
(1963) 02 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 425 of 1961

Kesra Singh and others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 12-02-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) 02 P&H CK 0032

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : H.S. Gujral, for the Appellant; Y.P. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

Shamsheer Bahadur, J.—This is a petition under Article 226 of the Constitution of India of Kesra Singh and eleven others to challenge the election of Janak Singh, Respondent 4 as Chairman, Inder, Respondent 7, as Vice Chairman, Gagan Singh Respondent 5 and Sohan Singh Respondent 6 as members of the Zila Parishad Hoshiarpur on 29th of September, 1961, and published in a notification of the Punjab Government on 3rd of October, 1961. The Petitioners are twelve out of the twenty-three electors of the Panchayat Samiti, Mukerian Block, Mukerian. The election of the Chairman, Vice-Chairman of the Panchayat Samiti and two delegates for Zila Parishad Hoshiarpur, was to take place on 29th of September, 1961, The notices for election of the two delegates for the Zila Parishad were sent by the Deputy Commissioner Hoshiarpur, the third Respondent, and the place of election was mentioned as the office of the Block Development Officer, Hajipur, on 29th of Sept., 1961. The notices for the election of Chairman and Vice-Chairman of the Samiti were, however issued by the second Respondent, Shri Dharam Vir, District Development and Panchayat Officer, Hoshiarpur, and the venue of the election was mentioned as the office of the Panchayat Samiti/Zila Parishad on 29th of September 1961. On receipt of the notices, Petitioners 1, 2, 3, 6, 7, 9, 10 and 11 went to the office of the Block Development Officer,

Hajipur, at the appointed time to participate in the election but the Presiding Officer did not turn up there. It is not disputed that these eight out of the twelve Petitioners got their presence recorded in the office of the Block Development Officer and kept on waiting for the election till 11-30 a. m , when they were advised by the Block Development Officer that they should make enquiries regarding the whereabouts of the Presiding Officer from the Rest House, Mukerian. Accordingly, these Petitioners proceeded to the Rest House, Mukerian, and not finding the Presiding Officer there they went to the bus-stand and saw the Officer they were in search of boarding a bus for Hajipur. On the enquiry of these eight Petitioners, the Presiding Officer informed him that the election had already been held at the Rest House, Mukerian. It is asserted in the petition that when the notices of the election to be held at the Block Development Office Hajipur were shown to the Presiding Officer he expressed his willingness to hold the election afresh, and for this purpose accompanied the eight Petitioners to the Rest House. Respondents 4,5, 6 and 7, who had been elected to the various offices, however, did not join the election and left the Rest House whereupon the Presiding Officer declined to hold the election afresh.

2. It is not disputed that the Petitioners immediately sent a telegram to the Deputy Commissioner about the wrong notices which they had received about the place of election. The election was notified in the Gazette of 3rd of October, 1961 and on the following day this petition was presented under Article 226 of the Constitution of India. Subsequently, the third Petitioner, Jagdish Mitter, also presented an election petition on 17th of October, 1961, u/s 121 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961. When the petition came up before me on 10th of May, 1962, the counsel submitted that the argument in the election petition was fixed for 26th of May, 1962, and an adjournment was requested on this score. The election petition was dismissed by the Deputy Commissioner, Hoshiarpur, on 19th of September, 1962, and Mr. Gujral, the learned Counsel for the Petitioners, submits that the decision given in the election petition does not affect the merits of the case as presented in the petition under Article 226 of the Constitution.

3. The relevant provisions for the holding of elections are embodied in the Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961, and clauses 3 and 4 are reproduced below:

3. The election of the Chairman and Vice Chairman of a Panchayat Samiti shall be held in the office of the Panchayat Samiti or such other place as may be specified in that behalf by the Presiding Officer, who shall convene and preside over the meeting called for that purpose.

4.(1) The Presiding Officer shall issue a notice in writing in Form A to the Members specifying the date and time of the meeting.

(2) The notice shall be sent at the ordinary place of residence of the Member, at least seven days before the date of meeting, either by post or in such other

manner as the Presiding Officer may consider expedient.

4. It is not disputed that the notices sent to the eight Petitioners mentioned the place of election as Block Development Officer, Hajipur. According to the Respondents, all the twelve Petitioners were informed orally about the change of the venue to the Rest House, Mukerian, where actually four out of the twelve Petitioners are said to have been present. It is argued by Mr. Gandhi that even the remaining eight Petitioners subsequently went to the Rest House, Mukerian, though they did not participate in the election. The ensuing submission of Mr. Gandhi is that as found by the Deputy Commissioner in the election petition presented before him no failure of justice has occurred to justify the setting aside of the election although there was an error in some of the notices which were sent to the voters about the place of election.

5. The allegations made in the petition have not been specifically denied and indeed even if the position adopted by the Respondents is accepted to be correct there is no answer to the submission of Mr. Gujral that the notice of the meeting had to be in writing under the signatures of the Presiding Officer as required by the Rules. The Block Development Office, Hajipur, may have been mentioned inadvertently or erroneously as the place of meeting in the notices sent to the twelve Petitioners but this mistake could not be rectified by a mere oral information about the change in venue. The transcending reality of the situation is that twelve out of the twenty-three members were wrongly notified about the place of meeting and even if some of them actually went to the place where the meeting had taken place and declined to participate in it, it would not validate the election proceedings which are initially void. The rule about the notice of the meeting has to be honoured in observance and not its breach and I find it impossible to surmount or brush aside the difficulties in my way by saying that no failure of justice has resulted. The eight out of the twenty-three members did not participate in the election must lead to the inescapable conclusion that the result of the election has been vitally affected by their non-participation on account of wrong notices being sent to them about the place where the election meeting had to take place. Mr. Gandhi has urged that Jagdish Mitter who had preferred an election petition u/s 121 of the Act can no longer be heard to say that the decision of the Deputy Commissioner, Hoshiarpur, is not binding on him. Even assuming this to be correct, I do not see how the Petitioners other than Jagdish Mitter are precluded from challenging the election in these writ proceedings. Mr. Gandhi submits that the petition in its present form by the twelve Petitioners including Jagdish Mitter cannot proceed and his name should be deleted by a proper amendment before it is adjudicated upon. If I were to accept this argument it would result in depriving the Petitioners of their redress in as much as the tenure of the members whose election is invalid has a little more than one year to run. In my opinion, the grievance of the Petitioners is just and this Court should not be slow in granting them the redress to which they are entitled, there being an obvious and patent error in this election.

6. As the petition succeeds on the ground which I have indicated it is not necessary for me to discuss the other objection raised by Mr. Gujral that Gagan Singh, Respondent 5, could not in any event be elected as a delegate-member as he had been removed from the membership of the market committee. It is pleaded in the written statement that this disqualification had not been published by notification when the election took place. I would content myself by saying that this plea appears to me to be somewhat dubious, but, as I have said before it is not necessary for me to express any final opinion on this matter.

7. In the result, this petition must be allowed and the impugned election set aside, I would, however, leave the parties to bear their own costs.