

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 09.03.2015

C.W.P.No.2778 of 2015

Sukhdev Singh Patwari

...Petitioner

Versus

State Election Commissioner, Punjab & others

...Respondents

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

1. Whether Reporters of 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. Satya Pal Jain, Senior Advocate, with
M/s Dheeraj Jain & Vijay Kumar Chaudhary, Advocates,
for the petitioner.

Mr. Vinod S. Bhardwaj, Additional Advocate General, Punjab,
for respondent Nos.1 & 2.

Mr. J.S.Bhandohal, Advocate,
for respondent No.3.

Mr. H.S.Dhillon, Advocate,
for respondent No.4.

HEMANT GUPTA, J.

Challenge in the instant writ petition is to an order dated 12.02.2015 (Annexure P-2), whereby the nomination paper of the petitioner for contesting the elections from Ward No.47 of Municipal Corporation, SAS Nagar, was rejected. The petitioner has also claimed a writ in the nature of mandamus directing the Returning Officer - respondent No.2 to reconsider and accept the nomination paper of the petitioner for elections in respect of Ward No.47 of Municipal Corporation, SAS Nagar.

The brief facts leading to the present writ petition are that on 07.02.2015, the State Election Commission published a Schedule of the elections to the various Municipal Corporations of Punjab including that of Municipal Corporation, SAS Nagar. The last date for filing nominations was 11.02.2015, whereas the scrutiny of nominations was to be held on 12.02.2015. On 11.02.2015, the petitioner submitted his nomination paper from Ward No.47, Municipal Corporation, SAS Nagar, as a candidate set up by the Shriomani Akali Dal. However, the nomination paper submitted by the petitioner was rejected on 12.02.2015. The reasoning recorded by the Returning Officer – respondent No.2, when translated, reads as under:

“I, Navjot Kaur, PCS, Additional Chief Administrator, GMADA -cum- Returning Officer, Municipal Corporation Mohali, District SAS Nagar, during the scrutiny of the nomination papers of candidates on 12.02.2015 in accordance with the Punjab State Election Commission Act, 1994, have found from scrutiny off the nomination papers of Sh. Sukhdev Singh Patwari S/o Late Sh. Bhag Singh, Flat No.2732-C, Sector – 70, that the number of the Voter List which is mentioned in Form 20, does not match with the general election of 2015 of Ward No.47 of Municipal Corporation, SAS Nagar and neither does the Booth No. (Part No.) match. Whereas, it has been clearly mentioned in Form No.20 by the candidate that my name is registered at Sr.No.748 of Part No.212 of Electoral Roll for Municipal Corporation Constituency No.47 and name of the proposer Sh. Shobha Gorla is registered at Sr. No.740, Part No.212 of the Electoral Roll for Municipal Corporation Constituency No.47. Whereas, Constituency No.47 has only 2 parts. On scrutiny, it was found that the name of the candidate Sh. Sukhdev Singh Patwari and proposer Smt. Shobha Gorla is not registered at Sr. Nos.748 and 740 of any Part (Booth), which Voter List has been prepared for General Election 2015 of Municipal Corporation, SAS Nagar. Because of vote number not being clear, the nomination papers of candidate Sh. Sukhdev Singh Patwari, Ward No.47 is rejected.”

The petitioner has averred that the petitioner as well as his proposer are duly registered as voters at Sr.Nos.748 and 740 respectively in the Voter List for the Elections to the Vidhan Sabha, however, in the new Voter List prepared for the Municipal Corporation Elections, the petitioner and his proposer are also registered as voters at Sr. Nos.1146 and 1135 respectively. The details of their vote numbers and the Constituency find mention in the Electoral Rolls of the Municipal Corporation, which have been prepared from the Vidhan Sabha Elections List itself. Therefore, mentioning of Sr. Nos.748 and 740 instead of Sr. Nos.1146 and 1135 in the nomination paper would merely be a clerical mistake, which is not substantial in character and is liable to be corrected. Therefore, the rejection of nomination paper is illegal and be set aside.

This Court on 20.02.2015 directed the Returning Officer – respondent No.2 to accept the nomination form of the petitioner and permit him to contest the elections scheduled for 22.02.2015. It was also directed that the result of elections pertaining to this Ward shall not be declared and the same be produced in a sealed cover. Pursuant to such directions, the result was produced before this Court in a sealed cover on 27.02.2015. It was found that the petitioner – Sukhdev Singh Patwari has polled 852 votes, whereas respondent No.3 – Prem Singh and respondent No.4 – Paramdeep Singh have polled 291 and 255 votes respectively.

