
(2015) 06 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 12348 of 2015 (O&M)

Jagdev Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Punjab State Election Commission Act, 1994 — Section 11, 35, 38, 38(4), 39

Citation : AIR 2015 P&H 136 : (2015) 179 PLR 574

Hon'ble Judges : Rajesh Bindal, J; Ramendra Jain, J

Bench : Division Bench

Advocate : Yowan Sharma, Advocate for Manoj Kumar, for the Appellant; Rajesh Bhardwaj, A.A.G, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rajesh Bindal, J.

1. The petitioners have approached this court for a direction to respondent No. 3 to consider the nomination papers filed by them for the post of Member Panchayat of village Bhalur, Tehsil Bagha Purana, District Moga.

2. Learned counsel for the petitioners submitted that election of Gram Panchayat of village Bhalur was conducted by the State Election Commission in the year 2013. On account of death of members representing Ward Nos. 7 and 8, the vacancies arose. Notification dated 29.5.2015 was issued under Section 35 of the Punjab State Election Commission Act, 1994 (for short, "the Act") for holding bye-elections. As per schedule, the last date fixed for filing nomination was 3.6.2015. The petitioners filed their nomination papers mentioning their serial numbers as well as of proposer and seconder in terms of the voters list of the year 2013 as the same only was available. Vide impugned notice, the candidature of the petitioners was rejected on the ground that voter number of the candidate, proposer and seconder did not tally with the voters list.

3. The submission is that Section 11 of the Act prescribes disqualifications for

being a member of a Panchayat or a Municipality. The petitioners do not fall in any of the categories. Section 38 of the Act provides that on presentation of the nomination paper, the Returning Officer is to satisfy himself about the name and electoral roll number of the candidate and his proposer, as mentioned in the nomination paper, and in case there is any error, the candidate is to be granted opportunity to correct the same. Section 41 of the Act provides procedure for scrutiny of the nomination. Even in terms thereof, the candidate has to be granted an opportunity to correct any error. The grounds on which nomination papers can be rejected have been enumerated. The case of the petitioners does not fall in any of those categories. It has further been provided in the aforesaid provisions that nomination of a candidate is not to be rejected merely on the ground of any irregularity in respect of nomination paper. While referring to the aforesaid provisions, it was submitted that the petitioners in the present case were not afforded opportunity to correct their electoral numbers and that of their proposer and seconder in the nomination papers furnished by them in terms of the voters' list for the year 2013, rather, respondent No. 3 rejected their nomination papers on the ground that they did not tally in terms of the voters' list for the year 2015, hence, the petitioners have been deprived of their right to contest the election, which is fundamental in nature.

4. On the other hand, learned counsel for the State submitted that rejection of candidature of the petitioners cannot be said to be illegal because they have to furnish complete and correct particulars. As per the latest voters' list supplied to respondent No. 3 by the State Election Commission, he could tally the numbers, as mentioned in the nomination papers, only therefrom. He had no other material with him to find out the correctness of the particulars mentioned in the nomination papers. Once the petitioners themselves were at fault, rejection of their nomination papers cannot be said to be illegal.

5. Heard learned counsel for the parties and perused the paper book.

6. The relevant provisions of the Act and the Punjab Panchayat Election Rules, 1994 (for short, "the Rules") are reproduced hereunder:

"Sections 38(4) and 41 (1 to 5) of the Act

38. Presentation of nomination paper and requirements for a valid nomination:

(1) to (3) xx xx xx

(4) On the presentation of nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical or technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical or technical or printing error in regard to the

electoral rolls numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical or technical or printing error to be corrected and where necessary direct that any such misnomer, inaccurate description, clerical or technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

xx xx xx

41. Scrutiny of nominations: (1) On the date fixed for the scrutiny of nominations under Section 35, the candidates, their election agents, one proposer of each candidate and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the Returning Officer may appoint, and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in Section 38.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject the nomination on any of the following grounds, namely:-

(a) that on the date fixed for the scrutiny of nominations, the candidate either is not qualified or is disqualified for being chosen to fill the seat under this Act; or

(b) that there has been a failure to comply with any of the provisions of Section 38 or Section 39.

(3) Nothing contained in clause (b) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

xx xx xx

Rule 11 of the Rules

Scrutiny of nomination papers and decision of objections (Section 41)--(1) The Returning Officer shall examine the nomination papers at the time appointed in this behalf, hear objections, if any, presented by the objectors in person, as to

the eligibility of any candidate and determine these objections after such enquiry as he may consider necessary. The decision rejecting or accepting a nomination paper and brief statement of reasons thereof shall be endorsed on the nomination paper and signed by the Returning Officer: Provided that the Returning Officer may,--

(a) permit any clerical error in the nomination paper in regard to names or numbers to be corrected in order to bring them in conformity with the corresponding entries in the electoral rolls; and

(b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked.

