

---

**(2008) 10 P&H CK 0005**  
**In the Punjab And Haryana At Chandigarh**

|                            |    |            |
|----------------------------|----|------------|
| Kulwant Singh and Others   | Vs | APPELLANT  |
| State of Punjab and Others |    | RESPONDENT |

---

**Date of Decision :** 03-10-2008

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 323, 324, 34, 427, 452

**Citation :** (2009) 153 PLR 32 : (2009) 4 RCR(Civil) 498

**Hon'ble Judges :** Satish Kumar Mittal, J;Jaswant Singh, J

**Bench :** Division Bench

**Final Decision :** Dismissed

---

## Judgement

Satish Kumar Mittal, J.—This order shall dispose of C.W.P. Nos. 13391 of 2008 and 13938 of 2008. C.W.P. No. 13391 of 2008 has

been filed by Kulwant Singh, who has been elected as Panch of Gram Panchayat of Village Sandhra, Tehsil and District Hoshiarpur, but at present

is confined in District Jail, Hoshiarpur in case F.I.R. No. 41 dated 4.6.2008 under Sections 323/324/452/427/34 IPC registered at Police Station

Bulawal. C.W.P. No. 13938 of 2008 has been filed by three elected Panches of the Gram Panchayat out of seven members Panchayat.

2. In both the petitions, a prayer has been made for setting aside the election of respondent-Ranjit Singh, who was elected as Sarpanch of the

Village Gram Panchayat in the meeting of Panches held on 16.7.2008. In the writ petition filed by Kulwant Singh, an additional prayer has been

made for issuing direction to respondents No. 1 to 4 to administer the oath of Panch to him.

3. In this case, Gram Panchayat of Village Sandhra consists of seven members (Panches). In the Panchayat election held on 26.5.2007, petitioner

Kulwant Singh in C.W.P. No. 13391 of 2008 and three petitioners in C.W.P. No. 13938 of 2008 were elected as Panches of the Gram

Panchayat. Immediately after the election and before administering the oath to the elected members, a criminal case was registered against

petitioner Kulwant Singh under Sections 323/324/452/427/34 IPC (F.I.R. No. 41 dated 4.6.2008 registered at Police Station Bullowal) in which

the petitioner was arrested on 8.6.2008. All the elected Panches were administered oath or affirmation on 11.7.2008 by the authorized person, as

specified in Schedule 1 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as "the Act"). Since the petitioner was in judicial custody in

the aforesaid criminal case, he could not take the oath as required u/s 13(1) of the Act. Subsequently, after the notification and oath of elected

members of the Gram Panchayat, the Deputy Commissioner authorized Shri Harbans Singh, Presiding Officer to convene the meeting of the

elected Panches u/s 13-A of the Act for electing the Sarpanch of the Village Gram Panchayat. A notice of the said meeting was also served upon

the petitioner as required under Rule-45 (1) of the Punjab Panchayat Election Rules, 1994 (hereinafter referred to as "the Rules"). On receipt of

the said notice, petitioner Kulwant Singh moved an application before the Sessions Court for interim bail or for directing the jail authorities to

produce the petitioner in custody at the venue to attend the aforesaid meeting and to exercise his right to vote to elect the Sarpanch of the village.

The Incharge Sessions Judge, Hoshiarpur vide his order dated 15.7.2008 though dismissed the prayer of the petitioner for interim bail, however,

he directed the jail authorities to take the petitioner to GES Hargarh Sandhra on 16.7.2008 at 3 PM under proper security to enable him to attend

the said meeting and to exercise his right to vote. It is pertinent to mention here that no direction was issued by the Incharge Sessions Judge,

Hoshiarpur to administer oath to the petitioner.

4. In compliance with the aforesaid order, when the petitioner was taken to the venue of the meeting, the Presiding Officer did not permit him to

attend the meeting and to cast his vote for the election of Sarpanch on the ground that he had not taken the oath or affirmation in terms of Section

13(1) of the Act as he had received the intimation to this effect from the District Development and Panchayat Officer, Hoshiarpur. The said

meeting was attended by the remaining six Panches and in the meeting respondent-Ranjit Singh was elected as Sarpanch of the Gram Panchayat as he was the only candidate. It is mentioned here that all the three petitioners did not propose the name of anybody and they had gone outside the meeting after signing the proceedings. Hence this petition.

