

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

FAO-4777-2017 (O&M)
Date of Decision :17.5.2018

Bal Mukand Aggarwal

....Appellant

vs.

Harpreet Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. J.S.Toor, Advocate and
Mr. Satnam Chauhan, Advocate
for the appellant(s).

Mr. H.S.Brar, Advocate
for respondent No.1.

Mr. Abhishek Bhardwaj, Advocate for
Mr. Harpreet Singh Multani, Advocate
for the respondents No. 2 and 5.

Mr. Ajay Pal Singh Gill, DAG, Punjab
for respondents No. 3 and 4.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order of the election Tribunal dismissing an election petition filed by the appellant.

Brief facts of the case are that the term of the Municipality, Mandi Gobindgarh had come to an end on 17.12.2013 and ultimately election was held on 25.2.2015. The appellant having lost filed the election petition and the same having been dismissed is before this Court.

The contention of the learned counsel for the appellant is that delimitation of wards and the reservation of vacancies was done illegally.

Section 89 of the Punjab State Election Commission Act, 1994 deals with the grounds on which an election can be set aside and the same is reproduced here in below:-

“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 this 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 was 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 practice 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."

It is the contention of the learned counsel that the case of the appellant is covered under Section 89(i)(d)(iv)(supra). Expanding the argument further Mr. Toor, has asserted that an amendment was made to Rule 3 of the Punjab Delimitation of Wards of Municipalities (Rules), 1972. pursuant to the 73rd amendment of the Constitution and consequently, any infraction of the amended rule would by necessary implication come within Sub-clause 89(i)(d)(iv).

The second argument raised by learned counsel for the appellant is that the election was declared on 18.12.2014 and the reservation of vacancies was done/changed thereafter and this was also illegal. On the other hand the counsel for the respondents have vehemently argued that even if these grounds are accepted the election petition would still have to fail because it is not merely infraction which would render the election void but the requirement of sub-clause (d) is that the infraction should have materially effected the result of the returned candidate and there is no evidence to prove the assertion that if the delimitation or reservation had been done in the manner suggested by the appellant, the result would have been different. Counsel for the appellant has argued that these illegalities themselves would prove that the whole election process was vitiated.

In my considered opinion, the argument of the learned counsel for the respondent has to prevail. The appellant cannot assert that if the delimitation/reservations had been done in a different manner the result would necessarily have been different. It could have been different but

equally it may not have been different and the only manner of proving that a result has been effected materially is evidence and no amount of presumption can take the place of proof. Learned counsel have further argued that reservation for different categories had become a Constitutional mandate after 73rd amendment and it was incumbent upon the appellant to have proved that the reservation was made with the object of helping the returned candidate. As per the counsel there is no evidence for this except the presumptive assertion of the appellant. Moreover, Article 243-ZG of the Constitution of India bars the jurisdiction of any Court in respect of delimitation etc.

Counsel for the appellant has then argued that before this election the appellant had challenged this illegal demarcation/reservation by way of a writ petition but at that time the State had taken objection that election process had started and consequently, the appellant had withdrawn that writ petition with liberty to take the pleas in the election petition and the Writ Court had allowed that plea. In my considered opinion, even the Writ Court cannot confer jurisdiction which is barred by the Constitution. In the present case, even if it is accepted (though the same is vehemently denied by the respondents) that there was any illegality in the process of delimitation/reservation the same could not be subject to review by election Tribunal unless the appellant was able to prove that the result of the returned candidate had been materially effected.

In my considered opinion, the only forum for challenging delimitation/reservation in the election for local bodies can be the Writ Court.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

17.5.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No