
(2014) 07 P&H CK 0312
In the Punjab And Haryana At Chandigarh
Case No : CR No. 4312 of 2014

Vijay

APPELLANT

Vs

Sunil Kumari

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Constitution of India, 1950 — Article 227, 243ZA
Haryana Municipal Act, 1973 — Section 13D, 272, 3A

Citation : (2014) 07 P&H CK 0312

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Amit Khatkar, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—Elections to the Municipal Council in the State of Haryana are governed by the provisions of the Haryana Municipal Act, 1973 and the Haryana Municipal Election Rules, 1978 framed thereunder. In exercise of powers conferred by the Haryana Municipal Act, 1973 the State Election Commission has in addition framed the Haryana Municipal Election Expenditure (Maintenance and Submission of Accounts) Order, 2006 which was notified on December 19, 2006. This order is traced to the authority conferred by Article 243ZA of the Constitution of India and Sections 3A, 13D and 13E of the Act of 1973.

2. The election of a returned candidate can be set aside under Rule 85(1)(a) of the 1978 Rules if the Election Tribunal is of the opinion that the candidate was not qualified or was disqualified under the Act and the Rules made thereunder.

3. General elections to the Municipal Council, Jind were held on May 20, 2010 and one Mani Ram son of Hardeva was elected as Municipal Councilor from Ward No. 30 but later on he was appointed in the Health Department, Haryana and, therefore, had to resign from the post of Municipal Councilor. His resignation led to a bye-election for filling up the vacancy. A fresh election was held on May 15,

2011. The petitioner had contested the earlier election in May 2010. In the fresh election, the petitioner contested and won with a margin of 44 votes defeating respondent No. 1 Smt. Sunil Kumari. Smt. Sunil Kumari had at the time of filing of the nomination papers and security for the bye-election objected to the nomination of the petitioner on account of non-submission of election expenditure statement for the election held on May 20, 2010 within the period prescribed i.e. one month from the date of declaration of the result and was, therefore, not qualified to be a candidate for the election. It is maintained that the Returning Officer paid no heed to the objection.

4. Aggrieved by the election of the petitioner, the defeated candidate Smt. Sunil Kumari, respondent filed an Election Petition u/s 272 of the Haryana Municipal Act, 1973 before the Civil Judge (Senior Division)-cum-Election Tribunal, Jind for declaring the election of Ward No. 30 of Municipal Council, Jind held on May 15, 2011 as illegal, null and void and the election petitioner Smt. Sunil Kumari be declared instead as a duly elected candidate from ward No. 30 and in the alternative a reelection be ordered. The petitioner put in appearance and contested the petition and denied that the expenditure account statement was not furnished. Rather, the same was deposited vide receipt No. 1111 dated June 18, 2010. Therefore, he cannot be held disqualified for the bye-election held on May 15, 2011. Moreover, his nomination form as well as security was accepted by the Returning Officer and there had been no lapse on his part. The Election Tribunal framed four issues for trial. The parties led their respective evidence both oral and documentary before the Tribunal with ample and full opportunity given to both sides. The Election Tribunal came to the conclusion that the petitioner had not submitted his election expenditure account statement within 30 days from the date of declaration of result of the previous election held on May 20, 2010 or thereafter. If a finding of fact has been returned based on appreciation of evidence available on record that till September 15, 2011 no account statement was submitted, which is allegedly to have been submitted by the petitioner on June 18, 2010, then hardly any scope remains for upsetting such a finding of fact. The Election Tribunal has examined the case in terms of Clause 5(11) and (12) of the Order 2006. The Election Tribunal has returned a positive finding that the petitioner had manipulated the Municipal Council record by submitting a statement on a back date and an entry in this regard was inserted in between the other entries already recorded. Moreover, the then Sub Divisional Magistrate had submitted its report (Ex. P1) called for by the Deputy Commissioner, Jind wherein it was clearly held on inquiry that the petitioner Vijay had not deposited his expenditure account statement within time and he had procured a forged entry in connivance with the despatch official thereby committing forgery at serial No. 1111. The SDM had recommended stern disciplinary action against the erring official. With this turn of events, the Deputy Commissioner, Jind wrote a letter to the Lokayukt on the strength of report submitted by SDM/SDO (Civil). The State Election Commission, Haryana, Panchkula was also informed that the Deputy Commissioner, Jind had not

submitted the list of those persons who had not deposited their expenditure statement within time in respect of elections held on May 20, 2010. The State Election Commission had accordingly issued a show cause notice Ex. PW3/C to all those candidates who had contested the election to show cause why they should not be declared disqualified for the next three years for not furnishing their expenditure account statement and in this letter the name of the petitioner, respondent in the Election Petition has been mentioned at Sr. No. 112.

5. The Tribunal perused the register of letters received, which is Ex. D1 and on perusal of the same found the entry at Sr. No. 1111 had been done in an irregular manner because there is no gap between entry No. 1110 and 1111 whereas in the entire register there is a gap of at least one line in any two entries. The learned Tribunal endorsed the findings in the enquiry conducted by SDO (Civil) in his report Ex. P1 and concluded that there was tampering of record with the connivance of the dealing Clerk. The Election Petition was accepted by judgment and order dated November 27, 2013.

