
(2011) 01 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : C.W.P No's. 10965 and 11000 of 2008

Kulwant Singh and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Punjab Panchayat Election Rules, 1994 — Rule 33, 33(2)
Punjab State Election Commission Act, 1994 — Section 3, 66

Citation : (2011) 2 RCR(Civil) 282

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved, therefore, I propose to dispose of the above mentioned writ petitions, by means of this common judgment, in order to avoid the repetition. However, the factual matrix, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in these petitions, have been extracted from (1) CWP No. 10965 of 2008 titled as "Kulwant Singh and another v. State of Punjab and others" for ready reference.

2. The contour of the facts, culminating in the commencement, relevant for disposal of the above indicated writ petitions and emanating from the record, is that there were five posts of Panches/members of Gram Panchayat of village Shamsinghwala, Tehsil and District Ferozepur. The petitioners claimed (para 9) that the reservation of seats for elections was made as mentioned here-in-below. It was admitted by official respondent No. 4 :-

Sr. No.

Posts of Members of Gram Panchayat, Shamsinghwala

General male members

General woman member

SC male member

SC woman member

1

5

2

1

1

1

3. The case set up by the petitioners, in brief in so far as relevant, was that in the wake of general Gram Panchayat elections to elect five members of Gram Panchayat of village Shamsinghwala were held on 26.5.2008. After polling the votes of the candidates, the valid votes were counted in each respective category as per reservation and the result was declared on the same day by the Presiding Officer, in view of the provisions of The Punjab Panchayati Raj Act, 1994 (hereinafter to be referred as "the Panchayati Raj Act"), by virtue of declaration of election result in form IX (Annexure P4) in the following manner:-

Sr.

No.

Name of contesting candidates (mark SC against the candidate belonging to scheduled caste

No. of votes casted

State elected or not elected.

1.

Kulwant Singh

55

Elected

2.

Thakur Singh

62

Elected

3.

Nirmal Singh

02

Not elected

4.

Balkiar Singh

01

Not elected

5.

Buta Singh

01

Not elected

6.

Surinder Kaur

Nil

No

7.

Kuldeep Kaur

84

No

8.

Kulwant Kaur

Nil

No

9

Khushdeep Kaur

Nil

No

10.

Jaswant Kaur

97

Elected

11.

Chhinder (SC)

01

No

12.

Balvir Singh (SC)

09

Elected

13.

Surinder Kaur (SC)

05

No

14.

Nifo (SC)

Nil

No

15.

Paramjit Kaur (SC)

49

No

16.

Prita @ Pritam (SC)

Nil

No

17.

Malkiat Kaur (SC)

55

Elected

4. The case of the petitioners further proceeds that having duly declared the election result (Annexure P4), the Presiding Officer/Returning Officer (the official

respondents) have changed the same at the instance of Janmeja Singh Sekhon, MLA and Minister of Irrigation and Power, Punjab (respondent No. 9) and declared Smt. Kuldeep Kaur and Smt. Paramjit Kaur as elected members in place of Kulwant Singh and Balbir Singh respectively, by way of changed election result (Annexure P-5), which is reproduced as under :-

Sr. No.

Name of contesting candidates (Mark SC against the candidate belonging to scheduled caste

No. of votes casted

State elected or not elected.

1.

Kulwant Singh

55

Not Elected

2.

Thakur Singh

62

Elected

3.

Nirmal Singh

02

Not Elected

4.

Balkiar Singh

01

Not Elected

5.

Buta Singh

01

Nil

Not Elected

6.

Surinder Kaur

No

7.

Kuldeep Kaur

84

Elected

8.

Kulwant Kaur

Nil

No

9.

Khushdeep Kaur

Nil

No

10.

Jaswant Kaur

97

Elected

11.

Chhinder (SC)

01

No

12.

Balvir Singh (SC)

09

Not elected

13.

Surinder Kaur (SC)

05

No

14.

Nifo (SC)

Nil

No

15.

Paramjit Kaur (SC)

49

Elected

16.

Prita @ Pritam (SC)

Nil

No

17.

Malkiat Kaur (SC)

55

Elected

In this manner, the Presiding Officer/Returning Officer have totally changed the categories of reservation of seats of Panches in the subsequent changed election result (Annexure P-5).

