
(2010) 02 P&H CK 0297
In the Punjab And Haryana At Chandigarh

Jaswant Singh

APPELLANT

Vs

Presiding Officer, Election Tribunal (A.D.C.) and Others

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Punjab State Election Commission Act, 1994 — Section 76

Citation : (2010) 158 PLR 175 : (2010) 2 RCR(Civil) 411

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against order of the Election Tribunal (A.D.C), Hoshiarpur whereby election petition filed by the appellant, challenging the election of respondent No. 1, u/s 76 of Punjab State Election Commission Act, 1994, (for short "the Act 1994") has been dismissed.

2. The General Elections, in the State of Punjab, for the Gram Panchayats, were held on 26.5.2008. 3. The first argument raised by the counsel for the appellants is that on 17.5.2008, when the nomination papers were to be scrutinized, he had objected to the candidature of respondent No. 1 on the ground that his nomination paper is not accompanied with "No Objection Certificate" (for short "NOC") from the Block Development and Panchayat Officer (in short "BDPO"). It is submitted that in the absence of the NOC, his nomination papers could not have been accepted, which otherwise has been illegally accepted by the Returning Officer. Therefore, a manifest in justice has been caused to the appellant as he has been pitted against a person to contest the election who was not qualified in view of Section 208(1)(o) of the Punjab Panchayati Raj Act, 1994 (for short "the Act"). He further relied upon the report of the SDM, Hoshiarpur to contend that in an enquiry conducted on 24.5.2008, the SDM, Hoshiarpur has opined that NOC was conspicuously absent with the nomination papers filed by the applicant.

3. The second argument raised by the counsel for the appellant is that respondent was disqualified from the post of Sarpanch by the Joint Director, Rural Development, exercising the powers of Director Punjab, Chandigarh, vide his order dated 28.5.2005. Therefore, he could not have been allowed to contest the present elections.

4. I have heard learned Counsel for the appellant and have perused the record which has been placed before me.

5. Insofar as the first argument is concerned, the disqualification enshrined in Section 208(1)(o) of the Act basically relied upon by the counsel for the appellant reads as under:

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.

6. In this regard, it is pertinent to mention that the Act came into force w.e.f. 21.4.1994 whereas the Act of 1994 came into force w.e.f. 7.9.1994. Therefore, the Act of 1994 is later on in time than the Act. It is also not disputed that disqualification mentioned in Section 208(1)(o) of the Act does not find mention in Section 11 of the Act of 1994. In the latest judgment of the Supreme Court in the case of "Som Pal v. Vijay Laxmi and Ors. 2008 (2) L.A.R. 557 it has been held that disqualification mentioned in Section 208 of the Act would not be operative in the face of disqualification provided u/s 11 of the Act of 1994, unless and until they both are consistent. In the present case, admittedly, disqualification mentioned u/s 208(1)(o) of the Act is conspicuous by its absence in Section 11 of the Act of 1994. Therefore, in terms of the decision of the Apex Court, the disqualification provided under the Act of 1994 would not apply. In view of this discussion, the first argument, raised by the counsel for the appellant is rejected.

7. insofar the second argument is concerned, it has been submitted that respondent No. 1 was removed from the post of Sarpanch vide order dated 28.05.2005 by the Director while exercising its jurisdiction u/s 20(1) of the Act. It is, however, admitted by learned Counsel for the appellant that respondent No. 1 was not disqualified to contest election in terms of Section 20(2) of the Act of 1994. Since, respondent No. 1 was not debarred from contesting election u/s 20(2) of the Act, which provides that in case a person, who has been removed u/s 20(1), he may be disqualified for re-election for a period not exceeding five years, as the Director may after such enquiry deem fit. In the present case, respondent No. 1 has not been debarred from contesting any election much less for any fixed period. Therefore, the finding recorded by learned Tribunal that respondent No. 1 was not debarred from contesting election is perfectly in order. In view of the above discussion, the second argument is also rejected.

8. No other argument has been raised before this Court. Hence, the present

appeal is dismissed.