

Des Raj Vs Surjit Kaur

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 4, 2001

Acts Referred: General Clauses Act, 1897 â€” Section 13
Punjab State Election Commission Act, 1994 â€” Section 35, 89

Citation: AIR 2001 P&H 146 : (2001) 2 RCR(Civil) 304

Hon'ble Judges: A.B. Saharya, C.J; V.K. Bali, J

Bench: Division Bench

Advocate: Mr. G.S. Bal, for the Appellant; Mr. S.C. Sibal, AG, Mr. P.S. Chikka, Senior DAG and Mr. K.S. Chahl, for the Respondent

Judgement

V.K. Bali, J.

Election of the appellant as Panch against reserved category of male Schedule Caste candidate has since been set aside by

the Election Tribunal, Sangrur, vide order dated 26.10.1998 and the election petitioner Surjit Kaur (respondent No. 1 herein), who polled more

votes than that of appellant, has been declared elected as Schedule Caste Panch. This order of the Election Tribunal has since been upheld by the

learned Single Judge vide judgment dated 27.1.1999 recorded in FAO No. 2612 of 1998 preferred by appellant Des Raj. The orders aforesaid

have been challenged by appellant Des Raj in this appeal under Clause-X of the Letters Patent.

2. Brief facts giving rise to this appeal reveal that the Government issued notification for holding election to Gram Panchayats. As per notification,

depending upon number of voters, some posts of Panchayats in each village were kept reserved for General or Schedule Caste candidates with

further reservation for males for females. As regards notification in respect of village Shekhupur Khurd of District Sangrur, out of 5 posts of

Panchayats, 2 were reserved for male general category and 2 for female general category, whereas 1 was reserved for Schedule Caste male, as

would be apparent from notification, Annexure P-1. Relevant part thereof reads thus :-

S. No. Name of Panchayat H. No. Category

Gram included village Voters

Panchayat Tot Gen SC BC

M F M F

1 to XX XX XX XX XX XX XX

58

59 Shekhupur Shekhupur 52 321 5 2 21-

60 to XX XX XX XX XX XX XX

66

3. For the 5 total seats, 9 candidates contested the election. Appellant Des Raj, a male Schedule Caste category candidate, polled 24 votes while

Surjit Kaur, respondent No. 1, who too is Schedule Caste, polled 26 votes. The votes polled in respect of village Shekhu-pur Khurd are as

follows :

Sr. No. Name Category Votes Polled Remarks

1. Mansa Singh General 63 Elected
2. Ghamanda Singh General 61 Elected
3. MukhtiarKaur General 38 Elected
4. Mante General 36By loss Elected
5. Des Raj SC 24 Elected
6. Mohinder Kaur General 36By toss Defeated
7. Surji Kaur SC 26 Defeated
8. Baljinder Kaur General 06 Defeated
9. Sukhdev Singh General 00 (No vote) Defeated

4. Inasmuch as, Surjit Kaur had polled more votes than the appellant Des Raj and was still declared defeated, she filed election petition under the

Punjab State Election Commission Act, 1994 (hereinafter to be referred as "the Act of 1994") for declaring result of reserved category Panches of

village Shekhupur Khurd as null and void and further to declare her as elected candidate, as also to declare appellant as having been defeated. It

was, inter alia, pleaded in election petition, Annexure P-2. that she as also Des Raj are permanent residents of village Shekhupur Khurd falling

under Malerkotla Block-2 and belonging to Ramdasia community and mat they stood for election of Panches from the reserved category. The

election from Gram panchayat for village Shekhupur Khurd was held on 21.6.1998 and the result was declared on the same dale. From the result,

as was declared by the Presiding Officer, she ought to have been declared elected but when she objected to the result, in the mariner the same had

been declared from the Presiding Officer, she was told that the same has been done at the instance of Returning Officer. She further pleaded that

injustice has been caused to her, as despite the fact that she had secured more votes than Des Raj, she had not been declared elected. As such,

