

(2012) 02 P&H CK 0276
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 5791 of 2009 (O and M)

Suresh Kumar Singla

APPELLANT

Vs

Election Tribunal, Fatehgarh Sahib and others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Punjab State Election Commission Act, 1994 — Section 103, 23(3), 30, 32, 32(3)

Citation : (2012) 3 RCR(Civil) 178

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : H.S. Sethi, for the Appellant; S.P. Jain with Mr. Dheeraj Jain, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The questions which arises/or consideration in this case are as follows:

- i) Whether in terms of Section 32(3) of the Punjab State Election Commission Act, 1994 [for short "the Act"], the electoral roll of a constituency can be amended by making an entry after the last date for making nominations is over?
- ii) Whether an election petition deserves dismissal if it is admittedly not presented by the candidate himself in violation of Section 76(1) of the Act?

The present appeal is directed against order of the Election Tribunal, Amloh, District Fatehgarh Sahib dated 23.10.2009 by which a petition filed u/s 76 of the Act and Rules 87 & 88 of the Punjab Municipal Election Rules, 1994 for challenging the election of respondent No. 2 (Rajiv Sood) as Municipal Councilor/ Municipal Commissioner from ward No. 4 of the Municipal Council, Mandi Gobindgarh, has been dismissed.

2. In brief, the appellant and respondent No. 2 contested election for the office of Municipal Councilor/Municipal Commissioner from ward No. 4 of the Municipal

Council, Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh Sahib which was held on 30.06.2008 and respondent No. 2 was held elected with the margin of 15 votes as against the appellant. The appellant filed a petition u/s 76 of the Act on 09.07.2008, which was admittedly presented by his advocate, assailing the election of respondent No. 2, basically on the ground that he had got prepared 33 supplementary voter list in connivance with the Returning Officer (Sub Divisional Magistrate) after filing his nomination, whereas the margin of victory of respondent No. 2 was only of 15 votes. Hence, the illegal preparation of votes at the instance of respondent No. 2 has materially effected the election.

3. The election petition was contested by respondent No. 2 in particular and other respondents in general by filing their replies. After the pleadings were over, as many as 3 issues were framed by the learned Election Tribunal. All the parties led their respective oral as well as documentary evidence. Although the learned Election Tribunal has recorded a finding on merit that 33 votes have been prepared after the nominations were filed, yet while deciding issue No. 1, it has observed that "with regard to the amendment made in the voter list by the Electoral Registration Officer-cum-Sub Divisional Magistrate, Amloh on the recommendation of Executive Officer, Mandi Gobindgarh, the petitioner had not produced any proof that upto when the amendment was to be completed. Therefore, issue No. 2 is hereby also cancelled". It was also observed that "as per the decision on issue No. 3, amendment in the names of the voters in the voter list by the Electoral Registration Officer-cum-Sub Divisional Magistrate, Amloh had been made on the recommendation of Executive Officer, Municipal Council, Mandi Gobindgarh after conducting the enquiry. Therefore, issue No. 3 is hereby decided in favour of the respondent". Finally, the learned Election Tribunal had observed that "after hearing the arguments of the counsel for both the parties and perusing the record placed on file, I came to the conclusion that on the applications made by some persons, whose names were entered in the voter list at the time of Assembly- Election 2007 but now have been left out from registration in the voter list of ward Nos. 4 and 5, the Electoral Registration Officer-cum-Sub Divisional Magistrate, Amloh has prepared the amended voter list after the enquiry conducted by the Executive Officer, Municipal Council, Mandi Gobindgarh as well as his recommendations. After the amendment of the voter list, he has displayed the same on the notice board for obtaining objections from the general public. This list was issued on being not received any objection within the stipulated period. If the petitioner had any objection in this regard, then he could have filed the objection before the Electoral Registration Officer-cum- Sub Divisional Magistrate, Amloh within the stipulated period as mentioned in the voter list displayed on the notice board, but the petitioner did not do so nor produced any such type of proof because the votes were polled on the basis of these voter lists and the result has also been declared on the basis of the same. So, it is not appropriate to challenge the voter list at this stage. Keeping in view various judgments produced by the respondents, the petition filed by the petitioner is hereby dismissed".

4. Learned counsel for the appellant has submitted that the learned Election Tribunal has committed a patent error of law in observing that the appellant has not produced any proof that upto what period the amendment in the electoral roll can be brought in. In this regard, he has submitted that Section 32(3) of the Act categorically provides that there cannot be any amendment, transposition or deletion of any entry after the last date for making nominations. He has also relied upon a decision of the Supreme Court in the case of Baidyanath Panjira v. Sita Ram Mahto and others, AIR 1970 Supreme Court 314.

5. In reply, learned counsel for the respondent No. 2 has submitted that when the amendment in the electoral roll was carried out, it was displayed on the notice board for inviting objections but since no objection was raised by the appellant at that time, therefore, he cannot be permitted to raise the objection now after losing the election.

6. I have heard both the learned counsel for the parties on the first question in this appeal.

7. There is no dispute that the nominations were filed for the constituency of ward No. 4, Municipal Council, Mandi Gobindgarh on 07.06.2008. There is also no dispute that the applications for inclusion of 33 votes were made on 19.06.2008, 20.06.2008 and 24.06.2008. Section 32 of the Act deals with the inclusion of names in the electoral rolls, which is reproduced as under :

32. Inclusion of names in electoral rolls. - (1) Any person whose name is not included in the electoral roll of a constituency, may apply to the Electoral registration officer for the inclusion of his name in that roll.

(2) The Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein :

Provided that if the applicant is registered in the Electoral roll of any other constituency, the Electoral Registration Officer of that constituency shall inform the Electoral Registration Officer of the constituency in which the applicant should have actually been registered and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

(3) No amendment, transposition or deletion of any entry shall be made u/s 30 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency and before the completion of that election.

