
(1984) 08 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Peition No. 5379 of 1983

Mohinder Kumar	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 324
Punjab Municipal Election Rules, 1994 — Rule 53, 53(1), 57, 58, 66

Citation : (1985) 2 ILR (P&H) 9

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Mohinderjit Singh Sethi, for the Appellant; P.S. Kang and D.V. Sehgal and Vinod Kataria, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—This petition under Article 226 of the Constitution of India brings forth rather a queer situation in the context of the Punjab Municipal Election Rules, The Petitioner was declared duly elected as a Municipal Commissioner on May 15, 1983. This election of his, however, was challenged by Respondent No. 4 by filing an election petition in terms of Rule 53 of the above noted rules. The relevant part of this rule, i.e., Sub-rule (1), reads as follows:

An election petition against the return of a candidate at a Municipal election or against the return of a President or Vice President or against an unsuccessful candidate with a view to his disqualification under Rule 66 on the ground of a corrupt practice or material irregularity in the procedure shall be in writing, signed by a person who was a candidate at the election or by not less than five electors and the petition shall be presented to the Deputy Commissioner or an Assistant Commissioner or Extra Assistant Commissioner appointed by the Deputy Commissioner in this behalf within 14 days after the day on which the result of the election was declared, provided that the limit of fourteen days prescribed by this rule may be extended by the Deputy Commissioner if there

are in his opinion sufficient grounds for such extension.

Since the election petition had been presented on June 15, 1983, i.e., much beyond the prescribed period of fourteen days in the rule, the Deputy Commissioner accepting the explanation of the Respondent that he was "under the influence of fever and could not file the petition within the prescribed period", in the light of a medical certificate and an affidavit filed by him extended the period of limitation up to the date of filing of the petition,--vide his order, dated June 15, 1983 (Annexure P. 2). Then in compliancy with Rule 56 he forwarded the election petition to the Government through the Director, Local Bodies, Punjab. The Government, as envisaged by Rule 58, appointed a Commission to hold an enquiry into the allegations made in the election petition. While the matter was before the Commission for trial, the Petitioner who had put in appearance in response to a notice issued to him besides contesting the rest of the material allegations against him in the election petition, raised a contention that the petition itself was barred by time as it had not been filed within the prescribed period of fourteen days from the date of his election. This latter mentioned contention of his has been turned down by the Commissioner,--vide its order, dated November 2, 1983 (Annexure P.3) on the ground that he had no jurisdiction to go into this question as the same stood settled by the order of the Deputy Commissioner (Annexure P.2). The Petitioner now impugns both these orders, i.e., Annexures P.2 and P.3 on the plea that either of these is at least bad for the reason that he stands deprived of a valuable right which had accrued to him with the lapse of the period of limitation and that too without any opportunity of hearing being afforded to him by either of these authorities--the Deputy Commissioner or the Commission. The attack, however, is primarily concentrated against order, Annexure P.2. As against this, the stand of the Respondents--official as well as non-official--is that the delay in the filing of the election petition having been duly condoned by the competent authority, i.e., the Deputy Commissioner, the Petitioner cannot successfully impugn either of these two orders. According to these Respondents, once the Government has appointed a Commission in terms of Rule 58 after satisfying itself--as envisaged by Rule 57--that the provisions of Rule 53(1) stood fully complied with, the question of limitation assumed finality qua the Petitioner and he could not possibly assail the order of the Deputy Commissioner before the Commission and the Commission had no jurisdiction to go into this matter over again.

2. Having given by thoughtful consideration to the entire matter in the light of the submissions of the learned Counsel for the parties, I find that the stand of the Respondents is wholly untenable. It is not disputed before me that where period of limitation is prescribed by the statute or the rules for, the filing of a petition or doing an act, with the expiry of that period of limitation, a right accrues to the party against whom the petition or the action is proposed to be taken in terms of any rule or law and that right cannot be wiped out or nullified by any authority or tribunal without hearing the affected party or the affected person. In other words, in case the authority competent to condone the delay in

the filing of the petition finds enough of justification or reason to condone the delay or remove the bar of limitation and thereby wants to take away the benefit from the person to whom a right has accrued on account of the lapse of period of limitation, it must at least hear that person. I hardly need multiply the citations or precedents in support of this proposition except to refer to the following meaningful observations made by their Lordships in an election matter in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

Fair hearing is thus a postulate of decision-making cancelling a poll, although fair abridgement of that process is permissible. It can be fair without the rules of evidence or forms of trial. It cannot be fair if apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law.

This is in spite of the fact that the law or the rules concerned may, be silent about the prior giving of any notice to the person to be affected. In the latter part of the same very judgment, their Lordships have observed as follows:

We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where It has not specified it is otiose. There is no such sequatur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation.

The stand of the Respondents that Rule 53(1) referred to above does not contemplate the issuance of any prior notice to the elected Municipal Commissioner before the condonation of the delay in the filing of the election petition has thus no substance. The submission of Mr. Sehgal, learned Counsel for Respondent No. 4, that the Commission can go into the question of condonation of limitation over again when properly raised before it, does not appeal to me for the short reason that Rule 53(1) dealing with the power of condonation of delay in the filing of an election petition has specifically conferred this power on the Deputy Commissioner. To hold that the Commissioner also has the power to go into the question of condonation of delay in the filing of the election petition, would amount to ignoring the specific provision as contained in Rule 53(1). The question of limitation, to my mind, has to be settled by the Deputy Commissioner and he cannot do so without affording an opportunity to the party against whom the period of limitation is being condoned. This is so even if the petition is presented before an authorised Assistant Commissioner or an Assistant Commissioner. In the instant case it is the conceded position that before passing the order Annexure P.2, the Deputy Commissioner never afforded any such opportunity to Respondent No. 4. So far as the argument of "finality" on account of the reference made by the State Government to the Commission is concerned, I find it difficult to reconcile with the same. What has been made final by Rule 57 is the order of dismissal of an election petition for non-compliance of

Sub-rule (1) of Rule 53 and not the order when the petition is referred to the Commission for trial. Otherwise also I feel that this argument does not arise in the case in hand as I am of the opinion that it is the Deputy Commissioner who has to finally settle the question of limitation with regard to the filing of an election petition and not the Commission appointed by the Government. As already observed, the Deputy Commissioner has to do it even when he has duly authorised an Assistant Commissioner or an Extra Assistant Commissioner to accept the election petition filed by one of the defeated candidates. These are some of the strange implications of these rules as pointed out in the opening part of this judgment. For the reasons recorded above I quash the impugned order, Annexure P.2.

3. As a natural consequence of this, the subsequent proceedings or the steps taken by the Government or the Commission have also to fall and are set aside. The matter is sent back to the Deputy Commissioner to decide the question of limitation afresh in accordance with law and the observations made above. I, however, pass no order as to costs. The parties through their counsel are directed to appear before the Deputy Commissioner, Kapurthala, on September 20, 1984.