
(2010) 04 P&H CK 0227
In the Punjab And Haryana At Chandigarh

Harbhajan Singh	Vs	APPELLANT
Jasbir Kaur and Others		
 Jasvir Kaur Vs Amarjit Singh and Others		RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 110
Penal Code, 1860 (IPC) — Section 153A, 171E, 171F, 376, 376A

Citation : AIR 2011 P&H 81 : (2011) 5 RCR(Civil) 488

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of two appeals bearing FAO No. 4744 of 2009 titled as ""Harbhajan Singh v. Jasbir Kaur

and Ors." and FAO No. 5003 of 2009 titled as ""Jasvir Kaur v. Amarjit Singh and Ors." as both the appeals have arisen out of an order passed by

Election Tribunal dated 27.8.2009 whereby Election of Harbhajan Singh to the post of Panch has been set aside and a direction has been issued to

the Government of Punjab to hold fresh elections for the post of Panch.

2. Harbhajan Singh has filed appeal No. 4744 of 2009 challenging the order of the Election Tribunal on the ground that the impugned order is

illegal whereas Jasvir Kaur has challenged the order of Election Tribunal on the ground that after upsetting the election of Harbhajan Singh she

should have been declared elected in his place. FAO No. 4744 of 2009 was filed on 18.9.2009 in which notice of motion was issued on

23.9.2009 and process of fresh election was order to be stayed. Whereas, FAO No. 5003 of 2009 was filed on 5.10.2009 in which notice of

motion was issued on 14.10.2009 and in the meanwhile, elections were ordered to remain stayed.

3. For the convenience, the facts are being extracted from FAO No. 4744 of 2009.

4. The General Elections, in the State of Punjab, for the purpose of constituting Gram Panchayats, were held on 26.5.2008 including Gram

Panchayat of Saidewala in which appellant-Harbhajan Singh was elected as a Panch. His election has been challenged by Jasvir Kaur on the

ground that he has been in unauthorized possession over the land of Panchayat, therefore, he was disqualified to contest the election. The said

election petition was allowed by Election Tribunal (ADC), Mansa vide its order dated 27.8.2009 and post of Panch, which was held by the

appellant-Harbhajan Singh, was declared vacant.

5. Learned Counsel for the appellant-Harbhajan Singh has argued that there is no provision in the Punjab State Election Commission Act, 1994

(for short "the Act No. 19 of 1994") under which a person, who is found to be in unauthorized possession should be declared disqualified. It is

submitted that though the provision of disqualification is provided u/s 208(1)(k) of the Punjab Panchayati Raj Act, 1994 (for short "the Act No.

9 of 1994) but the said provisions would not be applicable as there is no corresponding provision u/s 11 of the Act No. 19 of 1994. He relied

upon a decision of Supreme Court in the case of "Som Lal v. Vijay Laxmi and Ors." 2008(3) PLR 435.

6. Learned Counsel for respondent-Jasvir Kaur has argued that the election of appellant-Harbhajan Singh has been rightly set aside by the Tribunal

in view of Section 208(1)(k) of the Act No. 9 of 1994 and the learned Tribunal has further erred in not declaring her as elected though it is

empowered to do so in terms of Section 87 of the Act No. 19 of 1994.

7. I have heard both learned Counsel for the parties and perused the available record with their assistance.

8. Before advertng to the facts of the case, it would be appropriate to refer to the provisions of Section 208 of the Act No. 9 of 1994 and Section

11 and 87 of the Act No. 19 of 1994, which are reproduced as under:

208. Disqualification for Membership. (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if:-

(a) he is so disqualified by or under any law for the time being in force for the

purposes of elections to the Legislature of the State.

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one

years;

(b) has been found guilty of any corrupt practice in any election of a Gram Panchayat, Panchayat Samiti or Zila Parishad;

(c) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a Sarpanch or Panch of Gram Panchayat or

member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction, or

(d) has been convicted of an election offence, or

(e) has been ordered to give security for good behavior u/s 110 of the Code of Criminal Procedure, 1973 , or

(f) has been notified as disqualified for appointment as public servant except on medical grounds ; or

(g) is a whole-time salaried employee of any local authority, Statutory, Corporation or Board or a Co-operative Society, registered under the

Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government ; or

(h) is registered as a habitual offender under the Habitual Offenders (Control and Reforms) Act, 1952 or any other law for the time being in force;

or

(i) has not paid the arrears of tax imposed by a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be; or

