
(1993) 09 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 863 of 1993

Surinder Kaur

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 13-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Gram Panchayat Election Rules, 1960 — Rule 14
Representation of the People Act, 1951 — Section 135

Citation : AIR 1994 P&H 185 : (1994) 106 PLR 34

Hon'ble Judges : S.D. Agarwala, C.J.;Jawaharlal Gupta, J

Bench : Division Bench

Advocate : M.L. Sarin and Ms. Alka Sarin, for the Appellant; G.K. Chatrath, Advocate General, M/s. Anu Chatrath and G.S. Dhillon, for the Respondent

Judgement

1. This is a petition under Art. 226 of the Constitution of India. The petitioner came to this Court on January 18, 1993 and filed the present petition. The dispute is in regard to the election of Gram Panchayat Village Dialgarh, District Gur-daspur. The petitioner's allegations are that she had filed the nomination paper on January 17, 1993 but her nomination paper was torn away by some police officer present there. Her further allegation was that her husband Ravel Singh had been arrested by respondent No. 6, namely, Inspector Ajaib Singh in the morning to pressurise the petitioner so that she may not submit her nomination paper. In the petition, it is further averred that an application was made by her on January 17, 1993 to the Additional Deputy Commissioner requesting him to take necessary action as her nomination paper had been torn away. In this regard, the petitioner relied upon rule 14-A of the Gram Panchayat Election Rules, 1960 (hereinafter called the Rules).

2. On January 18, 1993, when this petition was filed, ad interim order was passed by this court directing that until further orders, the result of the elections shall not be declared. The effect of this order was that the polling was to continue but the result of the election was not to be declared. The said order was

to be communicated to respondents Nos. 4 and 5 telegraphically. Dasti orders were also given to the petitioner. Immediately thereafter, the stay order of this Court was communicated to the authority concerned and the petitioner claims to have communicated the order at 2,50 p.m. On 18th January 1993. According to the case of the respondents, the stay order came to the notice of the Returning Officer at 3.50 p.m. In order to ascertain this fact, during the hearing of the petition on August 3, 1993, we directed the learned A. G. Punjab, to produce the original record of the election in dispute on August 18, 1993. On August 18, 1993, the record was not produced due to the strike of the P. C. S. Officers, Consequently, the case was adjourned and it was fixed for today, namely, September 13, 1993. Today, the record has been produced by the learned A. G. Punjab,

3. The record is contained in a sealed box. The seal was broken in our presence and one big envelope was taken out from the box. This big envelope also contained seven small envelopes. One of the small envelopes on which it is written Presiding Officer's Diary, Dialgarh." was opened by us. After a perusal of the record, this envelope along with the big envelope has again been sealed with the seal of the Additional Registrar of this Court and put in the box. The said box has also been again sealed by the seal of the Additional Registrar of this Court. The keys have also been sealed in the presence of the counsel for the parties. The sealed box has been taken back by the A. G. Punjab. There was nothing on the record to establish as to when the poll came to an end. The ballot boxes were found sealed which prima facie shows that the polling had concluded.

4. The main question in the present petition is as to whether the Additional Deputy Commissioner was bound to adjourn the poll under R. 14-A of the Rules, mentioned above, on receipt of the application filed by the petitioner, which is Annexure P I. Rule 14-A of the Rules is quoted below :--

14-A Adjournment of poll in Emergencies ;--

(1) The Returning Officer, Presiding Officer, the Deputy Commissioner or the Government may adjourn the poll in a sabha area at any time in case the poll is in interrupted or obstructed by :--

- i) any riot or violence; or
- ii) a direct or indirect threat to the election process or conduct of poll or
- iii) an action of snatching or destroying the ballot papers or
- iv) any type of natural calamity; or
- v) booth capturing at the polling station or at a place fixed for polling or
- vi) any other sufficient reason to be recorded in writing.

2) Whenever the polling in a sabha area is adjourned in terms of the provisions of sub-rule (1) the Returning Officer shaE, as soon as practicable, report the

matter to Deputy Commissioner, who shall appoint a day for a fresh poll in such sabha area and shall fix the time at which such poll shall be held.

Explanation:-- For the purpose of this rule, the expression "booth capturing" shall have the same meaning as is assigned to it in the Explanation to S. 135A of the Representation of the People Act, 1951."

5. This rule enables the Returning Officer, the Presiding Officer, the Deputy Commissioner, or the Government, to adjourn the poll in the sabha area, if any of the conditions, as laid down in sub-rule I(i) to (vi) of rule 14, are fulfilled. Sub-rule (2) of this rule clearly lays down that whenever the polling in a sabha area is adjourned in accordance with the provisions of sub-rule (1), the Returning Officer shall, as soon as practicable, report the matter to the Deputy Commissioner, who shall appoint a day for a fresh poll in such sabha area and shall fix the time at which such poll shall be held. On a reading of this rule, it is absolutely clear that the power under R. 14-A can be exercised by the authority concerned only if the polling is not yet complete. It cannot be exercised when the polling has concluded. It may be that the result may not have been declared but the polling should have been complete.

