
(2010) 02 P&H CK 0040
In the Punjab And Haryana At Chandigarh

Sulakhan Kaur	Vs	APPELLANT
Sohan Singh and Others		RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Punjab State Election Commission Act, 1994 — Section 87, 88

Citation : (2010) 158 PLR 577 : (2010) 3 RCR(Civil) 7

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—Challenge in this appeal is to the order of Deputy Commissioner-cum-Presiding Officer, Election Tribunal,

Gurdaspur by which while deciding issue No. 5 (relief) election of respondent No. 1 (appellant) has been set aside and Block Development and

Panchayat Officer, Dorangla (for short "BDPO") has been directed to hold fresh elections and a copy of the order was sent to Additional Deputy

Commissioner (D) Gurdaspur for necessary action.

2. The grievance of the appellant is only to the part of the order whereby direction has been issued by the Election Tribunal to BDPO to conduct

fresh election for the post of Sarpanch and direction has been given to Additional Deputy Commissioner (D) Gurdaspur for necessary action.

3. Learned Counsel for the appellant has, inter alia, argued that in terms of Sections 87 and 88 of the Punjab State Election Commission Act, 1994

(for short Act No. 19 of 1994), the Tribunal has no jurisdiction to issue such directions which are contained in the impugned order. It is submitted

that in case of occurrence of a casual vacancy in the Panchayat on the grounds

provided u/s 89 of the Act No. 19 of 1994 procedure provided in

Sections 93 and 94 of Act No. 19 of 1994 has to be followed and vacant seat has to be filled up in accordance with law.

4. As against this, counsel for the respondents has argued that there is no procedure provided under the Act No. 19 of 1994 for the election of

Sarpanch. It is submitted that earlier election of the Sarpanch was direct but with the insertion of Section 13A in the Punjab Panchayati Raj Act,

1994 (for short "Act No. 9 of 1994") by virtue of Punjab Act No. 12 of 2008, the election of Sarpanch has become indirect, who is now elected

by a college of elected Panches. It is submitted that whenever a vacancy occurs in the office of Panch/Sarpanch due to death, resignation, removal

or otherwise, the same has to be filled up only as per Section 13A of the Act No. 9 of 1994 for which the Tribunal has issued direction to the

BDPO to hold the meeting for the purpose of election, therefore, the directions issued in the impugned order are not at all illegal.

5. In order to appreciate the controversy, it would be worthwhile to refer to certain relevant provisions of Act No. 9 of 1994 and Act No. 19 of

1994, which are as under:

Provisions of Act No. 9 of 1994 Section 2

(m) "casual vacancy" means a vacancy occurring otherwise than by efflux of time.

(zg) "member" means a member of a Gram Panchayat, a Panchayat Samiti or Zila Parishad and includes Sarpanch of a Gram Panchayat and

Chairman and Vice-Chairman of Panchayat Samiti or Zila Parishad

(zt) "Sarpanch means Sarpanch of the Gram Panchayat elected under [Section 13-A] [Substituted for the words and figure

Section 10" vide Punjab Act No. 12 of 2008] of the this Act;

Section 13-A. First meeting of the Gram Panchayat.- The Deputy Commissioner or any officer or official of the State Government, authorised by

him in this behalf, shall call the first meeting of the Gram Panchayat in the manner, as may be prescribed, as soon as, the election of all Panches is

notified, to elect the Sarpanch from amongst them.] [Substituted for Section 13 vide Punjab Act No. 12 of 2008. Prior to its substitution Section

13 was read as: "13. Oath of Panches and Sarpanches -After having been elected and before entering upon the duties of his office, a Panch as well

as a Sarpanch shall take an oath as specified in Schedule 1 and in the manner prescribed."""]

