

(1974) 03 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 118 of 1973

Ranzor Singh

APPELLANT

Vs

The State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Himachal Pradesh Gram Panchayat (Election) Rules, 1972 — Rule 58(1)
Himachal Pradesh Panchayati Raj Act, 1968 — Section 167, 168, 168(1), 170, 186

Citation : (1974) 3 ILR HP 244

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : D.P. Sud, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The Petitioner and Respondent No. 4 were elected as Panches of the Gram Panchayat, Chopal. Thereafter, they contested the election for the office of Pradhan of the Gram Panchayat. The Respondent No. 4 was declared elected. The Petitioner filed an election petition challenging the election of Respondent No. 4 as Pradhan, and also his election as Panch of the Gram Panchayat. A perusal of the election petition indicates that the challenge was directed principally against the election of the Respondent No. 4 as Pradhan and that the invalidity of his election as Panch was taken as a ground in support of the principal challenge. The election petition was filed before the Sub-Divisional Officer, Chopal. An objection was raised by Respondent No. 4 to the maintainability of the election petition. On April 28, 1973, the Sub-Divisional Officer made an order holding that the election petition had been filed wrongly before him and that it properly lay before the Deputy Commissioner. He directed the return of the election petition to the Petitioner for presenting before the proper forum. The Petitioner challenges the validity of that order.

2. Shri D.P. Sud, learned Counsel for the Petitioner, who has very ably argued this case, has placed before me the relevant provisions of the Himachal Pradesh

Panchayati Raj Act, 1968, and the relevant rules made thereunder in respect of election petitions. He contends that the election petition was rightly presented before the Sub-Divisional Officer and that the Sub-Divisional Officer is wrong in the view that it should have been presented before the Deputy Commissioner. It seems to me that the contention must be upheld.

3. Section 167 of the Himachal Pradesh Panchayati Raj Act provides that the election of a Panch to a Gram Panchayat shall be called in question only by an election petition presented in accordance with the provisions of Chapter XIII of the Act. There is no provision anywhere in the Act specifically providing for an election petition against the election of a Pradhan. Section 3(1)(s) of the Act, which defines the expression "Panch", extends its meaning to include a Pradhan. In my opinion, when Section 167 provides for an election petition against the election of a Panch, it should be construed to refer also to an election petition against the election of a Pradhan. Section 167 is sufficiently comprehensive in scope and refers to election petitions challenging the election of every person who falls within the expression of "Panch" as defined in Section 3(1)(s) of the Act. Section 168(1) of the Act declares that the election petition may be presented to the prescribed authority. Rule 58(1) of the Himachal Pradesh Gram Panchayat (Election) Rules, 1972, provides that an election petition u/s 168 of the Act shall be presented to the Sub-Divisional Officer (Civil) under whose territorial jurisdiction the Sabha area is situated. There can be no dispute that if regard is had to Rule 58(1) an election petition relating to the Gram Panchayat, Chopal, can be filed only before the Sub-Divisional Officer, Chopal. The election petition preferred by the Petitioner was presented before him, and he was bound in law to entertain it. Section 170 sets out the procedure to be followed on receiving election petitions. The prescribed authority is empowered to dismiss it if it does not conform to the requirements of the Act. But where the election petition suffers from no such infirmity, the prescribed authority is bound to entertain it. I am of opinion that the Sub-Divisional Officer, Chopal, was obliged to entertain the election petition.

4. The Sub-Divisional Officer has taken the view that as the election petition is directed against the election of the Respondent No. 4 as Pradhan he has no jurisdiction to entertain it and that it has to be presented before the Deputy Commissioner. In taking that view the Sub-Divisional Officer is patently wrong. Section 186 of the Act provides that a dispute relating to the election of the Pradhan of a Gram Panchayat shall be decided by the Deputy Commissioner. The section is merely concerned with the trial of such election petition. It does not require that the election petition must be presented to the Deputy Commissioner. The presenting of the election petition is a matter dealt with by Section 167, and that provision when read with Section 168 and Rule 58(1) clearly intends that all election petitions challenging the election of persons falling within the definition of "Panch" as defined in Section 3(1)(s) must be presented to the Sub-Divisional Officer. After the Sub-Divisional Officer entertains the election petition and finds it to be in order, he must then consider whether he has jurisdiction to try it or it

is to be tried by the Deputy Commissioner. In the event of the latter, he must direct his office that the election petition be placed before the Deputy Commissioner for trial. He cannot return it to the Petitioner for presentation to the Deputy Commissioner. To so return it would mean that he has declined to entertain it, a position which, as I have pointed out above, is not open to him. In the present case the Sub-Divisional Officer after finding that the election petition challenged the election of Respondent No. 4 as Pradhan should have directed the transfer of the election petition to the Deputy Commissioner. The process was correctly set in motion by the Petitioner when he presented the election petition to the Sub-Divisional Officer, and in continuation of that process the Sub-Divisional Officer should have sent the case to the Deputy Commissioner for trial. The Sub-Divisional Officer erred in directing the return of the election petition to the Petitioner for presentation to the Deputy Commissioner. In the circumstances, the impugned order dated April 28, 1973, must be quashed.

5. It appears that the election petition was returned to the Petitioner for presentation to the Deputy Commissioner and the Petitioner accordingly filed it before the latter. It must be taken that when he did so he acted on behalf of the Sub-Divisional Officer. The election petition has been pending for sometime before the Deputy Commissioner, and it is in the interest of justice that it should be disposed of expeditiously.

6. The writ petition is allowed. The order dated April 28, 1973, of the Sub-Divisional Officer, Chopal, is quashed. The Petitioner is entitled to his costs against Respondents Nos. 1, 2, and 3, which I assess at Rs. 150/-.