

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

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FAO No.3218 of 2016 (O&M)
Date of Decision: May 31, 2016

Baljit Singh

...Appellant

Versus

Shingara Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Atul Lakhanpal, Senior Advocate
with Mr. Arjun Lakhanpal, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.11671-CII of 2016

Prayer in this application is for exemption from filing certified copies of impugned order dated 29.04.2016 passed by Deputy Commissioner-cum-Presiding Officer, Election Tribunal, Moga and Election Petition (Annexure P/1).

Application is allowed.

Exemption from filing the certified copies of aforesaid documents is granted subject to just exceptions.

FAO No.3218 of 2016

Notice of motion.

2. Mr. N.S. Sodhi, Advocate, accepts notice on behalf of respondent No.1.

3. Caveat discharged.

4. Heard counsel for the parties.

5. It is the contention of learned senior counsel for the appellant that the Tribunal has erred in allowing the election petition, whereby the acceptance of the nomination paper of the petitioner by the

Presiding Officer has been held to be contrary to the statute by holding that the appellant was disqualified for participating in the election process. He contends that as per Section 11 of The Punjab State Election Commission Act, 1994 (hereinafter referred to as the '1994 Act'), the period of disqualification is five years from the date of conviction, which period admittedly had expired and, therefore, the impugned order cannot sustain. In any case, he contends that respondent No.1 could not have been declared elected as there is no prayer made in the election petition to that effect.

6. Counsel for respondent No.1, on the other hand, contends that Section 11 of the 1994 Act, even if applied, in the light of sub-section (k) of the said Act, the appellant would not be qualified for participating in the election as he does not fulfil the mandate of the said provisions, according to which Section 8(1)(f) of The Representation of the People Act, 1951, would be applicable, according to which the disqualification period is to be counted as six years from the date of release from jail. He contends that six years from the date of his release had not expired on the date of submission of the nomination papers and, therefore, he was not qualified for taking part in the election. The findings, thus, of the Tribunal being in accordance with law, deserves to be upheld. As far as the declaration of respondent No.1 as the elected Sarpanch of the village is concerned, he contends that as per Section 87 of the 1994 Act, the Tribunal has the powers to do so and it had rightly exercises its powers under the said Section to declare respondent No.1 as the elected Sarpanch. He, therefore, contends that the appeal deserves dismissal.

7. I have considered the submissions made by learned counsel for the parties.

8. Section 11 and sub-section (k) of the 1994 Act reads as follows:-

“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, -

(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”

In view of the above, reference will thus have to be made to the provisions of The Representation of People Act, 1951, which deals with the disqualifications. Since the present case is one where the appellant admittedly is a convicted person under the N.D.P.S. Act, Section 8(1)(f)(ii) would apply, which reads as follows:-

“8. Disqualification on conviction for certain offences.- (1)

A person convicted of an offence punishable under-

- (a) XXXX XXXX XXXX*
- (b) XXXX XXXX XXXX*
- (c) XXXX XXXX XXXX*
- (d) XXXX XXXX XXXX*
- (e) XXXX XXXX XXXX ; or*

(f) The Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

- (g) XXXX XXXX XXXX*
- (h) XXXX XXXX XXXX*
- (i) XXXX XXXX XXXX*
- (j) XXXX XXXX XXXX*
- (k) XXXX XXXX XXXX*
- (l) XXXX XXXX XXXX*
- (m) XXXX XXXX XXXX*

(n) XXXX

XXXX

XXXX

shall be disqualified, where the convicted person is sentenced to-

(i) only fine, for a period of six years from the date of such convictions;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.”

A conjoint reading of the said provisions clearly depicts that the appellant does not fulfil the mandate of the statute which would entitle him to participate in the election which was held for the post of Sarpanch of the village Daroli Bhai.

9. It is not in dispute that an FIR dated 31.07.2000 under the Narcotic Drugs and Psychotropic Substances Act, 1985, was registered against the appellant at Police Station Kotkapura, in which he was convicted on 05.02.2004 for 15 years and fine of ₹1,50,000/- was also imposed. In an appeal preferred by him, the tenure of punishment was reduced to ten years and the fine to ₹1,00,000/-. Appellant was released on bail from jail on 01.11.2007. Even if this date, for the sake of argument, is taken to be the date of his release, he does not complete six years on the date fixed for filing nomination or the date on which the elections were held i.e. 03.07.2013.

10. The findings, therefore, of the Tribunal being in accordance with law in this regard, do not call for any interference. The impugned order dated 29.04.2016 passed by the Election Tribunal holding the appellant ineligible to contest the elections and consequently removing him as the Sarpanch is upheld.

11. There is a dispute between the counsel for the parties as to whether the appellant has completed his jail term as per sentence awarded by this Court or not because as per the impugned order, the appellant has been released on bail from jail on 01.11.2007 and there is no release order on record which would indicate as to whether the appellant has completed his jail term or not in compliance with the order dated 13.02.2007 passed by this Court in an appeal preferred by him, according to which he was to undergo imprisonment for ten years with fine of ₹1,00,000/-. In the absence of clear evidence being available on record, this Court is unable to comment upon the same as of now and leaves it open for the authorities to decide on their own in case the appellant prefers to contest the election to the Panchayat.

12. As regards the contention of learned counsel for the appellant that the relief of declaring respondent No.1 as the Sarpanch of the village relying upon the provisions of Section 87 of sub-section (c) of the 1994 Act being beyond the pleadings, the same is found to be correct as in the election petition which has been filed, the prayer made reads as follows:-

“So, in the light of above mentioned fact and circumstances. The election of Baljit Singh respondent No.1 for the post of Sarpanch be set aside/cancelled and the order for re-election for the post of Sarpanch of V. Droli Bhai be passed to meet the ends of justice.”

13. The prayer made in the election petition was for ordering re-election for the post of Sarpanch of village Daroli Bhai, thus, the relief which has been granted by the Tribunal declaring respondent No.1 as the elected Sarpanch of the village Daroli Bhai, cannot be said to be in accordance with the pleadings and law. Merely because the Tribunal has the

powers to declare a candidate, who had the next maximum votes, to be elected, would not be enough, especially when such a prayer has not been made, as in the present case. This relief cannot be granted to the respondent for another reason i.e. the requirement under Section 90 has not been fulfilled/complied with, which mandates all the candidates who had participated in the election to be a party to the election petition. It is an admitted fact that no other candidate except the appellant herein, who had participated in the election of Sarpanch of the village, is a party to the election petition filed by the respondent.

14. The impugned order dated 29.04.2016 passed by the Deputy Commissioner-cum-Presiding Officer, Election Tribunal, Moga, to the extent of declaring respondent No.1-Shingara Singh as the Sarpanch of the village Daroli Bhai, Tehsil and District Moga, is set aside.

15. Let re-election to the post of Sarpanch be held as per law at an early date.

16. The appeal is partly allowed with above observations.

17. In the light of the dismissal of the appeal, the application for stay i.e. CM No.11672-CII of 2016, stands disposed of as infructuous.

May 31, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE