

(2003) 11 P&H CK 0097

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11620 of 2003

Kashmir Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Nov. 25, 2003

Citation: (2003) 2 PLJ 489 : (2004) 1 RCR(Civil) 580

Hon'ble Judges: G.S.Singhvi, J and Nirmal Singh, J

Advocate: Shri Gurminder Singh, Advocate. For the Respondent Nos. 1 to 3, Shri C.M. Munjal, Additional General, Punjab, Shri T.P.S. Tung, Advocate., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.

Whether the Returning Officer appointed for the election of Sarpanch and Panches of Gram Panchayat, Khode Bet, Block and Tehsil, Dera Baba Nanak, District Gurdaspur (respondent No. 3) could change the entries recorded in FormIX (Annexure P.2) showing the petitioner to have secured the higher valid votes and declare respondent No. 4 elected as Sarpanch of the Gram Panchayat is the question which arises for determination in this petition filed under Article 226 of the Constitution of India.

2. After having worked as Sarpanch of Gram Panchayat, Khode Bet from 1998 to 2003, the petitioner filed nomination form for election to be held in the month of June, 2003. Respondent No. 4 was the only other candidate who remained in the fray on the date of election, i.e., 29.6.2003. At the end of counting, the petitioner was shown to have secured 358 valid votes as against 243 valid votes polled in favour of respondent No. 4. Accordingly respondent No. 3 declared the petitioner as elected for the post of Sarpanch and five other candidates as Panchas. Thereafter, he made entries in FormIX as required by Rule 33 of the Punjab Panchayat Election Rules, 1994 (for short, 'the Rules'). A copy of FormIX duly signed by him was handed over to the petitioner. It, however, appears that after the declaration of result and preparation of Form IX, respondent No. 3 revised the entries contained in that form

and declared respondent No. 4 elected for the post of Sarpanch and on that basis, she was administered oath of office on 27.7.2003.

3. The petitioner had challenged the action of respondent No. 3 in declaring respondent No. 4 elected as Sarpanch on the ground of violation of the provisions contained in Punjab Panchayat Raj Act, 1994 and the Rules and mala fides. She has averred that respondent No. 3 revised the result of election under the influence of respondent No. 5, who belongs to ruling party and is Member of Legislative Assembly.

4. In the written statement filed by Deputy Commissioner cum District Electoral Officer, Gurdaspur, it has been averred that on receipt of a copy of the writ petition, the matter was got enquired into through Sub Divisional Magistrate, Dera Baba Nanak and appropriate action will be taken in accordance with law on the report submitted by him. A copy of the report prepared by Sub Divisional Magistrate, Dera Baba Nanak has also been annexed with the written statement.

5. We have heard counsel for the parties and perused the period. The question whether the Returning Officer can change the entries recorded in Form IX was considered and answered in the negative by the Supreme Court in Civil Appeal No. 4926 of 2000 Malkit Kaur v. Jatinder Kaur and others, decided on 20.11.2001. In that case, respondent No. 1 had been declared elected by securing 691 votes as against 489 votes secured by the appellant. Thereafter, the appellant approached Deputy Commissioner, Moga complaining that respondent No. 1 had been declared elected by mistake because in fact, she had secured 691 votes and she ought to have been declared elected. The Additional Deputy Commissioner called for the Returning Officer who corrected the entries contained in Form IX and declared the appellant as duly elected Sarpanch of the Gram Panchayat. The writ petition filed by respondent No. 1 was dismissed by the High Court. Their Lordships of the Supreme Court dismissed the appeal and rejected the plea of the appellant that she was entitled to be declared elected as Sarpanch. The relevant portion of the order passed by the Supreme Court reads as under :

"Learned counsel appearing for the appellant urged that earlier there being mistake and error in form IX prepared by the Returning Officer, the authority was justified in law to correct the form IX subsequently and the High Court committed error in setting aside the subsequent order of the Returning Officer. We do not find any substance in the argument. Under the Act and the Rules thereunder once a candidate has been declared elected in form IX, the Returning Officer ceased to have any power to alter the said declaration subsequently. The declaration as contained in form IX could only be challenged by means of an election petition before an appropriate Tribunal. In that view of the matter, we do not find any merit in this appeal. The appeal fails and is accordingly dismissed."

6. Learned counsel for the respondents fairly conceded that in view of the order passed by the Supreme Court in Malkit Kaur's case (supra), they cannot defend the action taken by respondent No. 3 to revise the entries recorded in FormIX.

7. In view of the above, the writ petition is allowed. It is held that the petitioner was duly declared elected as Sarpanch of Gram Panchayat, Khode Bet and respondent No. 3 did not have the jurisdiction to correct the socalled mistake in FormIX. Consequently, the action of the concerned authority to administer oath of office to respondent No. 4 is declared illegal and respondent No. 2 is directed to ensure that the petitioner is administered oath of office of the post of Sarpanch within a period of 15 days from the date of presentation of copy of this order.

8. However, liberty is given to respondent No. 4 to challenge the election of the petitioner by filing election petition under Section 74 of the Punjab State Election Commission Act, 1994 and it is hoped that the petition filed by her will be disposed of by the Election Tribunal as early as possible but latest within 3 months after the service of notice.