

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.1164 of 2015 (O&M)

Date of decision: 14.07.2015

Manpreet Singh Gill

..... Appellant

versus

Kuljit Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.D.S.Pheruman, Advocate for the appellant
Mr.Rajesh Bhateja, Advocate for the respondent

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?* **Yes**
2. *To be referred to the Reporters or not ?* **Yes**
3. *Whether the judgment should be reported in the Digest?* **Yes**

Kuldip Singh, J.

Appellant has filed this appeal against order dated 23.12.2014, passed by the Additional Deputy Commissioner-cum-Election Tribunal, Moga vide which election of the present appellant as Sarpanch of Gram Panchayat Village Gholia Kalan was set aside and the opposing candidate Kuljit Singh (respondent herein) was declared as elected Sarpanch.

Facts of the case are that Kuljit Singh, defeated candidate, filed the election petition before the Election Tribunal, Moga under Sections 74 and 76 of the Punjab State Election Commission Act, 1994 (for short, 'the Act of 1994'). It was stated in the election petition that in the year 2013 panchayat elections were held. The petitioner Kuljit Singh (respondent herein) as well as

Manpreet Singh Gill – respondent (appellant herein) contested the election. One Chamkaur Singh also contested the election. It was claimed that Manpreet Singh Gill and his family members are also enrolled as voters in SAS Nagar Mohali in addition to being registered as voters in Gholia Kalan, which is in violation of Section 26 of the Act of 1994. Therefore, election of respondent (appellant herein) should be cancelled under Section 89(d)(iv) of the Act of 1994 and the petitioner (respondent herein) Kuljit Singh should be declared as Sarpanch of Gram Panchayat under Section 90 of the Act of 1994.

Respondent (present appellant) on appearance took a preliminary objection that 3rd candidate to the post of Sarpanch is not made as party. Therefore, the election petition is not maintainable. It was denied that the respondent (appellant herein) and his family members are also registered as voters in SAS Nagar Mohali. It was claimed that they are residents of village Gholia Kalan and have exercised their voting rights in Legislative Assembly of Bagha Purana in 2006 at Sr.Nos.860 to 863. They were also enrolled in the electoral roll of 2003 in Legislative Assembly of Bagha Purana at Sr.Nos.506 to 510. Respondent denied to have violated the Act of 1994. From the pleadings, the followings are framed:-

- “1. Whether the election of respondent as Sarpanch of Gram Panchayat Gholia Kalan is liable to be declared null and void? OPP*
- 2. Whether the respondent has committed any corrupt practice? OPP*
- 3. Whether the petition is not maintainable in the present*

form? OPR

4. Whether the petition is not filed in accordance with provisions of law? OPR

5. Whether the petitioner has no locus standi to file the present petition? OPR

6. Relief.”

The Election Tribunal came to the conclusion that respondent (appellant herein) secured 2084 votes, whereas Kuljit Singh petitioner (respondent herein) secured 1400 votes and Chamkaur Singh came 3rd. It is noted that as per declaration, Chamkaur Singh secured 196 votes.

The Tribunal recorded the finding of fact that respondent (appellant herein) and his family members are also registered as voters in SAS Nagar in violation of Section 26 of the Act of 1994. Therefore, the election of the present appellant to the post of Sarpanch was set aside and the petitioner (respondent herein), who had secured second highest votes, was declared as Sarpanch.

I have heard learned counsel for the parties and have also carefully gone through the file.

Section 26 of the Act of 1994 provides as under:-

26. No person to be registered in more than one constituency.- No person shall be entitled to be registered in the electoral roll for more than one constituency.”

Section 28 lays down the conditions of registration and is reproduced as under:-

28. Conditions of registration.- Subject to the foregoing provisions of this Chapter, every person who-

(a) is not less than eighteen years of age on the qualifying date; and
(b) is ordinarily resident in a constituency;
shall be entitled to be registered in the electoral roll for that constituency.”