5. Counsel for the petitioner submitted that respondent No. 2-Harbans Singh, Presiding Officer has acted illegally while not permitting petitioner

Kulwant Singh to attend the meeting and cast his vote in the election of Sarpanch. He submitted that no notice of administering oath or affirmation

on 11.7.2008 was ever served upon petitioner Kulwant Singh and merely because of registration of a criminal case against him, he could not have

been deprived from participating in the meeting convened and held for the election of Sarpanch only on the ground that he had not taken the oath

or affirmation. Counsel contends that the Presiding Officer intentionally and under the political pressure had not permitted the petitioner to attend

the said meeting because petitioner Kulwant Singh was going to vote in favour of petitioner No. 1 in C.W.P. No. 13938 of 2008. Learned

Counsel further submitted that the District Development and Panchayat Officer, Hoshiarpur has further acted illegally while directing the Block

Development and Panchayat Officer, Hoshiarpur not to permit petitioner Kulwant Singh to attend the meeting of the Gram Panchayat for the

election of Sarpanch on the ground that he had not taken the oath as Member, Gram Panchayat. Therefore, the action of the Presiding Officer in

not allowing the petitioner to attend the meeting and cast his vote in the election of Sarpanch was illegal and the same vitiates the proceedings of the

meeting held on 16.7.2008 in which respondent-Ranjit Singh was elected as Sarpanch of the Gram Panchayat. Hence, the election of respondent

No. 7-Ranjit Singh as Sarpanch is liable to be set aside.

6. It is further the case of the petitioners in C.W.P. No. 13938 of 2008 that in the meeting held on 16.7.2008, respondent No. 5-Ranjit Singh was

illegally declared elected as Sarpanch of the Gram Panchayat. It is alleged that the signatures of the petitioners were taken by the Presiding Officer

on blank papers on the pretext of marking their presence in the above-said meeting and by mis-utilizing their signatures, the Presiding Officer

illegally declared elected respondent-Ranjit Singh as Sarpanch of the Gram

Panchayat. On this ground also, his election is liable to be set aside.

7. On the other hand, learned Counsel for the respondents while referring to Section 13 of the Act contends that no member of the Gram

Panchayat shall enter upon his duties until his election has been so notified and he has taken an oath or affirmation as specified in Schedule 1. He

submitted that without taking the oath or affirmation of the office of Panch, the elected member cannot discharge the functions of Panch and, thus,

cannot be permitted to cast his vote in the election of Sarpanch. Learned Counsel further submitted that in the instant case petitioner Kulwant Singh

did not take the oath not because of any negligence or fault of the official respondents, but because of the alleged crime committed by him. He

further submitted that notice of the oath taking ceremony was given to petitioner Kulwant Singh, but the petitioner could not attend the oath

ceremony on 11.7.2008 because he was in judicial custody. He did not file any application for interim bail or for issuing direction to the jail

authorities to take him at the venue for taking the oath. In view of these facts, petitioner Kulwant Singh was rightly not permitted by the Presiding

Officer to attend the meeting held on 16.7.2008 and to participate in the election of Sarpanch. Learned Counsel submitted that in the meeting held

on 16.7.2008, respondent-Ranjit Singh was rightly elected as Sarpanch as only one name was proposed and seconded for the post of Sarpanch

and there was no contest. He submits that in view of these facts, both the petitions are liable to be dismissed.

8. After hearing the learned Counsel for the parties, we do not find any merit in these petitions. Section 13 of the Act provides that every election

of a Panch shall be notified by the State Government in the Official Gazette and no member shall enter upon his duties until his election has been so

notified and he has taken an oath or affirmation as specified in Schedule 1. Sub-section (2) further provides that if a person refuses to take an oath

or affirmation, referred to in Sub-section (1), his election shall be deemed to be invalid and a fresh election shall be got conducted. Section 104 of

the Act provides for notification of election and oath of allegiance by members of Panchayat Samitis. Section 167 of the Act provides for

notification of election and oath of allegiance by member of Zila Parishad. Rule 40 of the Rules provides that the oath required to be taken under

Sections 13, 104 and 167 of the Act, shall be administered by a person authorized by the Government. Rule 45 provides for election of Chairman

and Vice-Chairman of the Panchayat Samiti and Zila Parishad and Sarpanch of the Gram Panchayat. Sub-rule (1) of Rule 45 of the Punjab

Panchayat Election (First Amendment) Rules, 2008 provides as under:

45. Election of Chairman, Vice-Chairman of Panchayat Samiti and Zila Parishad and Sarpanch of Gram Panchayat.- (1) After the election of

directly elected members is notified by the Government and the elected members have taken oath or affirmation u/s 13, 104 or 167 of the Punjab

