
(1972) 11 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2014 of 1972

Parbhu and others

APPELLANT

Vs

Illaqa Magistrate (Prescribed Authority) Mohindergarh and others

RESPONDENT

Date of Decision : 30-11-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1972) 11 P&H CK 0009

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Advocate : Chandra Singh, for the Appellant; H.N. Mehtani, Assistant Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

C.G. Suri, J.—This civil writ petition filed under Articles 226 and 227 of the Constitution of India raises the following important questions of law in connection with the panchayat elections held under the Punjab Gram Panchayats Act, 1952 (hereinafter briefly referred to simply as "the Act"):

Where the election of a Panch or Sarpanch has been set aside under sub-section (1) of section 13 O of the Act because he is found to have suffered from a disqualification, whether the fresh election visualised by sub-section (2) of the said section is to be confined to the single seat that falls vacant or whether the entire panchayat elections are to be held afresh or de novo?

2. A Division Bench ruling of this Court in *Manga v. Sohlu* (1965) 67 P.L.R. 955, may, in a way, seem to provide an answer to the above question. In the case cited, *Shri Sohlu*, the election petitioner had asked for the setting aside of the election of only the returned candidate who was found to be suffering from a disqualification and he had not prayed that the entire elections should be set aside. I had followed this ruling in *Bala v. The Executive Magistrate* C.W. 2641 of

1972, Civil Writ Petition No. 2641 of 1972 decided on 20th October, 1972, as the correctness of the Division Bench ruling referred to above was taken for granted by all concerned at the time. In this case also, the election petitioner had prayed only for the cancellation of the return of the candidate labouring under the disqualification. The correctness of these rulings has, however, been very seriously challenged by the counsel for the respondents in the present case and even though, without being over-discriminate, I would be following the Bench decision in Manga's case (supra) because it is binding on me. I must in fairness to the counsel for the parties recount here in detail the arguments advanced by them and the impressions that these arguments have made on my mind. It would be for the Letters Patent Bench to see, if and when the occasion arises, whether they would follow or distinguish the Division Bench ruling or would have the question of law re-examined by a larger Bench. Without meaning any disrespect, however, I cannot help saying that the decision in Manga's case (supra) may have been different if sub-section (2) of section 13-O of the Act had been brought to the notice of the Hon'ble Judges or its provisions had been duly considered. The judgment has referred to, reproduced and discussed a number of sections of the Act and even though sub-section (1) of section 13-O had been reproduced verbatim, sub-section (2) of the said section had not merited a citation or reference anywhere in that judgment. While dealing with the Supreme Court ruling in Surendra Nath Khosla Vs. Dalip Singh, which had been cited in that case by the respondent's counsel, the Hon'ble Judges who constituted the Division Bench in Manga's case had compared some sections of the Act with section 100 of the Representation of the People Act, 1951, but the more comparable or pertinent sub-section 13 O (2) of the Act does not appear to have been considered in the context of the provisions of the Representation of the People Act which were construed by the Supreme Court in Surendra Nath Khosla's case. It is sub-section (2) of section 13-O of the Act which may seem to make it obligatory on the prescribed authority to order a fresh election where an election has been set aside under sub-section (1) of section 13-O of the Act because of the success of an election petition. The sub-section does not say that the fresh election is to be confined only to the seat that has been vacated by virtue of the success of an election petition under sub-section (1) of the said section.

3. The facts of the present case are that the four petitioners along with respondents Nos. 3 and 4 had been returned as members of the Gram Panchayat of village Sihore in the last panchayat elections held in 1971. One of the defeated candidates, Shri Tej Ram respondent No. 2 had filed an election petition under sections 13-B and 13-O of the Act alleging that Shri Hit Lal respondent No. 4 was holding a lease under the Gram Panchayat on the date of his election and that he was not qualified or eligible to be elected as a Panch in view of section 5 (5) (1) of the Act as amended by Haryana Act No. 29 of 1971. This defect was described to have affected the entire panchayat elections and the prayer in the election petition was that the election of not only respondent No. 4 but also of the other

