

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No.20660 of 2014 (O&M)

Date of decision: 04.05.2015

Vaneet Mahajan

...Petitioner

Versus

Election Commission of India & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Narender Hooda, Senior Advocate, with
Mr. Sudhir Hooda, Advocate, for the petitioner.

Mr. Namit Kumar, Advocate,
for respondent No.1.

Mr. Vinod S. Bhardwaj, Additional Advocate General, Punjab,
for respondent Nos.2 & 3.

Mr. Satya Pal Jain, Senior Advocate, with
Mr. N.K.Banka, Advocate, for respondent No.4.

HEMANT GUPTA, J.

The petitioner has claimed a writ of mandamus declaring that respondent No.4 is not entitled to sit as Member of the Punjab State Legislative Assembly and to treat the seat of Amritsar North Constituency as vacant. In the alternative, the petitioner has claimed writ of *quo warranto* asking respondent No.4 under what authority he acts as a Member of Punjab State Legislative Assembly.

The petitioner alleged that respondent No.4 is not a voter in any electoral list in Punjab, therefore, he does not possess the basic qualification specified under Article 173(c) read with Section 5 (c) of the Representation of People Act, 1951 to hold a seat in the Legislative Assembly and, thus, he is disqualified from being a member of the Punjab State Legislative

Assembly. The petitioner asserts that he is an active worker of the Congress party and a public spirited citizen. The petitioner asserts that he was an elector having Sr. No.963 in the electoral roll of 2012 and still continues to be an elector in the electoral roll of 2015 in Amritsar North Constituency i.e. the same Constituency from which respondent No.4 was elected as a Member of the Punjab State Legislative Assembly. The petitioner further asserts that under Section 81 (1) of the Representation of People Act, 1951 (for short 'the Act'), he would have been entitled to file an election petition for annulling the election of respondent No.4. However, by the time, the petitioner discovered certain illegalities and irregularities committed by respondent No.4, the time period of 45 days from the date of election expired. Since the election petition stands time barred, the continuance of respondent No.4 as a Member of a State Legislative Assembly, when he does not possess the basic statutory qualification, amounts to a fraud on the Constitution and a subversion of democracy. It is also pleaded that respondent No.4 was elected from Amritsar North Constituency in the year 2007, but the grievance is being made in respect of election of respondent No.4 in the year 2012. Respondent No.4 filed his nomination papers on 11.01.2012 with his postal address as 11, Medical Enclave, Amritsar while mentioning that his name is entered at Sr. No.498 in Part No.98 of the electoral roll of 15 – Amritsar North Constituency. The petitioner alleges that such entry in the voter-list was false and fabricated, but still respondent No.4 was declared to be a winning candidate.

The petitioner and some other persons submitted a complaint to respondent No.1 on 19.11.2012 complaining about the illegalities and irregularities. The Chief Electoral Officer, Punjab entrusted the enquiry to the Deputy Commissioner, Amritsar to send his report by 10.01.2013. It

appears that after numerous representations, the Chief Electoral Officer reported on 16.05.2013 that prima facie offence under Section 17 of the Act is made out, but before reaching any conclusion, opportunity of hearing be granted. He recommended that enquiry be submitted to the Divisional Commissioner, Jalandhar. The Divisional Commissioner, Jalandhar submitted his report on 26.12.2013 to the effect that name of respondent No.4 and his family members have been fraudulently inserted at the time of printing of electoral rolls in the year 2006. Subsequently, a criminal complaint has been filed by the State through the Electoral Registration Officer under Section 31 read with Section 17 of the Act, which is pending decision. It is explained that the name of respondent No.4 is entered at Sr. No.498 in the electoral rolls of 2012, which is same as entry at Sr. No.752 of 2006 in the electoral rolls of 17 – Amritsar West prior to de-limitation. It is, thus, contended that genesis of entry at Sr. No.498 refers to the fabricated entry at Sr. No.752 of 2006 after intensive revision of electoral rolls 2005-06.

Annexure P-9 is the report of the enquiry conducted by the Commissioner, Jalandhar Division, Jalandhar. However, such report appears to be not complete. The complete copy of the same has been appended by respondent No.1 as Annexure R-2. The Commissioner examined the circumstances in which the names other than those mentioned in the enumeration card have been entered in the electoral rolls. The Commissioner found that names of respondent No.4 and his family members were entered with a different hand-writing other than the hand-writing of enumerator. The Commissioner in its report concluded as under:

“From the above facts and circumstances, it is clear that tampering of manuscript or electoral rolls pertaining to 17 – Amritsar (West) Constituency (Pre – this transfer and over writing the names

can be directly attributed to L.A., who was appointed as proof-reader for Part No.121 to 130. However, these wrong entries could have been detected during the subsequent revisions by the concerned EROs or the staff deputed for the purpose because in every election a marked copy of the electoral rolls is given to polling/political parties and the entries at Sr. No. of voters list, house number and election card serial number do not match these votes which were illegally entered at the time of printing.”

