
(1972) 08 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1787 of 1970

Dr. Baij Nath Sharma

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 25-08-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1972) 08 P&H CK 0004

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : G.C. Mittal, for the Appellant; D.S. Lambu, Deputy Advocate-General (Haryana), for the Respondent No. 1-2 and Mr. B.S. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Jain, J.—Brij Nath Sharma has filed this petition under Articles 226 and 227 of the Constitution of India, for the issuance of a writ of certiorari, quashing the order of the Sub Divisional Officer (Civil), Hansi, District Hissar, dated 1st May, 1970 (copy Annexure "P/2" to the petition)

2. On the facts there is no dispute. The petitioner was elected as a Member of the Municipal Committee, Bhiwani, in the elections held on 8th June, 1969. The election of the petitioner was challenged by Mahender Nath alias Magho, respondent No. 3, by filing an election petition under Rule 53 of the Punjab Municipal Election Rules, 1952 (hereinafter referred to as the Rules). In exercise of the powers conferred under Rule 58 of the Rules read with section 247 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act), the Governor of Haryana, appointed the Sub Divisional Officer (Civil), Hansi to enquire into the allegations made in the election petition file J by respondent No. 3, vide order dated 28th July, 1969 (copy Annexure P/1 to the petition). In pursuance of that order, Shri Rattan Singh, who was functioning as Sub Divisional Officer, started enquiry into the election petition. The enquiry was still going on when in March, 1970, Shri Rattan Singh was transferred and was succeeded by Shri Dhanendra

Kumar who in turn picked up the thread and resumed the enquiry from the stage Shri Rattan Singh had left On this the petitioner raised an objection that there was no fresh order passed by the State Government appointing him either by office or by name as Commissioner as required by law to enquire into the election petition and, therefore, tilt such order was passed, he had no jurisdiction to proceed with the case This objection was overruled by the Sub Divisional Officer vide his order dated 1st May, 1970. It is the legality and propriety of that order which have been challenged by way of the petition

3. Written statements in the shape of affidavits have been filed separately on behalf of respondents 1 and 2 and respondent No. 3.

4. The only contention that was raised before me by Mr. G.C. Mittal, learned counsel for the petitioner, was that on the transfer of Shri Rattan Singh, it was incumbent on the State Government to have issued another notification appointing Shri Dhanendra Kumar as Commissioner and that without there being a fresh order, the successor of Shri Rattan Singh had no jurisdiction to enquire into the election petition.

5. As conceded by the learned counsel for the parties, the decision of the contention depends upon the interpretation of clauses (2) and (3) of rule 58. In this situation, for facility of reference, it would be proper to reproduce the relevant provisions of rule 58 which read as under:

58. (1) If the election petition is not dismissed under rule 57, the Punjab Government shall appoint a person or person, hereinafter referred to as the Commissioner, to hold an enquiry into the allegations made in the election petition.

(2) The Punjab Government may appoint a person by name or by office to be a Commission under this rule, and if a person is appointed by virtue of his office the person for the time being holding the office shall be the Commission unless the Punjab Government shall otherwise direct.

(3) If a vacancy occurs in a Commission by reason of a death, transfer, resignation or any other cause, the Punjab Government may make a fresh appointment as provided by clause (2) of this rule.

After hearing the learned counsel for the parties I am of the view that there is no merit in the contention of the learned counsel for the petitioner.

6. Under sub-rule (2), the Government is entitled to appoint a person by name or by office to be the Commission. From the perusal of the order (copy Annexure P/1), I find that the Governor of Haryana did not appoint the Commissioner by name ; but made the appointment by Office In other words, in the instant case, Shri Rattan Singh was not appointed Commissioner by name ; but the Sub Divisional Officer (Civil) Hansi was appointed Commissioner and as Shri Rattan Singh happened to be the Sub Divisional Officer, he started the enquiry into the election petition. Mr. Mittal did not contend that in this case any person was

appointed by name ; but the contention of the learned counsel was that in cases where a person was appointed by virtue of his office, the intention of the framers of the Rules was that on the transfer of such officer fresh order for the appointment of the successor was necessary to be classed in order to give him jurisdiction to enquire into the election petition In support of his contention, stress was laid on the words occurring in sub-rule (2) the person for the time being holding the office shall be the Commission unless Punjab Government shall otherwise direct, and on the word "transfer" occurring in sub-rule (3). The contention though ingenuous, is fallacious on the face of it. From the plain reading the second part of sub-rule (2) it is clear that where the appointment of a person is by virtue of office then the person for the time being holding the office become the Commission. The purpose of the appointment under this part is only to clothe a person by virtue of the office he holds, with the authority to act as Commission. The notification makes the holder of the office a Commission and within the meaning and scope of the order, any person who happens to fill the office for the being would be deemed to be the Commission. The words the person for "the time being holding the office" "clearly signify and cover the case of any person who holds the office at the time of the commencement of the enquiry and during its continuance uptill the final stage ; of course power is given to the Government to give directions to the contrary as is evident from the phrase "unless the Punjab Government shall otherwise direct". In the original notification there is no such direction nor admittedly, has any such direction been given later on. In this view of the matter the successor of the officer who initiates the enquiry is fully entitled to continue the same without any fresh notification.

7. Further the word "transfer" occurring in sub rule (3) also does not change the position. Sub rule (3) is to be lead with sub-rule (2) and not independently. To my mind, it applies to those cases which fall in the first part of sub-rule (2), that is, where the person is appointed by name as Commissioner and not to the cases where he is so appointed by virtue of his office. To interpret the rule otherwise, as argued by the learned counsel for the petitioner, would create anomalies and would unjustifiably extend the scope of sub-rule (2). As a result of the above discussion, I hold that in cases where a person is appointed by virtue of his office to act as a Commissioner, then in that case, by reason of his transfer, the successor in office has jurisdiction to continue the enquiry in election petition and that no fresh notification or order is necessary to be issued for appointing the successor in office to act as Commissioner.

8. No other point was urged.

9. For the reasons recorded above, this petition fails and is dismissed ; but in the circumstances of the case I make no order as to costs.