returned candidates, including the petitioners, should be set aside. The prescribed authority, respondent No. 1, has by its impugned order dated 3rd July, 1972 (Annexure "A" to the petition) set aside the election of the six returned candidates in view of the provisions of section 13-O (2) which lays down that when an election has been set aside under sub-section (1), a fresh election shall be held. Shri Chandra Singh, the learned counsel for the petitioners, contends that the fresh election has to be confined to the single seat which has fallen vacant by the removal from office of respondent No. 4. He argues that the holding of such partial elections to a single seat or vacancy is actually contemplated by the Legislature in section 10 of the Act. This section provides for the filling up of casual vacancies occurring on account of death resignation or removal of a Panch or Sarpanch which take place during the term. It is moot point whether the vacancy caused by an order passed u/s 13-O (1) of the Act would be a casual vacancy. It is true that an order u/s 13-O (1) would also lead to the removal of a Panch or Sarpanch from office but this would not cause a casual vacancy contemplated by section 10. For such removals of a Panch and Sarpanch u/s 13 O (1), a more specific provision may appear to have been made by section 13-O (2) of the Act. The contingencies contemplated by section 10 occur during the term because of death or resignation of a member of the Gram Panchayat or because of his removal from office for like reasons which do not affect the validity of the entire election as originally conducted. The removals from office contemplated by section 10 are where a Panch or Sarpanch is removed u/s 9 second proviso or section 102 (2) etc. or where the casual vacancy has occurred by the death or resignation of a member of the Gram Panchayat. All these situations arising during the mid-term do not vitiate the elections initially held because of any defect or irregularity or illegality in the holding of these general elections to the whole panchayat. Section 10, therefore says that a new Panch or Sarpanch shall be elected in "such a manner as may be prescribed. Interpretation clause (j) of section 3 says that "prescribed" means prescribed by rules made under the Act. Rule 42 of the Haryana Rules of 1971 actually makes a provision for the filling up of such casual vacancies occurring for reasons mentioned in section 10 of the Act. This rule is not made specifically applicable to vacancies caused by an order passed u/s 13-O (1) because of the success of an election petition. Section 13-O (2) says that a fresh election shall be held where an election has been set aside u/s 13-O(1). The words "in such a manner as may be prescribed" which have been used in section 10 do not occur in section 13-O(2). The word "fresh" which has been used in relation to the new elections to be held u/s 13-O (2) has been eschewed in section 10 of the Act. The differences in the language of these two statutory provisions could not be without any significance. The intention of the Legislature appears to be that where a casual vacancy has to be filled in u/s 10 of the Act, the initial elections are not found to have been vitiated by any illegality or irregularity and the entire electorate can go to the polls again in a bye-election to fill up the mid-term casual vacancy. Where the initial election of one of the Panches is found to be void ab initio, the entire elections stand vitiated. This was the ratio of the

Supreme Court ruling in Surendra Nath Khosla's case (supra) and if the provisions of clause (e) of sub-section (1) of section 100 of the Representation of the People Act, 1951, are found to be comparable or to be in pari materia with the provisions of section 13-O (2), then there may be hardly any reason for our not adopting in this case as well the ratio of the Supreme Court ruling in Surendra Nath case. Section 100 (1) (c) of the Representation of the People Act says that where the result of the election has been materially affected by the improper acceptance or rejection of any nomination the Tribunal shall declare the election to be wholly void. Section 13-O (2) may appear to contain a similar mandatory direction when it says that a fresh election shall be held where an election has been set aside because of the success of an election petition under sub-section (1). In any case, this was an aspect of the matter which does not appear to have been considered by the Division Bench in Manga's case (supra). A mixture of any part of the old with something fresh may make the whole thing stale. We cannot have something fresh as enjoined by section 13-O (2) unless we reject all that is old and stale.

4. Shri Chandra Singh's argument that the fresh elections have to be confined only to the vacancy occasioned by the setting aside of respondent No. 4's election can lead to some very anomalous results. As observed by the Division Bench in Manga's case, the elections are by way of a single non-transferable vote. Each elector is supposed to get only one ballot paper and has the right to vote only once. If the secrecy of the ballot is to be maintained, it would not be possible to establish the identity of the 79 electors who had voted for respondent No. 4 and the polling at the fresh election cannot be confined to them. The appearance of a new face in a changed set of candidates who may be in the run, irrespective of whether the number in the set increases, decreases or remains the same, can upset the whole balance of power in the panchayat and disturb the proportional representation of the various contending parties. The new face may become such a hot favourite and may so completely sweep the polls that he may unnaturally tilt the balance in favour of his own political party. If the electors are to have single non-transferable vote and have to exercise their choice only once, then that section amongst the electorate who had voted for the petitioners and had been successful in returning candidates of their choice would be given a second say in the matter of selection of another member of the panchayat from amongst the fresh set of contesting candidates. This would give them a weightage which would be exercised in favour of the political party to which that section of the electorate had belonged. Respondent No. 1 has visualised in his return all possible permutations or combinations but without resorting to any such surmises or conjectures, it can safely be said that a change in the set of contestants can have such repercussions or inter-actions that it is not possible to strike at a part of the general elections without affecting the validity of the whole. The entire process of elections is so intimately linked up and integrated that it cannot be split up in separate pieces without affecting the continuity or soundness of the whole. The electors have, therefore, to stand or fall as a whole

and this is what section 13-O (2) seems to contemplate when it directs that the elections shall be held afresh. Platitudes and truisms can be propounded with Solomon's gravity but the Courts have to give effect to the provisions of a statute where its meaning is reasonably clear. The provisions of section 13-O(2) are inexorable and must prevail irrespective of whether the election petitioner seeks the setting aside of the return of only the disqualified candidate or whether he impugns the entire election proceedings. The above is only a brief resume of the arguments advanced by the learned counsel for the parties and what I think of these arguments.

5. As already observed above, I find it safer to follow the Division Bench ruling in Manga's case (*supra*) as it is binding on me. I allow the election petition and quash the impugned order of the prescribed authority in so far as it has set aside the election of the petitioners. The impugned order shall, however, stand in so far as it declares the election of respondent No. 4 to be void. In view of the peculiar circumstances of the case, the parties are left to bear their own costs.