

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

DATE OF DECISION : 5.3.2019

1. RA-CW No.6009 of 2018 in
C.W.P. No.40450 of 2018

Baghel Singh v. State of Punjab and others.

2. RA-CW No.2 of 2019 in
C.W.P. No.40450 of 2018

Baghel Singh v. State of Punjab and others.

3. RA-CW No.6006 of 2018 in
C.W.P. No.40441 of 2018

Jatinder Kaur and another v. State of Punjab and others.

4. RA-CW No.6007 of 2018 in
C.W.P. No.40439 of 2018

Kashmir Kaur Gill v. State of Punjab and others.

5. RA-CW No.6008 of 2018 in
C.W.P. No.40437 of 2018

Manreet Kaur v. State of Punjab and others.

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE LALIT BATRA**

Present:- Ms.Rameeza Hakim, Additional A.G. Punjab for the applicants.

MAHESH GROVER, J.

By this order we dispose of five review applications mentioned above.

The State of Punjab notified the elections for panchayats to be held on 30.12.2018. As per the prescribed schedule, nomination papers were filed by the aspiring candidates which were scrutinised resulting in objections as well which were required to be dealt with in terms of Rule 11 of the Punjab Panchayat

Election Rules, 1994 (hereinafter known as the rules). Orders in this regard were passed by the competent authority and a spate of writ petitions came to be filed in this Court when the Court was in winter recess.

These were disposed of by a Division Bench of this Court on 24.12.2018 and the relevant portion of the order is set out here below :-

“It would sub-serve the ends of justice, if the necessary directions are issued to the aggrieved petitioners to make their representations for redressal of their grievances to the respective Deputy Commissioners who will be responsible to forward the fresh representation, if so received from the petitioners to the competent authorities throughout the State of Punjab wherever jurisdiction vests in different petitions to consider the same within a period of 48 hours of receipt of the same by passing speaking detailed order spelling out the reasons for passing of such orders after associating the petitioners or their representatives in these Panchayat elections. However, it is made clear that in case any of the petitioners are found eligible to contest the elections, the competent authorities will not come in the way after passing of the order to enable them to participate in the same.

It would not be out of place to refer here that there may be similarly placed persons who have their grievances of similar nature and thus keeping in view that instead of filling separate petitions by them for redressal of their grievances, they may approach the competent authorities for redressal of the same rather than approaching this Court. The authorities will act as per these directions in their case as well.

It would be the duty of the State counsel to intimate all the Deputy Commissioners in the State of Punjab about this order and who will be responsible to forward the representations so received from such applicants/petitioners and for passing appropriate orders passed by the competent authorities.”

The State filed a review application against the order which came up for hearing on 27.12.2018, but by then the composition of the Bench had undergone a change in view of the roster prescribed for the winter recess. The Division Bench hearing the review application was of the view that the review/modification/recalling of an order ought to be considered and dealt with by the same Bench and declined to entertain the review application.

Upon the constitution of regular Benches after the winter recess, the Hon'ble Chief Justice referred the review applications to us and this is how the matter has fallen for our consideration.

We do not see any benefit in setting out the facts of each of the writ petitions which came up for hearing on 24.12.2018 resulting in the principal order in which the mandate noticed above was issued. Suffice it to say that the elections had been notified and the process set in motion with a schedule provided, according to which the date of filing nomination papers was till 19.12.2018 ; for scrutiny, 20.12.2018 and the date for withdrawal of the nomination papers was 21.12.2018 with the election scheduled for 30.12.2018.

The process for election was thus set in motion on 15.12.2018 upon issuance of the notification to that effect.

Heard.

The order passed by this Court on 24.12.2018 is in conflict with the settled proposition of law in particular, Article 243(o) of the Constitution of India

which mandates that no election to any panchayat shall be called in question except by an election petition presented to such an authority in such a manner as is provided for by or under any law made by the Legislature or a State. Article 243 (o) is extracted here below :-

“243-O. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any court ;
- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

The principle that election petition is the only remedy available once the election process has been set in motion, has been the consistent view in numerous decisions of the courts even before the incorporation of Article 243(o) in the Scheme of the Constitution.

The Hon'ble Supreme Court in **N.P.Ponnuswami v. Returning Officer** 1952 SCR 218(CB), **Mahinder Singh Gill v. Chief Election Commissioner** A.I.R. 1978 S.C. 851 and **Prithvi Raj v. State Election Commissioner, Punjab** 2007(2) I.L.R. P&H 206 (FB), has consistently held the election petition to be the only remedy available once the election process gets under way.

In view of the specific bar under Article 243(o), no such remedy of filing writ petitions was available to the writ petitioners.

If there was some lingering doubt in the mind of the petitioners that the election can be questioned by way of an election petition only on the grounds of material irregularities and corrupt practices and not on the grounds of rejection of nomination papers, then that issue too has been conclusively settled by numerous decisions of this Court – **Ram Avtar Singh v. State of Haryana** (1995) 2 RRR 268 (DB) and **Kalla Ramakrishna v. State Election Commission 2005(1) APLJ 11 (FB)**, to mention a few. Both the provisions of law and the various pronouncements of the courts were evidently not noticed by the Hon'ble Division Bench which passed the order on 24.12.2018.

Finding this to be an error apparent on the face of the record, we are of the opinion that all the review applications deserve to succeed and the order of the Writ Court dated 24.12.2018 is hereby recalled with a clarification that upon the rejection of nomination papers the remedy available to the writ petitioners would be of filing election petitions.

All the writ petitioners would thus be at liberty to avail themselves of this remedy under the law.

Disposed of..

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

March 5, 2019
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No