6. Aggrieved by the judgment of the learned Election Tribunal, the petitioner preferred an appeal before the learned Additional District Judge, Jind. The learned Lower Appellate Court has re-examined the oral and documentary evidence and affirmed the view of the Election Tribunal that there is no spacing between entry at Sr. No. 1110 and 1111. Entry No. 1111 regarding deposit of election expenditure details by the appellant is mentioned as a last entry on that page of the register as if blank space of 2 lines was used. On the following page, entry No. 1111 has been suffixed with letter "A". The entries after Sr. No. 1111A also have one line spacing inter se thus there is no apparent reason to add letter "A" to entry No. 1111 which prima facie appears to be added later on to insert another entry No. 1111. The Appellate Court has further found from the evidence adduced by the complaining candidate that the same also indicates that the information received under the Right to Information Act from the PIO that the petitioner Vijay had not deposited the election expenditure details by September 2011, thus the entry of deposit of the election expenditure details in the month of June, 2010 is apparently forged and fabricated. The officials involved including Vijay have already been summoned as accused in a criminal complaint filed by Smt. Sunil Kumari. The First Appellate Court by an elaborate and well reasoned order dated April 29, 2014 has dismissed the appeal with costs and the judgment of the Election Tribunal has been upheld and affirmed.

7. Aggrieved by the judgments, the petitioner has approached this Court in revision invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

8. Learned counsel for the petitioner bases his case for interference on an order passed by the State Election Commissioner, Haryana on June 8, 2012 while examining the case of the petitioner in the light of the complaint received from Smt. Sunil Kumari regarding non-submission of expenditure accounts. The matter was got inquired into by the Deputy Commissioner, Jind through the SDO

(Civil), Jind who reported that Vijay had not submitted the election expenditure in terms of the Order and to the contrary in collusion with the dealing official had got entered his name in the diary register. The Secretary, Municipal Council, Jind submitted a report informing the Deputy Commissioner that the explanation of Sh. Lal Chand, Peon who had entered the receipt of the expenditure register of Sh. Vijay Singh Sr. No. 1111 dated June 18, 2010 in the diary register had been called. The expenditure register had been found by Lal Chand, Peon after searching record and the same was sent to the Commission. Lal Chand made a statement that he had first entered dispatch No. 1110, thereafter 1111 and then 1111A. Lal Chand made a statement that Dispatch No. 1111A (Diary No.) has not been entered with mala fide intention to provide any benefit to any person. He stated that he was mentally disturbed and had, therefore, written 1111A. He further stated that such type of mistakes have occurred many times in the dispatch register earlier. He further stated that the information given to Smt. Sunil Kumari was without perusing the diary register and was supplied on the basis of the expenditure register kept in the office. The SDO (Civil), Jind has not accepted the version of Lal Chand in his report and found that it would be wrong to say that dispatch No. 1111A was entered by mistake. The State Election Commissioner, Haryana rather strangely did not disagree that Lal Chand committed the mistake to enter the extra letter in the dispatch (diary) register but went on to give the benefit of doubt to the petitioner. The Commission had itself requested the Director, Urban Local Bodies, Haryana, Chandigarh to take disciplinary action against the official concerned of Municipal Council, Jind under Rule 7 of the Punjab Civil Services Punishment and Appeal Rules, 1987 as applicable to Haryana. However, the State Election Commissioner, Haryana in an ill considered order mulled over the issue by reasoning that it is not clear whether Vijay had deposited the expenditure register in the prescribed time limit or not. At the same time, the State Election Commissioner accepted that Vijay deposited the expenditure register in the office of Municipal Council, Jind. Resultantly, it gave Vijay the benefit of doubt and withdrew the show cause notice issued to him on October 21, 2011. On this premise, learned counsel for the petitioner argues that the State Election Commission is the final authority with respect to disqualification for failure to lodge an account of election expenses and the findings of the Commission will bind the Civil Court. Clause 5(11) and (12) are cited. They read as follows:-

5(11) Disqualification for failure to lodge account of election expenses.

If the State Election Commission is satisfied that a person:-

(a) has failed to lodge an account of election expenses within the time and in the manner required under this Order: and

(b) has no good reason or justification for the failure, the State Election Commission shall by order published in the official gazette, declare him to be disqualified and may such person shall be disqualified for a period of three years from the date of the order...

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(12) These directions are absolutely mandatory and cannot be locally ordered or modified in any manner without prior written approval of the Commission. The Deputy Commissioner will not competent to permit any relaxation....

