

(1964) 08 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 1408 of 1964

Devi Ram

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: Aug. 31, 1964

Acts Referred:

- Punjab Panchayat Samitis and Zila Parishads Act, 1961 - Section 5(2)(a)(iii)

Hon'ble Judges: Mahajan, J; Dua, J

Bench: Division Bench

Advocate: Anand Sarup, for the Appellant; H.S. Wasu, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Dua, J.

Devi Ram petitioner has approached this Court under Article 226 of the Constitution in the following circumstances. The election to the Panchayat Samiti Ranian Block of a member representing the Market Committee in the Block u/s 5(2) (a) (iii) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Act) was scheduled to be hold on 21st June, 1964. Shri Kehar Singh, P. C. S., General Assistant to the Deputy Commissioner, Hissar respondent No. 3 in this court had been appointed the Returning Officer for this election and the nomination papers were to be filed before him on the day of the election i. e. 21st June, 1984 between 9 and 9.30 A.M., and the scrutiny of the nomination papers was to be made immediately thereafter; polling, if necessary, was in turn to follow the scrutiny immediately thereafter. The petitioner claim to be a producer member of the Market Committee, Sirsa which is a Market Committee in the Ranian Block; the is resident of village Bhuratwala, which village is situated within the jurisdiction of Panchayat Samiti Ranian Block. The petitioner and Arjan Singh, respondent No 4, who is also a

member of the Market Committee, Sirsa, filed their nomination papers for the election in question with respondent No. 3 Arjan Singh objected to the petitioner's nomination papers on the ground that village (sic)twala, in which the petitioner resides, not being within the jurisdic-(sic)et Committee, Sirsa, the petitioner was not eligible to be (sic) Section 5(2) (a)(iii) of the Act. The petitioner controverted this argument with the contention that Bhuratwala village is admittedly within the jurisdiction of the Panchayat Samiti, Ranian, and the petitioner had been duly appointed by the Government as a producer member of the Market Committee, Sirsa, and indeed his name as a producer member of the said Market Committee was on the list of electors for this election, with the result that he was fully eligible to seek election. According to the writ petition, even Arjan Singh admitted that village Bhuratwala was within the jurisdiction of the Panchayat Samiti, Ranian, but in spite of this admission, the Returning Officer rejected the petitioner's nomination paper on the sole ground that village Bhuratwala was not within the jurisdiction of the Market Committee, Sirsa. Arjan Singh was accordingly declared elected on that very day. The petitioner, soon after the announcement of the order rejecting his nomination paper applied in writing to the Returning Officer for a copy of the said order rejecting his nomination paper and also for a copy of the objections. The Returning Officer assured the petitioner that copies would be supplied to him in due course. Thereafter, the Returning Officer was several times approached for the required copies but the Returning Officer put him off saying that he was making enquiries whether or not such copies could under the rules be supplied to him. The petitioner thereupon applied to the Sub-Divisional Magistrate who was officiating as Deputy Commissioner, Hissar, complaining about the non-supply of the required copies. The Sub-Divisional Magistrate also marked the complaint to the Returning Officer with the remark that copies should be supplied to him or some rule should be quoted which deny him this right. The petitioner again approached the Returning Officer on 3rd July, 1964 with the aforesaid order of the Sub Divisional Magistrate, but the Returning Officer told him that the nomination papers and orders thereon had been sealed and the copies could only be supplied by the Deputy Commissioner. After getting this reply, the petitioner applied to the Deputy Commissioner for copy of the order rejecting his nomination paper. It is in these circumstances that the present writ petition has been filed challenging the order of the Returning Officer, rejecting the petitioner's nomination paper, describing it to be wholly without jurisdiction and perverse on the face of it. It has also been averred in the petition that the primary members of the Panchayat Samiti Ranian would shortly be called upon to co-opt six members representing women and schedule castes to the Panchayat Samiti Ranian Block and they would then be called upon to elect a Chairman and a Vice-Chairman of the Panchayat Samiti as well as two representatives of the Panchayat Samiti to the Zila Parishad. The declaration of Arjan Singh's election as a member of the Panchayat Samiti, Ranian Block, being void and ineffective, the co-option of members and the election of Chairman and Vice-Chairman of the Panchayat Samiti as well as of the representatives of the

Panchayat Samiti to the Zila Parishad would be vitiated if Arjan Singh were allowed to take part in these proceedings as a primary member. For these reasons, it has been averred that the petitioner has no other equally efficacious and speedy remedy except by way of the present writ petition. This petition was presented to this Court on 13th July, 1964. On 14th July, 1964, we issued rule directing the petition, to be heard by a Division Bench as the question raised was of considerable importance. Shri H.S. Wasu accepted notice and opposed the petitioner's prayer directing Arjan Singh not to take part in the co-option of members to the Pantheist Samiti, Ranian, u/s 16 of the Act and also to refrain from taking part in the election of Chairman, Vice Chairman and representatives of the Panchayat Samiti to the Zila Parishad, After hearing Shri Wasu, we granted an interim order restraining Arjan Singh from taking part in the co-option of members and in the election of Chairman, Vice Chairman and representatives of the Zila Parishad.

