
(1995) 03 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15044 of 1994

Gurchain Kaur

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Panchayati Raj Act, 1994 — Section 98(2)

Citation : (1995) 110 PLR 272

Hon'ble Judges : S.C. Datta, J; R.S. Mongia, J

Bench : Division Bench

Advocate : Gur Rattan Pal Singh, for the Appellant; R.K. Joshi, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—Through this writ petition election of Smt. Raksha Rani, respondent No. 3, as a member of the Panchayat Samitti, Morinda, from zone No. 6 has been challenged as, according to the petitioner, no election in the eyes of law can be deemed to have been held.

2. Briefly, the facts leading to the filing of the present writ petition may be noticed. Vide Notification dated August 30, 1994, in exercise of powers conferred under Sections 100 and 102 of the Punjab Panchayati Raj Act, 1994 (hereinafter called the Act) and other powers enabling in that behalf, Governor of Punjab issued a Notification notifying the election areas for the election of Panchayat Samittis of district Roop Nagar. Zone No. 6 for the Panchayat Samitti Roop Nagar was to be known as "Chanalon", which was reserved for women. Zone No. 6 comprised of 14 villages out of which one was village Chanalon.

3. The Government in the department of Local Government, Punjab, issued a Notification dated March 19/21, 1993, in pursuance of the provisions: of sub-section (i) of Section 5 of the Punjab Municipal Act, 1911, as amended by Punjab Municipal Amendment Act, 1994, by which the Governor of Punjab was pleased

to include certain areas within the limits of Municipal Committee, Kurali, in district Roop Nagar. This Notification was published in the Punjab Government Gazette-(Extra Ordinary) dated September 14, 1994. Village-Chanalon was included in the Municipal Committee, Kurali, by the said Notification.

4. The nomination papers for election to zone No. 6 of the Panchayat Samiti were filed on September 17, 1994; withdrawal of nomination papers was by September 19, 1994; the allotment of symbol was done on September 20, 1994; the election took place on September 30, 1994; and the result of the election was declared on October 1, 1994. Apart from the petitioner, Smt. Raksha Rani, respondent No. 3; Smt. Kamaljit Kaur, respondent No. 5, and Smt. Gurdev Kaur, respondent No. 6, were contestants for the election from zone No. 6. It may be observed here that according to the petitioner, respondent No. 3 Smt. Raksha Rani is a resident of village Chanalon and is a voter from that village. She was declared elected having secured maximum votes (1616). Petitioner secured 1326 votes, whereas respondents No. 5 and 6 secured 900 and 452 votes respectively. However, in the written-statement, the above respondents are said to have secured 1699, 918, 675 and 464 votes respectively, whereas petitioner secured 1315-votes.

5. In response to notice of motion, reply has been filed on behalf of respondent No. 2, the Returning Officer. Respondent No. 3 Smt. Raksha Rani and the other private respondents, though served, did not put in appearance and they were ordered to be proceeded against ex parte vide order dated November 14, 1994.

6. The learned counsel for the petitioner argued that Section 98 of the Act provides for the constitution of the Panchayat Samitis and the Panchayat Samiti can have jurisdiction over the entire block area excluding such portion of the block area as is included in a Municipality or is under the authority of a Municipal Corporation. Since according to the learned counsel for the petitioner, prior to the commencement of the election, the area of the block of Panchayat Samiti had been redelimited by excluding certain areas which included village Chanalon. The voters of village Chanalon could neither contest the election nor could be allowed to vote. Since respondent No. 3 is a voter from village Chanalon, she could not be allowed to contest the election from zone No. 6 and, therefore, no election at all in the eye of law can be deemed to have been held inasmuch as the persons beyond the Constituency have been allowed to contest and to vote.

7. On the other hand, though it has not been disputed that village "Chahalon" had been included in Municipal Committee, Kurali, district Ropar vide Notification dated September 14, 1994, Annexure P-I, yet it has been argued that electoral rolls were finalised on September 7, 1994, and no objection was raised regarding the voters of village Chanalon and since name of respondent No. 3 is included in the voters list which includes village Chanalon, the petitioner cannot be allowed to challenge the voters list now and ask for setting aside the election of respondent No. 3 on the above mentioned grounds. Further, it was argued that since the election has already taken place, the only remedy is by filing an

election petition under the Act. As regards the Notification including the area of village Chanalon in the Municipal Committee, Kurali, it has been stated by the Returning Officer that he had no knowledge/information about the Notification, which was published in the Punjab Government Gazette dated September 14, 1994. However, as no objections were tiled regarding the correctness/validity of the electoral roll, the same cannot now be challenged.

