
(1973) 05 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 135 of 1973

Tarsem Lal

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 02-05-1973

Acts Referred:

Punjab Municipal Election Rules, 1952 — Rule 51

Citation : (1973) 05 P&H CK 0007

Hon'ble Judges : Harbans Singh, J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : Mohninderjit Singh Sethi, for the Appellant; R.L. Aggarwal and Mr. K.S. Raipuri, for Advocate General, Punjab, for Respondents Nos. 2, 3, 4 and 7, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh, C.J.—This is an appeal under Clause 10 of the Letters Patent filed by Shri Tarsem Lal whose election to the Municipal Committee, Nurmahal (hereinafter referred to as the Committee), was set aside by the learned Single Judge, accepting Civil Writ No, 2743 of 1972, filed by Buta Ram respondent before us (hereinafter referred to as the petitioner). The facts, briefly stated, are as follows :

2. The election programme for the election of the Committee was issued by the Deputy Commissioner, according to which nomination papers were to be filed between May 1, 1972, and May 8, 1972. Nomination, papers were scrutinised and the Returning Officer rejected the nomination paper of Buta Ram petitioner on May 15, 1972, on the ground that his name did not appear on the electoral rolls which were operative on that day. It appears that the petitioner's name did not occur in the rolls and he had made an application on May 2, 1972, for the inclusion of his name in the voters' list. This application was accepted and his name was brought on the list on May 16, 1972.

3. An appeal against the rejection of the nomination paper could be filed within three days. Consequently, the petitioner filed an appeal before the Appellate Authority (District Magistrate) and, at the date of the hearing, he brought to the notice of the District Magistrate, the fact that he was a voter and that his name had been entered in the voters' list on May 16, 1972, but, in spite of this, his appeal was rejected. A copy of the order passed in the appeal had not been filed with the writ petition out of which this appeal has arisen. Election was, consequently, held on June 18, 1972, according to the programme, and Tarsem Lal, now appellant before us, was duly elected. Civil writ No. 2743 of 1972 was filed on 4th August, 1972, by Buta Ram Challenging the aforesaid order of the Appellate Authority. The petition was returned to Buta Ram and ultimately it was refiled on 19th August, 1972.

4. Two points were taken before the learned Single Judge, first, that the rolls on the basis of which the election took place were not proper and, secondly, that the nomination paper of the petitioner was rejected illegally by the Returning officer. The first point was negated by the learned Single Judge but, on the second point, he held in favour of the petitioner. The writ petition was consequently, accepted and the election of Ward No. 5 was quashed. Tarsem Lal, the successful candidate whose election has been quashed, has filed this appeal.

5. It is clear that under rule 51 of the Punjab Municipal Election Rules, 1952, "material irregularity" includes improper acceptance or refusal of any nomination paper and this material irregularity alongwith other matters, like corrupt practice, etc, is a ground for setting aside the election if it materially affects the result of an election. Rule 52 provides that an election cannot be challenged, except by an election petition which, according to rule 53, has to be filed within 14 days of the declaration of the result.

6. It is now well settled that the mere fact, that the normal mode of challenging an election is an election petition, would not oust the jurisdiction of this Court to interfere in a proper case and grant relief in the exercise of its extraordinary jurisdiction notwithstanding the fact that the petitioner has not exhausted his normal remedy as provided in rule 52. In this connection reference was made to three Division Bench decisions of this Court in Belt Ram v. State of Punjab (1964) 66 P.L.R. 1185, Bhagirath Singh Vs. The State of Punjab and Others, and Nanak Singh and others v. The Deputy Commissioner, Amritsar (1968) 70 P.L.R. 1095.

7. In the present case, however, the petitioner did not move his little finger against the election of Tarsem Lal and allowed the period of limitation to expire. His normal remedy to challenge the election had thus become barred by time, long before he filed the writ petition in this Court, for the first time, on 4th August, 1972. The date on which the result of the election was declared is not clear, but, in any case, one can assume that the results must have been declared soon after the date of the election which was 18th June, 1972. The question for consideration is, whether a petitioner can reasonably seek the aid of this Court in the exercise of its extraordinary jurisdiction to enforce his time-barred legal

right. It has been observed on a number of occasions that election is an expensive procedure and, where a person has been elected by the electorate in due process of law, the election should not be lightly set aside. When the Legislature has made specific provision that an election can be challenged through an election petition by filing the same within 14 days of the declaration of the result, on the expiry of those 14 days, the elected person acquires a very valuable right which cannot be challenged by the ordinary process provided by law. Can a person, who has failed to exercise his right to have the election set aside by filing the election petition within the time prescribed, be allowed to reagitated that matter and seek to enforce that legal right in this Court under Article 226 of the Constitution after the normal mode of enforcement of his legal right has become barred by time ? To our mind the clear answer to this question is in the negative. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, the Supreme Court, in very strong words, has taken the view that it should not normally be allowed.

8. In *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, tax was paid under an Act which was later found to be ultra vires and thus the payment of tax had been made under a wrong impression about the legality of the Act. A suit for the refund of the tax had become barred by time. While clearly observing that "the High Courts have power for the purpose of enforcement of fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of law," in paragraph 17 of the judgment, their Lordships of the Supreme Court went on to say as under :--

At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters, which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. * * * Thus, where, as in these cases, a person comes to the Court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds, that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion, will depend its each case on its own facts and circumstances. * * * It may however be stated as a general rule that if there has been unreasonable delay, the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay, the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits, on the

grounds like Imitation, the court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.

In paragraph 21 again it was observed as follows :--

The learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy, but where the delay is more than this period, it will almost be always proper for the Court to hold that it is unreasonable. * *.

9. These observations fully apply to the present case if we substitute the words "relief by a suit in a civil court" by the words "relief by an election petition as provided under the Rules". If an election petition had been filed on the day when the writ petition was filed in this Court, the petitioner would have met with the defence that the same was barred by time. The petitioner is trying to achieve the same thing by filing this writ petition more than two months after the date of the declaration of the results. As was observed by the Supreme Court in the above noted case, where legal remedy is barred then "almost always" the discretion should be exercised against granting the relief to the petitioner in the exercise of the extra ordinary jurisdiction. It is really a sound principle that time barred legal right cannot be allowed to be reagitated before this Court in the exercise of its extraordinary jurisdiction.

10. The learned counsel for Buta Ram, respondent before us, vehemently urged that in all the three Bench decisions of this Court, cited above this Court granted the relief notwithstanding the fact that no election petition was filed. In all those cases the petitioners had come to the Court with promptitude. As a matter of fact in those cases the petitioners had filed the writ petitions even before the election had taken place. The question of any legal right having become barred by time at the time of filing of the petitions did not arise in those cases and, therefore, those cases are of no help to Buta Ram.

11. We are definitely of the view that, in the present case, Buta Ram had come to this Court after an inordinate, delay long after his legal right to set aside the election, by filing an election petition, had become barred by time and, consequently, it was not a fit case in which, in the exercise of the extraordinary jurisdiction of this Court, any relief could be given to the petitioner by setting aside the election. It has already been noticed above that under rule 51, material irregularity also includes illegal or improper rejection or acceptance of

nomination papers and, therefore, any wrong rejection of the nomination paper was a ground which was available to Buta Ram to have the election set aside by filing an election petition.

12. For the reasons given above, we accept this appeal, set aside the order of the learned Single Judge and dismiss the writ petition. In the peculiar circumstances of the case, however, we leave the parties to bear their own costs.