Learned counsel for the petitioner has vehemently argued that it was a clerical mistake, when petitioner relied upon the Electoral Rolls of Legislative Assembly rather than the Electoral Rolls of Municipal Corporation, which the Returning Officer was bound in law to permit the

petitioner to correct the same. Therefore, the order passed by the Returning Officer – respondent No.2 is legally not sustainable.

On the other hand, Mr. Bhardwaj has argued that once the election process is set in motion, the only remedy of an aggrieved person is to file an election petition after the conclusion of the elections and not to intervene in the process of election by filing a writ petition. He also referred to Article 243 ZG of Part IX-A of the Constitution to assert that the writ petition would not be maintainable after the election process is set in motion. Reference is made to the judgments of Hon'ble Supreme Court reported as N.P.Ponnuswami Vs. Returning Officer, Namakkal Constituency AIR 1952 SC 64; Mohinder Singh Gill Vs. Chief Election Commissioner (1978) 1 SCC 405 and Anugrah Narain Singh Vs. State of U.P. (1996) 6 SCC 303 as well as a Division Bench judgment of this Court in Pran Nath Bhatia & others Vs. State of Punjab & another 1997 (2) ILR 238.

Learned counsel for the petitioner, while controverting the arguments raised by Mr. Bhardwaj, referred to a judgment of the Hon'ble Supreme Court reported as Election Commission of India through Secretary Vs. Ashok Kumar & others (2000) 8 SCC 216 to contend that this Court in its jurisdiction under Article 226 of the Constitution has power of judicial review, but the interference which has the result of interrupting, obstructing or protracting the election proceedings is prohibited, but the action, which subserves the progress of the elections and facilitate the completion of the election, can always be sought by this Court in a writ petition. Reference is also placed upon a judgment of five Judges' Bench in Prithvi Raj Vs. State Election Commissioner, Punjab & others AIR 2007 P&H 178, wherein the

power of judicial review in respect of election to the Municipalities has been upheld.

Having heard learned counsel for the parties at length, we find that the writ petition disputing the rejection of nomination paper, when the election process had commenced, does not warrant any interference, so as to permit the petitioner to avail his remedy of election petitioner after the conclusion of the elections. For such conclusion, we may refer to the Constitution Bench judgment rendered in Mohinder Singh Gill's case (supra), wherein the Bench considered Article 329 of the Constitution pertaining to the elections to the Legislative Assembly. The first question, which was considered by the Bench was: Whether Article 226 is covered by the embargo contained in Article 329(b) putting restriction on all manner of question, which may have impact on the ultimate result of the elections. The Bench observed as under:

“22. At the first blush we get the comprehensive impression that every calling in question of an election save, at the end, by an election petition, is forbidden. What, then, is an election? What is 'calling in question? Every step from start to finish of the total process constitutes 'election', not merely the conclusion or culmination. Can the cancellation of the entire poll be called a step in the process and for the progress of an election, or is it a reverse step of undoing what has been done in the progress of the election, non-step or anti-step setting at naught the process and, therefore, not a step towards the goal and hence liberated from the coils of Article 329(b)? And, if this act or step were to be shielded by the constitutional provision, what is an aggrieved party to do? This takes us to the enquiry about the ambit of Section 100 of the Act and the object of Article 329 (b) read with Article 324. Such is the outline of the complex issue projected before us.

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26. The rainbow of operations, covered by the compendious expression election, thus commences from the initial

notification and culminates in the declaration of the return of a candidate. The paramount policy of the Constitution-framers in declaring that no election shall be called in question except the way it is provided for in Article 329 (b) and the Representation of the People Act, 1951, compels us to read, as Fazal Ali, J. did in *Pannuswami*, the Constitution and the Act together as an integral scheme. The reason for postponement of election litigation to the post-election stage is that elections poll not unduly be protracted or obstructed. The speed and promptitude in getting due representation for the electors in the- legislative bodies is the real reason suggested in the course of judgment.

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35. A poll is part-a vital part-of the election but with the end of the poll the whole election is not over. Ballots have to be assembled, scrutinized, counted recount claims considered and result declared. The declaration determines the election. The conduct of the election thus ripens into the elector's choice only when processed, screened and sanctified, every escalatory step upto the formalized finish being unified in purpose, forward in movement, fair and free in its temper. Article 329(b) halts judicial intervention during this period, provided the act possesses the prerequisites of 'election' in its semantic sweep. That is to say, immunity is conferred only if the act impeached is done for the apparent object of furthering a free and fair election and the protective armour drops down if the act challenged is either unrelated to or thwarts or taints the course of the election."

