

(2010) 05 P&H CK 0170
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 1381 of 2010

Gurvinder Singh

APPELLANT

Vs

Presiding Officer, Election Tribunal (Sdm), Dhuri, District
Sangrur and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Punjab State Election Commission Act, 1994 — Section 76, 80, 89

Citation : (2010) 5 RCR(Civil) 930

Hon'ble Judges : Rakesh Kumar Jain, J

Judgement

Rakesh Kumar Jain, J.

1 The present appeal is directed against order dated 10.2.2010 passed by the Presiding Officer, Election Tribunal (Sub Divisional Magistrate), Dhuri, by which election of the appellant to the post of Sarpanch of Gram Panchayat, Maha Singh Wala, District Sangrur, has been set aside.

2 In brief, the facts of the case are that election to constitute Gram Panchayat Maha Singh Wala was held on 26.5.2008 in which seven panches were elected including the appellant. Thereafter, election for the post of Sarpanch was held on 19.7.2008 and the result was declared on 20.7.2008, in which appellant was elected as Sarpanch. His election was challenged by four members of the Panchayat on the ground that the appellant was not enjoying the confidence of the majority of the members and has been wrongly declared elected as Sarpanch by the Returning Officer under the political influence. The Election Tribunal allowed the election petition on the ground that though the meeting was held on 19.7.2008, in which election of Sarpanch was held through secret ballot, yet the votes were not counted on the same day rather votes were counted on the next day on 20.7.2008. On account of this fact, it was held by the Election Tribunal that the election has not been held in accordance with law. Consequently, the election of the appellant was set aside and it was ordered to be held afresh by

appointing some responsible person as Returning Officer.

3 Aggrieved against the order of the Election Tribunal, appellant has preferred this appeal "inter alia" alleging that the election petition, by itself, could not have been entertained by the Election Tribunal, as it has been filed beyond the period of limitation. It is submitted that the period of limitation, as prescribed under Section 76 of Punjab State Election Commission Act, 1994 (for short "the Act"), is 45 days and the Election Petition cannot be filed after the said period as the limitation cannot be extended even for a day and if the election petition is not filed within the prescribed period or is filed in violation of Section 76 of the Act, then the election petition is to be dismissed in terms of Section 80 of the Act. As a matter of fact, it is submitted that the election petition has been filed on the 46th day. In support of his contention, learned counsel for the appellant has relied upon a decision of this Court in the case titled as *Ajit Singh v. Nusrat Ali Khan*, 1997(4) R.C.R.(Civil) 460 and a decision rendered by the Bombay High Court in the case of *Ashok Shankar Gholap v. Krishnarao H. Deshmukh and another*, AIR 1980 Bombay 224.

4 On the other hand, the learned counsel appearing for the contesting respondents has argued that neither the plea of limitation has been taken by the appellant in the written statement nor any issue has been framed regarding it. Therefore, the said objection cannot be taken for the first time in appeal. He further contended that since the election petitioners have earlier filed two writ petitions, namely, C.W.P. No. 14602 of 2008 and C.W.P. 15379 of 2008, in this Court, therefore, the period spent in pursuing these writ petitions, should be excluded from the period calculated for filing the election petition before the Election Tribunal.

5 Faced with this situation, learned counsel for the appellant has submitted that neither the provisions of Section 5 nor of Section 14 of the Limitation Act, 1963, (for short "the 1963 Act") would apply in this case as the limitation for filing the election petition is 45 days which cannot be extended in any manner as the said writ petitions were dismissed as withdrawn with liberty to file fresh one with better particulars but neither any liberty was sought nor granted by this Court to file the election petition after the prescribed period. Meaning thereby, it is submitted that this Court had never extended the period of limitation for filing the election petition. In this regard, he relies upon judgments reported as *Joginder Singh v. Baldeep Singh and others*, 2010(1) R.C.R.(Civil) 78 and *Bagicha Singh (ExSarpanch) v. Punjab State Election Commission, Punjab*, 2001 (3) R.C.R.(Civil), 526.

6 I have heard learned counsel for the parties and have also gone through the record very carefully.

7 To appreciate the facts and law, it would be appropriate to refer to the relevant provisions of the Act, namely, Section 76 and 80, which reads as under :

"76. Presentation of petition (1) An election petition may be presented on one or

more of the grounds specified in subsection (1) of section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every election petition shall be accompanied . by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

8 Trial of election petitions :

(1) The election Tribunal shall dismiss an election petition which does not comply with the provisions of Section 76 or section 77 or Section 103. Explanation:

An order of the Election Tribunal dismissing an election petition under this subsection, shall be deemed to be an order made under clause (a) of section 87.

(2) Where more than one election petitions are represented to the Election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal made, in his discretion, try them separately or in one or more groups.

(3) Any candidate not already a respondent shall, upon application made by him to the Election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent. Explanation For the purposes of this subsection and of section 86, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Election Tribunal and to answer the claim or claims, as the case may be, made in the petition.

(4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from daytoday until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavor shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the election Tribunal for trial."

8. On facts, learned counsel for the respondents has very fairly accepted that :

(i) the election petition has been filed on the 46th day after the expiry of prescribed period of 45 days.