2. The person objecting under sub-rule (1) must be a candidate of the concerned Panchayat or Sabha Area, as the case may be."

7. Chapter-VII of the Act prescribes the procedure for conduct of elections. It starts with specifying the dates for nomination after issuance of notification for elections. Any person can be a candidate for election to fill a seat if he is qualified to be chosen to fill that seat in terms of the provisions of the Act. Section 11 of the Act prescribes disqualifications. In terms thereof, a person is disqualified for contesting an election, who suffers from any of the disqualifications enumerated therein. It is not in dispute that the petitioners do not fall in such category. Section 38 of the Act provides that on or before the date fixed for filing nomination papers, a candidate either in person or through his proposer can deliver nomination paper to the Returning Officer at the specified place. Section 38(4) of the Act provides that on presentation of nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and his proposer, as entered in the nomination papers, are the same as those entered in the electoral rolls. In case, there is any error in the nomination papers, the Returning Officer shall permit correction of any such error. Wherever necessary, he can direct that such an error shall be over-looked.

8. Section 41 of the Act and Rule 11 of the Rules provide for scrutiny of nominations at a stage which comes after the nomination papers are filed and for which a separate date is provided. It further provides that on a date fixed for scrutiny of nominations, the candidate, his election agent and one person authorised by him may attend the process of scrutiny of nominations. The Returning Officer is to provide reasonable facilities to the aforesaid persons for examining the nomination papers of all the candidates. Thereafter, he is required to examine the nomination papers and decide any objections raised pertaining to the nominations. He can reject the nominations on any of the grounds mentioned in Section 41 (2) of the Act. Those are:

"(a) that on the date fixed for the scrutiny of nominations, the candidate either is not qualified or is disqualified for being chosen to fill the seat under this Act; or

(b) that there has been a failure to comply with any of the provisions of section

38 or section 39."

9. It is not the case of the State that the petitioners are disqualified to be chosen as Members of the Panchayat, hence, the case will not fall in first disqualification, mentioned above. It is still not the case of the State that the petitioners were afforded opportunity to correct the error in the nomination papers and they failed to do so.

10. In terms of Section 41 (4) of the Act and Rule 11 of the Rules, the Returning Officer cannot reject any nomination paper on the ground of any defect, which is not of a substantial character. The decision has to be endorsed on each of the nomination paper.

11. In the case in hand, the ground shown in the notice rejecting nomination papers of the petitioners is "Vote Number of candidate, proposer and seconder do not tally with voter list." The case set up by the petitioners is that voters' list for the year 2013 only being available with them, they had filled their voters' list numbers and that of their proposer and the seconder accordingly. The voters' list for the year 2015 was not available with them.

12. Learned counsel for the petitioners submitted that it is not the case of the State that the names of the petitioners do not find mention in the voters' list for the year 2015. Only the serial numbers changed. To be specific, he pointed out the names of the candidates, proposers and seconders, which find mention in the voters' list of 2013, are as under:

13. The names of the candidates, proposers and seconders mentioned in the voters' list of 2015 are as under:

14. The fact that the petitioners were not afforded an opportunity to correct the electoral numbers of the petitioners, proposers and the seconders in the nominations filed in terms of the voters' list for the year 2015 is not disputed by learned counsel for the State. The provisions of the Act clearly provided that the numbers have to be checked at the time of presentation of the nomination papers and the candidate has to be afforded an opportunity to correct the same and secondly at the stage of scrutiny of the nominations. At that stage also, any error is required to be permitted to be corrected. Further, the nominations are not to be rejected only on the ground of defect, which is not of a substantial character.

15. As in the case in hand, the petitioners were not afforded the opportunity to correct the error regarding the voters' list numbers of the petitioners, proposers and the seconders mentioned in the nomination papers, which in the facts of the case can be said to be a bona fide error, in our opinion, rejection of their nominations on that ground is erroneous. The same deserves to be set aside. Ordered accordingly. The competent authority is directed to consider the same afresh after affording opportunity to the petitioners to make necessary corrections in the nominations. The needful be done before the elections, so as

to enable the petitioners to contest the same in case their candidature is otherwise found to be in order.

16. The petition stands disposed of.

17. A photo copy of the order be given to learned counsel for the parties under the signatures of the Special Secretary of the Bench of this Court.