5. The petitioners did not feel satisfied and filed the instant writ petitions, challenging the subsequent change of election result (Annexure P5), inter-alia on the ground that once the election result has been declared in form IX (Annexure P4), then it cannot subsequently be changed by the Presiding Officer (respondent No. 4) at the instance of Returning Officer (respondent No. 3). Thus, the change of election result (Annexure P5) was stated to be the result of exercise of colourable power and political pressure of respondent No. 9 against the statutory provisions of the Act and the Punjab State Election Commission Act, 1994 (for short "the Commission Act").

6. Levelling a variety of allegations and narrating the sequence of events, in all, according to the petitioners that the change of election result (Annexure P-5) is farce, illegal, without jurisdiction, against the statutory provisions and basic democratic set up. On the basis of aforesaid allegations, the petitioners sought quashment of subsequent declaration of election result (Annexure P-5), in the manner indicated here-in-above.

7. The respondents contested the claim of the petitioners. The official respondents No. 1 & 3 filed their joint written statement, respondent No. 4 filed his separate reply by way of affidavit and private respondent Nos. 5, 6 and 8 filed their separate joint written statement, inter alia pleading certain preliminary objections of, maintainability of the petitions, locus standi and cause of action of the petitioners. On merits, they admitted the initial declaration of result, vide (Annexure P-4). However, it was stated that the perusal of form IX shows that there was cutting in column No. 3 against the name of Kuldeep Kaur, Malkiat Kaur and Paramjit Kaur and the same was attested by the Presiding Officer (respondent No. 4), who has also changed the particular in column No. 3 against the name of Kulwant Singh and Balbir Singh, in which, earlier they were shown as "elected", whereas subsequently shown as "not elected". Thakur Singh and Jaswant Kaur in general woman category, Kuldeep Kaur in general woman category, Paramjit Kaur in scheduled caste category and Malkiat Kaur in scheduled caste woman category were stated to have been declared elected on the basis of votes secured by them.

8. According to respondent No. 3, he has no knowledge that respondent No. 4 has declared the petitioners as elected. He made cutting and alterations in the election result of the Gram Panchayat without his knowledge. He (respondent No. 3) rightly made notification, in which, Kuldeep Kaur, Jaswant Kaur, Thakur Singh, Paramjit Kaur and Malkiat Singh were shown as elected on the basis of report of respondent No. 4.

9. Sequel, Harsh Dev Sharma (respondent No. 4) admitted the reservation of seats as pleaded by the petitioners in para 9 of their petition. He has pleaded in para 12 as under :-

That para No. 12 of the petition is admitted to be correct. It is correct that the declaration of result was declared and rectified as per the instruction and directions of the Returning Officer and that Smt. Kuldeep Kaur was declared elected in place of Sh. Kulwant Singh and Smt. Paramjit Kaur was declared elected in place of Balbir Singh. The result was rectified on the direction of Returning Officer as Returning Officer had given the directions to the deponent stating that the result was to be declared as per rules and that Kuldeep Kaur and Paramjit Kaur were liable to be declared as elected as members in place of Kulwant Singh and Balbir Singh. The deponent has already given his statement before this Hon'ble Court on 20.6.2008 in this regard. The Returning Officer was Sh. Gurjinder Singh Behai SDO Canal Lining Sub Division, who was superior officer of the deponent and who was to guide to deponent and his order was not to be disobeyed by the deponent. It may also be mentioned that he was also Returning Officer of the election of village Chak Tahli Wala, Block (sic), District Ferozepur and the result of village Chak Tahil Wala was also rectified by his order, where Chander Mohan was the Presiding Officer. Moreover, the result was rectified in the hand of Assistant Presiding Officer, whereas the deponent had initialed on rectification and had performed his duty under the said Returning

Officer.

10. The private respondent Nos. 5, 6 and 8 (sic) the line of pleadings of official respondent Nos. 1 and 3 and have not specifically denied the contents of para 9 of the writ petition, as regards reservation of seats of the posts of Panches is concerned. However, they tried to explain that amongst the general male members, even lady can contest in that general category and similarly scheduled caste male member and SC woman can contest. They pleaded that no reservation was made with respect to male alone. In all, according to the contesting respondents that since there were some contradictions in the earlier declaration of election result (Annexure P-4), so, the Presiding Officer has rightly re-declared the election result (Annexure P-5). It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal. That is how I am seized of the matter.