(ii) two writ petitions i.e. C.W.P. No. 14602 of 2008 and C.W.P. No. 15379 of 2008 were filed, challenging the election of the appellant but no permission was taken for filing the election petition and the said writ petitions were dismissed as withdrawn, to file fresh one, on the same cause of action and in none of the writ petitions, the time period was extended to file the election petition.

9 Now the question that arises for consideration in the present appeal is as to whether any election petition, filed beyond the prescribed period of 45 days, even if no plea regarding limitation has been taken in the written statement, is maintainable and secondly, whether the period spent in the writ Court challenging the election of the returned candidate can be excluded while calculating period of 45 days in filing the election petition.

10 In response to the first question, the provisions of Sections 76 and 80 of the Act are to be considered. Section 76 of the Act specifically provides that an election petition may be presented on one or more of the grounds specified in subsection (1) of Section 89 to the Election Tribunal by any candidate to such election or by any elector, within a period of 45 days from the date of election of returned candidate. Section 80 provides that the Election Tribunal shall dismiss an election petition which does not comply with the provisions of Section 76, Section 77 or Section 103 of the Act. The law is well settled in the cases of Ajit Singh (supra) and Ashok Shanker Gholap (supra) that if any election petition is filed beyond the period of limitation then the same should not be entertained and should be dismissed.

11 In the case of Ajit Singh (supra), the respondent was declared elected to the Punjab Legislative Assembly from the Malerkotla Constituency on 7.2.1997. The election petition was filed on 31.3.1997 under the Representation of People Act, 1951 (for short "the 1951 Act"), challenging the election of the returned candidate. After the election petition was filed in the office of High Court the Deputy Registrar (Judicial) pointed out certain other defects that the petition was barred because it was filed on the 50th day from the declaration of the result as against the period of limitation of 45 days prescribed under Section 81(1) of the 1951 Act. The plea taken was that the election petition is maintainable because on 29.3.1997, the Court was closed and 30.3.1997 was Sunday, however, as per Section 10 of the General Clauses Act 1897, if the Court is closed on a day, on which the limitation expires, the petition can be filed on the next opening day. In this case, the Court has held that although the Court was closed on 29.3.1997 yet the Registry was open and hence the election petition could have been filed on 29.3.1997 and as such it was found that the election petition was time barred. In the case of Ashok Shanker Gholap (supra), the election petition was filed on the last day of the limitation without requisite number of copies. Copies

kept in Board Department by the Clerk of the Advocate and next day copies were handed over to the Designated Officer and the objection was removed. It was found that in this process, limitation had expired by one day and ultimately the election petition was dismissed by the Bombay High Court for noncompliance of Section 81 (3) in view of Section 86 of the 1951 Act.

12 Learned counsel for the respondents has argued that no objection has been taken during trial that the election petition has not been filed within the period of limitation, therefore, it cannot be taken in the appeal. Learned counsel for the appellant has submitted that although the issue with regard to the maintainability of the election petition has been framed, yet the issue of limitation can be raised at any time. He relies upon a judgment reported as Hanutaram v. Kumbharam and others, AIR 1971 Rajasthan 283, in which it was held that as per Section 3 of the Limitation Act, 1963 the question of limitation is a pure question of law, hence the plea of limitation could be raised for the first time in appeal also if it goes to the root of the case.

13 It is now well settled that in election matters the provisions of the Act as required to be strictly construed. Thus, the Election Tribunal had no other alternative except to dismiss the election petition in terms of Section 80 of the Act. Therefore, I am fully in agreement with the argument of the learned counsel for the appellant that the election petition was barred by limitation.

14 Insofar as, the second question is concerned whether period spent by the election petitioner in pursuing the remedy of writ in this Court could be excluded. In this regard orders passed by this Court in C.W.P. No. 14602 of 2008 and C.W.P. No. 15379 of 2008 are required to be noticed :

"C. W.P. No. 14602 of 2008. After arguing for some time, counsel for the petitioners states that the petitioners may be permitted to withdraw this writ petition with liberty to file fresh one with better particulars. Dismissed as withdrawn with the aforesaid liberty. C.W.P. No. 15379 of 2008. Counsel for the petitioners states that the petitioners may be permitted to withdraw this writ petition with liberty to file fresh one with better particulars. Dismissed as withdrawn with the aforesaid liberty."

15 In none of the above said cases, even the request was made to the Court for permission to file election petition within the stipulated time which should have been considered as extension of period of limitation for filing the election petition in the present case rather the writ petitions have been dismissed as withdrawn. In this regard, decision rendered in the case of Joginder Singh (Supra), would be applicable, in which it has been held that even if the writ petition has been dismissed with liberty to file election petition even than granting of liberty to file election petition does not amount to condonation of delay. Similar view has been taken in the case of Bagicha Singh (Supra), In any case, the election petition is to be treated and tried like a civil suit to which provisions of Section 5 of the Limitation Act would not apply for the purposes of extending the period of

limitation. In view of the above, the appeal is allowed with costs and impugned order dated 10.2.2010 passed by Presiding Officer, Election Tribunal, (Sub Divisional Magistrate), Dhuri is set aside.