Section 22: Filling of casual vacancies of Sarpanches and Panches - (1) Whenever a vacancy occurs by death, resignation, removal or otherwise

of a Sarpanch or of a Panch the vacancy shall be filled up by way of election:

Provided that if the vacancy relates to the Scheduled Castes, Backward Classes or to Women, the vacancy shall be filled up out of the persons

belonging to the category to which category of person the vacancy relates.

Provisions of Act No. 19 of 1994

Section 56: Casual vacancies in the Panchayats and Municipalities - (1) When the seat of a member elected to the panchayat or Municipality

becomes vacant or is declared vacant or his election to the Panchayat or Municipality as the case may be, is declared void, the Election

Commission shall subject to the provisions of Sub-section (2), by a notification in the Official Gazette, call upon the concerned Panchayat or

Municipality to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the

provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such

vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes, Backward Classes or the

Women, as the case may be, the notification issued under sub-section (1), shall specify that the person to fill that vacancy shall belong to the

category of persons to which the vacancy relates.

Section 87: Decision of the Election Tribunal - At the conclusion of the trial of an election petition, the Election Tribunal may make an order for-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Section 88: Other orders to be made by the Election Tribunal - (1) Where any charge is made in the petition of any corrupt practice having been

committed at the election, the Election Tribunal shall also make an order at the

time of making an order u/s 87 indicating -

(i) whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice;

(ii) the names of all persons, who have been proved at the trial to have been guilty of any corrupt practice; and

(iii) the total amount of costs payable and specifying the persons by whom these costs shall be paid and the persons to whom these costs shall be

paid:

Provided that a person who is not a party to the petition, shall not be named in the order under sub-clause (ii) unless-

(a) he has been given notice to appear before the Election Tribunal and to show cause why he should not be so named;

and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness, who has already been examined by

the Election Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

Section 92: Communication of orders of the Tribunal - The Election Tribunal shall, as soon as may be, after the conclusion of the trial of an election

petition, intimate the substance of the decision to the Election Commission and as soon as may be thereafter, shall forward to the Election

Commission, an authenticated copy of the decision.

Section 93: Transmission of order to the prescribed authority etc. and its publication - As soon as may be, after the receipt of any order made by

the Election Tribunal under Section 87 or Section 88, the Election Commission shall forward copies of the order to the prescribed authority and

shall cause the order to be published in the Official Gazette.

Section 100: Appeal to High Court - (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the

High Court on any question whether it pertains to law or fact from every order made by an Election Tribunal u/s 87 or Section 88.

(2) An appeal under this Chapter shall be preferred, within a period of thirty days from the date of the order of the Election Tribunal passed u/s 87

or Section 88:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had

sufficient cause for not preferring the appeal within such period.

6. After a careful reading of the aforesaid relevant provisions of law, it would be pertinent to mention that casual vacancy is the one which occurs

otherwise than by efflux of time which could be because of death, resignation, removal or otherwise of the incumbent in office of the Panch or

Sarpanch. In the present case, the casual vacancy has occurred due to the success of Election petition of the respondent by which election of the

appellant has been set aside. It may not be out of place to mention here that Act No. 9 of 1994 came into being in terms of Constitution (73rd

Amendment Act, 1992) replacing the Punjab Gram Panchayat Act, 1952 to establish a three-tier Panchayati Raj system in the State of Punjab

with elected bodies at the village, Block and District levels. Act No. 9 of 1994 came into operation w.e.f. 21.4.1994 whereas Act No. 19 of 1994

came into force w.e.f. 7.9.1994 in order to provide for the Constitution of the State Election Commission and for vesting the superintendence,

direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayats and Municipalities in the State of

Punjab, in the State Election Commission, and to provide for all matters relating to, or ancillary or in connection with the elections to the

Panchayats and Municipalities, in terms of the provisions of Parts IX and 12-A of the Constitution of India.