11. Assailing the impugned subsequent declaration of election result (Annexure P-5), the learned counsel for the petitioners contended with some amount of vehemence that once the election result (Annexure P-4) was declared by the Presiding/Returning Officers in form IX, then, it cannot be subsequently changed under any circumstances by the Returning Officer, except by filing the election petition before the competent Tribunal. The argument is that the same Presiding Officer has not only totally changed the election result, but changed the reserved categories as well, after the completion of election process on the direction of Returning Officer, without any legal authority and under the political pressure of respondent No. 9. Thus, he prayed that the subsequent declaration of election result (Annexure P-5) be set aside.

12. On the contrary, hailing the subsequent election result (Annexure P-5), the learned counsel for contesting respondents urged that since there were contradictions/mistakes in the election result (Annexure P-4), declared by the Presiding Officer, so, the Returning Officer has rightly directed and the Presiding Officer has subsequently declared the correct election result (Annexure P-5). The learned counsel further submitted that the change in the election result was in accordance with legal provisions and no interference is warranted in this respect.

13. Having heard the learned counsel for the parties, having gone through the record and relevant legal provisions of the Act with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petitions deserve to be accepted for the reasons mentioned here-in-be-low.

14. As is evident from the record that initially, the result of indicated election of Panches of the Gram Panchayat, was declared by the Presiding Officer by means of election result (Annexure P-4) in Form IX, which was subsequently totally changed by him on the direction of Returning Officer by virtue of election result (Annexure P5).

15. It is not a matter of dispute that during the course of hearing, a Coordinate

Bench of this Court (A.N. Jindal, J.) summoned Harshdev Sharma, Presiding Officer in this Court and recorded his statement on 20.6.2008 to the following effect :-

Earlier I had prepared the result on 26.5.2008 wherein I had declared Kulwant Singh, Thakur Singh, Jaswant Kaur, Balbir Singh and Malkiat Kaur as elected. However, on the asking of Mr. Gurjinder Singh, Returning Officer, I changed the result and made cutting in the original result, while declaring Thakur Singh, Kuldeep Kaur, Jaswant Kaur, Paramjit Kaur and Malkiat Kaur. On the asking of Returning Officer, I changed the name of Kuldeep Kaur in place of Kulwant Singh and Paramjit Kaur in place of Balbir Singh. The Returning Officer did not give me anything in writing. Thereafter I also altered the result of 26.5.2008 by adding the word "Nahi" in front of the name of Kulwant Singh and Balbir Singh. We were not explained in writing the procedure as to who was to declare the result.

I do not know if wrong result is declared then who was to rectify the same. The same thing happened in case relating to the elections of village Chattaliwala. Mr. Chander Mohan was the Presiding Officer.

16. Taking cognizance of the statement, the following order was passed on that day :-

Mr. Harshdev Sharma, Assistant Manager, Pb. Agro (Presiding Officer) and Mr. Rakesh Kumar, JE, Harike Canal Division, Ferozepur (Assistant Returning Officer) are present in person.

Mr. Harshdev Sharma, Presiding Officer has admitted that result dated 26.5.2008 (Annexure P-4) had been declared, but on the intervention of the Returning Officer, he had to make some tampering in the result, changing the names of few elected candidates. The grievance of the petitioners is that though they had been declared elected vide result Annexure P-4, but later on their names were substituted by some other unsuccessful candidates. It is contended that the respondents had no authority to change the result as the election had never been countermanded or set aside by the Competent Authority.

In the above circumstances, it shall not be fair to hold the elections again. Thus, the election process for Gram Panchayat, Shamsinghwala is stayed.

Further, the SSP, Ferozepur is directed to investigate the matter and book the erring officials/persons, for the alleged irregularities committed in the aforesaid election. Copy of the statement of Mr. Harshdev Sharma be also sent to him.

To come up on 29.7.2008, for further consideration.

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17. Such thus being the position on record, now the short and significant question, though important, that arises for determination in these petitions is, as to whether the Returning Officer was competent to give direction to the Presiding Officer to change the declaration of result or not?

18. Having regard to the rival contentions of the learned counsel for the parties/ to me, the Returning Officer did not have the jurisdiction to direct the Presiding Officer to change the election result (Annexure P-5) already duly announced by him by way of election result (Annexure P-4).

19. What is not disputed here is that elections of Panchayat are regulated by the provisions of the State Election Commission constituted u/s 3 of the Commission Act and the Punjab Panchayat Election Rules, 1994 (hereinafter to be referred as "the Election Rules") and there was only one polling station in the Gram Panchayats in question.