9. A perusal of the above provisions reveal that the satisfaction of the State Election Commission is not purely subjective. His decision must conform to the object of the Order issued by the Commission itself. It has to be objectively taken with respect to failure to lodge election expenses and in the event of admitted failure then to enter the question of failure without any good reason or justification. If the first ingredient is based on interpolation of record or a fraud or forgery while asserting proper and timely submission of election expenses then the second limb of sub-clause (b) of Clause 5(11) cannot be activated. There can be no gainsaying that fraud vitiates everything. Therefore, to put it in another way the satisfaction of the State Election Commission is two fold. Firstly, there has been a failure to lodge an account of election expenses within the time which period is prescribed by Clause 5(6) to be 30 days from the date of declaration of the result of the election and secondly, the person required to lodge account of election expenses has no good reason or justification for the failure to do so and when both the ingredients are not met, the State Election Commission has no option but to order disqualification for a period of three years from the date of the order. Sub-Clause 12 of Clause 5 make these directions as absolutely mandatory which are not capable of being locally ordered or modified without the prior approval of the Commission.

10. Learned counsel contention that no other authority can take a decision of disqualification and, therefore, neither the Election Tribunal nor the Lower Appellate Court have jurisdiction to pass orders disqualifying the petitioner is not well merited.

11. This Court is not impressed with the argument that it is the Election Commission alone which can disqualify a candidate for breach of the Order, 2006. In an Election Petition filed before the Tribunal under the Haryana Municipal Act, 1973 issues of all kinds of specified disqualifications are open to be canvassed and questioned. The Tribunal has much wider jurisdiction than that of the Election Commission which is not vested with judicial powers except to act in accordance with the statute it is created under. The Order, 2006 provides a species of disqualification in order to bring purity of elections and is aimed in the interest of conduct of elections in a fair and efficient manner and ways and means for contesting candidates to render accounts of expenditure at the elections which legislative purpose is set out in the objects and reasons in promulgating the Order.

12. It is the further contention of the learned counsel for the petitioner that respondent Smt. Sunil Kumari had approached this Court by way of CWP No. 15678 of 2012 during the pendency of the Election Petition. The petitioner was

arrayed as respondent No. 6. This Court dismissed the petition on August 16, 2012. The correctness of the order passed by the Election Commissioner giving benefit of doubt to the petitioner was questioned. The learned Single Judge of this Court observed that if the expenditure statement was submitted late, it was for the Election Commissioner to consider the same. The Election Commissioner has duly considered the enquiry and has decided to extend the benefit of doubt to the petitioner. The reasons for which the Commissioner has given this benefit apparently would appear just and reasonable. Once the Election Commissioner has decided to give benefit of doubt to the petitioner, the Court cannot sit over the same as if it were acting as a reviewing authority. The findings/observations were not interfered with.

13. Aggrieved by the decision of the learned Single Judge, Smt. Sunil Kumari preferred LPA No. 1363 of 2012 which was dismissed on September 7, 2012. Both the orders were passed ex parte and in limini. The petitioner was not heard by this Court in those proceedings. Both the impugned judicial orders have come subsequent to the decisions. On these premises, it is argued that the allegation levelled against the petitioner by Smt. Sunil Kumari has already been inquired into and decided by the competent authority i.e. Election Commissioner who has exonerated the petitioner by giving the benefit of doubt; the impugned orders have been passed without considering the decision of the Election Commissioner; Smt. Sunil Kumari had not disclosed the factum of dismissal of the writ petition and the appeal before the Election Tribunal.

14. However, I find that the Election Petition was instituted on June 14, 2011/ July 29, 2011 numbered Election Petition No. 1 of 2011. Since the election petition was filed prior to the orders passed by this Court, it cannot be said that there has been any concealment of facts. The petitioner was free to have agitated this issue before the Election Tribunal and the First Appellate Court. It is not his case in this petition that there has been a failure to examine the matter in the light of the orders passed in the writ petition and in the appeal. The petitioner does not appear to have even cared to bring to the notice of the Election Tribunal the orders passed in the writ and in the appeal. Nothing of the kind is forthcoming from reading of both the orders. In any case, the Election Tribunal has jurisdiction to decide an Election Petition in accordance with the municipal law. Both parties have led their evidence and have cross-examined each other witnesses. Both the Courts below have passed well reasoned orders which are not open to interference. A decision taken by the Election Commissioner under Clause 5(11) is not immune from challenge nor can any statutory authority claim such immunity. If a person fails to lodge an account of election expenses within the time granted and in the manner required under the order and has shown no good reason or justification for the failure to do so he has to be declared disqualified. If the Election Commissioner was bound to have acted in accordance with the Order and not diluted the order by conveniently giving the benefit of doubt and that does not mean the Civil Court is denuded of jurisdiction in an election petition to examine and return findings on merits and

in accordance with law. Still further, if such an argument was not raised before the Courts cannot be permitted to be taken up for the first time in the present proceedings.

15. This petition is accordingly found without merit and the same is dismissed. The Appellate Court is correct in reasoning that when the Tribunal found that there was fabrication in municipal record regarding deposit of the election expenditure details by the petitioner, it would not be unreasonable to hold that the Tribunal could not look into the matter if the appellant had deposited the election expenditure details as required under the 2006 Order. The petitioner was thus not qualified to contest the election or the bye election on May 15, 2011.

16. For the foregoing reasons, this petition is without merit and is ordered to be dismissed.