
(2005) 02 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13736 of 2003

Kulwinder Kaur

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Panchayati Raj Act, 1994 — Section 209
Punjab State Election Commission Act, 1994 — Section 12, 19, 35, 36, 37

Citation : (2005) 141 PLR 47 : (2005) 2 RCR(Civil) 392

Hon'ble Judges : H.S. Bedi, Acting C.J.; Viney Mittal, J

Bench : Division Bench

Advocate : Rajinder Goyal, for the Appellant; Nirmaljit Kaur, Addl. A.G. for Respondent No. 1 and Ajay Bhardwaj, for Narinder Hooda, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.—Petitioner, Kulwinder Kaur, has approached this Court through the present petition filed under Articles 226/227 of the Constitution of India. The prayer made in the petition is for the issuance of a writ of mandamus directing respondents No. 1 to 5 to declare the result of elections of the Gram Panchayat held on June 23, 2003, after counting the votes polled. A further direction has been sought that the respondents be restrained from taking a contemplated action of holding fresh elections in the village.

2. Petitioner, Kulwinder Kaur is resident of village Sarloopur, Tehsil and District Gurdaspur.

3. In exercise of the powers under Section 209 of the Punjab Panchayati Raj Act, 1994, the State Government of Punjab decided to hold general elections to the various Gram Panchayats in the State of Punjab on June 29, 2003. A notification in this regard was issued by the Secretary to Government of Punjab, Department of Rural and Panchayat on March 4, 2003. Consequently, the Punjab State Election Commission, in exercise of the powers u/s 35 of the Punjab State

Election Commission, Act, 1994 (hereinafter referred to as the Act) issued a notification dated June 16, 2003 whereby the requisite election programme for holding the elections of various Gram Panchayats, including the Gram Panchayat of village Saloopur, was issued. A copy of the aforesaid notification has been appended as Annexure P/1 with the present petition. As per the aforesaid notification, the election to the Gram Panchayat, village Saloopur was to be held as follows:

"(a) 19th June, 2003, Thursday, as the last date of making nomination.

(b) 20th June, 2003, Friday, as the date of scrutiny of the nominations.

(c) 1st June, 2003, Saturday, as the last date for withdrawal of candidature.

(d) 29th June, 2003, Sunday, as the date on which a poll shall if necessary, be taken, and

(e) 4th July, 2003, Friday, as the date by which the election shall be completed."

4. The petitioner accordingly filed her nomination for contesting the election for the post of Gram Panchayat. Polling was held on June 29, 2003, as per the election programme. The result of the aforesaid polling was to be declared on the same day i.e. June 29, 2003. The Presiding Officer had been appointed under the Act and the time for polling was fixed from 8.00 a.m. to 4.00 p.m. The claim of the petitioner is that the polling in the village went smoothly and there was absolutely no untoward incident, nor any interruption in the polling had taken place. However, the counting of the votes did not take place and was deferred. In fact, a letter was received by the Sub Divisional Electoral Officer, Gurdaspur from the District Election Officer, Gurdaspur whereby the counting of votes in some of the villages, including the village Saloopur, was not to be held and the boxes were sealed and kept at safe place till the enquiry" regarding votes was completed by the Commission. A copy of the aforesaid communication dated June 28, 2003 has been appended as Annexure P-2 with the present petition.

5. The allegation of the petitioner is that the aforesaid deferment of the counting had been done at the instance of Shri Partap Singh Bajwa, PWD Minister, Punjab. The petitioner had claimed that once the election programme had been issued and the polling had taken place in pursuance to the aforesaid election programme, then the election authorities were bound in law to count the votes and declare the result as per election programme. On the basis of the aforesaid fact and making a grievance against the non-declaration of the result for the election of Gram Panchayat, Village Saloopur, the petitioner has approached this Court through the present petition.

6. Upon notice of motion issued to the respondents, the claim of the petitioner has been contested by the respondents. Separate written statements have been filed on behalf of the respondents. A joint written statement has been filed by respondents No. 1, 3 and 4, as separate written statement has been filed on behalf of respondent No. 6 and another separate written statement has been

filed on behalf of respondent No. 2. A common stand taken by all the respondents in the written statements is that various complaints had been received by the State Election Commission, respondent No. 2, with regard to a large number of bogus votes having been enrolled by the election authorities in blocks Kahnuwan and Dhariwal and to enquire into the aforesaid matter, the State Election Commissioner had directed an enquiry into the matter to find out the genuineness thereof. Accordingly, the counting of votes in blocks Kahnuwan and Dhariwal had been stayed by the State Election Commission. However, the factum of any undue influence having been exerted by Shri P.S. Bajwa, the Minister, has been specifically denied by the respondents.

7. We have heard Shri Rajinder Goyal, learned counsel appearing for the petitioner, Ms. Nirmaljit Kaur, learned Additional Advocate General, Punjab and Shri Ajay Bhardwaj, learned counsel for respondent No. 6 and with their assistance have also gone through the record of the case.

