

CWP No.13467 of 2007

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.13467 of 2007 (O&M)

Date of decision: 30.01.2015

Makhan Singh

....Petitioner

Versus

State Election Commission of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Ishwar Lal, Advocate, for the petitioner.
Dr. Deepa Singh, Addl. A.G., Punjab.

PARAMJEET SINGH, J. (ORAL)

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the order dated 08.05.2007 (Annexure P-6) passed by Presiding Officer, Election Tribunal-cum-Additional Deputy Commissioner, Ludhiana, whereby election of the petitioner as Sarpanch has been set aside, without there being any election petition, without appreciating the provisions of law and he has been debarred from contesting the elections in any capacity for a period of six years.

Brief facts of the case, as averred in the petition, are to the effect that petitioner had shifted to village Kot Umra and took rented accommodation at the house of Gurdev Kaur w/o Pathana Singh and

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applied for ration card at village Kot Umra to the Food and Supply Department. The application was duly attested by Panch and Lambardar of village Kot Umra. Petitioner has agricultural land at village Kot Umra and is also paying taxes etc. He had been cultivating the land for more than 30 years. Petitioner's name was included in the voter list of village Kot Umra and he filed nomination papers for contesting the election of Sarpanch. Scheduled Caste Certificate dated 16.06.2003 issued by Tehsildar, Jagraon was also filed with the nomination papers as the post of Sarpanch was reserved for Scheduled Caste (man). I need not narrate entire facts of the case as the only issue at the relevant time before the authorities was with regard to responsibility of the persons who had created mess with regard to finalization of electoral rolls and question of validity of nomination was to be adjudicated.

Earlier, petitioner approached this Court by way of CWP No.12494 of 2003, which was decided on 19.11.2004 by the Division Bench and following issues were referred to the Election Commission: -

- “(a) that the person responsible for the lapse in the finalization of the electoral list do not go Scot free: and*
- (b) that the question as to the validity of the nomination is adjudicated upon in accordance with law.”*

In pursuance of the order dated 19.11.2004 passed by the Division Bench, Election Commission referred the matter to the Election Tribunal-cum-Additional Deputy Commissioner, Ludhiana. The Election Tribunal-cum-Additional Deputy Commissioner, Ludhiana, heard the matter and passed the impugned order dated 08.05.2007

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(Annexure P-6) whereby following conclusions were drawn: -

- “i) *That the earlier finding of my predecessor regarding fraudulent vote of Makhan Singh in the voter list of village Kot Umra was correct. Makhan Singh got prepared a wrong ration card and resultant vote only to avail the benefit of office of Sarpanch. The officials responsible have already been named and duly conveyed to the District Electoral Officer cum ADC (D) who has to take action against them as per law.*
- ii) *That as far as the question regarding the validity of nomination is concerned it is clear that on the day of filing the nomination Makhan Singh was clearly not eligible for filing his candidature. It has already been held in the previous references by this Election Tribunal to the State Election Commission that Makhan Singh has violated the provision of section 26 of State Election Commission Act, 1994 as he filed wrong declaration relating to his vote. Being the only candidate left in the fray, he had to be declared as Sarpanch. This election is therefore declared void and Makhan Singh is hereby removed from the post of Sarpanch. An Administrator may be immediately appointed by the Authority till the date of election of Sarpanch. Makhan Singh on account of his conduct must be debarred from contesting elections in any capacity for a period of six years. Copy of the order be sent to the State Election Commission Punjab Chandigarh, as well as the Distt. Electoral officer cum ADC (D).”*

I have heard learned counsel for the parties and perused the record.

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Admittedly, against the order passed by the Returning Officer with respect to rejection of nomination papers or declaring a candidate elected election petition lies before Election Tribunal. The matter cannot be agitated in writ petition in view of law laid down by a Division Bench of this Court in ***CWP No.9826 of 2013*** titled '***Balram Singh v. State of Punjab***' decided on 10.05.2013.

But when specific direction has been issued by this Court to the Election Commission and Election Commission is complying with the direction of this Court by further delegating the power to the Election Tribunal-cum-Additional Deputy Commissioner, Ludhiana, then Election Tribunal is proceeding as per directions of this Court. So far as the findings recorded by the Election Tribunal-cum-Additional Deputy Commissioner are concerned, same are partly correct with regard to preparation of wrong ration card by the petitioner. However, so far as the observation of the Election Tribunal-cum-Additional Deputy Commissioner with regard to setting aside the election and debarring the petitioner from contesting the election in any capacity for six years is concerned, same is uncalled for as this matter was not in issue and so is not sustainable in the eyes of law. However, the election was held in the year 2003 and thereafter, as per statement of learned State counsel, fresh elections have been held. , this writ petition has become infructuous.

Disposed of accordingly.

(Paramjeet Singh)
Judge

January 30, 2015
R.S.