

(2016) 09 P&H CK 0234

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 1684 of 2016 (O&M).

**Surjit Singh Randhawa - Appellant @HASH Panjab University Chandigarh
and Others**

Date of Decision : 22-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 SCT 171

Hon'ble Judges : Mahesh Grover and Shekher Dhawan, JJ.

Bench : Division Bench

**Advocate : Shri K.S. Dadwal, Advocate, for the Appellant; Shri Girish Agnihotri,
Senior Advocate with Shri Arvind Seth, Advocate, for the Respondents**

Final Decision : Disposed Off

Judgement

Mahesh Grover, J. - C.M. No. 3818 of 2016

Allowed. The case is taken up for hearing today.

Main Case

The appellant herein filed C.W.P. No. 17881 of 2016 impugning the order of respondent No.3 affirmed by respondent No.2 vide which his nomination for the election amongst the graduate constituency for the Senate Elections of the Panjab university to be held on 25.9.2016 was rejected on the ground that he had furnished incorrect information about his residential address.

2. The learned Single Judge dismissed the plea on the ground that he would have the remedy of challenging the election before an appropriate forum by resorting to the relevant provisions of law.

3. Learned counsel for the appellant contends that the impugned orders before the Writ Court passed by respondent No.3 and affirmed by respondent No.2 in appeal were in exercise of the powers under Regulation 5(B)(iii) of the Panjab university Calendar, 2007 (hereinafter referred to as the Calendar) which does not contemplate or empower the authorities to reject the nomination paper as

invalid in view of the separate provision governing such a course. He refers to Regulation 17 (VI) of the Calendar to contend that furnishing incorrect information regarding the address is not covered thereunder. For the purpose of reference, Regulation 5(B) (iii) and Regulation 17(VI) are extracted here below :-

"5. REGISTRATIN OF GRADUATES :

xxx xxx xxx

B.(iii) A candidate shall enter his ordinary place of residence or business in his application form.

The place of residence would mean :

- (a) Where he owns immovable property ; or
- (b) Where he resides permanently, or
- (c) Where he works.

If the case of candidate falls under more than one of the above three clauses (a), (b) and (c), he shall be required to choose one of these places and shall make a declaration to that effect while filing the nomination papers and only the place so chosen by him, shall be treated as the `place of his residence".

Subsequent change, if any, in his ordinary place of residence or business, shall be communicated to the Registrar, by the date prescribed, and on the prescribed form obtainable from the Registrar"s office.

The place of residence or business or change in such place communicated to the Registrar is liable to be rejected by him if found incorrect after necessary scrutiny and verification or if it is not filed by the prescribed date."

xxx xxx xxx

17(VI) A nomination paper shall be declared invalid:-

- (a) If a proposer or a seconder has signed nomination papers of more candidates than the number of vacancies;
- (b) If the nomination paper is not signed by the candidate or by the proposer or by the seconder;
- (c) If the nomination paper is not addressed to the Returning Officer by name, and does not reach him under a registered cover, or is not delivered to him personally, by the date and hour notified under clause (i).
- (d) In the case of an election by the Registered Graduates :-
 - (1) If the candidate or his proposer or seconder is a defaulter on the date of publication of the final Register of Graduates; and/or
 - (2) In the sum of Rs. 500 required to be deposited by the candidate under clause

(iv) is not received in the office by the prescribed date and hour ;

(3) If it does not bear the Registered Graduate enrolment number or the serial number of the candidate, the proposer and the seconder or, if Register Graduate enrolment number of the serial number of anyone of them happens to be wrong.

(e) If the candidate has ceased to hold the requisite qualification or capacity by virtue of which he is seeking election."

Learned counsel for the appellant also made a reference to certain other candidates who were similarly placed as the appellant who were granted the permission to contest the elections. He has mentioned these names in para-17 of the writ petition that he preferred. He also tried to make out a cause of discrimination by filing an additional affidavit regarding certain other people namely the candidate at Sr. No. 8 Prabhjit Singh.

Apart from this, it is contended that once the appellant's name found mention in the voters list, it could not be deleted. A reference in this regard has been made to Regulation 13.3 of the Calendar which is extracted here below :-

"13.3. A voter's name shall not be removed from the Register of Voters for the reason that the voter has, subsequent to the publication of the final Register, ceased to hold the capacity in which he was registered as such."