6. The question for our consideration in this case is as to whether on the basis of the record before us, it can be said that the polling was complete or not on January 18, 1993 when the election of the Gram Panchayat in question was held.

7. In the petition, in paragraph 10-C, it has been averred by the petitioner, that in pursuance of the communication of the stay order by this Court, the D. D. P. O. sealed the boxes at 3.30 p.m. and stopped the polling midway. The respondent No. 4-B, Surjit Singh, Inspector F. C. I. and respondent No. 6, Ajaib Singh, Inspector, opposed the sealing of boxes but the boxes were sealed at 3.30 p.m. There were a number of voters who had yet to cast their votes till 4 p.m. It has been further stated in this paragraph that the election process came to a halt at 3.30 p.m. Consequently, the election was to be held afresh as the election stood automatically adjourned on January 18, 1993 at 3.30 p.m. In fact, the allegation is that the polling was not complete and it was stopped midway.

8. A detailed written statement has been filed by Mr. N. K. Wadhawan Sub-Divisional Officer (Civil) Respondent No. 4 along with this written statement, affidavits have been filed and the averments made by the petitioner in the petition have been controverted. It has been specifically denied that the nomination paper of the petitioner was torn. One of the affidavits is of Mr. Bahadur Singh, D. D. P. O., Gurdaspur, respondent No. 4-C. In paragraph 3 of the affidavit of Bahadur Singh, respondent, it has been stated that on January 18, 1993 at 2.50 p.m. a telephonic message was received/given by Mr. M. S. Bedi, Advocate, Punjab and Haryana High Court conveying that the High Court had stayed the declaration of the result of the Gram Panchayat, Dialgarh. It has been further stated that Bahadur Singh conveyed the same to the Presiding Officer-cum-Returning Officer through Surjit Singh, AGI (D) in F. C. I. on the same day

at 3.50 p.m. This message was conveyed by Bahadur Singh, in person, who took acknowledgement in token of its receipt. In paragraph 5, it has been stated that the ballot boxes were sealed in the presence of Bahadur Singh, at the close of the poll at 4 p.m. This affidavit, therefore, clearly states that the boxes were sealed in the presence of Bahadur Singh at the close of the poll at 4 p.m. Surjit Singh, Inspector F. C. I., who was the Returning Officer has also filed the affidavit. In this affidavit, in paragraph 4, he has stated that he conducted poll in respect of the Gram Panchayat Dialgarh from 8 a.m. to 4 p.m. In paragraph 6, it has been stated that at 3.50 p.m. On January 18, 1993, Bahadur Singh D. D. P. O. Gurdaspur, reached in person to convey the message regarding the order passed by the High Court in the writ petition and further in paragraph 7 it has been stated that in compliance of the orders passed by the High Court, the ballot boxes in which the voters of Dialgarh village had polled their votes were sealed and no result was declared by the deponent after the completion of poll at 4 p.m. In paragraph 8, it has been further stated that Surjit Singh complied with the directions given by the High Court in their entirety and did not proceed further after the close of the poll. We are inclined to believe what has been stated by Bahadur Singh, D. D. P. O. Gurdaspur and Surjit Singh, Returning Officer, on oath. On the basis of the record before us, we hold that the polling was completed and the result of the election remained to be declared.

9. In view of our interpretation of R. 14-A of the Rules, quoted above, since the polling had been completed, the question of exercising powers under R. 14-A of the Rules by the Additional Deputy Commissioner does not arise and as such it is not possible for us to grant any relief as sought for by the petitioner to issue a direction to the Additional Deputy Commissioner to pass order on her application dated 17-1-1993.

10. It may here be observed that after the election result is declared, it will be open to the petitioner to challenge the election, in question, by way of an election petition before the prescribed authority, as provided under the law. The petitioner has consequently an effective alternative remedy available to challenge the election in question. It is not open for this Court to go into the disputed question of fact raised by the petitioner. All the questions which have been raised by the petitioner in this petition can be raised by her in the election petition. In the circumstances, we do not find it to be a fit case for interference under Art. 226 of the Constitution.

11. The learned counsel for the petitioner also urged that the petitioner had made an application on January 17, 1993 for postponement of the poll and it was the duty of the officer concerned to whom the application was made to decide the application before the actual poll took place. In our opinion, R. 14-A, of the Rules is an enabling provision. It entitles the Returning Officer, the Presiding Officer, the Deputy Commissioner, or the Government, as the case may be, to adjourn the poll, if any of the conditions mentioned in clauses (i) to (iv) of sub-rule (1) of R. 14-A of the Rules are in existence and the authority concerned is

satisfied that it is a fit case where the poll should be adjourned. Rule 14-A does not lay down that every application which is made under this Rule should be decided by the authority before the polling takes place. If such an interpretation is put, no election can ever take place, as numerous applications can be made by persons, in order to stall the process of the election, which is not the intention for which this Rule has been framed. Even if the authority concerned does not pass an order under R. 14-A, the aggrieved person can get relief by filing an election petition under the Act.

12. In view of the above the writ petition is dismissed in limine. Interim order passed by this Court on January 18, 1993 is hereby vacated.

13. Petition dismissed.