

(2008) 11 P&H CK 0048
In the Punjab And Haryana At Chandigarh

Rajwinder Kaur and Others	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 3 PLR 732 : (2009) 1 RCR(Civil) 462

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioners, who are the elected Panches of Gram Panchayat Village Merhana, District Tarn Taran, have filed this petition under Articles 226/227 of the Constitution of India for setting aside the election of respondent No. 6 as Sarpanch of the aforesaid Gram Panchayat, which was conducted in the meeting of the Panches held on 25.7.2008. The said meeting was attended by four Panches, who unanimously elected respondent No. 6 as Sarpanch. It is the case of the petitioners that actually no meeting had taken place on 25.7.2008, as neither the Presiding Officer nor the Secretary, Gram Panchayat came present at the fixed time and place. In support of their contention, the petitioners have relied upon the report dated 6.8.2008 given by the Sub Divisional Magistrate, Tarn Taran, copy of which has been annexed as Annexure P-3.

2. Written statement on behalf of respondents No. 5 and 7 has been filed in Court today. The same is taken on record and its copy has been handed over to counsel for the petitioners. In the written statement, filed on behalf of respondents No. 1, 3 and 4, it has been stated that after the notification of the election of Panches of the Gram Panchayat, the first meeting of the Panches was convened for 17.7.2008, but the same was adjourned for want of quorum. Thereafter, the next meeting was fixed for 22.7.2008 by the Presiding Officer, but on the same day, the Presiding Officer got ill, therefore, the said meeting could

not be held. Thereafter, the meeting was convened on 25.7.2008 at 1.00 P.M.

3. Notices of the said meeting were given to all the members of the Gram Panchayat. It has been specifically stated that the Presiding Officer was very much present at the time and venue of the meeting and the meeting was attended by 4 Panches. In the said meeting, respondent No. 6 was unanimously elected as Sarpanch of the Gram Panchayat. It has been specifically stated that the report given by the Sub Divisional Magistrate, Tarn Taran was considered by the Deputy Commissioner, Tarn Taran and the said report was not accepted, because the SDM gave the said report even without summoning and recording the statement of the Presiding Officer.

4. Therefore, the Deputy Commissioner has rejected the said enquiry report and thereafter, election of respondent No. 6 has been notified. In the written statement, a preliminary objection has also been taken that if the petitioners are aggrieved against the election of respondent No. 6 and they seek the setting aside of the election on the ground that no meeting was held on 25.7.2008, then they have the remedy of election petition. After hearing counsel for the parties, we are of the opinion that since the disputed questions of facts have been raised in this writ petition, therefore, in view of decision of this Court in Baljit Singh Vs. State of Punjab and Others, , decided on August 22, 2008, wherein it has been held that in view of Clause (b) of Article 243-0 of the Constitution of India and Section 74 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as "the Act"), election of Sarpanch is to be challenged by filing an election petition u/s 76 on the grounds mentioned in Section 89 of the Act, the petitioners have the remedy of election petition.

5. Dismissed.

6. However, since the petitioners had approached this Court within 45 days of the election of Sarpanch, therefore, in view of decision of the Hon"ble Supreme Court in Danda Rajeshwari Vs. Bodavula Hanumayamma and others, , we permit the petitioners to file an election petition, within a period of three weeks from today, u/s 76 read with Section 89 of the Act, challenging the election of respondent No. 6. If the election petition is filed by the petitioners within a period of three weeks from today, the Election Tribunal is directed to entertain and decide the same on merits, expeditiously.