4. The respondents have filed their reply justifying the action by referring to Regulation 17(vi)(d)(1) which is extracted here below :-

"17(vi)(d)(1). If the candidate or his proposer or seconder is a defaulter on the date of publication of the final Register of Graduates; and/or"

A further justification has been offered with reference to Regulation 13 of Chapter-I which provides for the composition of the Institution of Ordinary Fellows which may also be extracted here below for ready reference :-

"13. Ordinary Fellows :

(1) The number of Ordinary Fellows shall not exceed eighty five and of such number -

(a) Fifteen shall be elected by the Registered Graduates from amongst themselves, among whom-

(i) two shall be elected to represent the districts of Ferozepur, Hoshiarpur, Ludhiana and the tehsils of Muktsar, Moga and Malout in District Faridkot in the State of Punjab; and one to represent the Union Territory of Chandigarh; and

(ii) the remaining twelve shall be elected from any area including any of the areas mentioned in sub clause (i);"

It is contended with reference to the aforesaid that the whole purpose of concealment of the proper address was to derive a benefit of a reserved seat

from Hoshiarpur and to avoid a contest in the general seats numbering twelve which, of course, is strenuously denied by the appellant who has stated that such a stand of the University is without any justification or basis.

5. We have heard the learned counsel for the parties and are confronted with two questions as to whether the judgment of the learned Single Judge declining interference on the ground of availability of a remedy to challenge the election at a subsequent stage is sustainable or not and secondly, whether the respondent/ University was right in rejecting the nomination of the appellant on the ground set out in the impugned orders and pursuant to the powers purportedly exercised by them i.e. Regulation 5(B)(iii) and 17(vi)(1).

6. Before we proceed to determine the aforesaid issues, we may also notice that arguments were heard over a period of time and looking at the urgency expressed by the learned counsel in view of the impending elections on 25.9.2016, we, after hearing the arguments in the forenoon session, reserved the matter to pronounce the judgment in the afternoon session.

7. The appellant does not dispute that the residential address of Hoshiarpur that he furnished, was incorrect and he made no attempt to get it changed within the prescribed time of the election schedule. He has candidly submitted this fact while making a statutory appeal to the Vice Chancellor. In para 11 of the said appeal, he has submitted that merely by not getting the address changed, would be no ground to reject his nomination when there was no mala fide intention or wilful default on his part and also for the reason that he has also got his address changed in the University records. For the purpose of reference, paras 10 and 11 of the appeal are extracted here below :-

"10. That I have been made to believe that the only alleged grounds which my nomination has been invalidating is that I am not Principal of SGGGS Khalsa College, Mahilpur anymore, the position which I was holding at the time of enrolment in the registered graduates.

11. That merely, my not getting address changed subsequent to my leaving in the registered as graduates cannot be made a ground to reject my nomination paper specially when there is neither any malafide intention nor a wilful default on my part as I, have as member of Senate already got my address changed in the University records is as follows :

Dr. Surjit Singh Randhawa alias Surjit Singh, Plot No.337, Dashmesh Nagar, Majitha By Pass Amritsar."

We may also refer to the impugned order passed by the Returning Officer in the first instance where after reference to the provisions of Regulation 5 (B)(iii), it was stated that as per the election schedule, a candidate could apprise the Returning Office of the change of address on or before 22.6.2016.

8. It is pertinent to mention here that this fact is not denied by the appellant himself. We may, for the purpose of reference, reproduce the relevant portion of

the impugned order Annexure P-2 as also the rejection order passed by the Vice Chancellor :-

"ANNEXURE P-2

xxx xxx xxx

I am to inform you that as per PU calendar Vol.I 2007 under Regulation Chapter II(B) printed at page 61-62 under regulation 5(B) III reproduced as under :-

"(iii) A candidate shall enter his ordinary place of residence or business in his application form.

The place of residence would mean :

(a) where he owns immovable property ; or

(b) where he resides permanently ; or

(c) where he works.

If the case of candidate falls under more than one of the above three clauses (a), (b), (c), he shall be required to choose one of these places and shall make a declaration to that effect while filing the nomination papers and only the place so chosen by him, shall be treated as the `place of his residence".

