
(2004) 08 P&H CK 0193
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12848 of 2003

Sakooran

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Citation : (2004) 4 RCR(Civil) 287

Hon'ble Judges : Swatanter Kumar, J and K.S.Garewal, J

Advocate : Mr. S.S. Salar, Advocate. Mr. C.M. Munjal, Addl. A.G., Punjab; Mr. J.R. Mittal, Sr. Advocate with Mr. B.D. Sharma, Advocate., Advocates for appearing Parties

Judgement

K.S. Garewal, J.—The question which has arisen for determination is whether the declaration of Nasim Akhtari, respondent No. 5, as the elected Sarpanch on the basis of election on June 29, 2003 was valid or not.

2. The factual position may be narrated at the outset. Sakooran, petitioner herein and Nasim Akhtari, respondent No. 5 were two of the three candidates for Sarpanchship of Bhaini Kamboan. Election was held on June 29, 2003. After the votes had been polled the Presiding Officer started counting process but before the result could be announced, 20 persons stormed the counting room and snatched the ballot papers from the counting staff. The Presiding Officer informed the Returning Officer (SubDivisional Magistrate, Malerkotla) who visited the spot and complained to the police whereupon FIR 166 was registered at Police Station Malerkotla at 11.30 P.M. on June 29, 2003 under Sections 353/186/380 IPC, 135/135A of the Representation of People Act, 1951.

3. Thereafter, Punjab State Election Commission (for short 'the Commission') decided to order reelection and issued a press release which was published in "Daily Jagbani" on July 11, 2003. The reelection was scheduled for July 13, 2003. On the morning of July 13, a notice was pasted on the notice board outside the school where the poll was to be conducted, announcing that re election had been postponed. Annexure P3 is the said notice which reads "According to the

instructions received from the Commission and letter dated July 12, 2003 written by A.D.C. (Development) Sangrur, the elections that were scheduled for 13.7.2003 were being postponed till further orders". Representations were made by the petitioner and others before the Commission but to no affect. The result of the election was announced on August 6, 2003 showing that Nasim Akhtari (respondent No. 5) received 461 votes, Sakooran (petitioner) 458 votes and Sadikan 57 votes. Nasim Akhtari was declared elected.

4. According to the learned counsel for the petitioner, Nasim Akhtari's election was liable to be quashed because once the Commission was convinced that reelection was necessary, reelection had to be conducted. The action of the Returning Officer to postpone the election and then declaring the result was without jurisdiction. Once reelection had been ordered, the decision could not be reviewed. It was also submitted that it was necessary to instill confidence in democracy. Election should be quashed because ballot papers had been taken away and result could not be announced on the basis of ballot papers whose tampering could not be ruled out. In short, the argument was that once the Commission was satisfied that repolling was necessary, the earlier election process could not be made the basis for declaration of the result.

5. Replies were filed by the Commission, the Returning Officer and the successful candidate. The answering respondents unanimously took up the plea that the only remedy available to the petitioner was to file an election petition under Section 74 of the Punjab State Election Commission Act, 1994 (for short 'the Act') which provided that no election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter. Furthermore, it was also pleaded that the writ petition was not maintainable in view of the provisions of Article 240O of the Constitution of India.

6. Nasim Akhtari had on July 4, 2003 filed Civil Writ Petition No. 10035 of 2003 seeking a direction that the result of the election be declared whereby she had been declared elected by a margin of 3 votes. The writ petition was dismissed on July 10, 2003 by a Division Bench of this Court (coram N.K. Sodhi and Ashutosh Mohunta, JJ.). The Bench was of the view that the relief claimed by the petitioner to direct the Returning Officer to declare the result of the election that had been held on June 29, 2003 could not be granted. In any case, the Returning Officer is bound to order repoll in terms of order passed by the Election Commission and once the election is held and the result declared, it will be open to challenge the election. Reliance was placed on Anugrah Narain Singh and another v. State of Uttar Pradesh and others, JT 1996(8) SC 733 : 1997(1) RCR(Civil) 386 (SC).

