
(2010) 02 P&H CK 0088
In the Punjab And Haryana At Chandigarh

Rashpal Singh Alias Rachpal Singh and Others	APPELLANT
Vs	
Jasvir Singh and Others	RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Punjab State Election Commission Act, 1994 — Section 76

Citation : (2010) 158 PLR 172 : (2010) 2 RCR(Civil) 408

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against order of learned Election Tribunal (Sub Divisional Magistrate), Sangrur, dated 25.9.2009, whereby election petition filed by respondent No. 1 has been allowed and election of appellant Nos. 1 to 4 has been set aside.

2. Shorn of unnecessary details, it is suffice to mention here that election for panch of village Salempur was held on 26.5.2008 in which appellant Nos. 1 to 4 were declared elected. The said election was challenged by respondent No. 1. by way of C.W.P. No. 17684 of 2008, which was disposed of on 04.10.2008 with a direction to respondent No. 1 to file an election petition.

3. It is pertinent to mention here that in the said order, the Court had not ordered for condonation of delay which might have occurred on the part of respondent No. 1 while pursuing his remedy in the writ jurisdiction. Ultimately, respondent No. 1 filed an election petition u/s 76 of the Punjab State Election Commission Act, 1994 (for short, "the Act") for setting aside the election of the appellant Nos. 1 to 4 on the ground that his nomination paper has been illegally rejected. Admittedly, the election petition was filed on 15.12,2008.

4. Learned Election Tribunal framed as many as four issues, out of which one of the issues was "whether the petition in the present form is maintainable?" In any case, the Election Tribunal found that nomination papers of respondent No. 1

were illegally rejected, therefore, election of the appellants and perma respondent was set aside.

5. Aggrieved against the said order, appellant Nos. 1 to 4 have preferred this appeal before this Court in which besides other points, learned Counsel for the appellants has argued that election petition by itself was barred by limitation and could not have been entertained much-less decided in favour of respondent No. 1. He submits that admittedly, the election took place on 26.5.2008 and election petition was filed on 15.12.2008. He further submitted that even if the time during which election petitioner was busy in pursuing his remedy in writ jurisdiction, is excluded, still election petition has been filed after expiry of 71 days from the order dated 4.10.2008, though as per Section 76(1) of the Act, election petition should have been filed within 45 days from the date of declaration of result. Learned Counsel further submits that if election petition is not filed within 45 days, then u/s 80 of the Act, Election Tribunal has no other alternative but to dismiss the election petition then and there.

6. In reply, learned Counsel for the respondents have submits that manifest injustice has been caused to respondent No. 1 as he was deprived of his right to contest election due to illegal rejection of his nomination papers. It is submitted that respondent No. 1 under bonafide belief, pursued his remedy in the writ jurisdiction of this Court and had immediately challenged the election, but because of ill advise, he could not file election petition within 45 days from 4.10.2008 onward. It is also submitted that the appellants herein, cannot take the plea of limitation at this stage as the same was not set up in defence. It is further submitted that so far as issue No. 3, is concerned, that was not pressed by the respondents because of the findings recorded by the Election Tribunal.

7. I have heard learned Counsel for the parties and have perused the record with their assistance.

8. Before adverting to the rival contentions of learned Counsel for the parties, a look at the relevant provisions of Act is necessary and for that purpose, Sections 76 and 80 are reproduced below:

Section 76. Presentation of petition.-

(1) An election petition may be presented on one or more of the grounds specified in Sub-section (1) of Section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of 45 days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every Election petition shall be accompanied by as many copies thereof, as there are. respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

Section 80 Trial of Election petition.-

(1) The Election Tribunal shall dismiss an election petition which does not comply with the provisions of Section 76 or section 77 or Section 103.

(2) Where more than one election petitions are presented to the election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal, may, in his discretion, try them separately or in one or more groups.

(3) Any candidate not already a respondent shall, upon application made by him to the election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent.

(4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow to particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from day to day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavor shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the election Tribunal for trial.

9. Undoubtedly, Section 76 read with Section 89 of the Act provides that an election petition can be filed within 45 days from the date of election of the returned candidate. Section 80 provides that Election Tribunal shall dismiss the election petition which does not comply with the provisions of Section 76 of the Act.

10. The question in this case is whether election petition has been filed by the candidate (respondent No. 1.) challenging the election of the appellants on the grounds provided u/s 89(1) within 45 days from the date of election.

11. In the present case, facts have already been noticed.

12. Election was held on 26.5.2008. Writ petition was filed by respondent No. 1. in this Court which was ultimately disposed of on 4.10.2008. Admittedly, the time which has been consumed by respondent No. 1 in pursuing his remedy in the writ Court, was not condoned. Then the question is that if the limitation is counted from 4.10.2008, whether the election petition is within limitation? The answer is "No" because the election petition has been filed on 15.12.2008 after

the expiry of 71 days. The question then arises whether provisions of the Limitation Act, 1963 are applicable to the facts of this case for the purpose of condonation of delay.

13. In this regard, learned Counsel for the appellants has relied upon a decision of the Apex Court in the case of G.V. Sreerama Reddy and Another Vs. Returning Officer and Others, . This was a case under the Representation of the People Act, 1951. Provisions of Section 81(1) of the Act provides that election petition should be presented within 45 days. The question arose whether provisions of Limitation Act, 1963 are applicable. The apex Court held that Limitation Act cannot apply to the proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act. Similarly, same language has been adopted in the Act in Section 76 that an election petition has to be filed within 45 days. The Apex Court held that the object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider Sub-section (1) along-with the other provisions in Chapters II and III, the object and intent of the Legislature is that this provision i.e., Section 81(1) is to be strictly adhered to and complied with. Thus, the election petition is highly belated as respondent No. 1. has failed to seek condonation of delay even at the stage when the writ petition was disposed of by this Court. Moreover, election petition is like an original suit in which delay cannot be condoned.

14. Hence, in view of the above discussion, the present appeal is allowed and the election petition is dismissed with no order as to costs.