Panchayati Raj Act, 1994, as the case may be, in the case of Chairman and Vice-Chairman of Panchayat Samiti and Zila Parishad, the Deputy

Commissioner or any other officer, appointed by him in this behalf, but not below the rank of an Extra Assistant Commissioner, and in the case of

Sarpanch, any officer or official, authorized by the Deputy Commissioner, shall call a meeting, as laid down u/s 13-A, 105 or 168 of the aforesaid

Act, after giving a notice of a minimum period of twenty four hours in Form "X" to such members to elect Chairman, Vice-Chairman of Panchayat

Samiti and Zila Parishad and Sarpanch of Gram Panchayat, as the case may be, in separate meetings in accordance with the provisions of these

rules.

9. A perusal of the aforesaid provisions reveals that before entering upon his duties, the elected Panch is required to take an oath or affirmation as

specified in Schedule 1. A meeting for the election of Sarpanch as required u/s 13-A of the Act is to be convened after the election of die directly

elected members is notified and elected members have taken the oath or affirmation u/s 13 of the Act. Undisputedly, in the instant case, the

election of all the elected Panches has been notified. Out of seven members, six had already taken the oath. Petitioner Kulwant Singh did not take

the oath on 11.7.2008 in spite of having knowledge and information of the oath ceremony because he was in judicial custody in the aforesaid

criminal case. The contention of the petitioner that he was falsely implicated in the aforesaid criminal case at the instance of the local MLA and was

illegally prevented from taking oath by getting him arrested, cannot be gone into and accepted at this stage in this writ petition. When the petitioper

was taken at the venue of the meeting in terms of the interim order dated

15.7.2008 passed by the Incharge Sessions Judge, Hoshiarpur, the Presiding Officer did not permit him to cast his vote in the election of Sarpanch because he had not taken the oath or affirmation of the office of Panch. The contention of the counsel for the petitioner that the Presiding Officer himself should have given the oath to the petitioner and thereafter should have permitted him to attend the meeting and cast his vote, also cannot be accepted. The Presiding Officer was not the authorized person by the Government under Rule 40 of the Rules to administer the oath to the elected Panches. Since petitioner Kulwant Singh did not appear before the authorized person for taking the oath on 11.7.2008 and subsequently he never made any prayer to the said authorized officer to administer the oath or affirmation to him, the District Development and Panchayat Officer has rightly intimated to the Block Development and Panchayat Officer not to permit the petitioner to participate in the meeting and cast his vote in the election of Sarpanch as he had not taken the oath on 11.7.2008. It was only an intimation of a fact to the Block Development and Panchayat Officer. Therefore, it cannot be termed that the said letter was mala fide written only with an object to prevent the petitioner from participating in the meeting and exercise his right to vote of the election of Sarpanch. It is well settled that without taking an oath of an office, the person cannot discharge the functions and duties of the said office. The right of a Panch to participate in the meeting convened for the election of Sarpanch only arises after notifying his name as Panch and taking oath or affirmation of the office of Panch u/s 13 of the Act. Undisputedly, since petitioner Kulwant Singh did not take the oath as Panch, therefore, he was not permitted to participate in the meeting held on 16.7.2008 for election of Sarpanch.

10. As far as election of respondent-Ranjit Singh in the meeting held on 16.7.2008 is concerned, a perusal of the proceedings of the meeting reveals that out of seven Panches, six members of the Panchayat had attended the said meeting in which only the name of Ranjit Singh was proposed and seconded. No other candidate came forward to contest the election of Sarpanch. Therefore, he was rightly declared elected as Sarpanch of the Gram Panchayat.

As far as the contention of the counsel for the petitioners in C.W.P. No. 13938 of

2008 that in the said meeting, the signature of the petitioners were taken on blank papers is concerned, this is a disputed question of fact which cannot be gone into in this petition. In our opinion, the petitioners can question the election of respondent-Ranjit Singh as Sarpanch on the said ground by filing an election petition u/s 76 on the grounds mentioned in Section 89 of the Act, as has been held by this Court in Baljit Singh Vs. State of Punjab and Others, .

11. In view of the aforesaid, we do not find any merit in these petitions and the same are hereby dismissed.

12. However, it will be open for the petitioners to challenge the election of respondent-Ranjit Singh on the grounds that he was declared elected as Sarpanch illegally without there being any majority.

Sd/- Jaswant Singh, J.