

(2009) 11 P&amp;H CK 0197

**High Court Of Punjab And Haryana At Chandigarh****Case No:** FAO No. 4766 of 2009

Joginder Singh

APPELLANT

Vs

Baldeep Singh and Others

RESPONDENT

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**Date of Decision:** Nov. 12, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 243(f)
- Criminal Procedure Code, 1973 (CrPC) - Section 110
- Punjab Panchayati Raj Act, 1994 - Section 208
- Punjab State Election Commission Act, 1994 - Section 11, 19, 76, 89
- Representation of the People Act, 1950 - Section 17

**Citation:** (2010) 1 RCR(Civil) 78**Hon'ble Judges:** Nirmaljit Kaur, J**Bench:** Single Bench**Advocate:** Archana Sharma, for the Appellant; Deepak Arora, for the Respondent No.1, for the Respondent

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**Judgement**

Nirmaljit Kaur, J.

This is an appeal against the order dated 31.08.2009 passed by the Election Tribunal (Deputy Commissioner) Barnala, vide which the election of the appellant as Panch-Sarpanch of Village Mehal Khurd has been cancelled.

2. The brief facts of the case are that election constituting of Gram Panchayat of Village Mehal Khurd comprising of 11 Panches, was held on 26.05.2008. Appellant, respondent and Performa respondents contested the election and were the candidates for the seat of Panches. They were declared and elected as Panches of aforesaid Gram Panchayat without any objection from any side in any manner at any time before any authority. Later on, the appellant and respondent No.2 Baldeep Singh contested the election for Sarpanch and ultimately appellant was declared elected Sarpanch having majority of Panches with him. Further, respondent No.1

without filing an election petition before the learned Election Tribunal, filed Civil Writ Petition No. 11319 of 2008 before the High Court. The same was disposed of with direction to represent to the Deputy Commissioner Barnala for decision. Ultimately, the Deputy Commissioner, Barnala dismissed the application vide order dated 10.04.2008, with-direction to respondent No.1 to file election petition before Election Tribunal and the case was dismissed but respondent No.2 instead of filing election petition, again filed CWP No. 17139 of 2008 before Hon"ble Court and ultimately the said writ petition was dismissed as withdrawn on 26.09.2008 with liberty to file election petition in accordance with law. Subsequently, respondent No.1 filed a time barred election petition before the election Tribunal Barnala. The same was allowed and the election of the appellant was set aside vide impugned order dated 31.08.1998 only on the ground that "the appellant is not competent to contest the election for Panch because he is not the resident of village Mehal Khurd as his name appears in the Election list of Village Haibowal Ludhiana."

3. While challenging the aforesaid impugned order, the learned counsel for the appellant raised the following argument:-

i) The Election Tribunal has wrongly held that election petition is within limitation, whereas, the prescribed period u/s 76 of the Punjab State Election Commission Act, 1994 (in short the 1994 Act) is 45 days from the date of election. In the case in hand, the election of the said Gram Panchayat was held on 26.05.2008 and the result was declared on that very day. Subsequently, the appellant and respondent No.2-Baldeep Singh, contested for the post of Sarpanch, wherein the appellant scored 5 votes and respondent No.2 scored 4 votes of Panches. As such, the appellant was declared as Sarpanch on 17.07.2008. Thus, election petition could be filed only within the period of 45 days from the date of election of Panches. But in the present case, the election petition was filed on 11.11.2008 and thus, the same is barred by limitation and is not maintainable. This issue was specifically raised and pressed before the Election Tribunal but Election Tribunal disregarded the said legal objection regarding limitation as well as mandatory provision of Section 76 of the 1994 Act.

ii) The Election Tribunal has wrongly come to the conclusion that the appellant is disqualified to contest election because his name appears in the electoral list of Village Haibowal, Ludhiana. The observation of the learned Tribunal is totality wrong, unlawful, illegal, perverse because having votes at two different places are not at all a disqualification for the purpose of election of member Panchayat in view of Section 11 of the 1994 Act and u/s 208 of Punjab Panchayati Raj Act, 1994 as well as under Article 243(f) of the Constitution of India.

4. Learned counsel for the respondents, on the other hand, submitted that the election petition of the respondents was within limitation as the High Court vide order dated 26.09.2008 passed in Civil Writ Petition No. 17139 of 2008 had granted liberty to avail of the remedy of filing of the election petition in accordance with law.

It was further submitted that it was proved on record that on 26.05.2008, the date when the election of the Gram Panchayat Mehal Khurd was conducted, the name of appellant-Joginder Singh was not deleted from the electoral roll of Village Haibowal Khurd, District Ludhiana. Thus, the appellant had violated the provision of Section 17 and Section 100 (iv) of the Representation of the People Act, 1950 (in short the 1950 Act)

5. Learned counsel for the parties have been heard. Taking up the first arguments of the learned counsel for the appellant that the election petition of the respondents was time barred, it is necessary to peruse Section 76 of the 1994 Act, which reads as under:-

76. Presentation of Petition - (1) an election petition may be presented on one or more of the grounds specified in sub section (1) of Section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

6. It is amply clear from the reading of the above section that there is no provision for condonation of delay. It is evident that the election was held on 26.05.2008. The respondents filed Civil Writ Petition No.11319 of 2008 in this High Court, which was disposed of with a direction to the Deputy Commissioner, Barnala, for decision, but the Deputy Commissioner vide order dated 10.07.2008 directed to the respondents to file election petition. Thereafter, instead of filing the election petition, the respondents approached the High Court once again through Civil writ Petition No.17139 of 2008. The High Court vide order dated 26.09.2008 dismissed the same with the following direction:-

After arguing for some time counsel for the petitioners states that the petitioners may be permitted to withdraw this writ petition with liberty to avail the remedy of election petition, in accordance with law.

Dismissed as withdrawn with the aforesaid liberty.

7. Thus, from the above, it is apparent that while granting liberty to avail the remedy of election petition, no direction qua condonation of delay was passed. The mere fact that the High Court had dismissed the writ petition as withdrawn with direction to avail the remedy of election petition in accordance with law, in itself, does not amount to a direction for condonation of delay. Thus, to have condoned the delay on the ground that a liberty had been granted to the respondents to file election petition, cannot be sustained. It is admitted that neither any application for

condonation of delay was filed nor has any provision for condonation of delay has been pointed out by the learned counsel for the respondents. The provision of Section 76 of the 1994 Act, reproduced above, shows that the election petition should have been filed within a period of forty five days from the date of election of the returned candidate. In the present case, the election of Gram Panchayat Mehal Khurd was held on 26.05.2008 and the forty five days were expired on 09.07.2008. The election petition was filed on 11.11.2008, which is clearly time barred and the same should not have been entertained.

8. Taking up the second argument of the learned counsel for the appellant challenging the finding of the Election Tribunal that despite the name of the appellant-Joginder Singh, being registered in the voter list of Village Haibowal, he participated in the election proceeding of Village Mehal Khurd, is illegal, learned counsel for the appellant submitted that no doubt the appellant's name appeared in the voter list of Village Haibowal, District Ludhiana as well as Village Mehal Khurd, District Barnala, he had nevertheless made an application for deleting his name from the voter list of Village Haibowal Khurd. Further, it was stated that the appellant being a registered voter at two different places is not at all a disqualification for the election of Member of Gram Panchayat in view of Section 11 of the 1994 Act and Section 208 of the Punjab Panchayati Raj Act, which read as under:-

Section 11 of Punjab State Election Commission Act, 1994

Section 11 - Disqualification for membership of a Panchayat or a Municipality:- A person shall be disqualified for being chosen as and for being a member of a Panchayat or a Municipality

a) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State: or

b) if he is of unsound mind and stands so declared by a competent court; or

c) if he is an undischarged insolvent; or

d) if he has, in proceedings for questioning the validity or regularity of an election been found guilty of any corrupt practice; or

e) if he has been found guilty of any offence punishable u/s 153A or Section 171E or Section 171F or Section 376 or Section 376A or Section 376B or Section 376C or Section 376D or Section 498A or Section 505 of the Indian Penal Code, 1960 or any offence punishable under Chapter XIII of this Act unless a period of six years has elapsed since the date of such conviction; or

f) if he holds an office or profit under a Panchayat or a Muni; or

g) if he holds an office of profit under the Government of India or any State Government; or

h) if he is interest in any subsisting contract made with, or any work being done for, that Panchayat or Municipality except as a share holder (other than a Director) in an incorporated company or as a member of a co-operative society; or

i) if he is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner, or with which he is engaged in a professional capacity, in connection with any cause or proceeding in which the Panchayat or the Municipality is interested or concerned; or

j) if, he having held any office under the State Government or any Panchayat or any Municipality or any other State level authority or any Government company or any corporate body owned or controlled by the State Government or Government of India, has been dismissed from service, unless a period of four years has elapsed since his dismissal.

208. Disqualification for Membership. - (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if. -

(a) he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State.

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) has been found guilty of any corrupt practice in any election of a Gram Panchayat, Panchayat Samiti or Zila Parishad;

(c) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a Sarpanch or Panch of Gram Panchayat or member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction, or

(d) has been convicted of an election offence, or

(e) has been ordered to give security for good behaviour u/s 110 of the Code of Criminal Procedure, 1973 or

(f) has been notified as disqualified for appointment as public servant except on medical grounds; or

(g) is a whole-time salaried employee of any local authority, Statutory, Corporation or Board or a Co-operative Society, registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government; or

(h) is registered as a habitual offenders (Control and Reforms) Act, 1952 or any other law for the time being in force; or

(i) has not paid the arrears of tax imposed by a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be; or

(j) is a tenant or lessee or contractor or share-holder in any property of the Gram Panchayat, Panchayat Samiti and Zila Parishad, or

(k) is in unauthorised occupation of property belonging to any local authority; or

(l) being a Sarpanch has cash in hand exceeding the amount, permitted under the rules made-under this Act;

(m) is member of either House of Parliament or of the Legislature of the Punjab State:

Provided that a member of either House of the Parliament or Legislature of Punjab State may be elected as a Sarpanch or member of Gram Panchayat, Panchayat Samiti or Zila Parishad if, along with his nomination paper gives undertaking to the effect that he shall resign the membership of either House of Parliament or of the Legislature of the Punjab State, as the case may be, and so resigns before taking the oath or making affirmation for taking over the office of Sarpanch of a Gram Panchayat or a member of any Gram Panchayat, the Panchayat Samiti and Zila Parishad;

(n) has been convicted of an offence under the protection of the Civil Rights Act, 1955 within a period of five years immediately preceding the last date of the filing of the nomination papers; or

(o) being a Sarpanch or Panch does not attach certificate with his nomination papers to the effect that he has handed over to the Block Development and Panchayat Officer complete charge of the record of the Gram Panchayat and of the cash, if any, with him.

9. There is merit in the argument raised by the learned counsel for the appellant. A bare reading of the Section 11 of the 1994 Act as well as Section 208 of the Punjab Panchayati Raj Act, 1994, quoted above, lays down the disqualification for membership of a Panchayat or a Municipality and disqualification for membership of the Punjab Panchayati Raj Act. The mentioning of the name of the appellant in two electoral rolls does not create a bar from contesting the election of the members of the Panchayat.

10. Reliance was placed by the learned counsel for the appellant on the judgments rendered by Hon"ble the Supreme Court in the cases of "Bagicha Singh (Ex Sarpanch) v. Punjab State Election Commission, Punjab", 2001(3) RCR(Civil) 526 and Som Lal v. Vijay Laxmi & Ors., 2008 (2) ACJ 542 (S.C.) : 2008 (2) RCR(Civil) 760. In the case of Som Lal (supra), the election was challenged on the ground that an elected candidate was holding the office of profit. The said disqualification was duly mentioned in Section 208 of the Punjab Panchayati Raj Act, 1994. However, the said

disqualification was not enumerated in Section 11 of the 1994 Act. Hon'ble the Supreme Court while allowing the appeal thereby setting aside the judgment of this High Court held as under:-

....The disqualifications are only mentioned in Section 208 of the Act 9 of 1994 and the intention of the legislature is very clear and Section 11 of the Act of 1994 being in later point of time stating therein what are the disqualifications, therefore, the disqualifications mentioned in Section 19 of the Act 19 of 1994 will prevail and not the disqualification mentioned in Section 208 of Act 9 of 1994. The disqualification mentioned in Section 208 which are consistent with Section 11 of Act 19 of 1994 can only survive and not other disqualification.

11. It is, therefore, apparent that the election of the Member of a Gram Panchayat can be set aside only on the basis of disqualification as enumerated u/s 11 of 1994 Act. The case of the appellant is better because the mere registration of the name of the appellant in two different electoral rolls simultaneously, is not one of the disqualifications as laid down either in Section 208 of the Punjab Panchayati Raj Act, 1994 or Section 11 of the 1994 Act.

12. Learned counsel for the respondents, however, at this stage, objected that the enrollment of the appellant at two electoral rolls simultaneously was in violation of the provisions of Section 100 (iv) of the 1950 Act and hence, the election of the appellant could be set aside on this ground alone.

13. However, the said objection will not come in the way of appellant in view of the facts of the present case as the appellant in all fairness had moved an application to cancel his name from the electoral list of Village Haibowal Khurd (the receipt of the application dated 10.04.2008 is annexed as Annexure A5). The said application was made much before the date of election. The aforesaid application produced in evidence was dismissed on the ground that no specific date has been mentioned in the application for deleting his name from the electoral list of Village Haibowal Khurd. Whereas, Shri Jagjit Singh, District Election Officer, Ludhiana appeared as witness and proved the aforesaid application. It was an important piece of evidence. The date was evident from the receipt of the application P5 and the evidence of Jagjit Singh. In fact, on the basis of this application, the name of the appellant now stands deleted from the electoral roll of Village Haibowal Khurd, which is evident from electoral roll R4, produced before the Election Tribunal by Jaswant Singh, Election Kanungo. It is not the fault of the appellant that his name was shown on the voter list. Truth is that he had submitted the application to delete his name much before the election. It is a known fact that the name is finally deleted as and when fresh election list is prepared

14. No evidence has been brought on record to show that the appellant has exercised his vote in the election of Gram Panchayat of village Haibowal Khurd. The appellant has filed his application for deleting his name from the electoral roll of

village Haibowal Khurd, District Ludhiana much before the election. It is evident that the appellant is resident of Village Mehal Khurd, District Barnala and has validly exercised his right to vote of Village Mehal Khurd. As such, the appellant was fully eligible to contest the election of Gram Panchayat of Village Mehal Khurd, District Barnala.

15. Resultantly, the order dated 31.08.2009 passed by the Election Tribunal (Deputy Commissioner) Barnala, is hereby set aside both on merit as well as on the same being time barred. The appellant-Joginder Singh is accordingly ordered to be continued as the rightly elected Sarpanch of Gram Panchayat of Village Mehal Khurd, District Barnala.

Allowed in the aforesaid terms.