Another Constitution Bench in Lakshmi Charan Sen & others Vs. A.K.M. Hassan Uzzaman & others (1985) 4 SCC 689, while considering the orders passed in a writ petition filed claiming that the revision of electoral rolls be undertaken de novo; that objections and appeals in regard to the electoral roll be heard and disposed of and that no notification calling for election to the Legislative Assembly be issued until the rolls were duly revised, held that holding the elections to Legislatures and holding them according to law are both matters of paramount importance. On the one

hand is the individual's statutory right of franchise, on the other is the constitutional obligation imposed by Article 168 that 'For every State there shall be a Legislature.....'. The Bench held as under:

“21. As a result of this discussion, it must follow that the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.”

In Anugrah Narain Singh's case (supra), the Hon'ble Supreme Court dealt with the elections to the Municipalities after insertion of Part IX-A in the Constitution. The challenge was to the delimitations of the Municipal Wards for the purpose of elections. The Court held as under:

“24. The validity of Sections 6-A, 31, 32 and 33 of the U.P. Act dealing with delimitation of wards cannot be questioned in a court of law because of the express bar imposed by Article 243-ZG of the Constitution. Section 7 contains rules for allotment of seats to the Scheduled Castes, the Scheduled Tribes and the Backward Class people. The validity of that Section cannot also be challenged. That apart, in the instant case, when the delimitation of the wards was made, such delimitation was not challenged on the ground of colourable exercise of power or on any other ground of arbitrariness. Any such challenge should have been made as soon as the final order was published in the Gazette after objections to the draft order were considered and not after the notification for holding of the elections was issued. As pointed out in Lakshmi Charan Sen's Case, that the fact that certain claims and objections had not been disposed of before the final order was passed, cannot arrest the process of election.”

In Harnek Singh Vs. Charanjit Singh & others (2005) 8 SCC 383, the issue in respect of elections for the post of Chairman, Panchayat Samiti was raised by way of a writ petition. Examining the issue, the

Hon'ble Supreme Court considered the three Judges' judgment in C. Subrahmanyam Vs. K. Ramanjaneyullu (1998) 8 SCC 703 and Ashok Kumar's case (supra) i.e. the judgment referred to by the learned counsel for the petitioner and found that it was not a fit case where the High Court should exercise its writ jurisdiction.

In Gurdeep Singh Dhillon Vs. Satpal & others (2006) 10 SCC 616, the challenge was to elections to the Municipal Council in the State of Punjab. Referring to Article 243-ZG, the Hon'ble Supreme Court held as under:

“5. There is no dispute that the writ petition was moved only to challenge the election of the appellant to Municipal Council, Ferozepur City. Instead of challenging the said election by an election petition under Section 74 of the Punjab State Election Commission Act, 1994, respondents 1 to 13 took a short cut by filing a writ petition and invoking the constitutional jurisdiction of the High Court under Articles 226/227 of the Constitution. This petition ought not to have been entertained in view of the specific bar under Article 243-ZG(b) of the Constitution of India. The only remedy available to challenge the election was by raising an election dispute under the local statute.”

A Division Bench of this Court in Pran Nath Bhatia's case (supra) has held as under:

“27. Another aspect which has to be kept in mind is that the elections were ordered to be held under the directions of the High Court in which a time frame had been given. Elections for Panchayats, Municipal Corporation and Legislatures have to take place at regular intervals. Holding of elections cannot be stalled on the complaint of a few individuals as this may cause injustice to crores of other voters and have a right to elect their representatives. It was pointed out by the Supreme Court of India in Lakshmi Charan Sen & others Vs. A.K.M. Hassan Uzzaman & others (1985) 4 SCC 689, at 703 that:

“the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the Legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations.”

In Ashok Kumar’s case (supra), the Election Commission issued a notification of mixing of ballot papers before counting instead of counting polling station-wise. The petitioners have sought the suspension of the said notification. The prayer for interim relief was opposed by the Election Commission relying upon Article 329 of the Constitution. However, the High Court directed the Election Commission to make directions in such a way counting was conducted booth-wise consistent with the guidelines dated 22.09.1999 instead of notification dated 01.10.1999.

The issue examined was:

“12. The issue arising for decision in these appeals is the jurisdiction of the High Court to entertain petitions under Article 226 of the Constitution of India and to issue interim directions after commencement of the electoral process.”

After considering the judgments on the issue, the Hon’ble Supreme Court held as under:

“28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over-enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

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30. To what extent Article 329 (b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non-obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gills case, supra). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.”

After the aforesaid finding, the Court concluded as under:

“32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

- (1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.
- (2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or

in furtherance of the election proceedings cannot be described as questioning the election.

- (3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.
- (4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

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Learned counsel for the petitioner has referred to conclusions (2) & (4), as reproduced above, in support of his argument that the petitioner is not calling in question an election. He is not interrupting, obstructing or protracting the elections process. It is argued that the writ petition is to expedite the election proceedings, therefore, the same would be maintainable.

The Full Bench of this Court in Prithvi Raj's case (supra), has overruled the earlier judgment in Lal Chand Vs. State of Haryana AIR 1999 P&H 1, wherein it was held that the writ petition is maintainable in respect of elections of the Municipalities. The Bench held as under:

“21. A conjoint reading of the provisions of Constitution, the Municipal Act and the Election Commission Act leads to a singular conclusion, namely, that once an election has been notified under

Section 13-A(2) of the Municipal Act, an 'election', as defined in Section 3 (4-c) thereof, can only be called into question, by way of an election petition, filed in accordance with the provisions, and the mode and manner, as set out in the Election Commission Act.

22. The words used in sub-clause (b) of Article 243-ZG, and Section 74 of the Election Commission Act, do not, by specific intent or necessary inference, place any embargo on or in any manner curtail a High Court's jurisdiction under Article 226 of the Constitution. Neither Article 243-ZG of the Constitution nor Section 74 of the Election Commission Act makes any reference to the High Court. However, where the cause placed before a High Court calls into question an 'election', the High Court would in the exercise of judicial restraint, desist from exercising jurisdiction.

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27. An 'election', under the Municipal Act, commences with the issuance of a notification, by the State Government, under Section 13-A(2) of the Municipal Act. The election is thereafter held by the State Election Commission. The 'election' concludes, as provided in the aforementioned statutory provision, with the declaration of the result. Thus, a petition that 'calls into question' an 'election', during the period of the 'election', would not be entertained, under Article 226 of the Constitution of India. Redress to any such grievance, would have to await the outcome of the election and then also would be urged, by filing an election petition, under the provisions of the Election Commission Act. The aforementioned conclusions, however, shall not be construed to oust the jurisdiction of a High Court, under Article 226 of the Constitution of India. A High Court's power of judicial review is merely postponed, to a time and a stage, after the conclusion of the election and then also to a judicial appraisal of any judgment or order that may be passed by an Election Tribunal, duly constituted in terms of Section 73 of Election Commission Act.

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29. However, the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as such a petition does not call into question an election. A petition, seeking an expeditious conclusion

of an election, or filed with the object of facilitating the conduct of an election, would not be a cause, calling into question, an election and, adjudication, thereof would not be declined, by relegating the aggrieved petitioner to the remedy of filing an election petition. Thus, the words, appearing in Article 243-ZG(b) of the Constitution, clearly postulate that the legislative intent expressed therein, would come into operation only where a petition discloses a grievance, that calls into question an election.

30. This exercise of judicial restraint cannot be equated with lack of or bar of jurisdiction. Thus, the Full Bench, in Lal Chand's case (supra) did not commit any error of law, while holding that Article 226 of the Constitution, being an integral part of the basic structure of the Constitution, could not be diluted and exercise thereof could not be barred by any provision of the Constitution of India. The judgments of the Hon'ble Supreme Court in Ponnuswami's case and Mohinder Singh Gill's case (supra), were apparently not brought to the notice of the Full Bench. The principle of judicial/jurisdictional restraint enunciated therein was apparently not placed before the Full Bench."

In view of the above discussion, though the jurisdiction of the High Court is not barred to entertain a writ petition, but it is a judicial restraint to interfere in the elections once the election process is set in motion. This is so in the line on the interpretation of Article 329 of the Constitution pertaining to elections to the Parliament and Legislative Assemblies and Article 343 ZG in respect of elections to the Municipalities. Therefore, the rule of law, which has been adopted consistently, is that after the election process is set in motion, this Court in exercise of the powers under Article 226 of the Constitution will not interfere in the election process. Though in terms of Prithvi Raj's case (supra), we find that after the elections are concluded, there is power of judicial review, but normally since the Statute has provided effective alternative remedy; it is the said remedy, which should be availed rather than the extra ordinary writ jurisdiction of

this Court. Thus, we find that invocation of writ jurisdiction of this Court was misconceived and untenable.

However, we are faced with a situation, where the petitioner has been permitted to participate in the election process by directing the Returning Officer to accept the nomination paper of the petitioner. In such process of election, the petitioner has obtained the maximum number of votes. Therefore, to set at naught the election at this stage would be against the wish of the people of the Constituency.

Consequently, we dispose of the present writ petition with liberty to the parties or such other affected person to seek remedy against the election of the petitioner in accordance with law and before an appropriate Forum.

[HEMANT GUPTA]
JUDGE

09.03.2015
Vimal

[LISA GILL]
JUDGE