
Ram Dayal Vs Shri Gulbhar Singh and Another

Civil Writ No. 2212 of 1965

Court: High Court Of Punjab And Haryana At Chandigarh

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 exparte 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 42(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 redeposit 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.