
(1964) 07 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No 1581 of 1963

Hari Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 16-07-1964

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 10

Citation : (1964) 07 P&H CK 0028

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : Anand Swaroop, for the Appellant; T.S. Doabia for Mr. H.S. Doabia, Additional Advocate-General for Respondents Nos 1 to 4 and Mr. R. Sachar for Respondents No 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—The elections to the Market Committee, Jagadhri, District Ambala, were to be held and in that connection the Deputy Commissioner Ambala, respondent No. 2 appointed Mr. Sardar Singh, S.D.O., Jagadhri, respondent No. 3, as the Returning Officer and Mr. Mehnga Singh, S.D.O., P.W.D., Jagadhri, respondent No. 4, as the Presiding Officer. The following persons were nominated as candidates for the election of two Members from persons licensed u/s 10 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act):

- (1) Krishan Chand, respondent No. 5.
- (2) Kewal Krishan, respondent No. 6.
- (3) Hari Singh, petitioner.
- (4) Balbir Saran.
- (5) Ghasitoo Ram.

(6) Om Parkash.

(7) Pritam Lal.

(8) Manohar Lal..

(9) Sham Lal son of Ram Sarup.

Out of these nine persons, Pritam Lal withdrew his candidature. The nomination papers of Manohar Lal and Sham Lal son of Ram Sarup were rejected by the Returning Officer at the time of the scrutiny, while those of the remaining were accepted. The Returning Officer declared respondents 5 and 6 as elected with 140 and 122 votes respectively. The remaining candidates, who were defeated, however, secured the following number of votes:

(1) Hari Singh, petitioner 110

(2) Balbir Saran 88

(3) Om Parkash 8

(4) Ghasitoo Ram 2

The present writ petition has been filed by Hari Singh challenging the election of the two Members on the following grounds:

(1) that the nomination papers of Sham Lal were improperly rejected by the Returning Officer on the ground that in the voters' list the name of his firm was given as Ram Sarup and Company, whereas the license u/s 10 of the Act was in the name of Sham Lal and Company. This, according to the petitioner, was obviously a clerical mistake, which should have been corrected by the Returning Officer (vide proviso (b) to Rule 9 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961 (hereinafter referred to as the Rules);

(2) that the nomination papers of Kewal Krishan, respondent No. 6, were erroneously accepted by the Returning Officer, because he had been convicted for an offence under sections 147 and 332/149, Indian Penal Code, and sentenced to one year's rigorous imprisonment, which was, however reduced to six months by this Court. The charge against him was that he was a member of an unlawful assembly and in prosecution of the common object of the same, he along with others pelted stones on the police officers present at the Police Post, Yamuna Nagar, on or about 33th March, 1958 and as a result voluntarily caused simple hurt to 13 police officers, including the Superintendent of Police, a Head Constable, and several Foot Constables. His sentence expired on 21st December, 1959. He was, thus, disqualified from becoming a Member of the Market Committee u/s 12(6) of the Act and, as such, he was also disqualified from being nominated as a candidate under Rule 7;

(3) that at the time of polling, the Presiding Officer allowed the licensees u/s 10 of the Act to vote in contravention of sub-rule (3) of Rule 19 inasmuch as (a)

where the licensee was a firm, one of the partners of the firm was allowed to vote without any authorisation in writing from all the partners of the firm and (b) the certificates of identity in form "H" were accepted, even though they were not signed by the Chairman of the Committee of the Notified Market Area;

(4) that 27 persons, whose names were given in the list attached as annexure "C", were allowed to vote, although their names were not to be found in the published electoral rolls.

On the basis of grounds (3) and (4) mentioned above, it is urged by the petitioner that the polling was conducted by the Presiding Officer with material irregularity, which had materially affected the result of the election.

