

(1964) 09 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Miscellaneous No. 695 of 1964

Sarup Singh

APPELLANT

Vs

K.C. Grover and Another

RESPONDENT

Date of Decision: Sept. 8, 1964

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Gram Panchayat Act, 1952 - Section 13, 13(1), 13(O), 13(O)(1)
- Representation of the People Act, 1951 - Section 100(1), 101, 97, 97(1)

Citation: (1965) 1 ILR (P&H) 181

Hon'ble Judges: Gurdev Singh, J

Bench: Single Bench

Advocate: P.S. Daulta, for the Appellant; Ram Sarup and Surinder Sarup, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Gurdev Singh, J.

This petition under Article 227 of the Constitution is directed against the order of Shri K.C. Grover, Magistrate, First Class, Rohtak, dated 25th February, 1964, passed in the course of proceedings for setting aside the election of the Respondent Balwant Singh on a petition presented by Sarup Singh u/s 13(c) of the Punjab Gram Panchayat Act, 1952, as amended by Punjab Act 26 of 1962.

2. Election to the office of the Sarpanch, Gram Sabha, of village Naya Bans, tahsil and district Rohtak, was held on 27th December, 1963. The only two contestants were Sarup Singh Petitioner and Balwant Singh Respondent, and the latter was declared successful as the Returning Officer found that he had secured 420 votes as against 374 that were obtained by the Petitioner. Thereupon on 21st January, 1964, Sarup Singh made a petition (copy annexure A) for setting aside Balwant Singh's election inter alia on the plea that the result of the election in so far as it concerned

the successful candidate had been materially affected by improper reception of votes in his favour of dead and missing persons as well as of the minors, persons who were not present including those who were actually in service in the army, and of blind, semi-blind and infirm persons. In contesting the petition, Balwant Singh Respondent not only denied these allegations but also made the counter-allegation that the Petitioner had himself dishonestly and illegally obtained "void votes of persons who were dead, absent or nonexistent on the date of the election", and the result of the election so far as the Respondent was concerned had not been materially affected by any void votes alleged to have been cast in his favour. The Petitioner thereupon put in a replication objecting inter alia that the votes cast in the Petitioner's favour were not open to scrutiny and the Respondent could not be permitted to assail the validity of such votes on the plea that they were cast by persons who were either dead or absent or minors, etc. Before proceeding with the trial of the petition, the Prescribed Authority, Shri K.C. Grover (Respondent No. 1), considered this legal objection as a preliminary issue, but rejected the same on consideration of the relevant provision contained in Section 13(O) of the Punjab Gram Panchayat Act by his order dated 25th February, 1964. It is against this order that the Petitioner Ram Sarup, has come to this Court, under Article 227 of the Constitution with the Prayer that the order be quashed and the Prescribed Authority be directed not to allow Respondent No. 2 to plead that some of the votes cast in the Petitioner's favour were void being those of dead ones or minors, etc., and no evidence in this connection be permitted to be adduced.

3. The grounds on which the election of a Panchayat or a Sarpanch of a Gram Panchayat can be set aside are contained in Section 13(O) of the Punjab Gram Panchayat Act, 1952, as recently amended by Punjab Act 26 of 1962.

13-O. Grounds for setting aside elections.

(1) If the prescribed authority is of the opinion--

(a) that on the date of his election the elected person was not qualified, or was disqualified, to be elected under this Act; or

(b) that any corrupt practice has been committed by the elected person or his agent or by any other person with the consent of the elected person or his agent; or

(c) that any nomination has been improperly

rejected; or

(d) that the result of the election in so far as it concerns the elected person, has been materially affected--

(i) by the improper acceptance of any nomination; or

(ii) by the improper reception, refusal, or rejection of any vote or the reception of any vote which is void; or

(iii) by any non-compliance with the provisions of this Act or of any rules made under this Act;

the prescribed authority shall set aside the election of the elected person.

(2) When an election has been set aside under Sub-section (1), a fresh election shall be held.

4. It is Clause (d)(ii) of Sub-section (1) which alone is relevant for purposes of these proceedings, and the sole question for consideration is whether in dealing with the petition for setting aside the election based on the allegation that because of improper rejection of any vote or reception of any vote which is void the result of election in so far as it concerns the elected person has been materially affected, the prescribed authority is competent to scrutinize the votes of the Petitioner who is also an unsuccessful candidate or has to confine the enquiry to the validity of the votes obtained by the successful person.

