(1966) 05 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 168 of 1966

Harbans Singh Mann		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: May 4, 1966

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Municipal Election Rules, 1952 - Rule 52, 53, 54, 55, 56
- Punjab Municipal Act, 1911 - Section 20, 20(1), 246, 247, 68C

Citation: (1966) 2 ILR (P&H) 609

Hon'ble Judges: Prem Chand Pandit, J

Bench: Single Bench

Advocate: H.S. Doabia and T.S. Doabia, for the Appellant; L.D. Kaushal, Sr. Deputy Advocate-General, Jagmohan Lal Sethi and Ram Lal Aggarwal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Prem Chand Pandit, J.
This is a petition under Articles 226 and 227 of the Constitution filed by Harbans Singh Mann challenging the notification issued by the Punjab Government in March, 1965, (Annexure "D" to the writ petition), appointing the General Assistant to the Deputy Commissioner, Jullundur as an enquiry officer to hold an enquiry against the election of the Petitioner as President of the Municipal Committee, Banga, district Jullundur.

2. According to the allegations of the Petitioner, he was unanimously elected as the President of the said Committee on 1st of August, 1964. Karam Chand, Respondent No. 3, who was then the Vice-President of this Municipal Committee, presided over the meeting held for the said election. On 4th of August. 1964 after the election, Respondent

No. 3, addressed a demi-official letter to the Minister for Local Government, Punjab, pointing out that the election of the Petitioner as the President of the Committee was against law. Copies of t> demi-official letter were also sent to the Home Minister, the Deputy Commissioner, Jullundur and the Sub-Divisional Officer (Civil), Nawanshehar. On the receipt of this letter, the Deputy Commissioner, Jullundur, asked for the comments of the Sub-Divisional Officer (Civil), Nawanshehar. He also sought the opinion of the District Attorney as to whether any action could be taken on this letter or Respondent No. 3 should be advised to pursue the ordinary remedy as provided under the law by way of an election petition. In accordance with the opinion given by the District Attorney, the Deputy Commissioner on 19th of October, 1964, ordered that no interference was called for u/s 20(1) of the Punjab Municipal Act, 1911 (hereinafter called the Act) and that the aggrieved party might pursue the remedy available to him under the law. Thereafter the election of the Petitioner was approved and gazetted. On 27th of July, 1965, Shri V.K. Chib, General Assistant to the Deputy Commissioner, Jullundur, Respondent No. 2, issued a notice to the Petitioner (Annexure "C" to the writ petition) in which it was mentioned that an election petition had been filed against him and the Petitioner should appear in his Court on 2nd of August, 1965, in that connection. Prior to this the Petitioner had no knowledge that any election petition had been instituted against him. He appeared in the court of Respondent No. 2 on 2nd of August, 1965 and made an application for getting the copy of the election petition on the basis of which the case was started against him. The proceedings for the trial of the election petition were going on in the said court. After inspecting the file, the Petitioner came to know of the impugned notification issued by the State of Punjab, Respondent No. 1, by which Respondent No. 2 was directed to hold the enquiry. The notification runs thus--

In pursuance of the provisions of Section 247 of the Punjab Municipal Act, 1911, read, with Rule 68 of the Municipal Election Rules, 1952, the Government of Punjab, is pleased to appoint General Assistant to D.C., Jullundur, as Enquiry Officer, to hold an enquiry into the allegations made in the petition, dated 4th August, 1964, presented by Shri Karam Chand, President Municipal Committee, Banga, against the election of Shri Harbans Singh as President of the M.C. Banga.

3. The Petitioner has filed the present writ petition on 28th of January, 1966 praying that the notice (Annexure "C") issued to the Petitioner should be quashed as it is based on Annexure "D" which is wholly-null and void.

4. The learned Counsel for the Petitioner submitted that the demi-official letter, dated 4th of August, 1964, written by Respondent No. 3 and in which were mentioned the various irregularities committed in the election of the Petitioner was in fact an election petition within the meaning of this word under Rule 53 of the Municipal Election Rules 1952, (hereinafter called the Rules). The compliance of Rules 53 to 57 was essential for filing an election petition. In the instant case since these rules had not been followed, the election petition filed by Respondent No. 3 was bound to be dismissed by the State of Punjab, Respondent No. 1, under Rule 57. Rule 68 did not confer any power on

Respondent No. 1 to get an enquiry conducted in the election petition filed by Respondent No. 3. This Rule would apply only if the Punjab Government wanted to have an enquiry held on its own motion and if there was reason to suspect that a corrupt practice or material irregularity had been committed. Both these conditions were missing in the instant case. The scope of Rule 68 was limited and as no procedure had been prescribed by the Rules for conducting an enquiry under the said Rule, no enquiry could be held even if the necessary conditions for directing such an enquiry were fulfilled in a particular case. It was also contended that since the election of the Petitioner had been approved u/s 20 of the Act after sending for the reports of the authorities concerned, Rule 68 could not be invoked for holding the enquiry in dispute. An enquiry having already been held by the Deputy Commissioner before he approved the Petitioner''s election u/s 20, no second enquiry was competent under Rule 68.

