
(2011) 02 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 5622 and 5623 of 2009 (O and M)

Kuldip Kaur

APPELLANT

Vs

Jarnail Kaur and others
 Surjit Kaur Vs Rajwant Kaur
and others

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Punjab State Election Commission Act, 1994 — Section 81

Citation : (2011) 3 RCR(Civil) 187

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Judgement

Rajesh Bindal, J.—This order will dispose of above mentioned two appeals bearing FAO Nos. 5622 and 5623 of 2009, as the contention in law sought to be raised by learned counsel for the appellants is identical.

The facts have been noticed from FAO No. 5622 of 2009.

2. The dispute in the election petition filed before the Tribunal was pertaining to the election of Gram Panchayat, Bulepur, Tehsil Khanna, District Ludhiana. The election having been challenged, Presiding Officer, Election Tribunal-cum-Sub Divisional Magistrate, Payal (for short, "the Tribunal") accepted the petition filed by Jarnail Kaur while setting aside the election of Kuldip Kaur. The order has been impugned by Kuldip Kaur before this court.

3. Learned counsel for the appellant raised a brief argument, namely, that in terms of the provisions of Section 81 of the Punjab State Election Commission Act, 1994 (for short, "the Act") providing for trial of the election petition, the provisions of the Code of Civil Procedure, which pertain to trial of suits, are applicable. In the present case, though contentious issues were involved, the Tribunal without framing any issue and taking any evidence on record has merely decided the election petition considering the same as a representation. The Tribunal was deciding substantive rights of the parties. It should not have dealt

with the same in slipshod manner. He further submitted that though the petition was stated to be accepted, what was the consequence thereof was not mentioned. The submission was that the issue on merits in the present case is as to in what category the election of the candidates was to be considered. He further submitted that this legal issue has been referred by a Division Bench of this Court in C.W.P. No. 10804 of 2008, titled as Karnail Singh and another v. State of Punjab and others, vide order dated 7.1.2009 2009 (5) RCR (Civil) 910 to be considered by a larger Bench.

4. On the other hand, learned counsel for respondent No. 1 submitted that if the case of the parties is considered on merits, the appeal filed by the appellant deserves to be dismissed. Respondent No. 1 had secured more votes than the appellant in terms of the admitted facts where both had contested elections against each other. No evidence was required to be produced to prove this fact as the material on record before the Tribunal was sufficient. Framing of issues should not be taken to be a ritual to be performed in every case. Substance of the matter is to be seen.

5. Heard learned counsel for the parties and perused the relevant referred record.

6. A perusal of the impugned order passed by the Tribunal shows that while deciding the petition without framing any issues and affording opportunity to the parties to lead evidence, the election petition filed by respondent No. 1 was decided by the Tribunal by recording following findings :

The learned counsel for the respondent No. 4 stated in his written argument that the petitioner did not file her nomination papers in the category of S.C. Women reserved. Therefore, instead of the S.C. Category, her election has been included in the other category. In this way, the result of her election was declared in other category instead of S. C. category, which is correct. Therefore, her petition is liable to be rejected.

The arguments of learned counsels for both the parties were heard and facts on the record were perused, according to which the Form No. 4 which was filled by the petitioner, was filled only for S. C. Panch and she has also filled in her SC caste in the form. The petitioner got more votes. The respondent also admitted in her statement that her contest was held with Smt. Jarnail Kaur, petitioner. In case there was no contest of the petitioner with the respondent, then she would have been declared elected candidate before the election without any contest. Therefore, the petition of the petitioner is accepted.

7. This Court in Ajaib Singh v. Arjun Singh, 2000(3) RCR (Civil) 24 had opined that the Tribunal should not have decided the election petition without following the procedure laid down in the Code of Civil Procedure, as is provided for u/s 81 of the Act. Similar view was expressed in Palwinder Kaur v. Ranjit Singh and others, 2010(4) RCR (Civil) 750. It could not be disputed that substantive rights of the parties were being determined by the Tribunal and same should not have been in a short cut manner, rather, fair opportunity should have been afforded to

both the parties to prove their case.

8. For the reasons mentioned above, the impugned order passed by the Tribunal is set aside. The parties are directed to appear before the Tribunal on 4.3.2011 for further proceedings. The Tribunal is directed to decide the election petition in accordance with law. The trial should be concluded by 30.6.2011, may be by giving short adjournments but affording fair opportunity to both the parties.

The appeal stands disposed of.

9. Before parting with the order, this court is constrained to notice that in the certified copy of the order passed by the Tribunal, as was supplied to the parties and placed before this court, the memo of parties thereof does not contain the names of all the persons who were parties before the Tribunal. A perusal of the election petition filed by respondent No. 1 before the Tribunal shows that there was one petitioner and 13 respondents. Similar defect came to the notice of this court earlier as well. At the time of supplying copy of the final order, it is required that particulars of all the parties in a petition are mentioned in full detail and not merely the names of petitioner No. 1 and respondent No. 1. This should be taken care of in future by the Presiding Officers of the Election Tribunal in the State of Punjab.

10. A copy of this order along with photo copy of the certified copy of the order supplied by the Tribunal be sent to the Punjab State Election Commission for circulation to the Election Tribunals in the State of Punjab to ensure that while supplying a copy of the final order, the names of all the parties in the election petition are mentioned in detail.