Subsequent change, if any, in his ordinary place of residence or business, shall be communicated to the Registrar, by the date prescribed, and on the prescribed form obtainable from the Registrar's office.

... ..

REJECTION ORDER

I have examined your representation dated 22.8.2016 in detail, it is my considered opinion that :

(a) the change of address as mandated by the Calendar vide regulation 5(B)(iii) of Panjab university Calendar Volume I, 2007, was required to be intimated to the Returning Officer on or before 22nd June, 2016, as per approved schedule of Registered Graduate Constituency. In the instant case, the same has not been done before the said date.

(b) the repercussion of not getting the address changed would have resulted in undue advantage, as it would qualify the applicant for reservation under special quota for Hoshiarpur District.

(c) the status of Principal mentioned by the applicant in the address of nomination paper would be misleading to the electorate.

In view of the above, I uphold the decision of the Returning Officer in this case."

9. It is no one's case that the election schedule was not known to the appellant

requiring compliance of conditions and the time frame set out therein. It is clear, therefore, that the appellant was well aware of the requirements preceding the election and the essentiality of compliance which he could not have underscored considering that he has been elected twice from this constituency on earlier occasions resulting in an irresistible inference which we would unhesitatingly draw of the appellant's familiarity with the election process.

10. We were also informed during the course of the proceedings about a fact not denied by the appellant himself that the appellant had ceased to be a Principal of the SGGS Khalsa College, Mahilpur, District Hoshiarpur a few years back and such an address to be filled in, in the nomination form when he has concededly got the address changed and other records of the University as that of Amritsar would lend an intriguing character to the whole exercise virtually justifying the stand of the Vice Chancellor of the electorate being misled by the incorrect information resulting in an undue advantage to contest against a reserved seat.

11. Having said that, we are also of the opinion that Regulation 5(B)(iii) begins with a word 'candidate' whereas in the preceding two clauses, a reference has been made to an application for an enrolment by the applicant. The word 'candidate' would assume significance as it would in ordinary parlance in the context of an election relate to a person who offers himself for an election. Even otherwise, Chapter II-B which enshrines Regulations 5(B)(iii) pertains to election of Ordinary Fellows prescribing the period of election, the Register of Electors and other related matters. A candidate, therefore, was required to enter his ordinary place of business in his Form and similar information in the nomination form as well. Regulation 17(vi) talks of rejection of a nomination paper in case a candidate or a proposer or a seconder is a defaulter with date of publication of final register of graduates.

The term 'defaulter' has not been defined and would thus, assume a larger connotation covering all defaulters including the one of non-adherence to the schedule of election to meet its stipulated requirements.

12. The appellant has been unable to show or offer any justification for not responding to the election schedule by submitting his change of address within the prescribed time i.e. 22.6.2016.

13. Learned counsel for the appellant would then refer to Annexure P-1 to contend that University had accepted his nomination paper by reflecting his name in the list of intending candidates whereas his name figures at Sr. No. 47.

14. We are afraid the applicant cannot derive an undue advantage for himself from this document as the Note appended to the same indicates that scrutiny of nomination papers of the Register Graduate Constituency will be held on 16.8.2016 at 3 p.m. in the Senate Hall signifying the tentativeness of the list, the finalisation of which was to be decided after scrutiny.

15. In so far as the argument of certain other incumbents being treated

differently in similar circumstances, we have been apprised by the learned counsel for the University that the instance pointed out in the additional affidavit is also to meet the same fate as the appellant which takes the sting away from the argument of discrimination raised by the appellant.

16. For the reasons stated above, we are of the opinion that appellant's appeal must fail as he himself squandered away the opportunity of rectifying the information qua his residential address in terms of the election schedule and it is a settled law that all candidates who offer themselves for election are bound by such a schedule.

17. We also do not find any legal infirmity in the order of the Returning Officer as also the Vice Chancellor for the reason that we have set out in the foregoing paragraphs.

18. However, we would respectfully differ with the view expressed by the learned Single Judge who negated the challenge at the outset on the reasoning offered, of an alternate remedy to impugn the election result. No such remedy has been shown to us either by the appellant or by the respondents except a reference to Regulation 17(viii) which provides for an appeal against the order of the Returning Officer to the Vice Chancellor which order has to be treated as final. This remedy the appellant did avail unsuccessfully.

19. The L.P.A. is disposed of as above.