
(2009) 02 P&H CK 0149
In the Punjab And Haryana At Chandigarh

Surjit Singh

APPELLANT

Vs

Additional Deputy Commissioner, Hoshiarpur-cum-Election
Tribunal and Others

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Representation of the People Act, 1951 — Section 37, 82

Citation : AIR 2009 P&H 132 : (2009) 155 PLR 409 : (2010) 5 RCR(Civil) 252

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order dated 19.1.2009 passed by Additional Deputy Commissioner Hoshiarpur exercising the powers of Election Tribunal (in short "the Tribunal") under the Punjab State Election Commission Act, 1994 (in short "the Act"), whereby election petition filed by Surjit Singh (appellant) has been dismissed.

2. Brief facts of the case are that election of Gram Panchayat Jaura, Tehsil and District Hoshiarpur was held on 26.5.2008 in which Smt. Simranjit Kaur (respondent No. 3) and Smt. Kamaljit Kaur wife of the appellant contested for the office of Member Panchayat against the seat reserved for Scheduled Caste (woman category). In the said election, respondent No. 3 was declared elected to the seat reserved for Scheduled Caste (woman category). Thereupon, appellant, who happened to be the husband of Smt. Kamaljit Kaur (defeated candidate), filed an election petition against respondent No. 3 and other officers in terms of the provisions of Section 76 and 89 of the Act, before the Tribunal.

3. The appellant challenged the election on the ground that respondent No. 3 did not belong to Scheduled Caste category and was ineligible to contest the election in the category of Scheduled Caste (woman). It was alleged that respondent No. 3 is in fact daughter of Lachman Singh alias Lachho R/o village Boparai, District Kapurthala and is a "Jat" by caste by birth who has married to Sohan Singh R/o

village Jaura, a Scheduled Caste belonging to "Adharmi" community.

4. The appellant had also alleged in the election petition that even on enquiry it was found that she was a "Jat" by birth and married to a Scheduled Caste, therefore, she was not a Scheduled Caste. In the election petition following prayer were made:

(i) that the election of respondent No. 1 for the post of Panch may kindly be set aside;

(ii) that Smt. Kamaljit Kaur be declared elected for the post of Panch.

(iii) that legal action may be taken against respondent No. 2 and also got the case registered against respondent No. 1.

5. In reply to the election petition, it was alleged by respondent No. 3 that she was married to Sohan Singh 20 years ago and has acquired status of Scheduled Caste. She was accepted by her husband family and Scheduled Caste Community and Biradari. The Scheduled Caste certificate issued to her is valid. The Returning Officer had duly accepted her nomination paper on the basis of Scheduled Caste certificate and rightly declared her as elected candidate.

6. On the pleadings of the parties following issues were framed:

1. Whether respondent No. 1 was not eligible to contest the election of Panchayat against reserve seat of village Jaura on the basis of Scheduled Caste certificate () the Returning Officer. If it is so, whether her election is liable to be set being void.

2. Whether respondent No. 1 Simarjit Kaur belongs to Scheduled Caste and is eligible to take part in the election against reservation under the rules on the basis of SC certificate issued by Tehsildar Dasuya and her nomination papers legally accepted by the R.O.

7. Both the parties led their respective evidence. On merits, the Election Tribunal found that respondent No. 3 was duly accepted in the "Adharmi" community because she has been following their religion and customs for almost two decades, therefore, certificate of Scheduled Caste issued to her was valid. The election petition was also dismissed on the ground of noncompliance of mandatory provisions of Sections 77 and 89 of the Act.

8. Learned Counsel for the appellant has, inter alia, contended before this Court that before marriage, respondent No. 3 was a "Jat" by birth and had obtained status of Scheduled Caste only by virtue of her marriage to Sohan Singh who belongs to Scheduled Caste (Adharmi) community.

9. Learned Counsel for the appellant has relied upon the decisions of the Supreme Court in the Cases of Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others, ; Mrs. Valsamma Paul Vs. Cochin University and others, and Anjan Kumar Vs. Union of India (UOI) and Others, , to contend that benefit of Scheduled Caste is granted to those who belonged to Scheduled Caste by birth

and not to them who claimed to acquire the status of Scheduled Caste by marriage.

