

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.476 of 2015 (O&M)
Date of Decision:13.02.2015

Baldev Singh

....Appellant

Versus

Mohan Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. R.S. Chauhan, Advocate for the appellant.
Mr. B.S. Bhalla, Advocate for respondent No.1.

NAVITA SINGH, J.

1. This appeal was preferred against the order passed on 24.12.2014 by the Election Tribunal, Nawanshehr (Tribunal for short). The petitioner there, respondent No.1 herein, has challenged the election of the present appellant as Sarpanch of village Sajjowal.

2. Respondent No.1 herein rested his claim before the Tribunal on the ground that the appellant had contested the election by concealment of facts because if he had disclosed the facts, he would not even have qualified to file nomination papers. A criminal case by way of FIR No.66 dated 6.8.2009 at Police Station Balachaur was registered against him regarding which charge sheet was submitted by the police and trial was pending at the time nomination papers were filed. Not only that, another case by way of FIR No.58 dated 9.2.2008 under Sections 419,420,468,471 IPC and Section 12 of the Passport Act was registered against the appellant in which case he was released on probation but fine of Rs.20,000/- was imposed on him.

3. The appellant admitted before the Tribunal that there were criminal cases against him, one of which was pending and in the other, fine had been imposed on him apart from releasing him on probation. All this, he admitted in

his statement before the Tribunal. However, in his reply to the petition, he submitted that he had never been convicted and also did not disclose the pendency of one criminal case against him.

4. Finding that the appellant was disqualified to contest the election, the Tribunal set aside the election of the present appellant and declared elected the petitioner before it i.e. respondent No.1 herein, as the Sarpanch.

5. Counsel for the appellant contended that at this stage he did not dispute the pendency of the criminal case and the fact that imposition of fine in the case registered at New Delhi amounted to conviction. Though release on probation may not be a bar to contest an election, yet the imposition of fine was a sentence. He further contended that inspite of all that, the Tribunal, though rightly may have set aside the election of the appellant, could not declare respondent No.1 elected. He relied on Lata Devi Vs. Haru Rajwar (1989) 4 Supreme Court Cases 773, R.M. Seshadri Vs. G. Vasantha Pai 1969 (1) Supreme Court Cases 27 and Prakash Khandre Vs. Dr. Vijaya Kumar Khandre 2002 (2) RCR (Civil) 827.

6. Counsel for respondent No.1, however, first of all pointed out that despite admitting in his statement before the Tribunal, the appellant had the audacity to still pleaded in the grounds of appeal that no criminal case was pending or registered against him. Despite pleading here that a fine of Rs.20,000/- was imposed on him on 28.3.2011 and that he was held guilty and convicted, it was pleaded that no sentence was awarded. The conduct of the appellant in doing so was surely deprecable and is condemned by the court as after his own admission at an earlier stage in the petition, the appellant still mentioned in the grounds of appeal that there was no criminal case pending or

registered against him and that he had never been sentenced in any manner. He certainly did not come with the clean hands.

7. So far as the legal position regarding declaring present respondent No.1 as elected is concerned, reference may be made to Section 87 of the Punjab State Election Commission Act (Act for short), according to which, a Tribunal is entitled to make an order for declaring election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected. Counsel for the appellant while making reference to Clause (c) of Section 87 of the Act, referred in addition, to Section 90 of the Act, which is reproduced as under: -

Section 90

“Grounds for which a candidate other than the returned candidate may be declared to have been elected.--If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Election Tribunal is of the opinion,--

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices, the petitioner or such other candidate would have obtained a majority of the valid votes;

the Election Tribunal shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

8. In reference to the above provision of law, learned counsel for the appellant argued that respondent No.1 was required to claim in the petition a declaration that he had been duly elected and if the opinion of the Tribunal fell under any of the clauses of Section 90 of the Act, then it was incumbent on the Tribunal to declare the election of the appellant to be void and respondent No.1 to have been duly elected. The provisions of Sections 87 and 90 of the Act were read in conjunction by counsel for the appellant, though both are independent provisions. Nothing provided in one of the sections, overrides the other.

According to Section 90 of the Act, the Tribunal would be bound to make the order mentioned in that section after framing an opinion under any of the clauses, where the petitioner before it claimed a declaration for being duly elected. In Section 87, however, the word 'may' is used and a Tribunal is given the power to make an order declaring the election of all or any of the returned candidates to be void and the petitioner to have been duly elected. A reading of Section 87 of the Act, which is reproduced hereunder for ready reference:-

Section 87

"Decision of the Election Tribunal.—At the conclusion of the trial of an election petition, the Election Tribunal may make an order for,—
 (a) dismissing the election petition; or
 (b) declaring the election of all or any of the returned candidates to be void; or
 (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected"

would show that any of the above three orders can be made by the Tribunal and there is no bar in declaring the petitioner before the Tribunal, duly elected.

9. According to Section 87, the Tribunal can pass an order under Clause (c), whether or not a declaration is sought by the election petitioner that he/she be declared elected. Section 90 contemplates a situation and rather comes into play only if such declaration is sought. In the present case, a declaration to that effect has been sought by the petitioner i.e. respondent No.1 herein, but the Tribunal proceeded under Section 87 (c) of the Act as was clearly mentioned in the last para i.e. operative portion of the impugned order. There is no bar under Section 87 from passing an order under Clause (c) in cases where such declaration was sought by the election petitioner whereas the Tribunal cannot proceed under Section 90 unless such a declaration is sought.

10. In the reported cases referred to above on which reliance was placed by counsel for the appellant, the facts were different and in those cases

there were more candidates than two. It was, therefore, not possible to declare the petitioner before the Tribunal as duly elected and fresh election had to be ordered. Also those cases were linked with corrupt practices and not with simply disqualification of any of the candidates. In the present case, there were two candidates i.e. the appellant and respondent No.1 and there was a difference of only 10 votes in between them. In Prakash Khandre (supra), there were more than two candidates and the difference in votes was 10327 between the election petitioner and elected candidate. The matter dealt with a situation as to whether, if not for corrupt practice on the part of the elected candidate, whether the petitioner or such other candidate who obtained majority of valid votes could be declared elected.

11. In the instant case, there were only two candidates and since it was found that the appellant was disqualified to contest the election, the only other candidate being respondent No.1, the Tribunal rightly declared him elected. The power exercised under Section 87 of the Act was neither arbitrary nor illegal. If the order had been passed under Section 90 by the Tribunal, then the conditions laid thereunder were to be satisfied.

12. The appellant having not come with the clean hands before the Tribunal when he filed his reply to the petition and herein while filing the appeal, is even otherwise, not entitled to any relief. He tried to cheat the voters by concealment of the facts, which were mandatory to be disclosed and he secured votes. The Supreme Court held in Resurgence India Vs. Election Commission of India and another 2013 (4) RCR (Civil) 392 that the right of the voters to know the antecedents of a candidate was a natural right flowing from the concept of democracy. Though the matter in question in the said case was different, yet the intention of the Supreme Court was clear regarding the right of the voters to

know the antecedents of candidate seeking to contest the election. It was also written that failure on the part of the candidate to furnish relevant information as required by the Representation of the People Act would result in prosecution of the candidate. Every voter may not be in the know of the fact that the appellant had been sentenced in a case at Delhi, while another case of Police Station Balachaur was pending against him or for that he was disqualified to contest the election.

13. The appeal is dismissed with Rs.20,000/- as costs.

(NAVITA SINGH)
JUDGE

13.02.2015

Ishwar

Whether to be referred to reporter: Yes