

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

CWP No. 21462 of 2014 (O&M)

Date of decision: 24.03.2015

Ramesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. C.B. Goel, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Arvind Singh, Advocate for respondent No.1.

Mr. Kanwal Goyal, Advocate/amicus curiae
for respondent No.4.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the impugned communication dated 10.10.2011 (Annexure P-1) and the judgment dated 09.04.2014 (Annexure P-7), passed by respondent No.3, whereby the election petition filed by the petitioner under Section 176 of the Haryana Panchayati Raj Act, 1994, has been dismissed.

2. It is contended that the petitioner secured 103 votes,

whereas, respondent No.4 secured 93 votes in the elections of Gram Panchayat, held on 06.07.2010. The oath ceremony was to be held on 25.07.2010 and a letter was received by the petitioner for taking oath. However, in the said letter, the name of the father of the petitioner was wrongly mentioned as Dhara Ram instead of Banwari Lal. Both the candidates share common name i.e. Ramesh Kumar, whereas, their father's name were different, due to which the mistake has occurred. A complaint was also made by the petitioner before the Presiding Officer of Ward No.8, Gram Panchayat, Hassangarh, upon which, he made a statement in writing that it was due to his sheer mistake that Ramesh son of Dhara Ram, who secured 93 votes, was declared elected. The petitioner had approached the authorities concerned for redressal of his grievance but in vain.

3. The learned State counsel as well as the learned amicus curiae admit the factual position and states inadvertently the father name of the petitioner has been wrongly mentioned in the communication of the oath taking ceremony. The petitioner was the winning candidate from Ward No.8. In fact, the respondent No.2 had written to respondent No.1, vide letter No. 3694 dated 21.12.2010, to the effect that the name of the petitioner be notified in place of respondent No.4 for the post of Panch but the State Election Commission, vide memo dated 10.10.2011, informed that if the

mistake is committed by the Returning Officer, no corrigendum can be issued and the affected party may be advised to take appropriate legal remedy.

4. The learned amicus curiae cites **Prithvi Raj Vs. State Election Commission, Punjab and others**, 2007(3) RCR (Civil) 817, **Lal Chand Vs. State of Haryana**, 1998(3) RCR (Civil) 255.

5. Heard.

6. It is not in dispute that petitioner, namely Ramesh Kumar son of Banwari Lal was polled 103 votes, where respondent No. 4 namely Ramesh Kumar son of Dhara Ram was polled only 93 votes and as such it was the petitioner who ought to have been administered oath as a Panch. On 25.07.2010, the petitioner received a letter for taking oath to the office, but found that in said letter, his father's name was wrongly mentioned as Dhara Ram. Since, there was a mistake in the father's name, none took oath for the said post. Thereafter, petitioner submitted a representation/complaint to BDPO that although he is the duly elected Panch of the village, respondent No. 4, whose name is same to the name of petitioner has been wrongly declared as Panch and therefore this clerical mistake be corrected. On the said complaint, an inquiry was conducted, in which the presiding officer for the election from ward No. 8 made a statement in writing to the effect that due to his mistake name of Ramesh Kumar son of Dhara Ram was wrongly declared as elected

instead of petitioner and he may be pardoned. Subsequently, petitioner submitted an application under the RTI Act as to what action was being taken on his representation. Upon this application, he received information vide letter dated 27.12.2011, that State election Commission, Haryana has no power to issue corrigendum for making change in the result sheet prepared by the concerned returning officer. On this, the Deputy Commissioner, Rohtak sought advice from the Advocate General, Haryana who, in turn advised that in case of any mistake by returning officer, no corrigendum can be issued and the effected party has to take appropriate legal remedy. **(Annexure P-1)**. Consequently, the petitioner filed an election petition **(Annexure P-2)** before the Tribunal constituted under Section 176 of Haryana Panchayati Raj Act, alongwith an application for condonation of delay.**(Annexure P-4)**. The Election tribunal, after taking response from respondent no 4, framing the issues and taking evidence came to a conclusion that it was the petitioner who was the winning candidate, but dismissed the election petition on the ground of limitation vide order dated 09.04.2014 **(Annexure P-7)**. Aggrieved against the same, the petitioner initially filed a Civil Revision No. 3987 of 2014, in which notice of motion was issued by this Hon'ble Court, but later on, the petitioner sought permission for withdrawing his Civil Revision by filing CM No. 21807 C-II of 2014 **(Annexure P-8)**, which was allowed by this Hon'ble Court and

further granted him liberty to file the present writ petition.