10. It is further submitted by learned Counsel for the appellant that the election petition has been wrongly dismissed by the Tribunal on the ground that as per Section 77 of the Act, the appellant has not impleaded all the contesting parties in the election petition. It is maintained that in the category of Scheduled Caste(woman) there were only two contesting candidates and both were before the Tribunal in the election petition, therefore, the election petition could not have been dismissed on this ground. During the pendency of the present appeal, the appellant had also filed an application bearing C.M. Nos. 3229 to 3231-CII-2009 for seeking permission to amend the memo of parties of the election petition thereby adding the other candidates to the election as respondents but that application was not pressed by the counsel for the appellant and was got dismissed as withdrawn on 6.2.2009.

11. On notice issued in the main appeal on 6.2.2009, respondent No. 3 has put in appearance through Sh. K.S. Dadwal, Advocate. Since rest of the respondents were non-contesting therefore arguments were heard with the consent of both the parties.

12. Before proceeding further in the matter, it is worthwhile to refer to some of the relevant provisions of law:

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.

77. Parties to the petition.- A petitioner shall join as respondent to his petition:

(a) where he, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates, and

(b) any other candidate against whom allegation of any corrupt practice is made in 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 subsection, shall be deemed to be an order made under cause (a) of Section 87.

(2) Where more than one election petitions are presented to the Election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal may, in his discretion, try them separately or in one or more groups.

(3) Any candidate not already a respondent shall, upon application made by him to the Election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent.

Explanation.- For the purposes of this subsection and of Section 86, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Election Tribunal and to answer the claim or claims, as the case may be, made in the petition.

(4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from day-to-day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavor shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the Election Tribunal for trial.

89. Grounds for declaring election to be void.- (1) Subject to the provisions of Sub-section (2), if the Election Tribunal is of the opinion:

(a) that on the date of his election, a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under this Act, or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected:

(i) by the improper acceptance of any nomination; or

(ii) by the corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act.

the Election Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Election Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Election Tribunal is satisfied:

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice as committed contrary to the orders, and without the consent, of the candidate or his election agent.

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(C) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agent.

then the Election Tribunal may decide that the election of the returned candidate is not void.

(3) In this section, the expression "agent" has the same meaning as assigned to it in Explanation (1) given under Clause (9) of Section 108, but does not include election agent.

13. Learned Counsel for the appellant contends that in view of Section 76 of the Act, an election can be challenged on one or more of the ground specified in Section 77 and Section 89 of the Act by way of an election petition preferred before the Election Tribunal by any candidate to such election or by any elector. It is alleged that the appellant is an elector/voter of Gram Panchayat Jaura and had a right to challenge the election of respondent No. 3 by way of election petition on the grounds available u/s 89(1)(a) that on the date of her election, the returned candidate (respondent No. 3) was not qualified or was disqualified to be chosen in view of the decision of the Supreme Court in the case of Sobha Hymavathi Devi (supra); Valsamma Paul (supra) and Anjan Kumar (supra) as she was ineligible to contest in the category of Scheduled Caste (woman) having been born to a non-Scheduled Caste. It is also contended that since there were only two candidates in the election to the office of Panch Scheduled Caste

(woman category) and both were there in the election petition as the election petition has been filed by none-else then the husband of the defeated candidate Smt. Kamaljit Kaur, therefore, there was no need to implead other candidates who had contested in their own category. It was, thus, prayed that the impugned order passed by the Tribunal may be set aside, the election of respondent No. 3 be declared void and the wife of the appellant be declared as elected to the post of Panch.

14. On the contrary, Mr. K.S. Dadwal, learned Counsel appearing on behalf of respondent No. 3 has contended that the election petition by itself is not maintainable as rightly decided by the learned Tribunal because it is provided in Section 80(1) of the Act that The Election Tribunal shall dismiss an election petition which does not comply with the provisions of Section 76 or Section 77 or Section 103 of the Act. He further submits that there is a total non-compliance, on the part of the appellant, of the mandatory provisions of Section 77 of the Act, which provides that the appellant shall join the contesting candidate in case he pray for declaration of the election as illegal and also for declaring himself or any other candidate as duly elected. It is submitted by him that the appellant who is only an elector, should have impleaded the other contesting candidate, namely, Smt. Kamaljit Kaur, in the election petition as a respondent specially when the appellant had made categoric prayers for seeking the declaration of the election of respondent No. 3 as illegal and for getting his wife Smt. Kamaljit Kaur declared as elected.

15. In this regard, learned Counsel for respondent No. 3 has relied upon a decision of the Supreme Court in the case of "Har Swarup and Anr. v. Brij Bhushan Saran and Ors. AIR 1967 S.C. 836.

16. I have given my thoughtful consideration to the rival contention of both the parties and perused the record with their assistance.

