

(1964) 03 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 313 of 1963

Mohar Singh and Harnam Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-03-1964

Acts Referred:

Punjab Panchayat Samitis (Primary Members) Election Rules, 1961 — Rule 16(9), 4, 4(2), 4(3)

Citation : AIR 1964 P&H 414 : (1964) 2 ILR (P&H) 400

Hon'ble Judges : S.S. Dulat, J; P.C. Pandit, J

Bench : Division Bench

Advocate : Shamair Chand, for the Appellant; B.S. Chawla, General, for the Respondent

Judgement

1. The dispute in the present case relates to the election for the Punjab Panehayat Samiti (Primary Members) of the Rupar Block held on the 3rd of September, 1961. This election was originally fixed for the 20th of August 1961. The Appellant, who is a Paneh of the Panehayat of village Bara, was a candidate for this election and he filed his nomination papers for this purpose on the 11th of August, 1961. He also deposited a sum of Rs. 50/- as required by the rules. The scrutiny was held on the 16th of August, 1961. The Re-turning Officer held him eligible for the said election and also allotted a "symbol" to him. On the 19th of August, 1961, however, the Deputy Commissioner notified that the election was postponed to the 3rd of September, 1961. It appears that another election programme was issued by him on the 22nd of August, 1961, according to which fresh nomination papers had to be filed on the 29th of August, 1961, though on the same security deposits which were made previously for the election be held on the 20th of August, 1961. The security had to take place on the 30th of August, 1961. According to the Appellant, he was away from Rupar from the 20th of August to the 30th of August, 1981 and, therefore, he could not file fresh nomination papers. Moreover, he had no knowledge that fresh nomination papers had to be filed. He was all along under the impression that the election would be

held on the basis of the nomination papers which had already been filed and accepted. He was not allowed to take part in the election which was held on the 3rd of September, 1961. On 23rd of September, 1961, he filed a writ petition in this Court challenging the said election on the ground that the nomination papers already filed by him on the 11th of August, 1961 and duly accepted by the Returning Officer were quite sufficient for the election held on the 3rd of September, 1961. This contention did not prevail with Shamsheer Bahadur, J., who dismissed his petition on the 28th of May, 1963. Against this order the present appeal has been filed under Clause 10 of the Letters Patent.

2. There is no dispute about the facts in the present case. The only question which requires consideration is the interpretation of Rule 4 of the Punjab Panchayat Samitis (Primary Members) Election Rules 1961, which is in the following terms:

4 Election Programme. (1) The Deputy Commissioner shall frame an election programme for every block in his district, specifying for each block-

- (i) the name of the Returning Officer,
- (ii) the date, time and place for-
 - (a) the filing of nomination papers;
 - (b) the scrutiny of nomination papers;
 - (c) the withdrawal of nomination papers;
 - (d) the taking of poll, if necessary;
- (e) the publication of the names of persons declared to have been elected under Rule 16(9)

(2) The election programme shall be published not less than seven days before the date fixed for filing the nomination papers by posting a copy at the offices of the Deputy Commissioner. Panchayat Samiti, and at such other conspicuous place or places, as may be determined by the Deputy Commissioner in this behalf.

(3) The Government or the Deputy Commissioner may, by an order in writing, amend, vary or modify the election programme at any time:

Provided that, unless the Government otherwise directs, no such order shall be deemed to invalidate any proceedings taken before the date of the order.

(4) Every order under sub-rule (3) shall be published in the manner prescribed in sub-rule (2).

3. A plain reading of sub-rule (3) above would show that both the Government and the Deputy Commissioner can at any time by an order in writing amend, vary or modify the election programme. But the proviso to this sub-rule makes it clear that the proceedings already taken before the passing of such order will not

be invalidated, unless the Government -- not the Deputy Commissioner -- otherwise directs. In the present case the Deputy Commissioner had issued a fresh election programme on the 22nd of August, (sic) but the Government had not issued any direction invalidating the proceedings which had taken place before that date. The nomination papers of the Appellant have been held and duly accepted before this date. He had been held eligible for election by the Returning Officer and was allotted a symbol. By virtue of the abovementioned proviso these proceedings were not invalidated and the Appellant could stand for election held on the 3rd of September, 1961. The learned Single Judge was of the view that such a construction would destroy the power of the appropriate authority to amend, vary or modify the election programme under Sub-rule (3) of Rule 4, when something had been done in pursuance of the election programme which has already been published. This, according to the learned Judge, could not be the intention of the proviso to Sub-rule (3). He further says that when an election programme is amended, it follows of necessity that the different dates in the programme of election will have to be changed. With great respect to him, there is no quarrel with the proposition that when an election programme is amended the different dates mentioned therein may be changed, but the rule is quite clear that no proceedings taken before the date of the order amending the election programme will be invalidated, unless the Government otherwise directs. There can be no other interpretation of the words used in the proviso to Sub-rule (3) and, consequently, this must be the intention of the proviso. The change in the election programme did not necessarily mean that everything already done before that was invalidated.

4. The result is that this appeal is accepted, the judgment of the learned Single Judge is set aside and the election held on the 3rd of September, 1961 is hereby quashed. In the circumstances of this case, however, we will make no order as to costs.