

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

CWP-29714 of 2019 (O&M)
Date of decision:- 10.05.2021

Gurdev Singh

...Petitioner

Vs.

Presiding Officer and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. K.S. Dhaliwal, Advocate and
Mr. K.P.S. Virk, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G Haryana

Mr. Amit Jain, Advocate
for the applicant-respondent No. 3.

Ritu Bahri, J. (Oral)

The present writ petition has been filed under Article 226/227 of the Constitution of India, for issuance of writ in the nature of certiorari, seeking quashing of judgment dated 18.09.2019 (P-1), passed in Election Petition No. 1 of 2017, filed by respondent No. 3, whereby the election result dated 28.05.2017 for the post of Sarpanch, Village Nissing Gramin , declared in favour of the petitioner by the Returning Officer , has been declared illegal, null and void by respondent No. 1.

Brief facts of the case are that the election result to the post of Sapanch, Village Nissing Gramin was declared on 28.05.2017 and after counting of votes, the petitioner was declared elected as Sarpanch of Village Nissing Gramin, in pursuance of the election process. The date of filing of nomination was 12.05.2017 to 17.05.2017 and the scrutiny of papers was

conducted on 18.05.2017. The last date of withdrawal of candidature was 19.05.2017. The petitioner fought the election under the election symbol of 'Bicycle' and was declared elected on securing 492 votes as against that of respondent No. 3, who secured 485 votes and respondent No. 4, who secured 257 votes.

Before initiation of the election process, in terms of Section 164 of the Haryana Panchayati Raj Act, 1994 (herein after to be referred as 'Act, 1994'), the preparation of list of voters was initiated and the objections to the tentative voters list was to be submitted till 28.02.2017. As per election notification dated 27.02.2017, the last date of filing appeal under Rule 10 (2) against the objections decided under Rule 10 (1) was fixed as 06.03.2017 and the last date for disposing of the appeal in term of Rule 10 (2) and (3) was fixed as 15.03.2017 and the last date for deletion of names was fixed as 20.03.2017, after publishing of final electoral roll, the notification for conduct of election under Rule 24 of Haryana Panchayati Raj (Election) Rules, 1994 and Section 161 (1) and 211 (2) of Act, 1994 was issued on 03.05.2017 (P-2).

As per objections to the voter list filed by various persons, 185 names were struck off from the voter list and thereafter, respondent No. 3 as well as petitioner and others have also marked their presence at the time of hearing of the objections, which has been admitted by respondent No. 3 in his cross-examination that he had signed Exhibit R-1 (P-3), recording his satisfaction with regard to inquiry being conducted into double votes, pertaining to Municipal Committee, Nissing and Nissing (Grammin).

Respondent No. 3 had challenged the election of the petitioner

on the ground that about 150 voters cast their votes in the recently held

election of Municipal Committee, Nissing and their names are illegally included in the voter list of present election under challenge and they illegally cast their votes in the present election also. About 150 illegal votes were found to be double in the voter list of recently held election of Municipal Committee, Nissing and in the voter list of Panchayat Election, 2017 of village Nissing (Gramin).

Learned counsel for the petitioner submits that no finding has been recorded by respondent No. 1 while allowing the election petition that the persons who had double votes had casted their votes in the elections for the office of Sarpanch of Village Nissing (Gramin).

Learned counsel for the petitioner has referred to Section 176 of Act, 1994 which provides that it was incumbent upon respondent No. 1, after holding an inquiry to return a finding that a candidate has for the purpose of election has committed corrupt practice within the meaning of Sub-Section 5, as under Sub-Section 5, the corrupt practices have been defined.

Learned counsel for the petitioner has referred to the judgment of Hon'ble the Supreme Court in a case of ***Inderjit Barua and others etc vs. Election Commission of India, 1985 (1) SCC 21*** on the proposition that once the elections were held, thereafter the elections cannot be challenged because electoral rolls were invalid. There is a bar under Article 329 (b) of the Constitution operating.

Reference has further been made to the judgment of Hon'ble the Supreme Court in a case of ***Nripendra Bahadur Singh vs. Jai Ram Verma and others, 1977 AIR (SC) 1992*** wherein there were election to State Legislative Council in the local authorities. Some members were

ceased to be members of Kshetra Samitis but were wrongly recorded in electoral rolls of the constituency to participate in the voting. It was held that these voters were electors within the meaning of Section 2 (1) (e) of Representation of People Act, 1951 (for short 'Act, 1951') and were entitled to vote under Section 62 of Act, 1951.

Reference has now been made to judgment of Hon'ble the Supreme Court in a case of ***B.M. Ramaswamy vs. B.M. Krishnamurthy and others, 1963 AIR (SC) 458*** wherein the Election was challenged on the ground that the same was not conducted in fair manner. The relevant part of electoral roll of Mysore Legislative Assembly is list of voters for Panchayat Constituency and Secretary of Panchayat has to maintain a duly authenticated list of voters of the said constituency. The name of the candidate included illegally in the list on the date of filling of nomination. Hon'ble the Supreme Court has held that the Civil Court has no jurisdiction to question such election. The election was not to be set aside by High court on the ground that though name of candidate was in the list. It had been included therein illegally.

Reference has been made to another judgment of Hon'ble the Supreme Court of India in a case of ***Ramji Prasad Singh vs. Ram Bilas Jha and others, 1976 AIR (SC) 2573***, wherein the name of person was entered in electoral roll in violation of Section 23 (3). Such person has no right to vote merely by reason of entitlement conferred by Section 62 (1) of Act, 1951. The name must have been entered in accordance with law. It was held that evidence of unimpeachable nature is necessary to substantiate the charge of bribery. Except for substantial reasons, the Supreme Court will not embark upon a detailed assessment of oral evidence.

Learned counsel for the petitioner contends that in the present case, there was no evidence led by respondent No. 3 that petitioner had entered into corrupt practices for securing the votes of double voters. Thus, the impugned judgment is liable to be set aside, as respondent No. 3 has failed to prove any of the violations, which are enumerated under Section 176 of the Act, 1994.

On the other hand, learned counsel for respondent No. 3 has referred to Section 176 (5) of Act, 1994 to contend that it was nowhere mentioned that respondent No. 3 was required to lead evidence that petitioner was enticing the voters to give votes in his favour. He has submitted that the present is a case where respondent No. 3 and many other persons protested against the double votes but District Election Officer Karnal in connivance with the petitioner had not deleted the illegal votes of about 40 persons who were not eligible to cast their votes in Gram Panchayat Elections 2017 of village Nissang Gramin.

Reference has been made to judgment of Hon'ble the Supreme Court of India in a case of *A. Neelaohithadasan Nadar vs. George Mascrene and others, 1994 (Supp2) SCC 619* wherein challenge was to the judgment of the Kerala High Court, who upset the election of the appellant. Hon'ble the Supreme Court dismissed the appeal and held that the right of the voter is not absolute and it must yield to the principle of "purity of election" in large public interest. The exercise of extraction of void votes under Section 62 (4) of Act, 1951 would not in any manner impinge on the secrecy of ballot especially when void votes are those which have to be treated as no votes at all. The High Court permitted the inspection of the counterfoils since several double voters had been summoned for the

following days and subsequent days on the oral prayer/application of both the election petitioner and the appellant. The primary purpose thus was to purify the electoral process and to facilitate a quick trial by permitting the parties to inspect beforehand. Thus, the High Court was held to have committed no error in permitting such inspection.

Learned counsel for the respondent No. 3 has then referred to judgment of Hon'ble the Supreme Court of India in a case of ***I. Vikhesha Sema vs. Hokishe Sema, 1996 (3) R.C.R (Civil) 306*** wherein it was held that if the name of a person is included in more than one constituency, he has a right to vote only at one constituency. If he votes at more than one constituency or twice in one constituency because his name was recorded twice only then his vote in all the constituencies shall be deemed to be void.

Reference has been made to latest judgment of Hon'ble the Kerala High Court in a case of ***K.R. Mohanan Nair vs. Maju Mathew Pulickal and others, 2019 (1) KLT 217*** wherein it was held that a person cannot exercise his franchise in one Ward in a gram Panchayat and also in a Ward of a Municipality. An inspection of the ballot papers can be held only after the Court trying the election petition enters a finding that it is a prima facie satisfied that the petitioner has made out the case pleaded by him. The petition was thus dismissed.

Finally, reference has been made to judgment of this Court in a case of ***Gurnek Singh vs. Surinder Singh etc, 2006 (3) R.C.R. (Civil) 820*** wherein for the post of Sarpanch, a candidate was declared elected by one vote. The double casting of votes was established but it is not discernible to whom such votes have been cast. It was held that no one is entitled to exercise voting right twice where one of candidates has to be elected

from/by person of area where they are residing. The election were rightly held to be set aside. But it was held that the Tribunal exceeded its jurisdiction in declaring election petitioner as successful candidate. The election directed to be held de novo in accordance with law.

Reference can be made to order dated 18.09.2019 (P-1) where the Election Tribunal after examining the evidence led by the parties in para 20 of the order observed as under”-

On the basis of above discussion, this Court is of the view that there are Ex.PW9/14 to PW9/26, which is copy of voter list from ward no.1 to 13 of M.C. Nissing and Ex.PW9/27 to Ex.PW9/39, copy of forms, 8 lists, then there are Ex.PW9/1 to PW9/13 i.e. copy of signature of list ward no.1 to 13 of M.C. Nissing, then there is copy of complaint receipt dated 25.05.2017 i.e. Ex.P1, Ex.PW4/A is copy of death register and Ex/.PW3/B is copy of death register of Gian Kaur Ex.PW3/A is copy of application dated 29.05.2017 filed by Sarabjeet Singh and then there is Ex.PW5/A copy of application to S.P.Karnal dated 25.05.2017, then there is Ex.PW6/A copy of application to ADC Karnal dated 06.03.2017, then there is ex.PW6/B copy of voter list ward no.1 to 8 Nissing Gramin then there is ex.PW8/A copy of letter no.3155 dated 29.05.2018 and mark A to V and then Mark PW6/A to B which is copy of BDPO letter dated 23.02.2017 and 24.02.2017, then there is ex.PW10/A, C, G & F which is copy of voter list of Ward no.5 to 8 Nissing Gramin, copy of signature list ward no.1 to 4 of Nissing Gramin and copy of voter list ward no.1 Nissing Gramin, copy of signature list ward no.5 to 8 Nissing Gramin, there also ex.PW11/A to PW11/B which consist of copy of double vote list and copy of election for the same filed by Sarbjeet and Kuldeep. As we have discussed and perused all the documents and found the list of 40 persons

who has casted double votes and there is one dead vote which is illegally fold in the election of Puchayat of Village Nissing Gramin held on 28.05.2017 i.e. PW10/A Gian Kaur W/o Mohjan Singh. Following is the list of double votes which are pollold in the election of M.C. Nissing as well as again polled in the Gram Panchayant Gramin Nissing held on 28.05.2017.

The petitioner has not been able to dispute the above facts recorded by the Election Tribunal while passing the impugned order dated 18.09.2019 (P-1).

The short question for consideration before this Court is that whether casting of double votes can be made a ground to set aside the election.

Reference at this stage can be made to ***I. Vikhesha Sema's case (supra)*** wherein it has been held that if the name of a person is included in more than one constituency, he has a right to vote only at one constituency. If he votes at more than one constituency or twice in one constituency because his name was recorded twice only then his vote in all the constituencies shall be deemed to be void. In para No. 14 and 15, it has been observed as under:-

14. Once, the High Court was convinced, and it was evident from the facts on record that a large number of void votes had been received and they could have affected the outcome of the election, then it was under a duty to have taken the next logical step which would have been to examine the votes which had been cast, exclude the void votes and then recounted the valid votes in order to come to the conclusion whether the reception of the void votes had materially affected the result of the returned candidate. Without undertaking this exercise the High Court was wrong in coming to the conclusion that the election of the appellant had been materially affected and that the same should be set aside.

15. It appears to us that the course which was adopted in the case of **Bashir Ahmad Magrey v. Ghulam Quadir Mir and others, 1977(2) SCR 297** is the one which requires to be followed. In that case, the election of the returned candidate had been set aside by the High Court after it had counted the votes which had been improperly rejected. When the appeal came up for hearing before this Court, an order was passed whereby the Registrar (Judicial) of this court was deputed to inspect, in the presence of parties and their counsels, the 550 votes which were in question in that case and he was required to submit a report thereafter. After this exercise was undertaken, the Registrar (Judicial) submitted a report after examining ballot papers and it was found that the excess of votes validly polled in favour of the returned candidate over those of the respondent therein were 38. Accepting this report, this court accepted the appeal and upheld the election of the returned candidate.

Further in **Gurnek Singh's case (supra)**, this Court examined Section 76 and 89 of the Punjab Panchayati Raj Act, 1994 and held that the election has rightly been set aside by the Tribunal but the Tribunal exceeded its jurisdiction in declaring election petitioner as successful candidate. The election directed to be held *de novo* in accordance with law. In para 6 and 7 of the judgment, it has been observed as under:-

"6. Learned counsel for the respondent has argued that casting of votes in an illegal manner has been duly established. It has also been established that these persons supported the returned candidate and had cast their votes illegally. She has placed reliance upon a judgment of the Hon'ble Supreme Court in re : **A. Neelalohithadasan Nadar v. George Mascrene and others, 1994 Supp. (2) Supreme Court Cases 619**, wherein it has been held that double voting specifically pleaded both by respondent election petitioner in his petition as well as by appellant elected candidate in his recrimination petition-inspection of marked copies of electoral rolls and counterfoils orally allowed by High Court to facilitate evidence of witnesses, would be enough to draw the conclusion that the elections process was polluted and it is a setback to the confidence of the people.

