
(2008) 05 P&H CK 0051
In the Punjab And Haryana At Chandigarh

Sher Singh and Others etc.	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 20-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 465, 468

Citation : AIR 2008 P&H 218 : (2008) 3 RCR(Civil) 851

Hon'ble Judges : K.S. Garewal, J;Daya Chaudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Garewal, J.—The two petitions before us have been filed by Sher Singh and 10 others (C.W.P. No. 7619 of 2008) and Harjit Kaur and 2 others (CWP No. 7684 of 2008).

3. The petitioners in Sher Singh's case had filed nomination papers for election to Block Samiti, Patti while the petitioners in Harjit Kaur's case had filed papers for Zila Parishad, Tarn Taran, for zones which fell in Patti Assembly Constituency.

3. The petitioners had filed their nomination papers well in time and they did not withdraw their papers on May 5, 2008, the date fixed for withdrawal. But they were shocked to find that their names were missing from the list of candidates left in the fray. Only candidates belonging to the ruling party were shown in the said list. The petitioners vehemently assert that their signatures were forged on the withdrawal forms. This was done in connivance with the Returning Officer. The candidates belonging to the ruling party were elected unopposed. The successful candidates are respondents 8 to 18 in Sher Singh's case and respondents 9 to 11 in Harjit Kaur's case.

4. The petitioners have filed the petitions under Articles 226/227 of the Constitution of India seeking quashing of the list of candidates who were declared unopposed by Sub Divisional Magistrate-cum-Returning Officer, Tehsil

Patti on May 5, 2008. They have further prayed for a direction to the State Election Commission to get proper elections conducted and for symbols be allotted to them. The petitioners are also seeking registration of a criminal case against the Returning Officer, Assistant Returning Officer and all other officials who were involved in the commission of the offence, for abetment thereof and conspiracy to prepare false withdrawal application forms by forging their signatures and passing them as genuine, knowing them to be forged. According to the petitioners cognizable offences under Sections 419/420/465/468/471/120-B/109, I.P.C. read with Section 124 of the State Election Commission Act, 1994 have been committed. Lastly, the petitioners have sought a direction that their signatures be got compared from any agency outside Punjab and the record of the election be sealed.

5. Notice of motion was issued, reply was filed by respondent 16 in Sher Singh's case. Counsel for the respondents has challenged the maintainability of the petitions on the basis of the judgment of the Full Bench in Prithvi Raj Vs. State Election Commission and Others, and judgment of the Supreme Court in Harnek Singh Vs. Charanjit Singh and Others, . It has been submitted that this Court should exercise judicial restraint because the grievance of the petitioner falls within grounds enumerated for filing election petition as per Sections 89 and 108 of the Punjab State Election Commission (hereinafter referred to as the Election Act). As regards issuance of a direction for registration of F.I.R., the respondents have relied upon Aleque Padamsee and Ors. v. Union of India and Ors. 2007 (3) RCR 815 : AIR 2007 SCW 4783 wherein it was held that a writ seeking a direction to the police to register a case could not be entertained by the High Court. The only option was to file a complaint. In reply to the request for transfer of the investigation to an agency outside Punjab or to Central Bureau of Investigation, reliance was placed on Sakiri Vasu Vs. State of U.P. and Others, wherein the Apex Court held that no one can insist that the offence be investigated by a particular agency. The rest of the allegations regarding forgery of signatures on the withdrawal forms have been denied.

6. We called for the records of the case and had the occasion to examine the original withdrawal forms purportedly signed by 11 petitioners in Sher Singh's case. However, the withdrawal forms of the petitioners in Harjit Kaur's case were not produced before us. The petitioners have also relied upon a joint affidavit sworn by them on May 6, 2008, containing the allegations of forgery.