2. In the written statement filed by the Deputy Commissioner, Hissar, it is admitted that the petitioner is a producer member of the Sirsa Market Committee, though it is denied that the Sirsa Market Committee represents the whole of the Ranian Block. It has also been pleaded that village Bhuratwala to which the petitioner belongs does not fall within the notified area of the said Market Committee. The allegation in paragraph 13 of the petition that the petitioner had to apply to the Sub Divisional Magistrate who was officiating as Deputy Commissioner, complaining about the non-supply of copies, has been admitted, though this admission is followed by an averment that certified copies have been supplied to the petitioner. In the written statement filed by the Returning Officer also, it is admitted that the petitioner is a producer member of the Sirsa Market Committee, though like the other written statement it is denied that the Sirsa Market Committee represents the whole of Ranian Block or that village Bhuratwala falls within the notified area of the said Market Committee. Paragraph 11 of the petition is admitted; in other words, the Returning Officer had assured the petitioner that copies would be supplied to him in due course. In reply to paragraph 12, it is averred that the petitioner's application for the supply of certified copies of the order of the Returning Officer was sent to the said officer on 1st July, 1964 which was forwarded by him to the D. D. & P. O. in whose charge the sealed election papers of the Block Samiti's election are kept. Thereafter the petitioner is stated to have approached the Returning Officer in his office only once on 3rd July, 1964 with a reminder which was also forwarded to the D. D. & P. O. for necessary action. The petitioner was also told that since the nomination papers including the order of the Returning Officer rejecting his nomination papers had been sealed on 21st June, 1964 and sent to the D. D. & P. O. D. C. for record and his application for supply of copy had also been sent to the said officer for necessary action, the petitioner should approach him for the purpose. Later on the certified copy was supplied to the petitioner. Arjan Singh's written statement in substance merely avers that the rejection of the petitioner's nomination paper was correct and lawful. He has, however, also raised a preliminary

objection that it was open to the petitioner to file an election petition against the election of the answering respondent as a member of the Panchayat Samiti and since he had not done so, the present writ petition could not be maintained, particularly because no reason has been assigned for not filing the election petition as provided by law.

3. Today, the petitioner's learned counsel has also produced a true copy of the order of the Returning Officer dated 21 st June, 1964, In this order, we find a reference to a judgment of this Court in Civil Writ No, 1305 of 1961 dated 29th December, 1961 which is stated to have been produced by Arjan Singh in support of the contention that since village Bhuratwala does not fall within the notified area of the Sirsa Market Committee, the? petitioner was not qualified to contest the election. The Returning Officer has in his order relied on Rule 34(2) (c) of the Panchayat Samiti Election Rules, 1961 and has observed that unless the village in question is included in the notified area of the Sirsa Market Committee, the Committee cannot represent the Ranian Block Samiti in regard to this village and, therefore, the petitioner who is a resident of this village is disentitled to be elected as a member of the Ranian Block Samiti from the Sirsa Market Committee.

4. The petitioner's learned counsel has in support of his challenge to the impugned order passed by the Returning Officer read to us section 5 (2) (a) (iii) of the Act and has submitted that a plain reading of this provision shows that the Returning Officer's order is completely misconceived and erroneous in law. This section, so far as relevant for our purposes, is in the following terms :

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(2) Where a Panchayat Samiti is to be constituted for a block, it shall consist of the following members :

(a) primary Members to be elected in the manner prescribed by the persons as provided hereunder :

** * * *

(iii) One Member representing the Market Committees in the block, by the Members of such Committees from amongst the producer members residing within the jurisdiction of the Panchayat Samiti * * * 1 *.