17. Undisputedly, the defeated candidate Smt. Kamaljit Kaur has not filed the election petition. Her husband has challenged the election of respondent No. 3 as an elector in which, admittedly, Smt. Kamaljit Kaur has not been arrayed as a party. It is also undisputed that in the election petition filed by the elector, two prayers have been made, namely, for setting aside the election of respondent No. 3 and for declaring Smt. Kamaljit Kaur as elected to the office of Panch. It is also not disputed that the Election Tribunal has dismissed the election petition in view of the noncompliance of Section 77 of the Act. Therefore, the question involved is that in case where in an election petition filed by the elector petitioner who prays for setting aside the election of the elected candidate and also prays for the declaration of another person to be elected as a Panch, whether all the contesting candidates are required to be impleaded as a party in terms of the provisions of Section 77 of the Act.

18. In this regard, Section 77 of the Act is very clear because it says that where in addition to claiming declaration that the election of all or any of the returned

candidates is void, if a further declaration is sought to declare any other candidate as duly elected, then, all the contesting candidates should be impleaded as a party but in case where no such further declaration is claimed then only the returned candidate is required to be impleaded as a party.

19. The arguments raised by learned Counsel for respondent No. 3 that the provisions of Section 82(b) of the Representation of the People Act No. 43 of 1951 (hereinafter referred as "Act No. 43 of 1951") are paramateria with provisions of Section 77 of the Act and were interpreted by the Apex Court in the case of Har Swarup (supra). In order to appreciate the argument raised by the learned Counsel for the respondent No. 3 provision of Section 82 of the Act No. 43 of 1951 are required to be noticed. Section 82 is reproduced as under:

A petitioner shall join as presents to his petition:

(a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

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

While interpreting the above said provision, the Apex Court observed as under:

The terms of Section 82 show what persons must be joined as respondents to an election petition. Clause (a) shows that where a petitioner is only claiming a declaration that the election of all or any of the returned candidates is void, he has to join all the returned candidates to the petition and no more. Further, where the petitioner in addition to claiming a declaration that the election of all or any of the returned candidates is void claims a further declaration that he himself or any other candidate has been duly elected, he has to join not only the returned candidates but all the contesting candidates. So far as the words "returned candidates" and "contesting candidates" are concerned, there is no difficulty as to what they mean. A returned candidate is one who has been elected and a contesting candidate is one who has not withdrawn his candidature u/s 37. It is true that in Clause (a) of Section 82 where we find the words "he himself or any other candidate", "any other candidate" there means any other contesting candidate. That is clear from the context, for there is no question of declaring a person who has withdrawn his candidature as duly elected. But the same in our opinion cannot be said of the words "any other candidate" used in Clause (b) of Section 82. There is no indication in Clause (b) to suggest that "any other candidate" only refers to a candidate who has not withdrawn his candidature u/s 37. The use of the words "any other candidate" in Clause (b) is really in contrast to the candidates who are to be made parties under Clause (a). Under Clause (a) persons who are to be made parties to the petition are:

(a) returned candidates,

(b) contesting candidates,

depending upon the kind of declaration claimed in the petition. Where, for example, there is no claim for a further declaration in an election petition, only returned candidates would be made respondents under Clause (a). But if there are allegations of corrupt practice against any candidate other than the returned candidate, he would have to be made a party under Clause (b) as "any other candidate". Similarly where a declaration is asked for in the petition that a particular candidate has been duly elected, all the returned candidates as well as all the contesting candidates have to be made parties under Clause (a). Even in such a case if there is allegation that any other candidate besides the returned candidates and the contesting candidates has been guilty of corrupt practice, Clause (b) requires that he should also be made a respondent. There is in our opinion no reason for cutting down the meaning of the word "candidate" as defined in Section 79(b) for the purpose of Section 82(b) in the manner suggested on behalf of the appellants, namely, that in Section 82(b) the candidate is only one who has not withdrawn his candidature u/s 37.

20. In the present case, in the election petition, both the prayers have been made for setting aside the election of respondent No. 3 as void and also for declaring Smt. Kamaljit Kaur (other candidate) as duly elected, therefore, all the candidates who have contested the election were required to be impleaded as party.

21. The appellant cannot claim himself to be a substitute of his wife (Kamaljit Kaur) as he is the election petitioner as an elector whereas the law provides that all the contesting candidates have to be arrayed as respondent.

22. In view of the above discussion, I do not find any merit in the present appeal. Therefore, the same is hereby dismissed. No costs.