
(2010) 07 P&H CK 0220
In the Punjab And Haryana At Chandigarh

Smt. Madhu Bala

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 07 P&H CK 0220

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—The only grievance raised by the petitioner in the present writ petition under Article 226 of the Constitution of India is that votes of some dead persons were cast thereby materially affecting the elections of Panchayat.

2. Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the 1994 act) reads as under:

176. Determination of validity of election enquiry by judge and procedure.- (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in Question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following person:

(a) where the petitioner in addition to challenging the validity of the election of

all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under Sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such enquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of Sub-section (5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held. If on holding such enquiry the Civil Court finds that:-

i) on the date of his election a returned candidate was not qualified to be elected;

ii) any nomination has been improperly rejected; or

iii) the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any noncompliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act,

election of such returned candidate shall be set aside and fresh election may be held.

(b) If, in any case to which Clause (a) or Clause (aa) does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favor of each candidate, declare the candidate who is found to have the largest number of valid votes in his favor, to have been duly elected:

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any to the candidates to be declared elected, on additional vote shall be added to the total number of valid votes found to have been received in the favor of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view to induce a voter to give or to refrain from giving a vote in favor of any candidate, offers or gives any money or valuable consideration or

holds out any promise of individual profit, or holds out any threat of injury to any person; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.- A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.- The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or other wise.

3. From the perusal of Section 176(4)(iii) of the 1994 Act, it can safely be said that acceptance of improper votes is one of the ground to challenge election.

4. Learned Counsel for the petitioner has placed reliance on the Full Bench judgement of this Court in the matter of Lal Chand v. State of Haryana 1998 (2) PLR 640 and argued that the jurisdiction of this Court under Article 226/227 of the Constitution of India is not barred in the matter of acceptance of votes cast on behalf of the dead persons.

5. Since petitioner has efficacious alternative remedy by way of filing petition u/s 176 of the 1994 Act, I am not inclined to entertain this petition. Moreover, the question as to whether votes of dead persons were cast is a question of fact, which can not be gone into under Article 226/227 of the Constitution of India.

6. In view of the above, the petition is dismissed with liberty to the petitioner to file election petition, if so desires.