(j) is a tenant or lessee or contractor or share-holder in any property of the Gram Panchayat, Panchayat Samiti and Zila Parishad, or

(k) is in unauthorised occupation of property belonging to any local authority; or

(l) being a Sarpanch has cash in hand exceeding the amount, permitted under the rules made-under this Act;

(m) is member of either House of Parliament or of the Legislature of the Punjab State:

Provided that a member of either House of the Parliament or Legislature of Punjab State may be elected as a Sarpanch or member of Gram

Panchayat, Panchayat Samiti or Zila Parishad if, along with his nomination paper gives undertaking to the effect that he shall resign the membership

of either House of Parliament or of the Legislature of the Punjab State, as the case may be, and so resigns before taking the oath or making

affirmation for taking over the office of Sarpanch of a Gram Panchayat or a member of any Gram Panchayat, the Panchayat Samiti and Zila

Parishad;

(n) has been convicted of an offence under the protection of the Civil Rights Act, 1955 within a period of five years immediately preceding the last

date of the filing of the nomination papers; or

(o) being a Sarpanch or Panch does not attach certificate with his nomination papers to the effect that he has handed over to the Block

Development and Panchayat Officer complete charge of the record of the Gram Panchayat and of the cash, if any, with him.

11. Disqualifications for membership of a Panchayat or a Municipality - A person shall be disqualified for being chosen as, and for being a member

of a Panchayat or a Municipality-

(a) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or

adherence to a foreign State; or

(b) if he is of unsound mind and stands so declared by a competent court; or

(c) if he is an undischarged insolvent; or

(d) if he has in proceedings for questioning the validity or regularity of an election, been found guilty of any corrupt practice; or

(e) If he has been found guilty of any offence punishable u/s 153A or Section 171E or Section 171F or Section 376 or Section 376A or Section

376B or Section 376C or Section 376D or Section 498A or Section 505 of the Indian Penal Code, 1960 or any offence punishable under

Chapter XIII of this Act unless a period of six years has elapsed since the date of such conviction.

(f) If he holds an office of profit under a Panchayat or a Municipality; or

(g) If he holds an office of profit under the Government of India or any State Government; or

(h) If he is interested in any subsisting contract made with, or any work being done for, that Panchayat or Municipality except as a share-holder

(other than a Director) in an incorporated company or as a member of a co-

operative society; or

(i) If he is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner, or with which he is

engaged in a professional capacity, in connection with any cause or proceeding in which the Panchayat or the Municipality is interested or

concerned; or

(j) If he, having held any office under the State Government or any Panchayat or any Municipality or any other State level authority or any

Government company or any corporate body owned or controlled by the State Government or Government of India, has been dismissed from

service, unless a period of four years has elapsed since his dismissal.

87. Decision of the Election Tribunal - At the conclusion of the trial of an election petition, the Election Tribunal may made an order for -

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

9. No doubt Section 208(1)(k) of the Act No. 9 of 1994 provides a disqualification in respect of a person who is found to be in unauthorized

possession over the property belonging to any local authority, which includes Gram Panchayat but the said disqualification is conspicuously absent

in Section 11 of the Act No. 19 of 1994. The Apex Court, in the case of Som Lal (Supra), was faced with the same controversy wherein, election

of the salaried employee of a local authority was challenged on the basis of the provision contained in Section 208 of the Act No. 9 of 1994 but it

was held that Act No. 9 of 1994 is prior in time whereas the Act No. 19 of 1994 is later in time and disqualification provided in the Act No. 9 of

1994 which is not provided in the Act No. 19 of 1994 would not apply because Act No. 19 of 1994 is later in time. It was further held that if the

disqualifications, which are provided under both the Acts are the same then the same could be entertained by the Election Tribunal for the purpose

of upsetting an election but in the present case the disqualification provided u/s 208(1) (k) of the Act No. 9 of 1994 is not provided in Section 11

of the Act No. 19 of 1994, therefore, Election Tribunal has committed an error of law in upsetting the election of the appellant-Harbhajan Singh

restoring to the provision of Section 208(1)(k) of the Act No. 9 of 1994.

10. In view of the above, I find merit in the present appeal, namely, FAO No. 4744 of 2009, filed by the appellant-Harbhajan Singh and as such

the impugned order is set aside and the appeal is hereby allowed. With this order, the other appeal, namely, FAO No. 5003 of 2009, becomes

redundant and is ordered as such.

11. A photocopy of this order be placed on the file of another connected case.