2. In the return filed on behalf of the Deputy Commissioner, Ambala, respondent No. 2, it was stated that Shri Sham Lal filed nomination papers as representatives of Sham Lal and Company. Since the name of this Company did not appear in the voters' list, his nomination paper was properly rejected by the Returning Officer. It was admitted that Shri Kewal Krishan was convicted and sentenced under sections 147/ 332, Indian Penal Code. In the opinion of the Returning Officer, however, these offences did not involve moral turpitude as laid down in section 3(5)(e) of the Act. His nomination paper was, consequently, not rejected. It was further stated that Rule 19(3) was amended by the Government and the Presiding Officer was, therefore, authorised to issue ballot-papers after his own satisfaction about the identity of the licensee voters. Further, it was admitted that the names of 27 persons, mentioned in the list attached as annexure "C" to the Writ Petition., were not mentioned in the published Electoral roll but it could not be said if these persons were actually allowed to vote or not, since the relevant record regarding the votes cast and the marked copy of the electoral roll were lying sealed. Attention was however, invited to the proviso to Rule Rule 19(3), which laid down that where the licensee under sections 10 and 13 of the Act was a firm, only that partner of the firm, who had been duly authorised by all the partners to represent it, would be entitled to vote. It was also possible that some clerical errors/mistakes might have occurred in those names and after satisfying himself the Presiding Officer allowed them to cast their votes. This fact could, however, be verified from the marked copy of the electoral roll, which was under seal.

3. The first contention raised by the learned counsel for the petitioner was that the license u/s 10 of the Act was in the name of the firm, Sham Lal and Company, and Sham Lal had been duly authorised to represent this firm. In the voters' list at serial No. 443, the name of Sham Lal son of Ram Sarup was given under the second column as the license-holder, whereas in the third column under the heading "name of the firm" "Messrs Ram Sarup and Company" was written. In the fourth column, which is meant for "the number and the date of the license", it was mentioned "224, dated 18th May, 1963". In the fifth column, the age of Sham Lal was given as 26 and in the last column, namely sixth, his address was given as Main Bazar, Chhachhrauli. In the nomination paper of

Sham Lal, his name, his father's name, his address and his license number were given exactly in the same way as in the voters' list. The name of the firm, however, was given as Sham Lal and Company. Since Sham Lal was the son of Ram Sarup, therefore, by a clerical or printing error, the words "Messrs. Ram Sarup and Company" had been inserted under column 3 instead of "Messrs. Sham Lal and Company" and this clerical error could have been overlooked by the Returning Officer under the provisions of the proviso to Rule 9(1)(b).

4. Learned counsel for respondents 5 and 6, who were the successful candidates in this election, on the other hand, contended that this could not be called a clerical or printing error as envisaged in the proviso to Rule 9(1)(b). He submitted that Rule 3 dealt with the preparation and publication of electoral rolls and under that Rule the objections were invited against the preliminary list of electors published by the Deputy Commissioner and after they were disposed of, the final electoral roll was prepared and printed. Under sub-rule (6) of that Rule, the Deputy Commissioner was authorised to correct at any time any clerical or printing errors that he might discover in the electoral roll. The clerical or printing errors mentioned in the proviso to Rule 9(1)(b) were of a different kind, as for example, the mistakes in the spellings etc. He further submitted that Sham Lal, whose nomination paper had been rejected was the only person who was aggrieved by that order and it was he who could file a writ petition against the same. It was also contended that no election petition was provided in the Rules and, therefore, the proper stage to take objection to this order of the Returning Officer was when the nomination paper was actually rejected by him, that is, on 15th July, 1963. The election was held on 10th August, 1963 and the present writ petition which was filed on 27th August, 1963 was very much delayed and the election could not, consequently, be quashed. It was also submitted that the petitioner had not alleged in his petition that he had suffered any personal injury by the illegal rejection of the nomination paper of Sham Lal and, therefore, the election could not be set aside at his instance. For this, he cited a Full Bench decision of this Court in *Dev Parkash v. Babu Ram* (1961) 63 P.L.R. 485. Lastly, it was submitted that this Court should not listen to the petitioner, who had acquiesced in the order of the Returning Officer and had actually taken part in the election and now since he was defeated he could not file a writ of quo-warranto. Reliance for this submission was placed on a Bench decision of the Nagpur High Court in *Miss Avi J. Cama v. Banwari Lal Aggarwal* AIR 1953 Nag. 81.

