
(1995) 12 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16202 of 1995

Karan Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 21-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 4
Haryana Panchayati Raj Act, 1994 — Section 176

Citation : (1996) 112 PLR 686

Hon'ble Judges : V.S. Aggarwal, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : A.P. Bhandari, for the Appellant; S.P. Jain and Rajesh Gumbher, for the Respondent

Final Decision : Dismissed

Judgement

Amarjeet Chaudhary, J.—The petitioner, Karan Singh, was declared elected as Sarpanch of village Maheshpur, now in district Panchkula, which was earlier part of District Ambala, on 19.12.1994 defeating his nearest rival Vijay Kumar by a margin of only one vote. Defeated candidate, Vijay Kumar filed petition u/s 176 of the Haryana Panchayati Raj, Act, 1994. (Here in after referred to as "The Act") in Civil Courts at Ambala, for setting aside the election of elected candidate Karan Singh. In the petition, the petitioner had prayed for re-counting of votes only and nothing beyond that. The request of election petitioner was allowed by Ms. Ritu Jhanji, the then Sub-Judge IInd Class, Ambala City, on 18.2.1995. She ordered re-counting of votes in Court. It was after the recounting of votes that the election petitioner was declared elected and the present petitioner was unseated vide order dated 3.11.1995 of the Sub Judge 1st Class, Ambala City. Aggrieved against the order dated 3.11.1995 (Copy of which is Annexure P-I to the writ petition) vide which he was unseated, the petitioner filed the present petition for quashing the impugned order.

2. The order has been assailed on the ground that the vote which has been

declared invalid in fact was cast in favour of the petitioner and as such it should not have been rejected. The other plea is that the Court cannot order re-counting of votes.

3. This Court on 13.11.1995, at the time of issuing notice of motion, had directed the respondents to produce ballot papers in Court. In pursuance thereof, respondents have put in appearance and produced ballot papers in sealed cover. The ballot papers were opened in the presence of the counsel for the parties and were shown to them.

4. Mr. Bhandari contended that the voter had put the mark in the column of the petitioner and as such the vote cannot be rejected. He further reiterated that the re-counting of votes cannot be ordered without framing issues.

5. Learned counsel for the parties were heard at length. After having considered the submissions of learned counsel for the parties, we find no merit in the writ petition which deserves to be dismissed.

6. Now dealing with the submissions of learned counsel for the petitioner, it is worthwhile to mention here that Mrs. Ritu Jhanji, Sub Judge, who was seized of the matter, on 18.2.1995 had ordered the re-counting of votes. Against the order of Sub Judge, the petitioner had filed revision petition and the same was dismissed as withdrawn.

7. The petitioner having challenged the grounds of re-counting through revision petition and having withdrawn the same without seeking permission of this Court to agitate the grounds of re-counting as a challenge to, the election either before the election Tribunal or before this Court, after final disposal of election petition, is bound to suffer rigour of Order 23 Rule 1 Sub-rule 1 read with Sub-rule 4 of the Code of Civil Procedure. Order 23 Rule 1 read thus :

"Withdrawal of suit or abandonment of part of claim :- (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim :

Provided that where the Plaintiff is a minor or other person to whom the provisions contained in Rotes I to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court. (2) An application for leave under the proviso to Sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposal is, in his opinion, for the benefit of the minor or such other person.

(3) Where the court is satisfied :-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim.

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

(4) where the plaintiff :-

(a) abandons any suit or part of claim under Sub-rule (1), or

(b) Withdraws from a suit or part of a claim without the permission referred to in Sub-rule (3) he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter of such part of the Claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under Sub-rule (1), or to withdraw, under Sub-rule (3) any suit or part of claim, without the consent of the other plaintiff."

"Claim means relief as also grounds of obtaining the relief.

8. In view of this legal position, the petitioner has abandoned the grounds of re-counting as a challenge to the election. He, therefore, cannot be allowed to re-agitate the same in this writ petition.

9. The other plea of the petitioner that the vote in question was cast in his favour and the same has been wrongly declared invalid is also without any merit. In order to ascertain, the validity the vote in question, which was declared invalid by the Court, we have perusal the Pamphlet showing illustrative cases of valid and invalid postal and ordinary ballot papers notified by the Election Commission of India. The said pamphlet was issued for the guidance of Returning Officers/ Assistant Returning Officers/Counting Officers/Assistant Counting Officers, at the time counting of votes. From the careful scanning of ballot paper in question, it is observed that the stamp is marked on the black lines in between the two symbols and only a fraction of it is in the column of the petitioner. Had the major part of the stamp been in the column, a safe conclusion could have been arrived at that the intention of the voter was to cast vote in favour of the petitioner. That being not so, our conclusion is that it was not the intention of the voter to cast in favour of the petitioner. As such, the vote in question was rightly declared invalid.

10. For the reasons stated above, this writ petition, is dismissed being devoid of any merit.

11 No orders as to costs.