5. On a perusal of Clause (d) of Sub-section (1) of Section 13(O) it will be evident that where the election of a successful person is challenged under Sub-clause (ii) of that Clause, the Petitioner is required to prove not only that there has been improper reception, refusal or rejection of any votes or reception of any vote which is void but also that because of such votes the result of the election so far as it concerns the elected person has been materially affected. It is obvious that after excluding such votes if the successful candidate has still a majority of the total votes polled, his election would not be affected. It has, however, been contended on behalf of the Respondent that the scrutiny of the votes of the unsuccessful candidate (or candidates if they are more than one) would be necessary as they may have also procured similar votes of dead and missing persons, which could not be validly taken into account, and it is only after excluding such votes that the Prescribed Authority would be in a position to determine whether the election of the successful candidate has been materially affected. It is further argued that it will be unfair to allow the unsuccessful candidate to take advantage of illegal or void votes and to unseat a successful person for procuring similar votes. Reliance in this connection is placed upon a recent decision of the Allahabad High Court in Satya Ketu Vs. The Election Tribunal and Others, In that case the learned Judges, who were dealing with an election petition filed under the Representation of People Act. 1951. in which one of the grounds of attack was similar to that which is now before us, held that an application by an elected candidate, who was a Respondent in an election petition, for inspection of all ballot papers for the purpose of knowing the number of invalid votes cast in favour of the Petitioner could not be rejected on the ground that he had not filed a recriminatory notice u/s 97 of the Representation of People Act 1951, where the purpose of his application was merely to show that the result of the election would not be affected even if the invalid votes cast in his favour were rejected. as invalid votes were also counted in favour of the election Petitioner and when they are also rejected he would still remain the successful candidate. These

observations were based upon an earlier decision of that Court reported as Lakshmi Shanker v. Kunwar Sripal Singh 22 E.L.R. 47 . These decisions have, however, been expressly overruled by the Supreme Court in the recent case of Jabar Singh Vs. Genda Lal, On consideration of Section 100(l)(d)(iii) of the Representation of the People Act, which is exactly the same as Clause (d)(ii) of Sub-section (1) of Section 13(O) of the Punjab Gram Panchayat Act, their Lordships held that without a recriminatory petition u/s 97 of the Representation of the People Act, 1951, the votes of the unsuccessful candidate could not be scrutinized. Though the view taken by the Prescribed Authority receives support from the dissenting judgment of Ayyangar J., the majority judgment is against it. Gajendragadkar J. (as he then was) delivering the majority judgment laid down the correct legal position in these words:

In other words, the scope of the enquiry in a case. falling u/s 100(l)(d)(iii) is to determine whether any votes have been improperly cast in favour of the returned candidate, or any votes have been improperly refused or rejected in regard to any other candidate. These are the only two matters which would be relevant in deciding whether the election of the returned candidate has been materially affected or not. At this enquiry, the onus is on the Petitioner to show that by reason of the infirmities specified in Section 100(l)(d)(iii) the result of the returned candidate's election has been materially affected, and that, incidentally, helps to determine the scope of the enquiry. Therefore, it seems to us that in the case of a petition where the only claim made is that the election of the returned candidate is void, the scope of the enquiry is clearly limited by the requirement of Section 100(l)(d) itself. The enquiry Is limited not because the returned candidate has not recriminated u/s 97(1). In fact Section 97(1) has no application to the case falling u/s 100(l)(d)(iii). the scope of the enquiry is limited for the simple reason that what the clause requires to be considered is whether the election of the returned candidate has been materially affected and nothing else, if the result of the enquiry is in favour of. the Petitioner who challenges the election of the returned candidate the Tribunal has to make a declaration to that effect, and that declaration brings to an end the proceedings in the election petition.

6. It may be observed here that unlike the provisions contained in sections 97(1) and 101 of the Representation of the People Act, 1951, there is no provision in the Punjab Gram Panchayat Act either for a recriminatory petition or for enabling the defeated candidate to claim a declaration that he himself or any other candidate has been duly elected if the election of a returned candidate is set aside and on scrutiny of votes it is found that the Petitioner or some other defeated candidate had received a majority of valid votes. Though the Punjab legislature incorporated verbatim, except for Sub-clause (ii), the provisions of Section 100(l)(d) in the Punjab Gram Panchayat Act by the amending Act 26 of 1962, yet it did not make any provision for recriminatory petition nor did it empower the Prescribed Authority hearing the election petition to declare a defeated candidate as duly elected on acceptance of the election petition. It is obvious that the legislature merely intended that only the allegation regarding securing or acceptance of invalid votes relating to

the returned candidate should be gone into by the Prescribed Authority, and the votes on the basis of which a candidate has been declared alone should be scrutinized. The observations of their Lordships of the Supreme Court quoted above thus apply with greater force to the instant case. I am, accordingly, of the opinion that the learned Prescribed Authority acted beyond the scope of its power in permitting the Respondent to challenge the validity of the votes cast in the Petitioner's favour and in holding that while dealing with the petition for setting aside the Respondent's election u/s 13(c), he was competent to go into the question whether the Petitioner had secured any votes of persons who were dead or minors or absent from the village on the day of polling etc. Accordingly, his order, dated 25th February, 1964, cannot be sustained. The Respondent's Learned Counsel, Shri Ram Sarup, has, however, urged that despite this finding this Court should decline to interfere under Article 227 of the Constitution at this stage as the election petition has still to be heard and decided by the Prescribed Authority, and even if it ultimately fails, it will be open to the Petitioner to approach this Court either under Article 226 or 227 of the Constitution for redress. In this connection, he has relied upon Haripada Dutta Vs. Ananta Mandal, and Munsha Singh v. Gram Panchayat Subhanpur and Anr. (1963) 65 P.L.R. 76. The observations made in these cases do not apply to the facts of the case before us. In Munsha Singh's case (1963) 65 P.L.R. 76, Dua J., while holding that the power vesting in the High Court under Article 227 of the Constitution is extraordinary and intended to be used only in exceptional cases and not as a substitute for original or revisional or appellate powers, nonetheless recognized that it invests this Court with wide powers as custodian of all justice within its territorial limits so as to ensure that even-handed justice is meted out equitably, fairly and properly. In the Calcutta case Haripada Dutta Vs. Ananta Mandal, a Division Bench of that Court while holding that for ordinary cases the normal remedies available under the municipal laws should be left untouched by the constitutional powers under Article 227, however, emphasized that where grave injustice is likely to occur by reason of some mistake committed by inferior judicial or quasi-judicial bodies and the municipal law provides no adequate remedy, the High Courts are entitled and indeed bound to interfere under Article 227 to correct the mistake and grant an appropriate relief.

7. It is true that in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, their Lordships of the Supreme Court held that the High Court cannot in exercise of its power assume appellate powers to correct every mistake of law, yet they recognized the fact that the powers vesting in the High Court under Article 227 of the Constitution were wide and could be exercised where there was assumption of excessive jurisdiction or refusal to exercise jurisdiction or any irregularities or illegality in the procedure or any breach of the rules of natural justice. In the case before us the Prescribed Authority has clearly exceeded its authority in permitting a challenge to the validity of the votes secured by the Petitioner which the law does not entitle the Respondent to do. Thus, the impugned

order is clearly in excess of its jurisdiction and there is no reason why this Court should not step in to keep the Prescribed Authority within the bounds of law especially when the wrong decision of the Prescribed Authority is likely to lead to failure of justice. The fact that no right of appeal is provided against the final decision of the Prescribed Authority dealing with the election petition and the only remedy available to the aggrieved party would be either under Article 226 or 227 of the Constitution further renders it desirable that the mischief which is likely to follow the wrong assumption of jurisdiction be nipped in the bud at the initial stages of the proceedings so that the proceedings before the Prescribed Authority should proceed in the right channel. I thus find that it is a fit case for interference under Article 227 of the Constitution, and accepting the petition, the impugned order, dated 25th February, 1964, made by Respondent No. 1 is quashed. The records be remitted to the Prescribed Authority for proceeding with the case in accordance with law and in the light of the above observations.