20. As Rule 33 framed u/s 66 of the Commission Act postulates that "in a Sabha area where there is only one polling Station, the Returning Officer shall follow the [procedure set out in sub-rule (2)] for the counting of votes and declaration of result for election to the Gram Panchayat." As per sub-rule (2), the Presiding Officer shall, as soon as practicable, after the close of the poll and in the presence of any candidate or polling [agent] who may be present, count the valid votes given in each candidate with the aid of persons appointed to assist in the counting of votes and declare the election of the candidate who is found to have obtained the largest number of valid votes, or, if more than one member is to be elected for the Gram Panchayat, then the candidates who are found to have obtained the largest number of valid votes shall be declared to have been [elected; and] [after] the counting of ballot-papers contained in all the ballot-boxes has been completed, the Returning Officer shall record a statement in Form IX showing the total number of votes polled by each candidate. Again, it is not a matter of dispute that in the present cases, there was only one polling station and the Presiding Officer was required to follow the procedure contained in sub-rule (2) of Rule 33 of the Election Rules in this regard.

21. A co-joint reading of these provisions would reveal that after following the procedure of sub-rule (2) of Rule 33, the Presiding Officer was required to and has rightly declared the election result (Annexure P4), but he has illegally changed it and again declared the election result (Annexure P-5) not of his own, but at the direction of the Returning Officer without any legal basis. To me, the Presiding Officer of single polling booth did not have the jurisdiction to drastically change the election result (Annexure P-4), by way of election result (Annexure P-5) in this context.

22. An identical question arose before this Court in case *Kashmir Kaur v. State of Punjab*, 2004 (1) RCR (Civil) 580 (DB). Having interpreted the provisions of Rule 33 of the Election Rules, a Division Bench of this Court ruled (paras 5 to 7) as under :-

We have heard counsel for the parties and perused the period (Sic. record). The question whether the Returning Officer can change the entries recorded in Form-IX was considered and answered in the negative by the Supreme Court in Civil Appeal No. 4926 of 2000 - *Malkit Kaur v. Jatinder Kaur and others*, decided on

20.11.2001. In that case, respondent No. 1 had been declared elected by securing 691 votes as against 489 votes secured by the appellant. Thereafter, the appellant approached Deputy Commissioner, Moga complaining that respondent No. 1 had been declared elected by mistake because in fact, she had secured 691 votes and she ought to have been declared elected. The Additional Deputy Commissioner called for the Returning Officer who corrected the entries contained in Form-IX and declared the appellant as duly elected Sarpanch of the Gram Panchayat. The writ petition filed by respondent No. 1 was dismissed by the High Court. Their Lordships of the Supreme Court dismissed the appeal and rejected the plea of the appellant that she was entitled to be declared elected as Sarpanch. The relevant portion of the order passed by the Supreme Court reads as under:

Learned counsel appearing for the appellant urged that earlier there being mistake and error in form IX prepared by the Returning Officer, the authority was justified in law to correct the form IX subsequently and the High Court committed error in setting aside the subsequent order of the Returning Officer. We do not find any substance in the argument. Under the Act and the Rules there under once a candidate has been declared elected in form IX, the Returning Officer ceased to have any power to alter the said declaration subsequently. The declaration as contained in form IX could only be challenged by means of an election petition before an appropriate Tribunal. In that view of the matter, we do not find any merit in this appeal. The appeal fails and is accordingly dismissed.

Learned counsel for the respondents fairly conceded that in view of the order passed by the Supreme Court in Malkit Kaur's case (*supra*), they cannot defend the action taken by respondent No. 3 to revise the entries recorded in Form-IX.

In view of the above, the writ petition is allowed. It is held that the petitioner was duly declared elected as Sarpanch of Gram Panchayat, Khode Bet and respondent No. 3 did not have the jurisdiction to correct the so- called mistake in Form-IX. Consequently, the action of the concerned authority to administer, oath of office to respondent No. 4 is declared illegal and respondent No. 2 is directed to ensure that the petitioner is administered oath of office of the post of Sarpanch within a period of 15 days from the date of presentation of copy of this order.