8. According to Section 32(3) of the Act, there cannot be any amendment by way of transposition or deletion of any entry in the electoral roll which has been prepared in terms of Section 30 of the Act in respect of a constituency after the last date for making nominations, and before the completion of that election. If there is any amendment, the said voters can cast their votes in the subsequent election but not in that election in which nominations have already been made.

In this regard, the decision of the Supreme Court in Baidyanath Panjira's case (supra) would be relevant to refer. That case relates to the Darbhanga Local Authorities constituency of the Bihar Legislative Council. The last date for filing nomination papers was 02.04.1968, date of scrutiny of nomination papers was 04.04.1968 and the last date for withdrawal of candidature was 06.04.1968. The polling was on 28.04.1968 and the result was to be declared on 29.04.1968. In the electoral roll as it stood on the last date of filing nomination papers, the registered voters were only 123 and 16 of the registered voters were of the members of Dalsingsarai Notified Area Committee. On April 13, 1968, as per a notification u/s 389(c) of the Bihar and Orissa Municipal Act, 1922, 40 persons were nominated as members to the said Notified Area Committee in place of the old members, who were mostly newly appointed members. Thereafter, the electoral roll was amended on 27.04.1968, just a day prior to the polling. As per the amended electoral roll, there were 39 electors in the Dalsingsarai polling station, whereas 4 of them stood registered in the electoral roll as it stood on 02.04.1968. 33 out of the 39 electors were included in the Electoral roll relating to Dalsingsarai polling station exercised their franchise during the poll on 28.04.1968. In this background, the question arose for consideration of the Supreme Court as to whether the Electoral Registration Officer was competent to amend the Electoral rolls after the last date for making the nomination was over. The Supreme Court had dealt with Section 23(3), which is para materia with Section 32(3) of the Act, and held that the Electoral Registration Officer or the Chief Electoral Officer had no jurisdiction to make any amendment in the electoral roll after the last date of making the nominations is over.

9. In view of the provisions of Section 32(3) of the Act as well as the decision of the Supreme Court in Baidyanath Panjira's case (supra), I am of the considered opinion that the first question raised by the appellant in this appeal deserves to be answered in his favour and thus it is held that there cannot be any amendment by way of transposition or deletion in the electoral roll of a constituency after the date of making nominations is over.

10. The second question in this appeal is raised by learned counsel for respondent No. 2. He had moved a separate application bearing CM-19615-CII-2010 for seeking dismissal of the election petition on the ground that it has not been filed by the appellant/candidate in person and has rather been filed through his advocate. Reply to the application has been filed.

11. Learned counsel for respondent No. 2 has argued that Section 76(1) of the Act provides that an election petition has to be filed by the candidate and Section 80 of the Act provides that in case of any violation of Section 76 of the Act, the Election Tribunal shall dismiss the election petition. He has relied upon two decisions of this Court in the cases of Gurlal Singh v. Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others, 2010(5) R.C.R. (Civil) 474 and Major Singh v. Presiding Officer, Election Tribunal (A.D.C.), Sangrur and others, 2010(5) R.C.R. (Civil) 934 and a decision of the Supreme Court in the case of

G.V. Sreerama Reddy and another v. Returning Officer and others, 2009(3) R.C.R. (Civil) 937 : 2009(5) R.A.J. 36: AIR 2010 Supreme Court 133.

12. In reply, learned counsel for the appellant has submitted that this plea cannot be taken by the respondent No. 2 at this stage as it does not find mention in his written statement and there was no occasion for the appellant to prove that he was also accompanying his advocate at the time when the election petition was filed as the provision of Section 76(1) of the Act has to be considered not in form but in substance.

13. I have heard both the learned counsel for the parties on the second question.

14. In order to appreciate the controversy, it is worthwhile to refer to Sections 76 and 80(1) of the Act, which are reproduced as under :

76. Presentation of petition. - (1) An election petition may be presented on one or more of the grounds specified in sub-section (1) of section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

80. Trial of election petitions. - (1) The Election Tribunal shall dismiss an election petition which does not comply with the provisions of section 76 or section 77 or section 103.

Explanation. - An order of the Election Tribunal dismissing an election petition under this sub-section, shall be deemed to be an order made under clause (a) of section 87.

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15. Section 76(1) of the Act provides that the election petition can be presented on one or more of the grounds to the Election Tribunal by any candidate to such election or by any elector. Section 80(1) provides that the Election Tribunal shall dismiss an election petition which does not comply with the provisions of Section 76 of the Act, meaning thereby the provisions of Section 76(1) of the Act are mandatory in nature. Admittedly, the election petition is not presented by the candidate/appellant himself rather it has been filed through his advocate. This Court has taken a view in Gurlal Singh's case (supra) after discussing various judgments that if the election petition is not filed by the candidate himself, then there is no alternative left with the Election Tribunal but to dismiss the election petition. It has also been decided that if any objection is not taken by the

returned candidate even in the written statement about the non-compliance of Section 76(1) of the Act, it would not be deemed to be a waiver on his part. The aforesaid decision relied upon by learned counsel for the respondent No. 2 has further been relied upon by this Court in the case of Nachhattar Singh v. Presiding Officer, Election Tribunal, SDM Dhuri & Ors., 2011(1) Law Herald (P & H) 689.

16. Keeping in view the aforesaid facts and circumstances, the second question is decided in favour of the respondents. In view of the aforesaid discussion, once the election petition has not been duly presented in terms of Section 76(1) of the Act, which is mandatory in nature, I do not find any merit in the present appeal and as such, the same is hereby dismissed.