5. It is not necessary to decide the question as to whether the mistake pointed out by the Returning Officer and on the basis of which the nomination paper of Sham Lal was rejected was a clerical or a printing error as contemplated by the proviso to Rules (1)(b), because I find that the petitioner had acquiesced in the order of the Returning Officer and had actually taken part in the election and was defeated. Under these circumstances, I would not like to exercise my discretion in his favour by issuing a writ of quo-warranto. The nomination paper of Sham Lal was, admittedly, rejected on 15th July, 1963 and the election was to be held on 10th August, 1963. During this interval, he had ample opportunity to come to

this Court and seek redress of his grievance I am not unmindful of the fact that there are rulings to the effect that any member of the public can challenge the right to hold public office, provided he is not a man of straw set up by others. It is also true that a writ of "quo-warranto differs from certiorari, prohibition and mandamus in that it is not necessary for the applicant to establish that he has been prejudicially affected by any wrongful act of a public nature, or that his fundamental right is infringed, or that he is denied any legal right, or that any legal duty is owed to him." But it is equally clear that a writ of quo warranto is a remedy given by law at the discretion of the Court and is not issued as a matter of course. The Court is entitled to enquire into the conduct and the motive of the petitioner before issuing such a writ. There is ample authority for the proposition that the Court will not listen to a candidate who has acquiesced or perhaps concurred in the very act, which he afterwards comes to complain of, when it suits his purpose. It will not issue a writ of quo warranto at the instance of the candidate for an election who did not object to the nomination paper of another candidate for the same constituency at the proper time (see in this connection *Miss Avi J. Cama v. Banwari Lal Aggarwal* AIR 1963 Nag. 81, *Rajendar Kumar Chandanmal Vs. Government of State and Others*, and *A.R.V. Achar v. Madras State* AIR 1954 Mad. 583.

6. Learned counsel for the petitioner submitted that there were cases where the candidates fought the election and lost therein and then approached this Court challenging the election and were granted relief by this Court and the case of his client was stronger, because no election petition was provided under this Act and he had no alternative remedy except by filing a writ petition under Article 226 of the Constitution. He further referred to a decision of the Bombay High Court in *Sonu Sampat Shewale v. The Jalgaon Borough Municipal Committee* ILR 1958 Bom. 113, wherein it was observed-

That if the appointment of an officer is illegal, every day that he acts in that office, a fresh cause of action arises; there can, therefore, be no question of delay in presenting a petition for a writ of quo warranto in which his very right to act in such a responsible post has been questioned.

There is no force in this contention. If an election petition had been provided in the Act, there could be some justification for the petitioner to wait after the whole election was over, but in the present case he knew that he could not file an election petition after the election and, therefore, he should have immediately come after the nomination paper of Sham Lal was rejected by the Returning Officer. As already mentioned above, there was plenty of time at his disposal to approach this Court. Firstly, he did not come to this Court at that stage and, secondly, by taking part in the election he acquiesced in the impugned order of rejection of the nomination paper of Sham Lal. The Bombay authority relied upon by the learned counsel for the petitioner has no application to the facts of the present case, because that decision did not relate to an election matter. Moreover, it was not a case in which the petitioner had acquiesced in the

impugned order.

7. The second contention raised by the learned counsel for the petitioner was that the nomination paper of Kewal Krishan, respondent No. 6, was improperly accepted by the Returning Officer, because he had been convicted for an offence under sections 147 and 332/149, Indian Penal Code. For the reason given above, there is no force in this contention as well.

8. The third contention relates to grounds (3) and (4) mentioned at page 3 of this judgment. These two grounds are quite vague. It has not been alleged in whose favour the persons concerned had voted. It has also not been stated how the petitioner was prejudicially affected and further as to how the result of the election had been materially affected. It has been held by Chagla C.J. and Dixit J. in *Bhairulal Chunilal Vs. State of Bombay*,

The Courts must always be reluctant to interfere in elections except on the clearest and strongest of grounds. An election is a luxury, which a democracy cannot be expected to indulge in too frequently, and once the people have recorded their votes and expressed their confidence in their representatives, the Courts should be loath to interfere with the decision of the People merely because some technicality has not been observed or some irregularity has been committed. The matter would be entirely different if the irregularity has resulted in the people not being able to express their views properly or if there was any corrupt practice, which has materially affected the result of the election." Under these circumstances, no interference is called for in these proceedings on these two grounds also.

9. The result is that this petition fails and is dismissed, but in the circumstances of this case, however, I. will leave the parties to bear their own costs in these proceedings.