
(2010) 09 P&H CK 0361

High Court Of Punjab And Haryana At Chandigarh

Case No: L.P.A. No. 866 of 2010 (O and M)

Mehta Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Sept. 27, 2010

Hon'ble Judges: Mukul Mudgal, C.J; Ajay Tewari, J

Bench: Division Bench

Advocate: S.D. Bansal, for the Appellant; Anil Rathee, Addl. A.G. Haryana for the Respondent No. 1 to 4, Mr. R.N. Lohan, Advocate for the Respondent No. 6 and Mr. I.P. Goyat, Advocate for the Respondent No. 7, for the Respondent

Final Decision: Dismissed

Judgement

Mukul Mudgal, C.J.

This appeal challenges the judgment of the learned Single Judge dated 21.7.2010. Facts of the case are that on 6.6.2010, election to the posts of Panches of Ward No. 2, Village Jalalpur, District Jind was held. It is not in dispute that the appellant Mehta Singh and respondent No. 7 Bala Devi both secured 94 votes. It is also not in dispute that the Returning Officer issued certificates to both, the appellant and respondent No. 7 on 6.6.2010, though according to the appellant the certificate in favour of respondent No. 7 was issued belatedly on 10.6.2010 and back dated. The main plea of the appellant was that election results once having been declared, writ jurisdiction was not the appropriate remedy and once Form Nos. 14 and 18 were issued, the only course of action was by way of election petition. For this purpose, reliance has been placed on a Division Bench judgment of this Court reported as [Jasmail Kaur Vs. Punjab State Election Commission and Others](#),

2. As regards the judgment in Jasmail Kaur's case (supra), the learned Single Judge rightly distinguished the judgment since there was no dispute with regard to the actual conduct of toss/draw of lots and the only dispute was with regard to recourse to that procedure and it was in that context that the Division Bench had held in Jasmail Kaur's case (supra) that toss is not an appropriate remedy to resolve such a

dispute. The learned Single Judge has also recorded that respondent No. 6 i.e. the Duty Magistrate had not only not conducted election properly, rather the whole election process had been subverted, and respondent No. 5 i.e. the Returning Officer has, in fact, been convicted under the Contempt of Courts Act, as he tried to mislead the writ Court.

3. Learned counsel for the appellant has submitted that toss of coin with the consent of parties was resorted to and since the appellant succeeded in that process and follow up action of issuing the certificate including Form Nos. 14 and 18 was carried out in his favour, the writ jurisdiction could not be resorted to and the only remedy was to file an election petition.

4. Learned counsel for the respondents has, on the other hand, relied upon a judgment of the same Division Bench of this Court reported as [Baljit Singh and Others Vs. The State of Punjab and Others](#), wherein it was held as follows:-

10. After hearing counsel for the parties on this point, in the above facts and circumstances of the case, we are not inclined to accept the contention of learned counsel for respondent No. 6. It is true that when the remedy of election petition is available, this Court should refrain the Constitution of India, questioning the election of the returned candidate, but in the facts and circumstances of this case, this Court cannot be a silent spectator, particularly when a fraud has been played by a Presiding Officer to the election process and electors of village....

In our view, the facts of the present case as recorded by the learned Single Judge, would fall within the ambit of law laid down in Baliit Singh's case (supra). Further-more, we notice that the finding of the learned Single Judge that mal-practices had been resorted to by the Returning Officer (respondent No. 5) is demonstrated unequivocally by the certificates which he issued to both respondent No. 7 as well as the appellant. Even if it is assumed that the certificate in favour of respondent No. 7 was issued belatedly, as averred by the appellant though denied by respondent No. 7, nevertheless, the Returning Officer who takes such a stand which obviously demonstrates falsehood, cannot be relied upon. In any event, the learned Single Judge did not declare respondent No. 7 to be elected but merely directed that action be taken under Rule 71 of the Haryana Panchayati Raj Election Rules, 1994. Since there is no interim order staying the operation of the judgment of the learned Single Judge, we are informed that the election process has been carried out and respondent No. 7 has been duly elected as per Rule 71 of the aforesaid Rules. Accordingly, we are satisfied that this appeal has no merit and is dismissed as such with no order as to costs.