7. In response to the present writ petition, respondent no 2, i.e Deputy Commissioner cum District election Officer (Panchayat), Rohtak in para No. 2 of preliminary submissions of the reply has admitted that he had written to State of Haryana vide letter No 3694 dated 21.12.2010 to the effect that name of petitioner be notified in place of respondent No. 4 for the post of Panch in ward no 8 of Gram Panchayat Hasangarh, after receiving the letter No. 930 dated 30.07.2010 from Block Development and Panchayat Officer, Sampla to the effect that the election result of ward No. 8 of Gram Panchayat Hasangarh be rectified and the notification be redone/reissued in favor of the petitioner. True translated copies of the correspondence vide letter no 930 dated 30.07.2010 and vide letter no 3694 dated 21.12.2010 have also been annexed with reply as **Annexure R-2/1** and **R-2/2** respectively.

8. That three questions arise before this Hon'ble Court for determination in the present case in hand:

- Whether the remedy availed by the petitioner at the first instance for redressal of his grievance, by way of filing a petition under Section 176 of Haryana Panchayati Raj Act, 1994 was maintainable?
- If no, then what was the remedy available with the petitioner?
- Whether this Hon'ble Court can exercise its powers conferred

by the Constitution of India Under Article 226 at any stage?

1st question:

9. That as far as answer to the first question is concerned, the answer lies in the Judgment passed by a full bench of this Hon'ble Court in "**Lal Chand Vs State of Haryana**" cited as "**1999 AIR (Punjab) 1**". In the said case, two questions were formulated, out of which the second question that was formulated is reproduced as follows:

"(2) What are the grounds on which an election of a returned candidate to a Gram Panchayat/Zila Parishad can be challenged under the Haryana Panchayati Raj Act and the relevant Rules."

In answer to the said question, the Full Bench had held that an election of a returning candidate cannot be allowed to be challenged on any of the grounds other than those specified in Section 176 of the Haryana Panchayati Raj Act, 1994. The relevant paragraph no 9 of the said judgment is reproduced as follows:

"9. We propose to deal with first question only as the second question had already been answered by a Full Bench of this Court in the case of Smt. Anju v. Addl. Civil Judge (Sr. Division, Pchowa), C.W.P. No. 15310 of 1996 decided on 12th March, 1998 (reported in AIR 1998 Punj & Har 140). In this case it was held by the Full Bench that the election of a returned candidate cannot be allowed to be challenged on any of the grounds other than those specified in Section 176 of the Haryana Panchayati Raj Act, 1994. That is to say that

the grounds on which the election can be challenged are :

(a) That the returned candidate committed corrupt practices within the meaning of Sub-section (5);

(b) That some irregularities or illegalities were committed during the course of counting, on which plea the Court may order scrutiny and recounting of votes and declaring the candidate who is found to have largest number of valid votes in his favour to be duly elected. “

10. Thus, as a necessary inference of the Judgment passed by the Full Bench of this Hon'ble Court, it becomes amply clear that the returning candidate cannot have any cause of action to approach the Election Tribunal for redressal of his grievance Under Section 176 of the Haryana Panchayati Raj Act, 1994. It is only the defeated candidate who can file an election petition before the Tribunal, challenging the election of the returned candidate. Furthermore, as per Section 176 of the 1994 Act, the candidate can approach the Election Tribunal only under two circumstances: (i) if the returned candidate had committed corrupt practice coming within the meaning of Sub-Section (5); or if there were some irregularities or illegalities during the course of counting.

11. As is evident from the facts of the present case, the petitioner-returning candidate did not have any of the grievances as mentioned in Section 176 of 1994 Act and further, he was not even the defeated candidate, so as to have a valid cause of action to file

the election petition before the Tribunal. Therefore, in view of the above, the petition filed by the petitioner-returning candidate Under Section 176 of Haryana Panchayati Raj Act, 1994 was not maintainable.

2nd Question:

12. That once, the petition Under Section 176 of Haryana Panchayati Raj Act, 1994 was not maintainable, then the only remedy available with petitioner, in view of the facts of the present case was to approach this Hon'ble Court. The Hon'ble Full Bench, in Lal Chand's case supra has held that the election of Panchayat/Municipality can be challenged directly before the High Court Under Article 226/227 of the Constitution of India. The relevant paragraph no 27 of the said Judgment is being reproduced as under:

“27. In view of the above discussion; we are of the considered view that despite the bar imposed under Articles 243-O and 243-ZG of the Constitution of India, the election of the Panchayat/ Municipality can be challenged directly before the High Court under Articles 226/227 of the Constitution of India otherwise the Articles would be against the basic structure of the Constitution (i.e. judicial review by the High Court/Supreme Court). The High Court, however, keeping in view the facts and circumstances of the case may relegate the petitioner to the remedy available before the Election Tribunal.”

