

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.7735 of 2015 (O&M)

Gurdev Singh

... Appellant

Versus

Presiding Officer Election Tribunal-cum-Additional Deputy Commissioner
and others

... Respondents

(2)

FAO No.7732 of 2015 (O&M)

Sarbjeet Kaur

... Appellant

Versus

The Presiding Officer Election Tribunal-cum-Additional Deputy
Commissioner and others

... Respondents

(3)

FAO No.7733 of 2015 (O&M)

Surinder Kaur

... Appellant

Versus

Presiding Officer Election Tribunal-cum-Additional Deputy Commissioner
and others

... Respondents

(4)

FAO No.7734 of 2015 (O&M)

Kulwant Singh

... Appellant

Versus

The Presiding Officer Election Tribunal-cum-Additional Deputy
Commissioner and others

... Respondents

(5)

FAO No.7736 of 2015 (O&M)

Harbans Singh

... Appellant

Versus

Presiding Officer Election Tribunal-cum-Additional Deputy
Commissioner and others

... Respondents

(6)

FAO No.7737 of 2015 (O&M)

Surinder Kaur

... Appellant

Versus

Presiding Officer Election Tribunal-cum-Additional Deputy
Commissioner and others

... Respondents

Decided on : 01.06.2017

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. N.S. Swaitch, Advocate for the appellants.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of six appeals i.e ***FAO Nos.7735, 7732, 7733, 7734, 7736 and 7737 of 2015***, which have been filed under Section 100 of the Punjab State Election Commission, Act, 1994 (hereinafter referred to as 'the Act') challenging the order dated 17.08.2015 passed by the Election Tribunal who is none other than the Additional Deputy Commissioner, Ludhiana (hereinafter referred at as 'the Tribunal') The facts are being taken from ***FAO No.7735 of 2015 'Gurdev Singh Vs. Presiding Officer, Election Tribunal-cum-Addl.***

Deputy Commissioner, Ludhiana and others', as the order is also of even date passed by the same officer in the same style.

The order shows absolute non-application of mind and any reasoning while dismissing the election petitions of all the appellants and is a stereo type order which cannot be appreciated in any manner. It is to be noticed that the respondents have been duly served, but none has put in appearance to contest the cases.

The election petition was filed by the appellant on 12.08.2013 on the ground that the election of the Gram Panchyat of Village, Chakk Kalan, Block Sidhwan Bet, Tehsil Ludhiana, District Ludhiana was held and declaration were sought that the election of the private respondent Surjit Singh as Panch be set aside. It was pleaded that the nomination papers have been filed after completion of all formalities in all respects and that they had been scrutinized by the official respondent, but the proper procedure in the nomination papers was not followed. The scrutiny and the verification was to be done by 23.06.2013 and 24.06.2013 and whether the nomination papers were to be accepted or rejected for that intimation was to be given and nor any information was displayed on the notice board till 25.06.2013. There were standing instructions/guidelines of the Government that if any minor objections are found in the nomination papers of the candidates, who are going to contest the Gram Panchayat elections, that be removed after calling them on the spot but respondents No.2 and 3 did not follow such instructions/guidelines nor they called the petitioner with regard to any

objection or rejecting the nomination papers.

A complaint dated 26.06.2013 had been submitted to the Deputy Commissioner, Ludhiana, which had been duly appended and even a complaint thereafter had been filed forwarded to the Election Commission, Punjab against the conduct of the official respondents. Resultantly, the setting aside of the elections was sought on the grounds of the nomination papers and non compliance of Section 41 of the Act.

In the written statement filed by the official respondents the plea was taken that the petition was not properly verified and there was misuse of the process of law and whole process had been done as per rules and there is no cause of action. It was denied that no intimation had been given to the petitioners till 25.06.2013 as alleged. The nomination papers being incomplete had been rejected. It was denied that the rules and regulations were not followed and that it was done on account of any political interference.

Similar was the reply of the private respondent who pleaded that all rules had been duly complied with and each and every information had been displayed as per the schedule. It was also submitted that one complaint was inquired into by the SDM, Samrala and the complaint was found false. The provisions of Section 41 had been duly complied with.

Thereafter, replication was also filed by the petitioner and the following issues were framed on 11.06.2015 after passing of the following order:-

“The case filed was produced. The case was called up. The parties are present with counsel. Issues were framed by the counsel to parties. After fixing issues, case is fixed for evidence/witness. In addition to this the respondent party submitted an application to the effect that they have filed an application to the Director, Local Bodies, Punjab for getting transferred these election petitions from this Court. Therefore, proceedings of the Court be stopped. The case file may be produced on 15.06.2015.

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- 1. Is the nomination letter cancelled in an illegal manner.*
- 2. Was the objection and Educational Qualification Card was enclosed with Nomination letter.*
- 3. Can the nomination letter be cancelled on the basis of non-filling of Income Tax column.*
- 4. Is it necessary to fill Income Tax column, whereas this concerned column is not applicable on candidate.*
- 5. Is the educational qualification necessary for Sarpanch.*
- 6. Can the nomination letter be cancelled on account of not enclosing certificate of educational qualification.*
- 7. Has any cutting been made in page marking of the case file?*
- 8. Have required documents been annexed with nomination letter?*
- 9. Has respondent no.1 been benefitted after tampering the case file in a wrong manner?*
- 10. Is the selection of respondent no.1 liable to be cancelled?*
- 11. Is this petition not liable to be continued?*
- 12. Have Section 76 and Rule 50 of Punjab State Election Commission not been complied with.*
- 13. Relief. ”*

From the perusal of the record, it is clear that and on the

basis of the said issues, the appellant examined two witnesses namely Gurdev Singh and Sukhdev Singh and, thereafter, documents were tendered into petitioner evidence on 29.06.2015. In defence, the official respondents as many as three witnesses namely A.S. Grewal, the Returning Officer, Baldev Singh Pannu, Assitant Returning Officer and the respondent Surjit Singh were examined and they were duly cross-examined which was completed on 01.07.2015. Eventually the reasoning, which has been given by the Tribunal, on the basis of this exercise completed over a period of more than 2 years reads as under:-

“The arguments of the parties heard and perused the Court file carefully and found that the petitioner had not submitted his nomination papers as per the provisions of the act, whereas the scrutiny of the papers validly conducted on the date fixed and the returning officer validly rejected the nomination papers of the petitioner. Accordingly the allegations of the petitioner are not correct on the other hand the respondent no.1 properly declared Panch as unopposed. In view of this election petition is hereby dismissed.”

Thus, it is apparent that neither the issues in question have been discussed nor got reproduced in the body of the order and neither any evidence had been adverted to by discussing in detail as to which of the witnesses stated what.

Section 75 of the Act provides that Tribunal has the jurisdiction to adjudicate upon the election petitions. The contents of the petition have to contain the concise statements and full particulars on the basis of which the challenge is raised to the election and under Section 79

the petitioner can get the election of returned candidate to be declared void. The trial is to be conducted on day to day basis under Section 80 (5) and it has to be concluded within a period of six months when it is presented to the Tribunal under sub-Clause 6.

Under Section 81 of the Act the procedure before the Tribunal which is to be followed is also laid down and the Tribunal has to try the petition as nearly as may be in accordance with the procedure contained as per the Code of Civil Procedure, 1908. The provisions of the Indian Evidence Act subject to the provisions of the 1994 Act are deemed to apply in respects to all the trial of an election petition.

Under Section 89 (1) of the Act the ground of declaring the election to be void is specified whether it is by improper acceptance of nomination papers or regarding any nomination having been improperly rejected. The Punjab Panchyat Election Rules, 1994 have also been framed, which provides that the election petition is to be dismissed if the provisions of Rules 51 and 52 are not complied with, which is regarding the contents of the petition and deposit to be made. The petition can only be withdrawn before the Tribunal under Rule 54 with leave. Section 81 and 89 read as under:-

“81. Procedure before the Election Tribunal-- (1) Subject to the provisions of this Act and of the rules made thereunder, every election petition shall be tried by the Election Tribunal as nearly as may be in accordance with the procedure contained in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) to the trial of suits:

Provided that the Election Tribunal shall have the discretion to refuse for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the election petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings of the election petition.

(2) The provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872) shall, subject to the provisions of this Act, be deemed to apply in all respect to the trial of an election petition.

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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 returned candidate by an agent 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.”

The responsibility thus which was given to the Tribunal as to decide the *lis* on the basis of the evidence, which came before it has thus been duly abrogated in the present case.

The Hon'ble Apex Court has time and again said that a reasoned order is necessary when statutory authorities are applying its mind to show that the decision taken is on the basis of proper application of mind and whether the orders can be sustained. Reliance can be safely placed upon the judgment of the Apex Court rendered in ***Harbhajan Singh Dhalla vs. Union of India, AIR 1987 SC 9*** wherein it was held that while the observance of the principles of nature justice are required but there should be reasons which should support the decision even if it is an administrative order. The relevant paragraph reads as under:-

“26. In this case there is no provision of any appeal from the order of the Central Government in either granting or refusing to grant sanction under section 86 of the Code. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in court but inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its jurisdiction under section

86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that decision must be expressed in such a manner that reasons can be spelled out from such decision. Though this is an administrative order in a case of this nature, there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively considered- There is no claim of any privilege that disclosure of reasons would undermine the political or national interest of the country.”

It is settled principle of law that reasons give clarity to an order and in the absence of the same, the order is not sustainable. Reliance can be placed upon the judgment rendered by the Apex Court in ***Union of India & others Vs. Jaiprakash Singh & another AIR 2007 SC 1363***. Relevant observations read as under:

“7. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable. 8. Even in respect of administrative orders Lord Denning M.R. In Breen v. Amalgamated Engineering Union 1971 (1) All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 LCR 120 it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links

between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In the present case neither the issues nor the evidence have been discussed and from the above reasoning given for dismissal one cannot -make out as to what prevailed with the Tribunal to dismiss the election petition without even referring to the necessary provisions or the evidence which had come on record and, therefore, the orders on the basis of it are not sustainable. A complete procedural code with effective powers has been provided in the Act and rules have been framed by which Tribunal is required to exercise its power with care and caution and for the proper and fair adjudication of the disputes which has not been done and neither the issues have also been noticed at the time of final disposal.

In such circumstances, the orders are not sustainable and are

accordingly set aside. The matter is remanded to the Tribunal for a fresh decision within a period of 2 months from the receipt of the certified copy of this order.

A copy of this order be sent to the Chief Secretary, Punjab for bringing to his notice as to casual manner in which the Tribunal has dealt with the disputes and for issuance of proper instructions in the future for decision of the election petitions by the Tribunals duly notified for the said purpose.

Resultantly, the present appeals are allowed and the impugned orders are set aside.

JUNE 01, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes