

(2010) 06 P&H CK 0055

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 4109 of 2009 (O and M) .

Gurnam Singh

APPELLANT

Vs

Kamaljit Kaur and
Another

RESPONDENT

Date of Decision: June 28, 2010

Acts Referred:

- Punjab Panchayat Election Rules, 1994 - Rule 50
- Punjab State Election Commission Act, 1994 - Section 76, 77, 80, 86, 87

Citation: (2010) 159 PLR 662

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

This appeal is directed against order of Deputy Commissioner-cum-Election Tribunal, Patiala dated 3.6.2009 by which election petition filed by Kamaljit Kaur (respondent No. 1) challenging the election of Gurnam Singh (appellant) to the post of Panch of Gram Panchayat Village Hajipur, Block Bhunerheri, Tehsil and District Patiala has been allowed and respondent No. 1 has been declared to be elected in place of the appellant as a member of the Panchayat from General Category.

2. The material facts of the case are that General elections to constitute Gram Panchayat in the State of Punjab were held on 26.5.2008 including village Hajipur, Block Bhunerheri, Tehsil and District Patiala which comprises of a Panchayat of five panches in which 3 seats were meant for General category and 2 seats for General category (women). Total 18 candidates filed their nomination papers for five seats out of which after scrutiny, 10 nomination papers were found to be valid. Five candidates contested in the General category and five filed their nomination papers for 2 seats of General Category (women). Out of the aforesaid 10 candidates, those

who had contested for three seats in General Category, are as under:

1. Surinder Singh s/o Ajit Singh
2. Gurnam Singh s/o Gian Singh (respondent No. 1)
3. Gurnam Singh s/o Balbir Singh
4. Chanan Singh s/o Suba Singh
5. Lakhminder Singh s/o Harbans Singh

3. Similarly, the following five nomination papers were filed for two reserved seats in General category (Women).

1. Sukhwinder Kaur w/o Mehal Singh
2. Sarbjit Kaur w/o Gurnam Singh
3. Kashmir Kaur w/o Rajinder Singh
4. Kulwant Kaur w/o Lakhminder Singh
5. Kamaljit Kaur w/o Surender Singh

4. In the general category, Gurnam Singh s/o Balbir Singh, Surinder Singh s/o Ajit Singh and Gurnam Singh s/o Gian Singh (respondent No. 1) were declared elected as they were found to have secured 101, 85 and 48 votes respectively. In the general (women) category, Kashmir Kaur and Kulwant Kaur were declared to have been elected as they were found to have secured 84 and 79 votes respectively whereas election petitioner (respondent No. 1) Kamaljit Kaur w/o Surjit Singh, who had secured 60 votes was the loser.

5. Respondent No. 1 who had lost the election, filed CWP No. 10759 of 2008 in which she had alleged that though she had applied under General category but her name has been illegally considered under General category (women) and on that basis she has not been elected whereas the present appellant, who had secured 48 votes has been illegally returned from the General category. The said writ petition was disposed of by this Court vide its order dated 12.6.2008, which reads as under:

It is stated that the petitioner has secured 60 votes in the election of the Panches held on 26.5.2008 for the Gram Panchayat Hajipur, Tehsil and District Patiala. She applied under General Category but her name has been considered under General Category (Women) and on that basis, she has not been elected whereas respondent No. 6, who has secured only 48 votes, has been declared elected under General Category. It is stated that the petitioner never applied under the quota reserved for General Category (Women). The petitioner has already made a representation (Annexure P-2) to respondent No. 4. She will also make representation before respondent No. 2.

6. This petition is accordingly disposed of with a direction to respondent No. 2 that in cases such a representation is made. The same shall be considered and disposed of in accordance with law within four weeks from the date a copy of this order is made available to the Competent Authority." Respondent No. 1 then filed an election petition u/s 76 of the Punjab State Election Commission Act, 1994 (for short "the Act") read with Rule 50 of the Punjab Panchayat Election Rules, 1994 (for short "the Rules") by impleading the appellant and Presiding Officer of the Election only as the parties, alleging therein that pursuant to the order of the High Court passed in CWP No. 10759 of 2008 the election petitioner had approached the State Election Commission where the matter is pending but to avoid the expiry of limitation, the election petition has been filed and that the election of respondent No. 1 has been materially effected as she has been illegally considered in the category of General (Women) which was never intended by her in her nomination paper. The election petition was contested by the appellant as well as the Presiding Officer by filing their respective replies. The election petitioner (respondent No. 1) did not choose to file replication. Thereafter, the case was adjourned for one reason or the other and ultimately, after examining the record, Election Tribunal without framing the issues, decided the election petition holding that candidature of respondent No. 1 has been wrongly considered in the category of General (women) which should have been considered in the General category instead. It is observed that if election petitioner/respondent No. 1 is considered in the General category, she deserves to be elected in place of the appellant as she had secured 60 votes whereas the appellant had polled 48 votes.

7. Aggrieved against the order of the Tribunal, the present appeal has been preferred by the appellant in which besides taking the plea that the Tribunal has erred in not following the procedure as prescribed in the Code of Civil Procedure, 1908 (for short "CPC") as after completion of the pleadings, no issues were framed as a result of which, no opportunity for leading evidence was provided to the appellant but also on the ground that the election petition itself was not maintainable as it is in violation of the mandatory provisions of Sections 77 and 80 of the Act. It is submitted that admittedly, the election petitioner/respondent No. 1 has impleaded only the appellant and the Presiding Officer as parties while seeking election of appellant/returned candidate as void and also for declaring herself to be elected in her place. It is submitted that as per Section 77 of the Act where the election petition in addition to claiming declaration that the election of all or any of the returned candidates is void, seeks a further declaration that the election petitioner or any other candidate should be duly elected, then all the contesting candidates and where no such declaration is claimed then all the returned candidates should have been impleaded as parties. It is further submitted that in case there is a violation of provisions of Section 77 of the Act, the Election Tribunal has no other option but to dismiss the election petition in terms of Section 80 of the Act and such an order shall be deemed to have been passed u/s 87(a) of the Act.

8. As against this, learned Counsel for respondent No. 1 has submitted that firstly, the meritorious matter may not be sacrificed on technicalities and secondly, it is submitted that if rigours of Section 77 of the Act, are coming in the way of respondent No. 1 then he is ready to forego the relief granted by the Tribunal declaring her to be elected in place of the appellant as she had at least impleaded the returned candidate, namely, the appellant as respondent in the election petition, therefore, that part of the impugned order was requested to be maintained.

9. I have heard both the learned Counsel for the parties and perused the record with their assistance but before adverting to the facts of the case, it would be relevant to refer to Sections 77, 80 and 87 of the Act.

Section 77:

Parties to the petition:

A petitioner shall join as respondent to his petition.- (a) where he, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegation of any corrupt practice is made in the petition.

Section 80 - Trial of election petitions - (1) The Election Tribunal shall dismiss an election petition which does not comply with the provisions of Section 76 or Section 77 or Section 103.

Explanation - An order of the Election Tribunal dismissing an election petition under this sub-section, shall be deemed to be an order made under Clause (a) of Section 87.

(2) Where more than one election petitions are presented to the Election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal may, in his discretion, try them separately or in one or more groups.

(3) Any candidate not already a respondent shall, upon application made by him to the Election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent.

Explanation - For the purposes of this sub section and of Section 86, the trial of a petition shall be deemed to commence on the date fixed the respondents to appear before the Election Tribunal and to answer the claim or claims, as the case may be, made in the petition.

(4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow to particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from day to day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the Election Tribunal for trial.

Section 87:

Decision of the Election Tribunal - At the conclusion of the trial of an election petition, the Election Tribunal may make an order for:

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner and any other candidate to have been duly elected."

10. In the Gramr Panchayat comprising of five Panches, three seats were meant for General category and 2 seats for General (women). Initially total 18 nomination papers were received but after scrutiny, 10 were found to be valid out of which five candidates were found to be contesting in the General category and five in the category of General (women). It is also an admitted fact that the election petitioner/respondent No. 1 has challenged the election of the appellant by impleading the appellant and Presiding Officer of the Election only as parties. It is now well settled that provisions of the Act are to be strictly construed specially when it is provided in Section 80 of the Act that in case of non compliance of provisions of Sections 76, 77 and 103 of the Act, the Election Tribunal shall dismiss the election petition. It was the duty of the Election Tribunal to opine on the due compliance of Sections 76, 77 and 103 of the Act before adverting to the merits of the" case because if the election petition, for the non compliance of the aforesaid three Sections, is not maintainable, Election Tribunal had no jurisdiction to proceed with the election petition to decide the same on merits as the effect of the order passed u/s 80 is deemed to have been passed u/s 87(a) of the Act which provides that the election petition has to be dismissed. Thus the impleadment of returned candidates or contesting candidates is necessary. In the first situation, when the election petitioner is claiming declaration of election of the returned candidate to be void, he

is required to implead all the returned candidates and in the second situation, where he is also claiming himself or any other candidate to be declared elected in place of returned candidate, all the contesting candidates are also required to be impleaded. In the present case, however, despite claiming both the reliefs, neither all the contesting candidates nor all the returned candidates have been impleaded as parties, therefore, the election petition had been filed in total defiance of the mandatory provisions of Section 77 of the Act to which Section 80 of the Act applies with full force resulting into dismissal of the election petition.

11. Although learned Counsel for the appellant has also argued that learned Tribunal has erred in not framing appropriate issues after the completion of the pleadings as a result of which the appellant has been deprived of his right to lead evidence in support of his case but that aspect is not required to be dealt with in the present case in view of the fact that the election petition by itself was not maintainable for non compliance of Section 77 of the Act.

12. In view of the aforesaid discussions, the present appeal is allowed and impugned order is set aside with costs.