Section 31 empowers the correction of electoral rolls, which includes the ground of change of place of ordinary residence and is reproduced as under:-

31. Correction of entries in electoral rolls.- *If the Electoral Registration Officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency--*

(a) is erroneous or defective in any respect; or
(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency; or
(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll'

the Electoral Registration Officer, shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on a ground specified under clause (a) or clause (b) or under clause (c), except in the case of death of a person, the Electoral Registration Officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

Disqualification of the member of the Panchayat or

municipality are enumerated in Section 11 of the Act of 1994 and are reproduced as under:-

Section 11- Disqualifications 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 under Section 153A or Section 171E or Section 171 F 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 Municipality; or

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

h) if he is interested 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.

(k) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of Punjab 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; or

(l) If he has been convicted of any offence involving moral turpitude or an offence implying of any defect in the character of a member as defined in clause (zg) of section 2 of the Punjab Panchayati Raj Act, 1994 (Punjab Act No.9 of 1994) or a member of the Municipality unless a period of five years has elapsed since his conviction; or

(m) If he is registered as a habitual offender under the Punjab Habitual Offenders (Control and Reform) Act, 1952 (Punjab Act No.12 of 1952), or any other law for the time being in force; or

(n) If he has been convicted of an offence under the Protection of Civil Rights Act, 1955 (Central Act No.22 of 1955) within a period of five years immediately preceding the last date of the filing of the nomination papers; or

(o) If he 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 (Punjab Act No.25 of 1961) or of the State Government or the Central Government; or
(p) If he has been notified as disqualified for appointment as public servant except on medical grounds; or
(q) If he has not paid the arrears of tax imposed by the Panchayat or the Municipality, as the case may be; or
(r) If he is in un-authorized occupation of property belonging to any local authority; or
(s) If he is a member of either House of the Parliament or of the Legislature of Punjab State:

Provided that a member of either House of the Parliament or the Legislature of Punjab State may be elected as a member as defined in clause (zg) of section 2 of the Punjab Panchayati Raj Act, 1994 (Punjab Act No.9 of 1994) or as a member of the Municipality, if, alongwith his nomination paper, he gives undertaking to the effect that he shall resign the membership of either House of the Parliament or of the Legislature of Punjab State, as the case may be, and so resigns before taking the oath or making affirmation for taking over the office as such member; or

(t) If he refuses to act, or becomes, in the opinion of the State Government, incapable of acting, or has been declared a bankrupt or an insolvent or has been convicted of any such offence or subjected by a criminal court to any such order as implies, in the opinion of the State Government, a defect of character which unfits him to be a member of the Panchayat or the Municipality; or
(u) If he has been declared, by notification, to be disqualified for employment in, or has been dismissed from, the Public service and the reason for the disqualification or dismissal is such as implies in the

opinion of the State Government a defect of character which unfits him to be a member of the Panchayat or the Municipality; or

(v) If, being a legal practitioner, he acts or appears in any legal proceeding on behalf of any person against the Panchayat or the Municipality, or on behalf of or against the State Government, where in the opinion of the State Government, such action or appearance is contrary to the interest of the Panchayat or the Municipality.

Section 25 provides the disqualification for registration in electoral rolls which is reproduced as under:-

25. Disqualification for registration in an electoral roll.- *A person shall be disqualified for registration in an electoral roll, if he,-*

- (a) is not a citizen of India; or*
- (b) is of unsound mind and stand so declared by a competent court.*
- (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections; or*
- (d) has been convicted of an offence punishable under:-*
 - (i) the Protection of Civil Rights Act, 1955; or*
 - (ii) the Unlawful Offences (Prevention) Act, 1967; or*
 - (iii) the Dowry Prohibition Act, 1962; or*
 - (iv) the Terrorist and Disruptive Activities (Prevention) Act, 1987; or*
 - (v) the Religious Institutions (Prevention of Misuse) Act, 1988; or*
 - (vi) any law providing for the prevention of profiteering and hoarding; or*
 - (vii) any law relating to the adulteration of food or drugs.*

Section 89 provides that grounds for declaring the election to be void. The same is reproduced as under:-

89. Grounds for declaring election to be void.- (1)

Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion.-

(a) that on the date of his election, a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under this Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected.-

(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act;

the Election Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Election Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Election Tribunal is satisfied.-

(a) that no such corrupt practice was committed at the

election by the candidate or his election agent, and every such corrupt practice as committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(c) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agent;

then the Election Tribunal may decide that the election of the returned candidate is not void.

