal occupation of the land before becoming a Panch and this land was taken into possession by Ujagar Singh s/o Shadi. The Deputy Commissioner purporting to act on this report held the petitioner guilty under section 5(5)(m) of the Act and removed him from the membership of Gram Panchayat Kheri under Section 102(2)(d) of the Act. Aggrieved Bir Singh has filed this writ petition.

3. It has been argued by the learned counsel for the petitioner that the allegations in the showcause notice served on the petitioner were that he had rendered himself ineligible for the membership of Gram Panchayat under section 5(5)(1). After an inquiry, he has been held to have violated the provisions of Section 5(5)(m) of the Act. Under Section 5(5)(1) *ibid*, a person who is a tenant or a lessee under Gram Panchayat is ineligible to contest the election for the office of membership of Gram Panchayat. This disqualification is to exist at the time of election. This is entirely different from the disqualification provided under section 5(5)(m). That sub section deals with cases of persons who are in illegal occupation of Gram Panchayat's land. If any person is in illegal possession of the Gram Panchayat land at the time of or within one year preceding the election, he renders himself ineligible to contest the election for the office of Panch. The two disqualifications are materially different. The person who is charged for violating section 5(5)(1) cannot be removed by holding him guilty for violation of section 5(5)(m). There is merit in this contention of the learned counsel for the petitioner. It is evident from the chargesheet dated 30.10.1973 that a chargesheet had been framed against the petitioner for rendering himself disqualified from the membership of Gram Panchayat under section 5(5)(1). However, a finding has been given that he was disqualified under section 5(5)(m). This is not permissible in law. The petitioner did not know that he had to make out a case against infraction of the provisions of section 5(5)(m) of the Act.

4. For the foregoing reasons I allow this writ petition and set aside the order dated 21.11.1974 passed by the Deputy Commissioner, Jind, a copy of which is attached as Annexure P. 4 to the writ petition. No costs.