

(1965) 12 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 2212 of 1965

Ram Dayal

APPELLANT

Vs

Shri Gulbhar Singh and Another

RESPONDENT

Date of Decision: Dec. 20, 1965

Acts Referred:

- Punjab Gram Panchayat Act, 1952 - Section 13B, 13C

Citation: (1966) 2 ILR (P&H) 571 : (1966) 68 PLR 312

Hon'ble Judges: R.S. Narula, J

Bench: Single Bench

Advocate: H.L. Sarin with Miss. Asha Kohli, for the Appellant; Anand Swaroop and R.S. Mittal Respondent No. 2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.S. Narula, J.

Ram Dayal, petitioner filed an election petition u/s 13-B and 13-0 of the Punjab Gram Panchayat Act, 4 of 1953 as amended by the Punjab Act 26 of 1962 read with rule 42 of the Gram Panchayat Election Rules, 1960 to set aside the election of Moni Ram respondent No. 2 as Sarpanch of Gram Panchayat of village Thuian, Tehsil Fatehbad, District Hissar. It is not disputed that the petitioner deposited the amount of security required u/s 13-C of the Act read with rule 44(1) of the above said rules. The contesting respondent did not appear at the trial of the petition and proceedings were held ex-parte against him by orders of the Prescribed Authority dated March 28, 1964. At the conclusion of the trial on April 30, 1964 the Prescribed Authority accepted the election petition and set aside the election of respondent No. 2 as Sarpanch. The petitioner was indisputably entitled to obtain refund of the amount of security deposited by him at least thirty days after the grant of his election petition. The petitioner allowed substantial time to elapse and applied for the withdrawal of his security deposit. This application was allowed and the amount of the security

was refunded to the petitioner in full.

2. On June 15, 1964 respondent No. 2 made an application for setting aside the ex parte order allowing the election petition. In reply to that application the petitioner contested the jurisdiction of the Prescribed Authority to set aside the ex parte order, written objections against the application of the second respondent were put in on behalf of the petitioner. Copy of those objections has been filed as annexure C to the writ petition. The Prescribed Authority rejected all those objections and by order dated July 29, 1965 (copy annexure D to the writ petition) allowed the application of the second respondent dated 15th June, 1964 and set aside the ex parte order allowing the election petition. He then adjourned the case to 12th August, 1965 for Moni Ram respondent to file his written statement in reply to the election petition. It is at that stage that this writ petition was filed on August 9, 1965 to quash and set aside the order of the Prescribed Authority dated 29th July, 1965.

3. Mr. H. L. Sarin, the learned senior counsel for the petitioner has firstly submitted that there is no provision in the Act or the rules authorizing the Prescribed Authority to review its earlier order. Of course there is no such provision. But I do not think that the Prescribed Authority exercised any power in the nature of review while passing the impugned order. The order is in the nature of one under Order 9, rule 13 of the CPC which merely amounts to setting aside the ex parte judgment or decree. Section 13-G of the Act provides that every election petition has to be tried by the Prescribed Authority, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure. There being nothing inconsistent with the provisions of Order 9, rule 13 of the Code in the Act or the rules it is clear that the Prescribed Authority has the jurisdiction by operation of section 13-G of the Act to set aside an ex-parte order in suitable cases. In another case a Prescribed Authority under the Act had restored an election petition on the analogy of the provisions of Order 9, rule 9 of the CPC after dismissing it in default. The order restoring the petition was challenged in this Court by a petition under Article 227 of the Constitution, C. M. No. 1990 of 1964 by Banwari petitioner. A short note of that Judgment appears in *Banwari v. Anokh Singh* (1965) 67 P. L. R 11 S. N. Shamsheer Bahadur, J. held in that case on 28th October, 1964 that by virtue of the provisions of section 13-G of the Act the Illaqa Magistrate had the jurisdiction to set aside the order dismissing the election petition in default but that it was necessary for the Illaqa Magistrate to have the notice of the application issued to the opposite party before actually restoring the election petition. Though Banwari's case related to the provisions Order 9, rule 9 of the Code and the instant case relates to a decision under Order 9, rule 13 of the Code of Civil Procedure, the question of law, which arises for decision in this writ petition is almost similar to that which arose in Banwari's case (*supra*). I do not, therefore, find any force in the first contention of the learned counsel for the petitioner.

4. It was then contended that after pronouncing his final order, though ex-parte, in the election petition, the prescribed Authority was functus officio and had no jurisdiction to entertain any subsequent petition relating to the case which had been finally disposed of. This could be so if the Prescribed Authority had been appointed only for the trial of the particular election petition. But a reference to rule 42 of the above-said rules makes it clear that all election petitions under the Act have to be tried by the 1st Class executive Magistrate of the Illaqa. Before the separation of the Executive from the Judiciary, the relevant expression in rule 42i 1) was "a Illaqa Magistrate". That being so, the petition lies to a Court which is otherwise constituted and functioning in the area. It cannot be said, therefore, that after deciding any case which comes before a regular Court it becomes functus officio in the absence of a statutory provision to that effect. I am, therefore, not able to uphold the second contention of the learned counsel either.

5. The practical difficulty and a possible hurdle is then referred to by Mr. Sarin. The petitioner apprehends, it is stated by Mr. Sarin, that the second respondent may not now take up an objection before the Prescribed Authority to the effect that the election petition is liable to be dismissed under rule 45 of the aforesaid rules as the deposit required under rule 44(1) of the rules which had admittedly been made at the appropriate stage is no more in existence and that even if the petitioner re-deposit the same an argument may be made about there having been no subsisting deposit for some time during the trial of the petition. There appears to be no basis for this apprehension. It is not disputed that the requirements of rule 44(1) were duly complied with and the requisite deposit had been made by the petitioner at the appropriate time. It could not be expected that the petitioner should continue to leave the deposit with the Prescribed Authority even after the expiry of the normal period for setting aside the ex-parte final orders of the Illaqa Magistrate. If the ex-parte order has been subsequently set aside it is no fault of the petitioner. In any case it is needless for me to go further into this question in this particular case as Shri Anand Swaroop, the learned counsel for respondent No. 2, the elected candidate, undertakes not to raise such an objection before the Prescribed Authority. He also concedes that such an objection would be futile if the election-petitioner re-deposits the amount of security in question within one month from the date on which a copy of the written statement of second respondent is delivered to him.

6. In this view of the matter without expressing any final opinion on the pure question of law involved on this item, I direct under Article 227 of the Constitution that in view of the concession made by the second respondent the election petition of the petitioner herein shall not be dismissed by the Prescribed Authority on the ground that he had withdrawn the security deposit after the passing of the ex-parte order. Nothing stated in this judgment shall debar the second respondent from taking up or pressing any other plea in the nature of limitation or otherwise to the maintainability of the election petition before the Prescribed Authority. No other

direction is necessary. This writ petition is disposed of accordingly. The parties may appear before the Prescribed Authority on 31st January, 1966 for further proceedings. There will be no order as to costs.