(1962) 07 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 1147 of 1961

Rulya Ram		APPELLANT
	Vs	
The State of Punjab and Others		RESPONDENT

Date of Decision: July 16, 1962

Acts Referred:

- Punjab Panchayat Samitis and Zila Parishads Act, 1961 - Section 6(h)

Hon'ble Judges: Dua, J

Bench: Single Bench

Advocate: H.L. Sarin and K.K. Cuccria, for the Appellant; C.D. Dewan, D.A.G., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dua, J.

Rulya Ram petitioner filed his nomination papers for contesting the election to the Gharaunda Block Samiti as a representative of Co-operative Societies. His nomination papers along with those of other candidates came up for scrutiny before the Returning Officer Block Samiti Gharaunda, Tehsil and District Karnal on 18th August 1961. When his nomination papers were rejected on the ground of removal from the membership of the Market Committee Gharaunda vide Government notification No. 195 dated 24th April 1958 Agri (IX)-58/2107. The notification referred to in the order dated 18th August 1961 is attached with the petition as Annexure ''A''. According to this notification, Rulya Ram was held guilty of misconduct as a member of the Market Committee Gharaunda and for that reason removed from the membership of the said Market Committee. It is this order of rejection of the nomination papers dated 18th August 1961 which is being assailed in the present proceedings which were initiated on 21st August 1961. The counsel has contended that there is no provision of law justifying rejection of the petitioner''s nomination papers on the ground that he had been removed from the membership of the Market Committee.

2. From the reply sent by Shri M.N. Sawani, Returning Officer, Gharaunda Block Samiti, it appears that the petitioner''s nomination papers were rejected u/s 6(h) of the Punjab Panchayat Samities and Zila Parishads Act, 1961. This provision reads as follows:-

6. No person shall be eligible for election as a primary Member if such person-

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(h) has been dismissed from the service of Government or a Municipal Committee or a Gram Panchayat or any other local authority for misconduct and has been declared to be disqualified and has within five years from the date fixed for the nomination of candidates, been proscribed from Government employment:

* * * *

That this provision is wholly inapplicable to the petitioner''s case can I hardly admit of any doubt. The language is plain and unambiguous and indeed even the learned counsel for the respondents did not attempt to bring the petitioner''s case within this clause. The only point on which the learned counsel for the respondents tried to defeat the petitioner''s claim urged before me is based on the plea that there is an alternative remedy in the form of an election petition available to the petitioner and that he having not utilised the alternative remedy, he should not be granted relief on the writ side.

3. This contention appears to me to be difficult to sustain. According to Shri Sarin the election petition rules described as the Punjab Panchayat Samiti and Zila Parishad (Election Petition) Rules framed u/s 115 read with section 121 of the parent Act were enforced on 26th August 196, whereas the impugned order had been passed eight days earlier i.e. on 18th August 1981. The present writ petition was also presented in this Court five days before the election petition rules were enforced, namely, on 21st August 1961, and it was admitted by a Division Bench on 22nd August 1961. The learned counsel for the respondents did not contend that the impugned order dated 18th August 1961 is specifically subjected to challenge or is explicitly made assailable under the Election Petition Rules mentioned above. Reference was, however, made by the counsel to section 121 of the parent Act (Punjab Act No. 3 of 1961) which provides for election petitions. According to this section any person who is a voter for the election of a Member may on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the election of any person etc. The argument was not developed on behalf of the respondents and the counsel did not by reference to the rules attempt to establish that the erroneous rejection of nomination papers can constitute a valid ground for founding an

election petition for setting aside the election in question. I am, therefore, not called upon to express any considered opinion on the point whether under the rules in question the order rejecting nomination papers can be challenged in an election petition nor upon the validity and scope and effect of the relevant rules. Assuming, however, that an order rejecting nomination papers can be challenged in an election petition, in my opinion, such an alternative remedy would not on the facts and circumstances of this case constitute a sufficiently cogent ground to bar certiorari or other suitable writ, order or direction under Article 226 of the Constitution. It is obvious that before approaching this Court on 21st August 1961, the petitioner could not exhaust the alternative remedy on which the respondents have placed reliance as admittedly the rules prescribing such remedy had not till then been enforced; besides, such remedy even when created by the enforcement of the rules was claimable only after the announcement of the result of elections and, not at any earlier stage. It is thus obvious that in the present case when the writ petition was filed in this Court this was the only remedy available to the petitioner, and same was the position on 22nd August 1961 when the Motion Bench admitted it to a hearing and issued notice to the respondents, The petitioner''s prayer for staying the elections was refused by the Motion Bench which, however, expressly directed in the admitting order that the writ petition should be heard the following week, if possible. It is unfortunate that inspite of this direction by the Motion Bench the writ petition has taken 11 months to be heard. Whether this delay is due to the laxity in the office of this Court or to want of due diligence on the part of the respondents in not filing their return with the requisite promptitude so as to enable this Court to expeditiously dispose of the controversy is unnecessary to determine in these proceedings, for, it is indisputable that the petitioner is wholly free from blame in this matter. In this connection there is one other fact which deserves to be stated at this stage. The petitioner also applied to the Deputy Commissioner, Karnal on 18th August 1961, the date on which the impugned order was passed, under rule 39 of the Punjab Panchayat Samities (Primary Members) Election Rules enforced on 6th July 1961 for redress against the impugned order but the Deputy Commissioner came to the conclusion that he had no power to interfere with the order in question. This order of Deputy Commissioner which is dated 19th August 1961 is also on the present record. Now can it be said that the petitioner rushed to this Court on the writ side with undue haste without exhausting all other adequate alternative remedies available to him? I would unhesitatingly answer this query in the negative.

4. The next question is that though at the time of the passing of the impugned order and also at the time of the presentation of the writ petition in this Court there was no alternative remedy at all open to the petitioner, one came into existence on 26th August 1961 which could be availed by the petitioner after the elections; and the respondents pose the question that as this Court had not granted stay to the petitioner, he should have utilised that remedy after the elections, pendency of the present writ petition in this Court notwithstanding. The learned counsel for the

respondents has not contended that the existence of an alternative remedy is an absolute bar to the writ petition as indeed it could not be so contended. The legal position is well-settled that inspite of the existence of adequate alternative remedy a discretion vests in this Court to entertain a petition for writ etc. and to grant requisite relief. The broad lines of the general principles are no longer in dispute and need not be repeated here: their application to a given case however depends on the variety of individual facts and peculiar circumstances and no inflexible or rigid rule has over been laid down or is possible to lay down which would control and govern all cases: See A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, and Dharam Chand v. State of Punjab (1962) 64 P.L.R. 589.

5. In the case in hand the impugned order is manifestly and clearly contrary to law and without any legal basis; so much so that the counsel for the respondents has not even attempted to justify it on the merits., The alternative remedy, if at all it can be called one, came into existence long after even the admission of the writ petition by a Bench of this Court. The'' hearing of the petition had been ordered in the week following the date of the admission i.e. 28th August 1961; the petitioner did actually apply to the Deputy Commissioner for relief which was refused to him on the ground that such a remedy was non-existent, an election petition would by now be clearly barred by time. For these reasons I am wholly unable to persuade myself to decline relief to the petitioner in the exercise of the discretion vested under Article 226 of the Constitution. To decline relief in this case would, in my opinion, be defeating the cause of justice and not promoting it.

6. As no other point was raised at the Bar, I have no option but to allow this petition and set aside the order of the Returning Officer dated 18th August 1961 as also of the Deputy Commissioner dated 19th August 1961 which I hereby do. The quashing of the order of the (sic) Magistrate would obviously have the effect of enlisting the petitioner to contest the elections. The petitioner would be entitled to his costs of these proceedings.