7. They have stated that when the final list of the candidates was displayed, they got a shock to find their names missing. They immediately raised a hue and cry and lodged a protest against the high-handedness of the Returning Officer, they asked the Sub-Divisional Magistrate to get their signatures compared with the signatures on the withdrawal forms. The petitioners lodged a strong protest before the Deputy Commissioner and met him at 10.00 p.m. at his residence. The Deputy Commissioner showed his inability to do anything. On the next day the petitioners issued a joint declaration containing facts mentioned above and

handed it over to the Deputy Commissioner. This was also faxed to the Election Commissioner.

8. Learned Senior Deputy Advocate General appearing for the State produced before us the inquiry report submitted by Shri S.S. Dhillon, IAS, Observer for PRI Elections, District Tarn Taran. The report is of May 9, 2008 on the basis of an inquiry conducted by him following the direction of the State Election Commissioner dated May 6, 2008. The same reads as under:

A serious complaint with regard to the forging of signatures of candidates in fray of a particular party towards the withdrawal of the candidates have been made for the elections of the members of Block Samitis and Zila Parishad of Patti. The conduct of Returning Officer Patti and Returning Officer Tarn Taran have also been questioned in the complaint which has been filed in the shape of an affidavit.

9. I have been desired to request you to make an inquiry after giving personal hearing to the complaints and perusal of the relevant record and send your report and recommendation by the evening of 9th May, 2008 positively."

10. The inquiry report (in original) and all the documents presented before the Observer have been examined by us. It is a detailed inquiry in which the Observer has himself personally examined all the relevant documents, recorded the comments of Returning Officer - Sub Divisional Magistrate, Patti, who submitted that "all candidates appeared before the undersigned personally and submitted their withdrawal. The undersigned after scrutinizing the nomination papers etc. accepted their withdrawal forms."

11. The Observer also took on record the affidavit of Jasbir Kaur (petitioner 10 in Sher Singh's case) in which she stated that on May 5, 2008 at 9.00 a.m. a meeting was held with Harminder Singh Gill of the Congress party. Gill told the party candidates that the party's position was weak, therefore, nomination papers should be withdrawn. On the basis of this decision, all candidates went to Tarn Taran to withdraw their nomination papers. After reaching Tarn Taran some of the candidates refused to withdraw nomination papers but Jasbir Kaur herself withdrew her papers along with 11 others. At 6.00 p.m. Gill again held a meeting and said that the papers have been withdrawn but they should blame the Government for this withdrawal in order to malign it and they should also complain to the Election Commission and file a writ in the High Court. While concluding Jasbir Kaur stated that the nomination papers had been withdrawn on the asking of Harminder Singh Gill. They had signed the papers but the complaint filed against the Government officials was filed under threats and pressure from Harminder Singh Gill. The Observer also referred to the affidavits of two other individuals, Narpinder Singh and Harpartap Singh who also stated that they had withdrawn from contesting the election on the asking of Harminder Singh Gill, as decided at the meeting of the Congress candidates held on May 5, 2008.

12. The observer himself scrutinized the nomination papers and the withdrawal notices and felt that "it cannot be concluded that their signatures have been forged as alleged by them." Furthermore, the Observer also observed that a handwriting expert, after comparing the signatures of the complainants, could give a legal/expert opinion whether signatures had been forged or not.

13. The nature of the allegations is extremely serious and if found true can have grave consequences. We asked the petitioners who were present in the Court, all except Jasbir Kaur, put their signatures on two sheets of papers. We have examined these signatures with signatures on the powers-of-attorneys attached to the respective petitions. To the naked eye we felt that there were points of similarity and dissimilarity present between the signatures on the power-of-attorney and those on the withdrawal forms (we could compare only the signatures of the petitioners in Sher Singh's case but not in the other case).

14. The question before us is about the course that should be adopted at this stage. It is obvious that the allegations of the petitioners are very serious and if they are true then this case could be said to be one in which the election process has been outrageously subverted through criminal means.