(3) In this section, the expression 'agent' has the same meaning as assigned to it in Explanation (1) given under clause (9) of section 108, but does not include election agent.

Section 77 provides as to who should be made party to the election petition and is reproduced as under:-

77. Parties to the petition.- *A petitioner shall join as respondent to his petition-*

(a) where he, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegation of any corrupt practice is made in the petition.

The perusal of Section 77(a) shows that where election of a returned candidate is sought to be declared as void and further declaration is claimed by the petitioner that he himself or any other candidate has been duly elected then all contesting candidates

should be made party.

In the present case, the petitioner had sought to set aside the election of present appellant and further declaration that he should be declared as elected. Such declaration was in fact granted. Admittedly, in this case, Chamkaur Singh the 3rd candidate, who attained 3rd position in the election, was not made party. Therefore, for violation of Section 77(a) of Act of 1994, the election petition of the petitioner (respondent herein) was not maintainable.

In this way, the petitioner (respondent herein) was required to show that the case of the present appellant (respondent before the Tribunal) falls in any of the grounds mentioned in Section 89 or 11 of the Act of 1994 or at the most, he was not eligible to be registered as voter as per Section 25 of the Act of 1994.

Admittedly, Section 26 provides that no person shall be entitled to be registered in the electoral roll in more than one constituency. But then the question would arise as to what consequences would follow if it is so done? Act of 1994 does not make the registration of votes at two different places as a ground to declare the election as void. The grounds of disqualification are mentioned in Section 11 of the Act of 1994 and the grounds on which the election can be declared as void are mentioned in Section 89 of the Act of 1994. The perusal of the said grounds show that nowhere under the said sections the registration of votes at two places is a ground to declare the election as void.

The perusal of impugned order shows that the election of the present appellant was set aside only on the ground that it was

found that he and his family members were also registered as voters at SAS Nagar Mohali and that a criminal case has been registered against him bearing FIR No.147 dated 10.10.2013 under Sections 199, 420, 468 and 471 IPC.

For declaring the election void, the case must be covered either under Section 11 or Section 89 of the Act of 1994. Act of registration of votes at two places is also not covered in the definition of 'corrupt practices'.

Moreover, it is found that for violation of Section 77(a), the election petition was not maintainable as the 3rd candidate Chamkaur Singh was not made party. Secondly, the mere registration of vote in another constituency is not considered a disqualification under Section 11 of the Act of 1994 nor it is a ground to declare election as void under Section 89 of the Act of 1994.

The authority of this Court in the case of Varinder Kaur alias Barinder Kaur v. Smt.Gurcharan Kaur and another, 2012(2) RCR (Civil) 116, produced by the counsel for the respondent is not attracted in the present case as in the said case, case was remanded and was not finally decided on merits.

This Court in Joginder Singh v. Baldeep Singh and others, 2010 (1) RCR (Civil) 78, observed as under:-

“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 under Section 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.”

It being so, this Court is of the firm view that for the reasons mentioned above, the impugned order is not sustainable in the eyes of law. Accordingly, the present appeal is allowed. The impugned order dated 23.12.2014 passed by the Additional Deputy Commissioner-cum-Election Tribunal, Moga is set aside and consequently, it is ordered that Kuljit Singh – respondent who was declared as Sarpanch stands removed from the said post with immediate effect and the present appellant Manpreet Singh Gill shall continue to work as Sarpanch of village Gholia Kalan.

14.07.2015
gk

(Kuldip Singh)
Judge