Reliance in this regard can also be placed upon the observations of Hon"ble Apex Court in case Sohan Lal v. Babu Gandhi and others, 2003(2) R.C.R. (Civil) 731 : AIR 2003 Supreme Court 320, wherein, it was held that after declaration of result, the Returning Officer cannot direct re-counting of votes or change results of election. Only remedy open for aggrieved party is to file election petition. Therefore, the law laid down in the aforesaid judgment "*mutatis mutandis*" is applicable to the facts of the instant cases and is the complete answer to the problem in hand.

23. Likewise, there is another aspect of the matter, which can be viewed from a different angle. The relative comparison of election results (Annexures P4 and P5) would reveal that Kulwant Singh at Serial No. 1 was declared elected in general category, but in subsequent changed election result (Annexure P-5), he was declared "not elected". In the election result (Annexure P-4), Kuldeep Kaur at serial No. 7 was declared not elected, but she was declared elected, vide election result (Annexure P-5). In Annexure P-4, Balbir Singh (SC) at Serial No. 12 was declared elected in scheduled caste category, but he was shown declared "not elected" in the changed election result (Annexure P5). According to election result (Annexure P-4), Paramjit Kaur (SC) at serial No. 15 was declared not elected, but in subsequent changed election result (Annexure P-5), she was declared elected.

24. As indicated earlier, it has been specifically pleaded in para 9 of the writ petition that as per schedule, five members of Gram Panchayat of village Shamsinghwala, out of whom, two were in general male members category, one in general male member, one SC male member and one SC woman member, were to be elected. This reservation was admitted in para 9 of the written statement filed on behalf of respondent No. 4. So much so, official respondent Nos. 1 and 3 and the private respondents did not controvert the mode of reservation of the seats in this behalf.

25. Therefore, the initial election result (Annexure P-4) would go to show that the Presiding Officer has rightly declared the result as per the reservation of seats. Subsequently, he was compelled by the Returning Officer to change the election result, for the reasons best known to him and he again declared the election result (Annexure P-5). The net effect and the change was that one seat remained vacant in general male category and one seat in SC woman category, which is totally contrary to the reservation of the seats of five Panches of the Gram Panchayat in this context.

26. Ex facie, the celebrated argument of learned counsel for private respondents that since amongst category of general male members, even woman can contest in that general category and amongst SC male member, even SC woman can contest in that category, so, the Returning Officer has the power to change the election result (Annexure P-5) even changing the categories, is neither tenable nor the observations of this Court in case Jagir Singh v. Rajwinder Kaur and another, 2010(4) RCR (Civil) 752 are at all applicable to the facts of the present case, wherein the election of candidate was challenged in the election petition. The Election Tribunal came to the conclusion that if any nomination paper is filled against the vacancy of general category (women), then it should be clearly mentioned in the words "Lady Panch". But as the election petitioner had not mentioned in the nomination papers that she is contesting in the category of "Lady Panch", she should have been considered in the General Category and not in the category of General Lady. Appellant therein challenged the order of Election Tribunal in this Court and on the peculiar facts and circumstances of that

case, it was observed that "if a woman candidate of Jat caste did not mention her choice in the column "Name of office", she simply mentioned "Office of Panch" and described her caste as Jat, in such a case, it would be considered that she contested the election in general category and not in the seat reserved for "General Women".

27. Possibly, no one can dispute with regard to the aforesaid observations, but the same would not come to rescue of private respondents in the present controversy.

28. As mentioned above, the net result of the change was that one seat remained vacant in general male category and one seat in SC woman category, which is totally contrary to the reservation of seats of five Panches of the Gram Panchayat, which were reserved by the authorities prior to the elections. In this manner, to my mind, the category/reservation of seats of Panches already notified before elections, cannot possibly be subsequently changed after the completion of election process and declaration of the result (Annexure P-4).

29. Thus, seen from any angle, the Presiding Officer did not have the jurisdiction/power to change the result, by means of election result (Annexure P-5) at the direction of Returning Officer. The same is not only illegal, but against the statutory provisions of law, as well and cannot legally be sustained in the obtaining circumstances of the case.

30. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

31. In the light of the aforesaid reasons, the instant writ petitions are hereby accepted with costs of Rs. 25000/-, to be recovered equally from the concerned Returning Officer and Presiding Officer (respondent Nos. 3 and 4) respectively and to be deposited in the account of State Legal Services Authority, Punjab, Chandigarh. Consequently, the impugned declaration of election result (Annexure P-5) is hereby quashed and the original election result (Annexure P-4) is restored. The official respondents are directed to act in accordance with the election result (Annexure P-4) in this relevant connection.