7. Coming to the subsequent developments, it would be seen that the Commission did not support the action of the Returning Officer in reporting the matter to the police. When complaints were received by the Commission that miscreants had entered the counting hall and taken away ballot papers, statements of the polling party were recorded wherein they stated that they had compiled the result in their own hand and had already filled Form No. IX for both

Panches and Sarpanch when the incident took place. Later on all election material along with forms had been taken away by the police and was in the custody of the police. The statements of the Returning Officer, Presiding Officer and polling party members made it clear that the result had already been compiled and it was the defeated candidate and her supporters who had carried away the counted ballot papers. Therefore, the Commission was of the view that if repoll was ordered, it would encourage miscreants committing mischief during elections. When the result became known and stood compiled, the Presiding Officer should have announced the result immediately. The Commission directed the Returning Officer to accept the result from the polling party and send it to the Commission for publication. The above has been summarised from the communication addressed by the Commission to the District Electoral Officer cum Deputy Commissioner, Sangrur on July 23, 2003 (Annexure R2/4). Furthermore, the Commission also reported the matter to the State Government for taking action against the Presiding Officer.

8. The relevant provisions of the Act are Sections 59 and 67. The decision in this case would depend upon whether the case is covered by these provisions. Section 59 provides for a fresh poll in case of destruction of poll boxes and lays down that if at any election any ballot box is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidentally or intentionally destroyed or damaged or tampered with, to such an extent, that the result of the poll at the polling station or place cannot be ascertained or any voting machine develops a mechanical failure or there has been error or irregularity in procedure as is likely to vitiate the poll, the Returning Officer shall report the matter to the Commission. Thereupon, the Commission shall either declare the poll as void and appoint a day for fresh poll or if it is satisfied that the result of fresh poll will not, in any way, affect the result of the election or the mechanical failure of the machine or the error in procedure shall not material, the Commission shall issue a direction to the Returning Officer for further conduct and completion of the election.

9. According to Section 67 of the Act, if at any time before the counting of votes is completed, the ballot papers are unlawfully taken out of the custody of the Returning Officer or are destroyed, lost or damaged to such an extent that result of the poll cannot be ascertained, the Returning Officer shall forthwith report to the Commission and the Commission shall either direct a fresh poll or direct the Returning Officer to resume and complete the counting.

10. It is quite obvious that in the present case the ballot papers were snatched after counting was over. It was a very narrow election, Nasim Akhtari secured 461 votes while Sakooran 458, Sadikan got 57 and 14 votes were cancelled. Therefore, out of a total of 990 votes, the victory margin was just 3.

11. However, it is important to note that the Commission was fully seized of the matter after it had received recommendation for repoll sent by the Deputy Commissioner cum District Electoral Officer on June 30, 2003 (Annexure R2/3).

Thereafter the Commission received a complaint disclosing that it was after the election had been completed and the result compiled by the Presiding Officer that some miscreants had taken away the ballot papers relating to the election. An inquiry was conducted by the Commission, the statements of the polling party were recorded by the Commission and these officials categorically stated that they had compiled the complete result in their own hand and had already filled Form IX when the incident took place.

12. From the above, it is obvious that none of the three conditions for ordering a fresh poll under Section 59 of the Act or ordering recounting of votes under Section 67 of the Act are present in this case. The counting of the votes had been completed and the result had been compiled, most importantly form IX had also been filled up when the incident occurred. Therefore, the Commission was justified in issuing a direction to the Returning Officer for further conduct and completion of the election as there was no legal justification to declare the poll void in terms of Section 59(2)(b). This decision had been reached after recording the statements of the members of the polling party. The Commission was fully justified in coming to the above conclusion since there was no material to hold that counting of votes should be declared void. The Commission had taken a valid decision in terms of Section 59(2)(b) and Section 67(2)(b) of the Act.

In view of the above discussion, we find no merit in this petition. The petition is hereby dismissed.