7. Act No. 19 of 1994 is a complete Code in itself providing for guidance in almost all contingencies. It provides the reliefs u/s 87 which an

Election Tribunal can order, which relates to dismissal of the Election Petition, declaring the election of all or any of the returned candidate to be

void and petitioner or any other candidate to be elected. In Section 88 of the Act No. 19 of 1994 in case of any charge of corrupt practice having

been committed is made, the Tribunal can also order, at the time of passing

an order, u/s 87 indicating as to whether any corrupt practice has or has not been proved to have been committed at the time of election and what

was the nature of the corrupt practice, the names of all the persons, who have been proved at the trial to have been guilty of any corrupt practice

and the total amount of costs payable and out of whom those costs shall be paid

and the persons to whom those costs shall be paid.

8. Interestingly, impugned direction is conspicuous in its absence in sections 87 and 88 of the Act No. 19 of 1994. Moreover, as per the scheme

of the Act, after the order having been passed by the Election Tribunal, upsetting the election of a sitting candidate, the Election Tribunal is bound

to communicate its order indicating its substance and decision to the Election Commission and also send an authenticated copy of the decision to

the Election Commission, who, as soon as may be, after the receipt of such an order, passed by the Election Tribunal under sections 87 or 88,

shall forward copies of the order to the prescribed authority in order to get it published in the official gazette. The purpose of this exercise provided

under Sections 92 or 93 of the Act No. 19 of 1994 is to bring on record not only the decision of the Election Tribunal vide which the sitting

candidate has been unseated but also to make it public by way of publication in the official gazette, after which as per Section 56 of the Act No.

19 of 1994, the Election Commission by notification in the official gazette would call upon the concerned Panchayat or Municipality to elect a

person for the purpose of filling the vacancy so caused. It may be clarified here that word ""member"" used by legislature in Section 56 would

include Sarpanch as well in view of the definition of ""member"" provided u/s 2 (zg) of the Act No. 9 of 1994. Thus, in my view, the impugned

directions issued by the Election Tribunal are without jurisdiction being beyond the scope of sections 87 or 88 of the Act No. 19 of 1994.

9. Learned Counsel for the appellant has further argued that the election for the office of sarpanch could not be held in accordance with Section

13A of the Act No. 9 of 1994 as it talks of only first meeting of the members of the Panchayat which is to be convened as soon as their election is

notified. In reply, learned Counsel for the respondents has vehemently argued that prior to the insertion of Section 13A in the Act No. 9 of 1994

election to the post of Sarpanch was direct but after the insertion of Section 13A vide Punjab Act No. 12 of 2008 the election to the post of

Sarpanch has become indirect as Sarpanch is elected from amongst the elected Panches. It is submitted that the same procedure would be

followed in the case of casual vacancy as was followed at the initial stage by way of first meeting. In this regard, he relies upon a decision of this

Court in CWP No. 15074 of 2000 titled as Madhu Bansal etc. v. State of Punjab etc., decided on 28.11.2001.

10. I have heard counsel for the parties in this regard and I am of the opinion that argument raised by the counsel for the respondent would prevail.

Indeed, there is no provision under the Act No. 19 of 1994 for the purpose of electing a Sarpanch. Election of Sarpanch is only guided by

provisions of Section 13A of the Act No. 9 of 1994. Though, it is mentioned that Sarpanch would be elected in the first meeting of the Gram

Panchayat in the manner as may be prescribed, as soon as, the election of all Panches is notified yet in the case of casual vacancy having occurred

in terms of Section 22 of Act No. 9 of 1994 i.e. by way of death, resignation, removal or otherwise (as in the present case election has been

upset) by way of meeting of the elected Panches to elect a sarpanch and for that purpose procedure provided u/s 13A of the Act No. 9 of 1994

would apply to a subsequent meeting also.

11. In view of the above discussions, the present appeal is allowed and the direction issued by the Tribunal to BDPO to conduct fresh election for

the post of Sarpanch and direction issued to the Additional Deputy Commissioner (D) Gurdaspur for taking necessary action is set aside.