

(1974) 09 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No"s. 173 and 174 of 1974

Kanshi Ram

APPELLANT

Vs

The Sub-Divisional Officer (Civil) and Another

RESPONDENT

Date of Decision : 19-09-1974

Acts Referred:

Himachal Pradesh Gram Panchayat (Election) Rules, 1972 — Rule 58

Himachal Pradesh Panchayati Raj Act, 1968 — Section 167, 168, 170, 179, 180(1)

Citation : (1974) 3 ILR HP 858

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—This and connected writ petitions challenge an order of the Sub-Divisional Officer (Civil) declining to consider the Petitioners' plea that the election petitions filed against them are barred by time.

2. Kanshi Ram, the Petitioner in Civil Writ Petition No. 173 of 1974, was declared elected Panch of the Gram Panchayat, Sandhu. The second Respondent, Nand Lal, filed an election petition challenging Kanshi Ram's election. Kanshi Ram opposed the election petition. Among the pleas, he said that the election petition was barred by time.

3. Tulsi Ram Sharma, the Petitioner in the connected Civil Writ Petition No. 174 of 1974, was also elected Panch of the Gram Sabha, Sandhu, and an election petition was filed against his election by Chet Ram. Tulsi Ram contended that the election petition was barred by time.

4. The two election petitions came on for hearing before the Sub-Divisional Officer (Civil), Theog, as the prescribed authority determined under Rule 58 of the Himachal Pradesh Gram Panchayat Election Rules, 1972. On June 14, 1974,

the Sub-Divisional Officer (Civil) made a common order holding that as the election petitions had already been admitted and the stage had been reached for an enquiry into them, the plea of limitation could not be considered. Apparently taking the view that the order admitting them should be taken to close the issue of limitation, he observed that he was not competent to review or revise that order. The validity of the order of June 14, 1974, is now assailed by the Petitioners.

5. Section 167 of the Himachal Pradesh Panchayati Raj Act, 1968, provides for an election petition to challenge the election of a Panch of a Gram Panchayat. Section 168 declares:

Any member of the Sabha may, on furnishing the prescribed security in the prescribed manner, present within thirty days of the publication of the result, on one or more of the grounds specified in Sub-section (1) of Section 180, to the prescribed authority, an election petition in writing against the election of any person as a Panch.

6. If an election petition is not filed within the prescribed period of thirty days, the penalty is dismissal of the election petition. Section 170 provides that if the petition is not presented within the period specified in Section 168, "the prescribed authority shall dismiss the petition". It is evident that a duty has been cast on the prescribed authority to dismiss an election petition which is barred by time. Before dismissing the petition, the prescribed authority is required by the proviso to Section 170 to give the election Petitioner an opportunity of being heard. If the prescribed authority decides not to dismiss the election petition on the grounds set out in Section 170, it is required by Section 179 to enquire into the election petition.

7. It is urged on behalf of Nand Lal and Chet Ram that the Act entitles an election Petitioner alone to be heard on the question whether an election petition is barred by time, and the Respondent to the election petition has no right whatever to be heard in the matter. The submission proceeds on the basis that as Section 170, by its proviso, makes specific reference to the election Petitioner only, therefore by implication no other party has a right to be heard.

8. The contention on behalf of Nand Lal and Chet Ram appears to me to be without substance. When Section 168 provides a period of limitation for filing an election petition and Section 170 requires the prescribed authority to dismiss the petition if it is not presented within time, it is clear that while on the one hand the statute has cast an obligation on an election Petitioner to prefer his election petition within time, there is a corresponding right in the successful candidate, whose election is challenged, against his election being disturbed by a petition filed beyond time.

9. When an election petition is entertained by the prescribed authority, it is bound to consider whether the requirements of Section 168 have been satisfied. It must examine whether the prescribed security has been furnished as required

by law and also whether the petition has been filed within time. If ex facie it appears to be within time, the prescribed authority may proceed to deal with it u/s 170. If, on the contrary, it appears on the face of it to be barred by time it should hear both the election Petitioner and the Respondent on that point. That will ensure that the question of limitation has been disposed of once and for all so far as the prescribed authority is concerned. But the prescribed authority may decide to hear the election Petitioner alone at that stage. If that be so, and the prescribed authority does not dismiss the election petition on the ground of limitation u/s 170, it will proceed to enquire into the election petition u/s 179. An inquiry into the election petition contemplates an enquiry into all the questions which properly arise out of such election petition. Inasmuch as the successful candidate is entitled to show that the election petition should be dismissed, he is entitled to raise all points in defence which will defeat the election petition. Included in this is the right to urge that the election petition is barred by time. The expression "enquire" in Section 179 is wide enough to include all the points of enquiry which can properly arise upon the respective submissions of the parties. Those submissions need not be confined to the grounds on which the election has been challenged; they will extend to all matters which a Respondent to the election petition can take in defence. It is not necessary that an express right should be conferred by the Act on the Respondent to plead that the election petition is barred by time. As for the submission that Section 170 has expressly conferred a right on the election Petitioner to be heard in the matter of limitation, that is only for the purpose of ensuring that the election petition is not dismissed without hearing the election Petitioner.

10. Learned Counsel for Nand Lal and Chet Ram has referred me to K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, but in my opinion nothing said therein weakens the conclusion to which I have come.

11. In my judgment, the Sub-Divisional Officer (Civil) is in error in holding that he is not competent to consider the plea of Kanshi Ram and Tulsi Ram Sharma that the respective election petitions filed against their election is barred by time. That the election petitions have reached the stage contemplated by Section 179 of the Act is no bar to the plea being entertained.

12. This and the connected writ petitions are allowed. The order dated June 14, 1974, of the Sub-Divisional Officer (Civil) is quashed. The Petitioners are entitled to an opportunity before the Sub-Divisional Officer (Civil) to show that the respective election petitions filed against their election are barred by time. The Petitioner in each writ petition is entitled to his costs, which I assess at Rs. 100 in each case.