

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.M. NO.4103 CII OF 2016 &
F.A.O. NO.1292 OF 2016
DATE OF DECISION: JUNE 01, 2016

Lakhwinder Singh

.....Appellant

VERSUS

Balwant Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Divjyot S. Sandhu &
Ms. Mandeep Kaur, Advocates,
for the appellant.

Mr. Prateek Pandit, Advocate,
for respondent No.1.

Ms. Charanjit Kaur, Advocate,
for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the order dated 29.01.2016 passed by the Election Tribunal under the Punjab State Election Act, 1994, Kapurthala, whereby petition under Sections 74, 76, 89, 90 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as “1994 Act”) as filed by Balwant Singh (respondent No.1 herein) for setting-aside the election of appellant-Lakhwinder Singh to the post of Sarpanch of Gram Panchayat, Village Khanpur, Tehsil and District Kapurthala, has been accepted and election of the appellant set-aside and Balwant Singh,

respondent No.1 (election petitioner) declared as Sarpanch of Gram Panchayat, Village Khanpur, Tehsil and District Kapurthala.

It is the contention of learned counsel for the appellant that the election to the post of Sarpanch, Gram Panchayat, Village Khanpur, was held on 03.07.2013. On that very date, counting of the votes took place wherein the appellant was declared as winner and thereafter he took oath as Sarpanch of Gram Panchayat, Village Khanpur, Tehsil and District Kapurthala. An election petition was filed by respondent No.1, challenging the election of the appellant, where he asserts that the nomination of the appellant could not have been accepted as he was in illegal possession of 1 kanal and 15 marlas of Gram Panchayat land in Khewat/Khata No.949/868, Khatauni No.1336, Khasra No.115 (11-7) at the time of filing of nomination papers. However, the said objection, as raised by respondent No.1, was rejected by the Presiding Officer-respondent No.2 on the ground that no documentary proof in this regard had been produced. The challenge was based upon this assertion alone but in the proceedings before the Election Tribunal except for statement of respondent No.1 and one Jarnail Singh son of Inder Singh, who appeared as PW1 and PW2 respectively, no other evidence, much less documentary, was brought on record. He contends that the Presiding Officer of the Tribunal, after closing the evidence of the appellant, had appointed the Naib Tehsildar, Dhilwan, as Court Commissioner to enquire about the correct situation relating to the illegal possession of the land of the Gram Panchayat and to present his report in Court. Naib Tehsildar, Dhilwan, accordingly submitted his report dated 27.04.2015 (Annexure R1/2) on 12.05.2015. In the said report, no demarcation had been conducted by the Naib Tehsildar, Dhilwan, and he

had merely relied upon the earlier demarcation held on 03.12.2008 (Annexure R1/1), wherein it was stated that the appellant was in possession of some land. The Naib Tehsildar has merely proceeded on the spot, inspected the same and submitted his report while relying upon demarcation conducted on the spot on 03.12.2008. He, thus, submits that the said enquiry report could not have been relied upon by the Tribunal, especially when no opportunity was made available to the parties to object to the said report, which was contrary to the procedure prescribed under the Revenue Manual and also the High Court Rules and Orders as applicable. No positive evidence has been led by respondent No.1, which would established his claim. The onus was upon respondent No.1 in the election petition to prove the same and he failed to discharge it. Assertion has also been made that the Tribunal could not have proceeded to appoint a Local Commissioner in the facts and circumstances of the present case, when there was no prima-facie documentary evidence on record, which would indicate that some land of Gram Panchayat was in illegal possession of the appellant. The counsel has, thus, prayed for allowing the present appeal by setting-aside the impugned order.

On the other hand, counsel for respondent No.1 has asserted that once it has been established on the basis of the report of the Local Commissioner (Naib Tehsildar, Dhilwan), dated 27.04.2015 that the appellant was in illegal possession of 6 marlas of Gram Panchayat land, the findings as recorded by the Tribunal cannot be faulted with. The nomination papers of the appellant were wrongly accepted by the Presiding Officer by rejecting the objection, as raised by respondent No.1. He, thus, contends that the impugned order, being in accordance with law, does not call for any

interference.

I have considered the submissions made by learned counsel for the parties and with their assistance have gone through the impugned order.

The only ground which has been taken in the election petition by respondent No.1 while challenging the election of the appellant as Sarpanch of Gram Panchayat, Village Khanpur, Tehsil and District Kapurthala, was non-acceptance of his objection to the nomination submitted by the appellant i.e. regarding illegal possession of Gram Panchayat land. The objection was rejected by the Presiding Officer for the reason that no documentary evidence was brought on record, which would indicate illegal possession of Gram Panchayat land at the hands of the appellant. In the election petition as well, no evidence has been led except for the bald assertions made by respondent No.1 as PW1 and one Jarnail Singh as PW2. No other evidence in the form of revenue record had been placed on record. The onus was upon respondent No.1, who was the election petitioner, to prove his assertion, which he had failed to discharge, especially when the appellant had denied the allegations as had been made. The Tribunal has proceeded to exceed its jurisdiction by appointing a Local Commissioner (Naib Tehsildar, Dhilwan) without there being any request from any party to the petition, depriving the parties of their right to object to the same. Even the report of the Local Commissioner was not supplied to the parties and, thus, they did not have an opportunity to file objections, if any, to the same. That apart, the Tribunal is a neutral party in the election petition and, therefore, should proceed to decide the same as per the procedure prescribed under the Punjab Panchayat Election Rules, 1994. It is not in dispute that Civil Procedure Code is also applicable where the Act

and the Rules are silent and, therefore, the Tribunal is required to follow the same. Even if the report of the Naib Tehsildar, Dhilwan, dated 27.04.2015 is to be taken as that of a Local Commissioner, the same is not as per the provisions of the Civil Procedure Code. The High Court Rules and Orders and the Revenue Manual, which prescribe the manner in which the demarcation is to be held to establish the possession of a party, have not been followed. As is apparent from the report of the Naib Tehsildar, Dhilwan, he proceeded to only inspect the spot and did not demarcate the land himself, which fact is apparent from his report, where he states that as per the demarcation conducted at the spot on 03.12.2008, the appellant was in possession of about 6 marlas of land. There is nothing in the report, which would indicate that said 6 marlas of land belonged to Lakhwinder Singh. The said report being submitted without first identifying the established *burjis* (signs) and thereafter without carrying out any measurement, the same cannot be taken to be correct demarcation and, thus, the findings in the said report could not have been relied upon by the Tribunal to return a finding that the appellant was in illegal possession of the Gram Panchayat land. The finding, as returned by the Tribunal, cannot sustain and is set-aside.

In view of the above, the present appeal is allowed and the impugned order dated 29.01.2016 passed by the Deputy Commissioner-cum-Election Tribunal, under Punjab State Election Act, 1994, Kapurthala is hereby set-aside. The election petition of respondent No.1, Balwant Singh son of Diwan Singh, challenging the election of Lakhwinder Singh son of Sucha Singh to the post of Sarpanch of Gram Panchayat, Village Khanpur, Tehsil and District Kapurthala, is dismissed.

Since the main appeal stands dismissed, C.M. No.4103 CII of 2016 for staying the operation of the impugned order is also dismissed.

June 01, 2016
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(AUGUSTINE GEORGE MASIH)
JUDGE