13. Since, the Hon'ble Full Bench has consciously used the words "election of the Panchayat/Municipality can be challenged directly before the High Court under Articles 226/227 of the Constitution of India", it has to be inferred that election as a whole can be put to scrutiny.

Question No 3.

14. That in answer to this question, the facts have to be relooked again. In the present case, the Ld. Tribunal took cognizance of the matter and while returning his finding on issue no 1 i.e "Whether the petitioner is entitled to be declared elected Panch of Ward No 8, Gram Panchayat, Hassangarh, Tehsil Sampla, District Rohtak as he had allegedly secured more valid votes than the respondent ?OPP", had held that petitioner had succeeded in proving this issue in his favour and it has been established on the file that actually petitioner Ramesh son of Banwari lal had won the election by securing 103 votes. Still, the election petition was dismissed being time barred as the election result was declared on 06.07.2010, whereas the petition before the election tribunal was filed on 03.01.2012, although it should have been filed within 60 days from declaration of the result. In the present case, although there was a mistake on part of the petitioner to approach the election tribunal, however, the said mistake cannot result in the dismissal of the present writ petition. Since, the petitioner was duly elected by the

voters of Ward No 8, therefore he is entitled to be declared as elected candidate by issuance of corrigendum to the original notification, because there is no mistake on part of the petitioner.

15. This, Hon'ble Court, in its Larger Bench decision **“Prithvi Raj Vs State Election Commission, Punjab and others”**, cited as **2007 AIR (Punjab) 178**, while interpreting the provision of Article 226, 243, 329(b) of the Constitution of India had held as under:

“34. As regards the second question, the Full Bench in Lal Chand's case (supra) has held that the provisions of Article 243 of the Constitution would have to be read down and subject to Article 226. This interpretation in our considered opinion negates the ratio in Mohinder Singh Gills case (supra) In our considered opinion, a harmonious interpretation to these provisions, as assigned by the Hon'ble Supreme Court in Mohinder Singh Gill's case (supra), while interpreting a similar provision, namely, Article 329(b) of the Constitution, and as explained, herein above, would suitably resolve this apparent conundrum of constitutional interpretation. Article 243ZG(b) of the Constitution, cannot be read down or held to be ultra vires of the provisions of Article 226 of the Constitution of India. The provisions of Article 243ZG(b) of the Constitution have to be read in the light of the principles of law, as set down in Mohinder Singh Gill's case (supra), and the judgments referred to in the preceding paragraphs, namely, that the High Court would not entertain a challenge "calling in question" an "election." Challenge to an election, would be postponed, to a time and stage after the conclusion of the "election" and then also by an

election petition, a High Court would, in the exercise of judicial restraint, postpone judicial review to a stage after the Election Tribunal adjudicates the election petition. The power of a High Court, under Article 226 of the Constitution of India would, however, be available, where exercise of the said power subserves the progress of the election, facilitates its completion and is exercised to further the election process. One should not forget that the statutory mandate to the authority under the Election Commission Act is to conduct free and fair poll. For achieving that objective and in furtherance thereof, there is no fetter to achieve that objective by invoking extra ordinary powers of this Court under Article 226 of the Constitution.”

16. Articles 226/227 of the Constitution have been conceived and designed to address such peculiar situations like in the present context to sub-serve the progress of election; facilitate its completion; and further the election process. Therefore, it fit case to exercise the extra-ordinary powers conferred by Articles 226/227 of the Constitution of India, so as to ensure that the elected representative is not deprived of the office. The mandate of the people is deserved to be given effect to and the technicalities cannot be allowed to stand to frustrate the right of the petitioner, especially when the Returning Officer/Presiding Officer has admitted his mistake at the first instance.

17. Keeping in view the above facts and circumstances, the present petition is allowed, the judgment dated 09.04.2014 passed by

the learned Civil Judge (Sr. Divn.), Rohtak in Election Petition under Section 176 of the Haryana Panchayati Raj Act, 1994, is reversed; Election Petition is allowed and the petitioner is declared as winning candidate for the post of Panch of Ward No.8, Gram Panchayat, Hassangarh, Tehsil Sampla, District Rohtak.

Allowed.

24.03.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter: Yes / No