
(1993) 08 P&H CK 0175
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2749 of 1993

Gurdial Singh, Ex-Sarpanch

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 03-08-1993

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 5(2)
Punjab Gram Panchayat Election Rules, 1960 — Rule 14A, 14B

Citation : (1994) 107 PLR 567

Hon'ble Judges : S.D. Agarwala, C.J.;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : H.S. Mattewal and Sukhbir Singh, for the Appellant; K.S. Doad, for Respondent Nos. 5, 6 and 7, G.K. Chatrath, General and Anu Chatrath, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, C.J. and Jawahar Lal Gupta, J.—Heard the learned counsel for the petitioner, the learned Advocate General, Punjab, and the learned counsel for the Respondents No. 5, 6 and 7.

2. "This writ petition relates to the election of Gram Panchayat Midhu Khera, Tehsil Malout, District Faridkot. The petitioner is one of the candidates contesting the election for the office of Sarpanch. Paramjit Singh, respondent No. 5, is the other contesting candidate for the office of Sarpanch. The nominations in respect of the said elections were to be made on January 21, 1993, and the poll was to place on January 22, 1993. On January 22, 1993, during the polling one Polling Officer, Shri Gurmail Singh, was caught having in his possession the ballot papers to be used for the election of Panches and Sarpanch. The Returning Officer suspended the poll and reported the matter to respondent No. 3, namely, the sub-Divisional Officer. The Sub Divisional Officer reported the matter to the Deputy Commissioner concerned, who accepted the report of the Returning Officer and thereafter passed an order suspending the poll and directed that the

election shall take place on some other day. This poll has been postponed on more than one occasion.

3. After the filing of the nomination papers on January 21, 1993, the voters' list has been changed. The subsequent poll was sought to be held on the basis of the revised electoral rolls which had come into existence after January 21, 1993, when the nomination papers had been filed in respect of the elections, in question. The petitioner challenged the holding of the election on the basis of the revised electoral rolls on the ground that only the electoral list, which was in existence on January 21, 1993, the date of nominations, could be the list, on the basis of which the election could be held. Section 5(2) of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act) provides that every person who is entered as a voter on the electoral roll of the Punjab Legislative Assembly for the time being in force, pertaining to the area of any Sabha shall be member of the that Sabha. In the circumstances, a person who is entered as a voter in the electoral roll for the time being could be entitled to vote in the election. The question which arises for our consideration is as to what meaning should be given to the expression, "for the time being in force", occurring in Sub-section (2) of the Section 5 of the Act ? A similar matter came up for consideration before the Supreme Court in *Narendra v. Manikrao*, wherein the Hon'ble Supreme Court laid down as follows:-

".....In our electoral scheme as unfolded in the 1951 Act, every elector ordinarily can be a candidate. Therefore, his name must be included in the list on or before the date fixed for nomination. Otherwise he loses his valuable right to run for the elective office. It is thus vital that the electoral registration officer should bring in the names of all the electors into the electoral roll before the date and hour fixed for presenting the nomination paper."

This principle laid down by the Supreme Court is fully applicable to the present case also. Section 5(2) of the Act, provides, as has already been stated, that every person who is entered as a voter on the electoral rolls of the Punjab Legislative Assembly for the time being in force, pertaining to the area of any Sabha shall be member of that Sabha. If voters are added subsequent to the date of the nominations, those added voters cannot have the right to file nomination papers. In the circumstances no election can be held on the basis of the electoral rolls which came into existence after the filing of the nomination papers under the election programme. In view of the above, we agree with the submission made by the learned counsel for the petitioner that the voters who are sought to be added after the filing of the nomination papers on January 21, 1993, cannot be treated as voters for the election, in question. The poll was postponed on January 21, 1993, when the nomination papers in respect of Gram Panchayat, in question, had already been filed.

4. The learned Advocate General, Punjab, urged that though it is correct that the Deputy Commissioner had only adjourned the poll in the instant case under Rule 14-A of the Punjab Gram Panchayat Election Rules, 1960 (hereinafter called the

Rules) yet under Rule 14-B of the Rules, the Government or a Deputy Commissioner, has the power to cancel the election programme of any Gram Sabha at any time before the commencement of the poll. There is no doubt that there is power with the Government or the Deputy Commissioner under Rule 14-A, to cancel the election programme if the conditions as laid down in Rule 14-B are in existence, but this question," in our opinion is wholly premature as the State Government or the Deputy Commissioner has not exercised any such power under Rule 14-B of the Rules till now. The contention raised by the learned Advocate General consequently, is wholly premature.

5. The writ petition is allowed. A mandamus is issued to respondents No. 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.