7. I have heard learned counsel for the parties at length and have also perused the paper book. I am of the opinion that the Tribunal has not been able to cull out categorically any evidence from which it could be inferred that the votes cast at Village Bhago Majra by the residents of other villages could be said to have been cast in favour of the returned candidate. It is merely the conjecture on the basis of which it has been assumed that such votes were cast in favour of the returned candidate.

This objection could have been raised at the relevant time but none seems to have been raised. It is also discernible from the discussion and observations made by the Tribunal that the votes were recounted three times but the result remained the same. This was not enough of a reason to hold that the votes could be said to have been cast in favour of the returned candidate. However, the factual position that the persons who had cast votes projecting themselves to be residents of Village Bhago Majra, were in fact residing in some other villages and they are said to have cast votes in their own villages as well. It is obvious that the respective voters lists were necessarily required to be challenged at the time when the votes were being cast. No such plea seems to have been taken in this regard at the relevant time as nothing had been brought on record that any objection in this regard was raised by the defeated candidate or by any other person. However, the fact that the votes had been cast by the persons indicated above against Sr. Nos. 77, 135, 182, 193, 204, 206, 207, 209, 235, 236 and 378, at two places, this would be enough to hold that the election process was polluted and it does bring a set back to the confidence of the people exercising their right of popularly electing a person. If definitely impinges upon the right of a voter in a democratic system. The basic principle of democracy cannot be ignored i.e. the election has to be held in a fair and proper manner, no one is entitled to exercise the voting right twice over in the present system where one of the candidate has to be elected from/by the persons of the area where they are residing.”

The Election Tribunal after examining the entire evidence and documents has observed in para No. 20 of the judgment that 40 persons had casted double votes and there is one dead vote, which is illegally fold in the election of the Panchayat of Village Nissing Gramin held on 28.05.2017 i.e P.W.10/A Gian Kaur w/o Mohan Singh. Hence the above facts were sufficient enough for the Election Tribunal to return a finding that election were in violation of Section 176 (4) and (5) of the Act, 1994, which reads as under:-

“Section 176 of the Haryana Panchayati Raj Act 1994, provides that Clause 4 sub clause A”, “If on the holding such inquiry the Civil Court finds that candidates has for the purpose of election committed a corrupt practice the election shall be set aside and the candidate be declared disqualify for the purpose of election and

fresh election may be held”. Sub-Section 5 of this Section clause A provides, “ A person shall be deemed to have committed a corrupt practice who with a view to induce a voter to give or to re frame from giving a vote in favour of any candidate, offers or gives any money or valuable consideration or holds any promise of individual benefits or holds out any threat of injury to any person shall be deemed to have committed the same.”

The only exception to the above Rule would be that if the person's name is in the two voter list but he has not casted his vote in one constituency, then the election cannot be set side. However, if the name of a person is included in more than one constituency, he has a right to vote only at one constituency. If he votes at more than one constituency or twice in one constituency because his name was recorded twice only then his vote in all the constituencies shall be deemed to be void. Thus, the Election Tribunal has rightly set aside the election and has given direction to conduct the fresh election for the post of Sarpanch of Nissing Gramin, as per Rules.

The judgments cited by learned counsel for the petitioner are not applicable to the facts of the present case, as in the present case, the Election Commission was required to examine the question of 40 double voters, who had casted their double votes, as per Section 176 (4) and (5) of the Act, 1994. None of the cases referred to by learned counsel for the petitioner was a case where one voter had casted double votes. Respondent No. 3 was not required to lead evidence to show that the above 40 voters had been secured by the petitioner in a corrupted manner. There was sufficient evidence with the Election Tribunal to set aside the election, as the complaint was also filed by the petitioner and many other persons of

area of Nissing (Gramin). But even if the names of persons recorded in two voter list, it can only be looked into after the Election is over and if on holding such inquiry, the Civil Court finds that candidates for the purpose of election committed a corrupt practice, the election shall be set aside.

In view of *I. Vikhesha Sema's case (supra)* , the present petition stands dismissed being devoid of any merits.

(RITU BAHRI)
JUDGE

10.05.2021
G Arora

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No