8. The conduct of elections under the Act is governed by Chapter VII of the Act. Section 35 of the Act provides for appointment of dates for nominations etc., where after public notice of the requisite programme is required to be issued u/s 36 of the Act. Nominations for elections are governed by the provisions of Sections 37 and 38 of the Act. After scrutiny of nomination u/s 41 of the Act, the poll is to take place under Chapter X of the Act. Section 57 of the Act authorises the Election Commission to fix the hours during which the poll will be taken. Section 58 of the Act provides for certain emergencies when adjournment of poll can be ordered. Section 58 of the Act may be noticed at this stage :

"58. Adjournment of poll in emergencies.- (1) If at any election, the proceedings at any polling station provided u/s 19 are interrupted or obstructed by any riot or violence, or if at an election it is not possible to take the poll at any polling station on account of any natural calamity or any other sufficient cause, the concerned Presiding Officer or the Returning Officer, as the case may be shall announce an adjournment of the poll to a date to be notified later by the Election Commissioner and where the poll is so adjourned by a Presiding Officer, he shall forthwith inform the concerned Returning Officer.

(2) Whenever a poll is adjourned under Sub-section (1), the Returning Officer shall immediately report the circumstances to the prescribed authority and the Election Commissioner and the Returning Officer shall as soon as may be with the previous approval of the Election Commissioner, appoint the day on which the poll shall be taken, and fix the polling station or place at which and the hours during which, the poll shall be taken and shall not counter (count ?) the votes cast at such election until such adjourned poll is concerned."

9. Chapter XI of Act deals with counting of votes during elections. Section 66 provides that at every elections where poll is taken, votes shall be counted by or under the supervision and direction of, the Returning Officer. On counting the votes, declaration of result is required to be made u/s 69 of the Act by the

Returning Officer. Thereafter, a report in this regard is required to be submitted by the Returning Officer to the Election Commission u/s 70 of the Act. On receipt of the aforesaid report, the aforesaid result shall be published in an Official Gazette u/s 71 of the Act.

10. A perusal of all the aforesaid provisions of the Act clearly shows that once the election process commences in terms of the notification issued u/s 35 of the Act, then the process gets completed only on publication of the result u/s 71 of the Act. Although in some of the situations noticed u/s 58 of the Act, polling can be adjourned but besides the aforesaid situations there is no other provision where polling having once commenced can be adjourned. The natural corollary from Section 58 of the Act would be that once the election process, in terms of election programme issued u/s 35 of the Act, had commenced then it has to conclude by counting of votes, declaration of result and publication thereof.

11. After the result of the election has been duly notified u/s 71 of the Act, there is a provision to challenge the aforesaid election under Chapter 12 of the Act through an election petition. Various grounds to challenge the election have been provided u/s 89 of the Act. One of the grounds is improper reception, refusal or rejection of any vote or the reception of any vote which is void. Thus, if in polling any votes have been improperly received or proper votes have been rejected or persons authorised to vote have been refused to exercise their right of voting or the void votes have been received, then that would give an aggrieved party a right to challenge the election of a winning candidate. The scheme of the Act clearly shows that but for the remedy of an election petition, for challenging the election of a winning candidate, there is no other provision to nullify the election held under an election programme duly issued. In the back ground of the aforesaid various provisions of the Act, it is apparent that elections to the Gram Panchayat, Saloopur were notified to be held on June 29, 2003. The polling, in fact, took place on the aforesaid date. There was no order of adjournment of polling by the Election Commissioner or any other competent authority, in terms of Section 58 of the Act. Once the polling had taken place uninterrupted and was duly completed at the fixed hours, then the consequential counting of votes in terms of Section 66 of the Act had to take place. In our opinion, there was absolutely no power or jurisdiction with any of the election authorities not to count the aforesaid votes, duly polled. Even if it be taken, though no comments are offered by us in that regard, that there were any unauthorised votes which had been included in the voters list, still the remedy of any aggrieved person to challenge the election of a winning candidate would be by way of an election petition only. Of course, the State Election Commissioner was well within its right to revise the electoral list, but the aforesaid revision could not be used as a handle to subvert the election process which had duly commenced.

12. In view of the aforesaid discussion, we find that the action of the respondent No. 2 to 5 in deferring the counting of votes, which had been cast on June 29, 2003, during the elections of Gram Panchayat, Village Saloopur, was wholly

without jurisdiction and unauthorised. Accordingly, we direct respondent No. 2 to 5 to declare the result of the election of Gram Panchayat, Village Saloopur, held on June 29, 2003 forthwith. In view of the aforesaid direction, prayer made by the petitioner for restraining the respondents not to hold fresh election does not survive any further.

The present writ petition is allowed in the aforesaid terms. There shall be no order as to costs.