15. The learned Counsel for the petitioners argued on the basis of Supreme Court judgment in Surinder Kaur Vs. State of Punjab and others, . The election of Sarpanch was scheduled on January 18, 1993. Nomination papers were to be filed by January 17. The petitioner obtained a no objection certificate on January 15. On January 17 she went to submit her nomination papers. Her husband was detained by the police and one of the respondents forcibly snatched her nomination papers and tore them. The petitioner went to the police but no heed was paid. Consequently, she filed a complaint before the Sub Judicial Magistrate at 3-30 p.m. but no action was taken. Since election was to take place on January 18, she approached the High Court through a petition on the following day. Stay was granted to her at 2.00 p.m. which was telegraphically communicated at 3.00 p.m. The poll closed an hour later at 4.00 p.m. However, the writ was dismissed. Surinder Kaur filed an appeal before the Supreme Court. The Court found that a stay was in operation when the poll closed and the petitioner had been prevented from filing her nomination papers. She had filed a petition making all the allegations. In these circumstances, it was held that conduct of the election was not valid. The petitioner was ineligible to file an election petition but she had been unlawfully prevented from filing her papers. There had thus been a clear violation of law. Consequently repoll was ordered.

16. In the present case the petitioners had not been prevented from filing their nomination papers but had been prevented from contesting the elections by someone forging their signatures on the withdrawal forms and thereby making them withdraw their candidature from the election. The petitioners assert that they never signed the withdrawal applications but this assertion stands considerably diluted by the affidavit of Jasbir Kaur before the Observer, a summary of which has been given above. The petitioners assertion is that there

is a clever forger at work who forged their signatures on the withdrawal forms. It would indeed be a very audacious and daring act, to say the least, if one or many forgers had forged the petitioners' signatures and presented the withdrawal forms. If this is true then the case would call for severest penalty because the forger and the people behind him had struck at the very root of democracy to deprive thousands of villagers the opportunity of electing members of their choice to Block Samiti, Patti, and to three zones of Zila Parishad, Tarn Taran.

17. On the contrary, if the withdrawal of papers by the petitioners was valid and their pleadings are false then they deserve severe penalty under the law for perjury. Needless to say, a decision can only be taken after an expert examines the admitted signatures with the questioned ones.

18. The question to be considered would be what action can be taken in relation to the election in dispute. Full Bench decision in *Prithvi Raj Vs. State Election Commission and Others*, specifically lays down that an election can only be challenged through an election petition. This is the consistent view of the Courts. Reference can be made to *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , *Harnek Singh Vs. Charanjit Singh and Others*, and *Manda Jaganath Vs. K.S. Rathnam and Others*, . Very recently in *Balraj Singh v. State of Punjab and Ors.* CWP No. 7668 of 2008 decided on May 15, 2008 we have held that an election petition is the remedy.

19. We are unable to accept the petitioners' contention that this case is covered by the principles laid down in *Surinder Kaur Vs. State of Punjab and others*, because as yet the withdrawal forms have not been proved to be forged. It is only an allegation, although a strong one yet until it is established conclusively, we must refrain from passing any order to quash the election and order repoll at this early stage on unproved allegations.

20. The petitioners are not without remedy, They can file election petitions before the Election Tribunal on the ground that their nomination papers were improperly rejected (through forged withdrawal forms). This is a ground mentioned in Section 89 for declaring the election of a returned candidate to be void. The petitioners may also challenge the election on the ground of non-compliance with the provisions of the Election Act and the Election Rules (for wrong withdrawal of their nomination papers) which too is a ground for declaring the election to be void.

21. As there is still remedy available to the petitioners to challenge the election through an election petition we relegate the petitioners to the said remedy. We would like to state that a fair, impartial and expeditious hearing of election disputes is also an integral part of a fair and impartial electoral process.

22. Nothing stated above shall be taken as an expression of opinion on the merits of the petitioners' claim, the Election Tribunal shall decide the election petition, if filed within time, dehors what has been stated above and shall come

to its own independent conclusion. The writ petitions are dismissed. No costs.