
(1985) 07 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 468 of 1985

Sh. Madho Singh

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

Date of Decision : 23-07-1985

Acts Referred:

Citation : (1985) 07 P&H CK 0077

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Praveen Goyal, for the Appellant; S.K. Sayal, A.A.G. Pb. and Mr. Jasbir Singh, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—Petitioner Madho Singh's election as a Municipal Commissioner of the Municipal Committee, Barnala, held on June 10. 1979, has been set aside by the State Government as a result of the election petition filed by Mukhtiar Singh, Respondent No. 2, the defeated candidate. The solitary ground pleaded for the setting aside of this election was that as a matter of fact 21 void votes were cast during the course of this election. The State Government taking that since the Petitioner had been able to secure only 17 votes more than the votes polted in favour of Respondent No. 2, came to the conclusion that the election had to be set aside in terms of a combined reading of Rules 51 and 63 of the Punjab Municipal Election Rules. As a result of this conclusion of the State Government the notification, Annexure P. 1, was issued on October 13, 1984, setting aside the election of the Petitioner as a member of the above noted Municipal Committee.

2. What is now seriously being contended by the learned Counsel for the Petitioner is that mere participation or casting of the void votes during the course of this election cannot possibly lead to the conclusion that the result of the election had in any way been materially affected and in the absence of such a finding, the State Government could not set aside the election of the Petitioner.

Concededly no such finding has been recorded either by the Election Commission, i.e., Sub Divisional Officer (Civil) Malerkotla or by the State Government before the issuance of the impugned notification Annexure P. 1. The contention of the learned Counsel for the Petitioner appears to be well merited and is rather supported by an authoritative pronouncement of a Full Bench of this Court in Parkash Chand v. State of Punjab (1977) 79 P.L.R. 84. This is what the Bench has observed:

Under Rule 63(1) (c) an election can be declared void if, in the opinion of the Commission, there has been any "material irregularity" in the conduct of the election. According to the definition in Rule 51, reception of any vote which is void or non-compliance with the provisions of the Act or of the Rules made thereunder, would be a "material irregularity", but the fact that there has been reception of any void vote or non-compliance with the provisions of the Act or the rules made thereunder would not by itself be sufficient to declare an election void until it is further proved that the result of the election has been materially affected as is evident from the words "as materially affects the result of an election" occurring in the definition. of "material irregularity" in Rule 51. In other words, before any relief can be granted it has to be proved that by the reception of the void votes the result of the election has been materially affected. Rattan Anmol Singh and Another Vs. Atma Ram and Others, relied on.

It has further been held in this judgment that:

It follows that mere participation of persons (in this case two illegally coopted members) who could not legally vote, would not by itself lead to an inference that the result of the election has been materially affected. (1972) 74 Pun LR 378, overruled.

In the face of this authoritative pronouncement, learned Counsel for the Respondents has hardly any argument to advance.

3. In the light of the discussion above, I allow this petition, set aside the impugned notification Annexure P. 1 and declare the Petitioner to be a member of the Municipal Committee, Barnala, whose tenure has concededly been extended upto December 31, 1985. I however, pass no order as to costs.