5. The main point for decision in this case is whether the demi-official letter, dated 4th of August, 1964, written by Respondent No. 3 was an ''election petition'', as alleged by the learned Counsel for the Petitioner or it was merely a complaint filed by him bringing the various irregularities in the Petitioner''s election to the notice of the Government. It was conceded by the learned Counsel for the Petitioner that if it be held that this letter was not an ''election petition'', then there will be no merit in the writ petition.

6. It is common ground that in this demi-official letter, Respondent No. 3 had mentioned the various irregularities and illegalities that had taken place in the election held on 1st of August, 1964. It was also prayed therein that a full enquiry into the various allegations should be made and, if found true, the election be declared null and void. It is significant to mention that Respondent No. 3 does not say in this letter that it was an election petition. The Deputy Commissioner, according to the Petitioner sought the opinion of the District Attorney as to whether any action could be taken on this letter or Respondent No. 3 should be advised to pursue the ordinary remedy available to him under the law by way of an election petition. In accordance with the opinion of the District Attorney, the Deputy Commissioner ordered that no interference was called for u/s 20, Sub-clause 1, of the Act and the Petitioner''s election was then approved. The aggrieved party was left to the remedy available to him under the law. It is again note-worthy that the Deputy Commissioner had not treated this demi-official letter as an election petition. The departmental file produced by the State shows that on the receipt of this letter a factual report was called from the Sub-Divisional Officer (Civil), Nawanshehar, to enable the Government to decide whether there was prima facie any ground in terms of Rule 68 to appoint an enquiry officer to enquire into the conduct of the said election. The said Sub-Divisional Officer submitted his report in which he stated that a number of irregularities had been committed in the election and he, consequently, recommended that the election of the Petitioner should not be approved u/s 20, Sub-clause (1) of the Act. This report was sent to the Deputy Commissioner, Jullundur, who was, however, of the view that no interference u/s 20, Sub-clause (1) of the Act was called for merely on the basis of the enquiry report submitted by the Sub-Divisional Officer. He recommended

that the said election should be approved. The matter was then examined by the Government and they were of the view that the election of the Petitioner could, under no circumstances, be deemed to be fair. According to them, it was a fit case in which Rule 68 should be invoked and enquiry held into the conduct of the said election. After this decision was taken by the Government, the impugned notification (Annexure "D") was issued and under the provisions of Section 247 of the Act read with Rule 68, the Government appointed the General Assistant to the Deputy Commissioner, Jullundur, as an enquiry officer to hold an enquiry into the allegations made by Respondent No. 3 in his letter, dated 4th of August, 1964. It is again significant to mention that neither the Sub-Divisional Officer nor the Government had at any stage of the proceedings treated the demi-official letter as an election petition.

7. Section 247 of the Act says that the State Government may appoint a Commission consisting of one or more persons to hold an enquiry. Rule 68 runs thus:

The Punjab Government may, of its own motion, direct an enquiry to be held into the conduct of any election if there is reason to suspect, that a corrupt practice or material irregularity has been committed and the case shall be dealt with so far as may be in the manner prescribed in these rules.

8. The Government had issued the impugned notification u/s 247 of the Act read with Rule 68. They never treated the letter of Respondent No. 3 as an election petition. This letter was taken as a complaint bringing the various irregularities and illegalities committed in the election to their notice. They got an enquiry made into these allegations in order to find out if there was any prima facie case for taking action under Rule 68. After the receipt of the report from the Sub-Divisional Officer, they came to the conclusion that material irregularities had been committed in the said election and, therefore, a prima jade case had been made out for taking action under Rule 68. It is clear from the notification and from the decision taken by the Government that they never treated the demi-official letter as an ''election petition''.

9. There are two methods provided by law of setting aside an election--one is by filing an election petition under Rules 52 and 53 and the other by taking action under Rule 68. The first is resorted to by an aggrieved party and the other is availed of by the Government after it considers that a case has been made out under Rule 68. In the instant case, the Government had come to the conclusion, after making preliminary enquiry, that action should be taken under Rule 68. It was entirely for the Government to consider whether they would take action under Rule 68 or direct Respondent No. 3 to file an election petition under Rules 52 and 53. If after making a preliminary enquiry through the Sub-Divisional Officer (Civil), they decided to take action under Rule 68, no objection under the law can be taken to this course being adopted by them See in this connection the Supreme Court decision in Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, .