Now it is clear and admits of no reasonable doubt that in so far as the present case is concerned, one member representing the Market Committees in the Block is to be elected by the members of such Committees from amongst the producer members residing within the jurisdiction of the Panchayat Samiti. The petitioner admittedly resides within the jurisdiction of the Panchayat Samiti and he is also admittedly a producer member of the Market Committee, Sirsa. Complying, as he does, with the

essential conditions contained in section 5(2)(a)(iii) it is not understood how the Returning Officer managed to incorporate into this provision a condition that the petitioner's village Bhuratwala should also be within the jurisdiction of the Market Committee, Sirsa. The judgment of this Court in Civil Writ No. 1305 of 1961 mentioned by the Returning Officer in his order is reported as *Mansa Ram v. Deputy Commissioner* ILR (1962) I Pb. 392, which merely lays down that the word "Market Committee in the Block" as used in section 5 (2) (a) (iii) of the Act means the "Market Committee situated within the Block" in the sense that either the whole or part of the notified area lies within that Block of the Panchayat Samiti to which election is to be made. It is not easy to understand how that decision could have any relevancy to the point in issue before the learned Returning Officer and indeed Shri H. S. Wasu has very fairly and frankly conceded that that decision has not the remotest relevancy to the question before the Returning Officer.

5. The respondents' counsel has, however, laid most stress, and this was perhaps his main plank of defense, on a preliminary objection, that the petitioner could have filed an election petition and having not done so, he should not be permitted to approach this Court under Article 226 of the Constitution by-passing the statutory remedy. In this connection, our attention has been drawn to section 121 of the Act which lays down that any person, who is a voter for the election of a member, may on furnishing the prescribed security, on such other conditions as may be prescribed, within 20 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 as a member, Vice Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned. Sub-section (3) of this section, provides that except as provided in this section, the election of a member, Vice Chairman or Chairman shall not be called in question before any authority or in any Court. Shri Wasu has stressed that the petitioner being a voter would be entitled to file an election petition and, therefore there being an adequate alternative remedy, this Court should in its discretion decline to exercise its jurisdiction under Article 226.

6. This Article is couched in wide terms and the exercise thereof is not subject to any restriction save the territorial restriction which is in express terms contained therein. Nevertheless, this jurisdiction is not exercised merely because it is permissible to do so, involving as it does, exercise of judicial discretion on the facts and circumstances of each case whether or not to allow it to be invoked. The Courts have accordingly in view of its wide amplitude prescribed certain self imposed limitations in regard to its exercise and resort to this jurisdiction is normally not permitted where an alternative remedy for the relief claimed is adequate, reasonably speedy and equally efficacious without being unduly onerous, for it would clearly be an erroneous exercise of discretion to trench upon an effective alternative remedy provided by statute for obtaining relief. But it is equally well settled that the existence of an alternative remedy, though an extremely important factor, and more particularly so in those election contests in which the Legislature has provided remedy by way of

election petition, does by no means per se affect, curtail or impinge upon the jurisdiction of this Court under Article 226 which can legitimately be invoked by an aggrieved party in a fit case, when the true dictates of justice so demand. One of the basic and fundamental considerations which largely influence the judicial mind of the writ Court inducing it to interfere is when manifest injustice resulting from jurisdictional or grave and material legal infirmity, patent on the face of the record, is plainly discernible without requiring deep probe into conflicting facts, and the alternative remedy, if any, is not equally effective. The matter being pre-eminently one of judicial discretion, no inflexible and rigid rule can or should be formulated to serve as a straight jacket in all cases. Each case would accordingly have to be dealt with in its own peculiar setting and circumstances and the mere existence of an alternative remedy does not of itself impose an obligation on this Court to relegate the aggrieved party to such remedy.

7. Before examining the present petition in the light of the legal position just stated, we may note that we are not concerned with the case covered by Article 329 of the Constitution to which different considerations apply. Here, the texture of discretion under Article 226 is to be considered in the background of section 121 of the Act and the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules 1961. According to Rule 3, the election of any person as a member of a Panchayat Samiti can be called in question by an elector through an election petition on the ground that such person has been guilty of a corrupt practice specified in the schedule or has connived at or abetted the commission on any such corrupt practice or the result of whose election has been materially affected by the breach of any law or rule for the time being in force or there has been a failure of justice. Such a petition is to be presented, within 20 days from the announcement of the result of the election, to the Deputy Commissioner having jurisdiction, who is the prescribed authority u/s 121.

Now, in the present writ petition the Deputy Commissioner is respondent No. 2 and in his written statement he has sought to support the order of the Returning Officer; indeed, it appears to us that the written statements, both of the Returning Officer and the Deputy Commissioner, are identical. The prescribed authority has thus already formed a view against the petitioner which is wholly unsupportable. It appears to us that even when the Deputy Commissioner and the Returning Officer were called upon to file their returns in answer to the rule issued by this Court, they did not care to consult the law advisers of the State, for otherwise, in all probability, they would not have persisted in their erroneous view. This Court consider it to be its duty in this connection to point out that in our democracy where Rule of law prevails, every authority wielding power, more so an authority entrusted with quasi-judicial functions, must not only be fully posted with the correct legal position and whenever necessary consult the State law advisers who are being retained at considerable State expense, but the said authorities must also imbibe the spirit of conscientious obedience to the true dictates of law rather than answer to some

other call in disregard of law. And then to direct the petitioner to the election petition and decline relief in these proceedings would clearly mean undue delay, which, on the facts and circumstances of this case, can scarcely promote the cause of justice. It may be recalled that at the preliminary hearing we considered this case to be eminently fit for granting interim stay. That the delay by resorting to election petition is likely to be inordinate can also be reasonably envisaged from the fact that the prescribed authority is a very busy officer who may not be in a position to give this controversy the priority it deserves. Another important factor which stares us in the face is that an election petition is to be presented within 20 days of the announcement of the result of an election. The election petition in the case in hand was thus to be filed within 20 days from 21st June 1964 but the petitioner, as is clear from the pleadings was not supplied with a copy of the order of Returning Officer till the representation of the writ petition in this Court on 13th July, 1964 and this in spite of his best efforts to secure the requisite copy. The position disclosed in the pleadings in this regard does no credit to the officers entrusted with the duty of supplying copies and indeed it can scarcely be considered to be conducive to the promotion of the Rule of law and by no means serves to inspire the citizens' confidence in democracy in action as revealed by these officers' acts and attitude.

8. Next, it may be recalled that on 14th July, 1964, at the preliminary hearing when Shri Wasu appeared in answer to the advance notice of stay given by the petitioner under the rules of this Court, he did not raise the preliminary objection based on the existence of alternative remedy and indeed he was desirous of obtaining a speedy decision on the question of law raised.

9. Finally, the determination of the clear-cut question of law raised would be enough in this case to entitle the petitioner to the relief claimed. The grave error of law is apparent on the face of the record and no further enquiry into facts is necessary for redressing the petitioner's grievance. All these factors discussed above, more than amply justify sustenance of the petitioner's claim to interference by this Court in its judicial discretion, there being no convincing contention by the respondents pointing out how the election petition in this case can be considered equally speedy and efficacious. Section 121(3) of the Act need not detain us because this provision however effective in excluding other proceedings cannot affect this Court's jurisdiction under Article 226, though of course, in the exercise of discretion, this factor deserves due notice.

10. There is one aspect to which we cannot help adverting before closing. The allegations in the writ petition and the reply in the returns disclose a most unsatisfactory state of affairs regarding supply of copies of the orders of the Returning officer and of the objections. In paragraph 11 of the petition, it has been categorically asserted that soon after the announcement of the order rejecting the nomination paper of the petitioner he applied in writing to the Returning Officer for a copy of the order as also for a copy of the objections, and the petitioner was

assured by the Returning Officer that copies would be supplied to him in due course. The Returning Officer has admitted these averments in his written statement. In paragraph 12 of the petition, it has been stated that the petitioner approached the Returning Officer several times for the requisite copies but he was put off on the ground that enquiries were being made whether such copies could be supplied under the rules or not. In answer to this plea, it is stated that the petitioner's application for a copy of the order of the Returning Officer was sent to the Returning Officer on 1st July, 1964 and it was forwarded by him to the D. D. & P. O. in whose charge the sealed election papers of the Block Samiti Election are kept. This reply is difficult to understand in view of the admission of paragraph 11 according to which soon after the announcement of the order of rejection, the petitioner had applied in writing to the Returning Officer himself for the requisite copies. I need not refer in detail to the position taken up by the Returning Officer; suffice it to say that it betrays a complete unawareness on the part of the Returning Officer of the importance which our Constitution attaches to the training of citizens in the Panchayati Raj as a democratic institution for local-self Government purposes.

11. In so far as the grant of copies is concerned, we cannot too strongly deprecate the indefensible hesitation on the part of the officers concerned in granting copies of their orders to the aggrieved parties who may be desirous of seeking further relief from appropriate quarters. This misconceived hesitation may at times give rise to an apprehension, by no means unreasonable, of mala fides by attempting to obstruct effective challenge to the election by appropriate proceedings; this feeling deserves to be discouraged. It must be emphasised that democracy under the Rule of law flourishes and grows to strength by more rather than less judicial review of quasi-judicial functions and functions affecting citizens' rights and interests. It is in the circumstances desirable that clear-cut rules be made for prompt supply of copies to the aggrieved parties so that they may effectively exercise their right to challenge the impugned orders.

12. For the foregoing reasons, this petition succeeds and allowing the same we make the rule absolute and quash the impugned election of Arjan Singh, respondent No. 4 as a member of the Panchayat Samiti, Ranian Block, as void and ineffective. The petitioner will get his costs of these proceedings.

D.K. Mahajan, J.

13. I agree.