this result is liable to be set aside and she is liable to be declared elected. The appellant Des Raj filed written statement contesting her cause and

pleaded therein that even though it may be true that petitioner Surjit Kaur and he belong to Ramdasia community but insofar as Surjit Kauris

concerned, she stood for the election of Panch against a general category candidate whereas he had contested election of Panch against reserved

category. He further pleaded that in Gram Panchayat of village Shekhupur Khurd total seats of Panches were 5, out of which 2 seats were

reserved for general category male, 2 seats were reserved for general category female, whereas 1 seat was reserved for Schedule Caste "male".

He was the only contesting candidate against Schedule Caste "male category" and, thus, was declared elected Panch, In the replication that came

to be filed by Surjit Kaur, the averments made in the written statement filed by the appellant, reference of which has been given above, have not

been denied. After resultant trial, the Election Tribunal, as mentioned above, upheld the plea of Surjit Kaur-respondent No. 1 and declared her

elected, whereas the election of the appellant Des Raj as Panch was declared void and consequently set aside. The result of FAO No.2612 of

1998 that came to be filed against the order aforesaid by the appellant has since already been mentioned above.

5. Learned counsel representing the appellant vehemently contends that the election pertaining to village Shekhupur Khurd was to be held strictly

according to notification, Annexure P-1, vide which out of total 5 seats of Ranches, 2 were reserved for general male category, 2 were reserved

for general female category and 1 was reserved for Schedule Caste male category. Respondent No. 1 Surjit Kaur may be Ramdasia, belonging to

Schedule Caste but her candidature as a Schedule Caste candidate could not possibly be accepted. Even though, therefore, she might have

mentioned in her nomination papers that she belongs to Schedule Caste category, her candidature had to be considered as a general category

candidate and, therefore, she had to compete with those, who had contested election against general category. This notification could not be

challenged in an election petition and in fact same was not challenged and yet a finding has been returned by the learned Single Judge that under the

scheme of the Constitution and even under the Punjab State Election Commission Act, 1994, there cannot be any reservation for male, as also that

in view of Section 13 of the General Clauses Act, 1897, masculine gender shall be taken to include females. Learned counsel representing

respondent No. 1-Surjit Kaur, on the other hand, endeavours in maintaining the findings returned by the sale deed, as noted above.

6. We have heard learned Counsel representing the parties and carefully gone through the records of the case. Before we may, however,

determine the controversy involved in this case, we would like to mention that records of the election petition, as also the election as such, were

sent for and the same have since been examined by us. We do find from the nomination papers submitted by the candidates that both appellant and

respondent No. 1-Surjit Kaur, against the column as to which caste they belong, have certainly mentioned Ramdasia. The election record does not

disclose as to whether at any time the concerned officer had passed any order wherein it might have been mentioned as to which candidate was

contesting against a reserved category seat. So much so, even the electorate was left guessing as to which candidate was contesting election

against reserved seat be it male, female or reserved category male. The ballot papers, which too have been examined by us, again do not specify

the candidatures of respective contestants against either of the reserved categories, mentioned above. Be that as it may, the fact remains that

election had to be held pursuant to notification, Annexure P-I, reproduced above. According to notification, Annexure P-I, out of total 5 seats of

Panches in respect of Gram Panchayat of village Shekhupur Khurd, 2 seats were reserved for general category male, 2 seats were reserved for

general category female and 1 seat was reserved for Schedule Caste male. This notification was not challenged at any sale either before or after the

election on the ground that there could not be any reservation for Schedule Caste male. Even such a challenge has not been raised in the election

petition. It could not be disputed during the course of arguments that if result of election has to be declared strictly in compliance with notification,

annexure P-1, the appellant, even though might have secured less votes, shall have to be declared elected as against Surjit Kaur, respondent No.

1, inasmuch as her candidature had to be considered in that case as a general category candidate and fally of her votes could be considered vis-a-

vis general category candidates.

7. Time is now ripe to consider as to whether without there being any challenge to the notification issued by the Government calling upon a

constituency to elect members, the grounds on which election of appellant has been set aside by the learned Single Judge, could, at all be gone

into. We may mention once against that learned Single Judge has held that under the scheme of the Constitution and even under the Punjab State

F.lection Commission Act, 1994, there could not be any reservation for male and further that by virtue of Section 13 of the General Clauses Act,

1897, which specifically makes it clear that unless there is anything repugnant in the subject or context, words importing the masculine genre shall

be taken to include females and, therefore, the very reference to reservation for male would include female.

8. Chapter VII of the Act of 1994, deals with conduct of elections. By virtue of Section 35 contained in Chapter VII of the Act of 1994, as soon

as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official

Gazette, appoint the last date for making nominations, the date for scrutiny of nominations, the last date for the withdrawal of candidature and the

date or dates on which a poll shall, if necessary, be held. This chapter further deals with public notification of election, nomination of candidates for

election, presentation of nomination papers and requirements for a valid nomination, Deposits, notice of nominations and the time and place for

their scrutiny, scrutiny of nominations, withdrawal of candidature and publication of list of contesting candidates. Whereas, Chapter VIII deals with

agents of contesting candidates etc. Chapter IX deals with general procedure at election. Chapter X deals with the poll. Chapter XI deals with

counting of votes. Chapter XII, which is also relevant chapter for deciding controversy in issue, deals with election petitions. No election shall be

called in question except by an election petition presented in accordance with the provisions of this Chapter, Section 89 of the Act of 1994, deals

with the grounds for declaring election to be void. The Election Tribunal can declare the election of the returned candidate to be void if he 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 any corrupt practice committed in the interest of the returned candidate by an agent or other than his election agent; or

(iii) by any non-compliance reception, refusal or rejection of any vote or the reception or 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.

Perusal of the relevant provisions of the Act of 1994, as have been detailed above, would, thus, manifest that sine qua non of holding election is a

notification calling upon a constituency to elect a member or members. In other words, election cannot be held till such time notification for that

purpose is issued by the Government. The Election Commission has to issue notification in Official Gazette to fix the last date for making

nominations, date for scrutiny of nominations etc. in compliance with the notification issued by the Government calling upon a constituency to elect

a member or members for constituting Gram Sabha. Member or members, therefore, in our view, had to be elected in accordance with the said

notification, be it with regard to total number of members or reservation provided for various categories. The Election Commission has jurisdiction

to hold election in accordance with the notification issued by the Government and if that be so no election can be challenged by way of election

petition that may detract from the notification issued by the Government on any ground. What we have said above, would gain strength from the

grounds of election petition, envisaged u/s 89 of the Act of 1994. Concededly, none of the grounds mentioned in Section 89 of the Act of 1994,

was pressed before the Election Tribunal to set aside the election of the appellant as a Panch of Gram Sabha Shekhupur Khurd. Learned counsel

representing the appellant has canvassed before us that there is nothing in the Act of 1994 that may suggest that there could not be any reservation

for a Schedule Caste male category candidate, as also that nothing as such emerges even from the provisions of the Constitution as also that

Section 13 of the General Clauses Act, 1897 would not apply to the facts and circumstances of the case, but in view of our finding that the ground

for setting aside election of the appellant is not envisaged under the Act of 1994, as election had to be held in strict compliance with the notification

issued by the Government, it will be futile to go into the questions raised by the learned Counsel representing appellant as also to comment anything

on the findings returned by the learned Single Judge, reference whereof has been given above.

9. In view of the discussion made above, we allow this appeal. Consequently, the order passed by the Election Tribunal dated 26.10.1998 and the

judgment dated 27.1.1999 passed by the learned Single Judge are set aside. The appeal, as mentioned above shall be allowed, leaving, however,

the parties to bear their own costs.

10. Appeal allowed.