Learned counsel for the petitioner relies upon a judgment of Hon’ble Supreme Court reported as K. Venkatachalam Vs. A. Swamickan & another (1999) 4 SCC 526, wherein the appellant did not have the qualification to be elected as Member of the Legislative Assembly in Tamil Nadu, the Court held that even if the election petition is not filed, the matter can be examined in a writ petition. The Hon’ble Supreme Court observed as under:

“25. In the present case, the appellant was not an elector in the electoral roll of Lalgudi Assembly Constituency. He, therefore, could not be elected as a Member from that constituency. How could a person who is not an elector from that constituency represent the constituency? He lacked the basic qualification under clause (c) of Article 173 of the Constitution read with Section 5 of the Act, which mandated that a person to be elected from an Assembly constituency has to be an elector of that constituency. The appellant in the present case is certainly disqualified for being a Member of the Legislative Assembly of Tamil Nadu.....”

In the written statement filed on behalf of respondent Nos.2 & 3, it is stated that the petitioner made complaint for the first time on 19.11.2012 though the result of Punjab Legislative Assembly was declared on 06.03.2012. The petitioner does not have any locus to challenge the election of respondent No.4 by way of present petition, which has been filed on the basis of wrong facts. It is also pleaded that respondent No.4 was registered as elector in more than one Constituency i.e. in the electoral rolls

of 16 – Amritsar North Assembly Constituency at Part No.64, Voter Sr. No.1546; 17 – Amritsar West Assembly Constituency at Part No.123, Voter Sr. No.749 and 23 – Tarn Taran Assembly Constituency Part No.93, Voter Sr. No.373 in the electoral rolls of 2007, but after 2008, respondent No.4 was only registered at one place, therefore, the election of respondent No.4 cannot be disputed in the present writ petition.

We have heard learned counsel for the parties and find no merit in the same. Respondent No.4 was an elector in the electoral roll in the year 2007 and continues to be an elector in the year 2012. A candidate or a voter is to examine the final printed voter list to determine as to whether his name appears in the electoral roll to be eligible to contest an election or to be a voter. If the name of the elector is not appearing in the voter list, he has the remedy of moving an application in Form 6 & 7 as contemplated under Rule 13(1) and Rule 26 of the Registration of Electors Rules, 1960 in terms of Sections 22 and 23(1) of the Representation of People Act, 1950 Act for inclusion of his name in the voter list. The absence of name of respondent No.4 in the final electoral roll would give right to him to seek inclusion of his name in the electoral roll.

We find that the enquiry conducted by the Divisional Commissioner proceeds on the wrong assumptions of law and facts, as the only thing was required to be examined is as to whether the name of respondent No.4 appears in the electoral rolls of the year 2012 or not. His name undisputedly appears in the said electoral roll. His name appears in the electoral roll of the year 2007 as well. The factors as to why and how the name of respondent No.4 was entered in the electoral roll could not be examined to dispute the basic eligibility qualification. The enquiry conducted does not show that any overt or covert part played by respondent

No.4 in getting his name included in the enumerators card. It is not disputed that respondent No.4 is resident of Amritsar. If he is a resident of Amritsar and his name appears in the voter list of 2007 and 2012, therefore, his inclusion in the voters list cannot be disputed merely because hand-writing in the enumeration card including the name of the petitioner appears in different hand-writing. Such changes prior to publication of the voters list cannot be made basis for returning a finding that respondent No.4 was not a properly enrolled voter. If the names of respondent No.4 and his family members were wrongly included, the Election Commission could proceed against its officials who have allegedly made entries in the enumeration card, but to say that respondent No.4 could not be a voter is wholly untenable. We find that the entire proceedings have proceeded on wrong assumption of law and facts.

The judgment in K. Venkatachalam's case (supra) arises out of a fact where the appellant was not found to be a voter in any electoral roll in the Constituency. But in the present case, the name of respondent No.4 appears in the electoral roll of the year 2007 and 2012. Thus, the reliance on the said judgment is wholly misconceived.

The petitioner is an Advocate and political activist. He is aware of the fact that respondent No.4 was a voter in the year 2007 and was elected as a Member of the Legislative Assembly. Respondent No.4 again contested election in the year 2012 and was again elected as Member of the Legislative Assembly. It was upon him to raise objection at the time of filing of nomination or to file an election petition after the declaration of the result. The will of the people cannot be allowed to be tinkered with except in the manner contemplated by law that is by way of an election petition. Having failed to raise objection at the time of filing of nominations, later by way of

election petition, we find that the present writ petition is nothing, but gross abuse of process of law. The petitioner is fighting his political battle in Court rather than in the Constituency. The adjudication of political differences is from the court of people and not in Court of law.

In view of the above, we find that the petitioner is abusing the process of Court. Consequently, we dismiss the present writ petition with the costs of Rs.50,000/-.

[HEMANT GUPTA]
JUDGE

04.05.2015
Vimal

[LISA GILL]
JUDGE