10. It was submitted by the learned Counsel for the Petitioner that Respondent No. 2 had himself mentioned in the notice, dated 27th of July, 1965, that an "election petition" had been lodged by Respondent No. 3 and the Petitioner should attend his Court on 2nd of August, 1965, in that connection. The mere fact that Respondent No. 2 has termed the letter written by Respondent No. 3 as an election petition cannot convert the same into one. As already mentioned above, the Government had never treated this letter as an election petition and had not appointed Respondent No. 2 as an enquiry officer to try the same as an "election petition". It had all along been treated as a complaint and after making a preliminary enquiry into the various allegations contained therein in order to find out if there was prima facie any case for taking action under Rule 68, Respondent No. 2 was appointed an enquiry officer under this rule. I would, therefore, hold that the said demi-official letter written by Respondent No. 3 was not an "election petition" as alleged by the Petitioner. It was then argued by the learned Counsel for the Petitioner that under Rule 68, the Government could take action suo motu and not at the instance of any party. There is no merit in this contention, because any body can bring irregularities to the notice of the Government and if they are prima facie satisfied that there is truth in them they can take action on the same of their own motion.

11. It was then submitted that the impugned notification was bad in law inasmuch as it is not stated therein-that the Government had reason to suspect that a corrupt practice or material irregularity had been committed in the said election. There is no substance in this submission also. When Rule 68 has been specifically referred to in the notification, it was not necessary to mention the other things contained in this rule. It was held by the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, --

An express recital of the formation of the opinion that the scheme was necessary in the interests of the public, by the Undertaking in the scheme is not made a condition of the validity of the scheme. The State Transport Authority can frame a scheme only if it is of opinion that it is necessary in public interest that the road transport service should be run or operated by the Road Transport Undertaking. When it proposes, for the reasons mentioned in Section 68C, a scheme providing for such a transport undertaking, it is a manifest expression of its opinion in that regard.

12. Moreover, it was an administrative action being taken by the Government and it was not necessary under the law to mention the reasons in the notification.

13. With regard to the contention of the learned Counsel for the Petitioner that as no procedure had been prescribed by the rules for conducting an enquiry under Rule 68, no enquiry could be held, it is enough to say that in Rule 68 itself, it has been clearly stated that the case shal be dealt with so far as may be in the manner prescribed in these rules. That means that the rules, for the trial of an election petition which has not been dismissed under Rule 57, i.e., Rules 58 onwards, shall be followed as far as possible in conducting the enquiry ordered under Rule 68. Besides, u/s 247 of the Act, the State

Government could appoint a Commission consisting of one or more persons to hold an enquiry. "Commission", as mentioned in Section 246 meant the person or persons appointed by the State Government to hold an enquiry in respect of an election under the Act. Thus, an enquiry officer is not appointed merely for the purpose of trying only an election petition. Such an officer could be appointed for holding an enquiry referred to in Rule 68 as well. It cannot, therefore, be said that no procedure had been prescribed by the rules or the Act for conducting an enquiry under Rule 68. Even assuming for the sake of argument that no procedure had been prescribed for making an enauiry under Rule 68 the enquiry officer could evolve his own procedure. See in this connection the decision of Bhandari, C.J., in Manohar Lal L. Nadarchand Vs. Mohan Lal Gian Chand, .

14. Coming to the objection that since the election of the Petitioner had been approved u/s 20 of the Act after an enquiry had been held by the Deputy Commissioner, no second enquiry was competent under Rule 68 if is pertinent to mention that no enquiry is contemplated u/s 20 of the Act. Secondly, the enquiry conducted by the Sub-Divisional Officer (Civil) was to enable the Government to decide whether there was prima facie any case in terms of Rule 68 to appoint an enquiry officer to enquire into the conduct of the said election. Learned Counsel for the Petitioner was unable to point out any provision of law under which the preliminary enquiry barred the regular enquiry contemplated by Rule 68. Thirdly, if the Petitioner"s election was void under Rule 69, the mere fact that the election had been approved u/s 20 would not make it valid. Moreover, an election which has been approved by the Government is always liable to be set aside either by means of an election petition or by taking action under Rule 68.

15. It may be mentioned that it is not the case of the Petitioner that Rule 68 was ultra vires the provisions of the Act. Besides no mala fides were alleged against the Government when it took action under Rule 68.

16. In view of what I have said above, this petition fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.