8. To appreciate the arguments of the respective counsel, provisions of Section 98 of the Act may be noticed:

"98. Establishment of Panchayat Samiti. (1) The State Government by notification, direct that, with effect from such date as may be specified in the notification, there shall be constituted a Panchayat Samiti for every Block in a District.

(2) The Panchayat Samiti constituted under sub-section (1) shall save as otherwise provided in this Act have jurisdiction over the entire Block area excluding such portion of the Block area as is included in a Municipality or is under the authority of a Municipal Corporation, a Cantonment Board or a Notified Area Committee constituted under any law for the time being in force:

Provided that a Panchayat Samiti may have its office in any area comprised within the excluded portion of the Block and in such area may exercise its powers and function over the property and institutions under its ownership, control or management: Provided further that the Panchayat Samitis already constituted under the Punjab Panchayat Samitis and Zila Parishads Act, 1961 shall be deemed to have been constituted under this Act.

(3) Every Panchayat Samiti shall, by the name of the Block for which it is constituted, be a body corporate having perpetual succession and a common seal and subject to such restrictions as are imposed by or under this Act or any other law, shall be vested with the powers of suing or being used in its corporate name, or acquiring, holding land, transferring property, movable or immovable, whether without or within the limits of the area over which it has authority, or entering into contracts and of doing all things, necessary, proper and expedient for the purpose, for which it is constituted.

(4) When Panchayat Samiti is constituted for a Block under sub-section (1), and the Block is redelimited, the State Government shall reconstitute a Panchayat Samiti for the re-delimited Block, under that sub-section."

9. From a reading of Section 98(2) of the Act above, it would be evident that the Panchayat Samiti constituted under sub-section (1) have the jurisdiction over the entire block are excluding such portion of the block area as is included in a Municipality etc. Sub-section (4) of Section 98 of the Act provides that if after Panchayat Samiti is constituted for a block under sub-section (1) and the block is redelimited, the State Government shall reconstitute a Panchayat Samiti for the redelimited block. In the present case, prior to the filing of the nomination

papers, there was a Notification excluding area of Chanalon from block area of the Samiti and including the same in Municipal Committee, Kurali. Consequently, no voter from village Chanalon could contest or vote for the election to the Panchayat Samiti. This is further clear from sub-section (4) of Section 98 of the Act that even if a Panchayat Samiti is constituted and later on the area-of the block is re delimited, the State Government has to reconstitute a Panchayat Samiti. In the present case, as observed above, the date for filing nomination paper was September 17, 1994, whereas delimitation had already taken place on September 14, 1994. Even if the election had been held even then under sub-section (4), the Government had to reconstitute Panchayat Samiti of the re-delimited constituency. However, in the present case, as noticed above, the election had not taken place when the block area of the Panchayat Samiti had been re-delimited. Resultantly, in our view, voters of village "Chanalon" and other area which had been included in the Municipality could not have been allowed to participate in the election of the Panchayat Samiti. No election in the eyes of law can be deemed to have been held when a person who cannot be a voter for a particular constituency has been allowed to contest the election.

10. As far as the objections of the respondent are concerned, the factum of respondent No. 3 being a voter in village Chanalon, which earlier formed part of zone No. 6 of the Panchayat Samiti, is not being disputed. Petitioner is not challenging the voters' list. The only challenge is whether the voters of the area, which falls within the Municipality, can be allowed to participate in the election for the Panchayat Samiti in view of the provisions of sub-sections (2) & (4) of Section 98 of the Act? the answer has already been given above. Since we are holding that no election in the eyes of law can be said to have been held so far as zone No. 6 is concerned, the question of filing an election petition under these circumstances would not arise as the very holding of the election from zone No. 6 is void ab initio and illegal.

12. For the foregoing reasons, we allow this writ petition and set aside the declaration of the result by which respondent No. 3 was declared elected as a member of the Panchayat Samiti, Morinda, from zone No. 6 and further direct the respondents to hold elections from the said zone in accordance with law.