

(1968) 12 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2308 of 1964

Shri Nasib Singh	Vs	APPELLANT
Shri J.S. Puri and others		RESPONDENT

Date of Decision : 16-12-1968

Acts Referred:

Gram Panchayat Election Rules, 1960 — Rule 6

Citation : (1970) 1 ILR (P&H) 652 : (1969) 71 PLR 340

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Y.P. Gandhi, for the Appellant; N.K. Sodhi, for the Respondent

Final Decision : Allowed

Judgement

B.R. Tuli, J.—The petitioner is a member of the Gram Sabha of Sabha Area, Mundian Kalan, police-station Saddar, tehsil and district Ludhiana. The election to the office of Chairman, Gram Sabha of Mundian Kalan was held on 1st and 2nd January, 1964. The nomination papers were filed on 1st January, 1964 and the poll was taken on 2nd January, 1964 on which date the result was announced. The petitioner and respondents 2 to 4 were the candidates for the election so the said office. The nomination paper of Shri Inder Singh, respondent 4, was rejected and the nomination papers of the petitioner and respondents 2 and 3 were accepted. The petitioner and respondents 2 and 3 contested the election. Respondent 2 secured 284 votes and was declared elected to the said office while the petitioner and Shri Bhagwan Singh, respondent 3, secured 246 and 155 votes respectively and were defeated. The petitioner filed an election petition which was dismissed by Shri J.S. Puri, Ilaqa Magistrate, on 4th July, 1964. A copy of that order is Annexure "A" to the writ petition. The petitioner has filed the present writ petition to have that order quashed and to declare the election of Kalu respondent as void and to quash the same.

2. The main point argued by the learned counsel for the petitioner is that the nomination papers of respondents 2 and 3 were improperly accepted inasmuch

as the nomination papers were not accompanied by the receipt of security deposited and, therefore, the provisions of Rules 6 and 7 of the Gram Panchayat Election Rules, 1960 were not complied with. Rules 6 and 7 are as under:

6. Nomination of candidate.-(1) Any person who is not disqualified under sub-section (5) of section 6 of the Act may be nominated as a candidate for election; provided that on the date, time and place fixed under rule 3, he delivers in person to the Returning Officer a nomination paper completed in the prescribed form.

(2) The nomination of each candidate shall be made on a separate nomination paper in Form I and must be subscribed by the candidate himself as assenting to the nomination.

(3) The nomination papers of members of the Scheduled Castes shall also be accompanied by declaration verified by a Magistrate, Kanungo, Patwari, Lambardar, or a member of a local authority or the Punjab State Legislature that the candidate is a member of the Scheduled Castes, specifying the particular caste to which the candidate belongs.

7. Deposits -(1) Each candidate nominated under the provisions of Rule 6 shall, at or before the time of delivery of his nomination paper, deposit, or cause to be deposited, a sum of Rs. 20/- and in the case of Scheduled Castes candidate a sum of Rs. 10/-, either in the treasury or sub-treasury or with the local Lambardar or the Returning Officer and produce a receipt obtained from the treasury or sub-treasury or from the Lambardar, or the Returning Officer, as the case may be, and no candidate shall be deemed to be duly nominated unless such deposit has been made.

(2) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected and the number of votes polled by him is less than one half of the votes polled by the candidate who is declared elected with least number of votes, the deposit shall be forfeited to the Government :

Provided that in the case of a candidate for election of Chairman, the deposit shall be forfeited only if he fails to secure one-eighth of the total number of votes polled for the office of Chairman:

Provided further that in the case of a Gram Panchayat where a seat or seats has or have to be filled from amongst members of Scheduled Castes, the number of votes polled by the non-scheduled castes/ scheduled castes, candidate who is declared elected with the least number of votes will be taken into consideration for determining if a defeated non-scheduled caste scheduled caste candidate shall forfeit his deposit or not.

(3)(a) The deposits in the following cases shall, by an order in writing of the Returning Officer, be returned to the candidate or where he is dead, to his legal representative:

- (i) where the nomination paper of the candidate has been rejected; or
- (ii) where the candidate has withdrawn his nomination paper within the specified time; or
- (iii) where the candidate had died before the commencement of the poll.

Notes.-(i) Where the money was deposited with the Lambardar, the order shall be addressed to him.

(ii) Where the money was deposited in a treasury or sub-treasury the challan shall be endorsed by the Returning Officer in favour of the candidate or his legal representative, as the case may be.

(iii) Where the money was deposited with the Returning Officer, the latter shall return it to the candidate or his legal representative, as the case may be.

(b) The deposit in the following cases will be returned as above after the declaration of the result of election:

(i) where the candidate, though not elected, does not forfeit his deposit under sub-rule (2); or

(ii) where the candidate is elected.

(4) The deposit shall be returned to the candidate, or, if not made by him to the person by whom it was made or to his legal representative, as the case may be.

3. It is the case of the respondents that they had deposited the amount of security with the Returning Officer. The Returning Officer has also admitted this fact and has stated that he passed on the money to the Lambardar who kept the account. The petitioner also deposited the money with the Returning Officer who granted him the receipt which he filed with his nomination paper. It cannot, therefore, be said that the Returning Officer was not aware of the requirement of Rule 7, that he has to issue a receipt which the candidate has to file along with the nomination paper. The question arises whether the provisions of Rule 7 are mandatory or merely directory. The bare reading of this rule shows that its provisions are mandatory. The receipt has to be appended to the nomination paper in order to prove that the security deposit has been made and the only mode to prove that fact has been prescribed in this rule, that is, the production of the receipt obtained from the person with whom the deposit is made and no other mode of proof of deposit of security is allowed. Since admittedly no receipt proving the deposit of security had been produced with the nomination papers by Respondents 2 and 3, their nomination papers were improperly accepted and the improper acceptance of their nomination papers has prejudicially affected the result of the election. On this short ground this petition deserves to succeed and I do not propose, to deal with other mutters raised by the learned counsel for the petitioner in his petition.

4. The result is that this petition is allowed with costs and the election of

respondent 2 is set aside. Counsel's fee Rs. 100/-.