

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA 1166/2022(O&M)

Date of decision: 24 /01/2023

Tarsem Singh

.....Applicant

Vs.

Ranjit Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.KBS Mann, Advocate for the applicant.
Ms.Shubreet Kaur, Advocate for respondent no.1
Mr. Vijay Kumar Chaudhary, Advocate for respondent no.3.

Nidhi Gupta, J.

The petitioner is the elected Sarpanch of Gram Panchayat, Naushehra Pannuan. By way of the present Transfer Petition, the petitioner is seeking the transfer of Election Petition No. 76/SDM/TT dated 11.2.2019 titled as 'Ranjit Singh v Tarsem Singh' (Annexure A-1), filed by respondent no.1 under Section 76 read with Sections 89 and 108 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as 'the Act'), pending in the Court of Ld. SDJM-cum-Election Tribunal, Tarn Taran, District Tarn Taran, to any other Court of competent jurisdiction out of District Tarn Taran.

Brief facts of the case are that pursuant to notice issued under Section 209 of the Punjab Panchayati Raj Act, 1994 General Elections of Gram Panchayats in Punjab State were directed to be held on 30.12.2018.

Nominations papers were to be filed by the aspiring candidates from

15.12.2018 to 19.12.2018. Date of scrutiny of such nomination papers was fixed as 20.12.2018 while the date for withdrawal of nomination papers and allotment of symbols to candidates was fixed as 21.12.2018, and polling date was fixed as 30.12.2018 on which date itself the election result was to be declared.

In pursuance to the said notice respondent no.1 went to file his nomination papers on 18.12.2018 but the same was rejected by the Returning Officer, Block Naushehra Pannuan on the ground that House Tax was pending. Aggrieved thereof, Respondent no.1 filed CWP 40450 of 2018 which was disposed of by this Court vide order dated 24.12.2018 directing the Authority concerned to re-conduct enquiry into the nomination papers filed by respondent no.1. In compliance thereof, Deputy Commissioner, Tarn Taran directed BDPO Naushehra Pannuan to do the needful, who in turn scrutinized the nomination papers of respondent no.1 and again reported that House Tax was pending against respondent no.1.

Thereafter, respondent no.1 filed present Election Petition (Annexure A-1), with the prayer to set aside the election of Gram Panchayat, Naushehra Pannuan held on 30.12.2018 whereby the petitioner was declared as Sarpanch of Gram Panchayat Naushehra Pannuan, and for re-conducting the election for the post of Sarpanch. Issues in the Election Petition were framed on 25.11.2020. It is alleged by the petitioner that no opportunity was given to him to lead evidence, though respondent no.1 tendered his evidence as Ex. CW1 on 18.2.2021 and sought further time for producing evidence.

Thereafter, on 18.3.2021 the Election Petition was dismissed for want of prosecution. On 19.3.2021, Respondent no.1 filed application for restoration of the case, which was allowed after issuing notice to the

petitioner, but it is petitioner's case that he was never served. In these circumstances, no one appeared on behalf of the petitioner and the Election petition was allowed Ex-parte vide order dated 19.4.2022, whereby election to the post of Sarpanch of Gram Panchayat held on 30.12.2018 was set aside and the authorities concerned were directed to initiate proceedings for denotifying the Notification issued for the post of Sarpanch and to hold fresh election for the said post within two months.

Aggrieved against the order dated 19.4.2022 passed by the Election Tribunal, the petitioner herein filed FAO 3325/2022 titled as 'Tarsem Singh v Ranjit Singh and others' which was disposed of by this Court vide order dated 17.8.2022 (Annexure A-2) by setting aside the order dated 19.4.2022 and the matter was remanded back before the Election Tribunal, Tarn Taran to decide the Election Petition afresh after hearing both sides in accordance with law. The parties were directed to appear before the Election Tribunal, Tarn Taran on 30.8.2022.

It is alleged by the petitioner that in compliance of order dated 17.8.2022, the petitioner appeared before the Court of Ld. SDM-cum-Election Tribunal, Tarn Taran on 30.8.2022, however the Ld. SDM-cum-Election Tribunal, Tarn Taran refused to mark his presence, and even refused to accept his application (Annexure A-3) for marking his presence. According to the petitioner this was done under political pressure. Petitioner further states that under these circumstances he got his affidavit dated 30.8.2022 (Annexure A-4) from the Notary Public to the effect that he was present in the Court and his presence be marked in view of the directions issued by this Court. It is alleged by the petitioner that respondent no.1 is a close aide of the local MLA who is also a Cabinet Minister, and as such Ld. SDM-cum-Election Tribunal,

Tarn Taran is not able to decide the case on merits and rather acting on the instructions of said Cabinet Minister. It is further alleged that petitioner was intentionally marked absent on 30.8.2022 and 15.9.2022. Copies of zimni orders w.e.f. 30.8.2022 to 15.9.2022 passed by Ld. SDM-cum-Election Tribunal, Tarn Taran are at Annexure A-5. It is next alleged by the petitioner that when he obtained certified copies of said zimni orders, he was surprised to see himself marked absent. It is alleged that on an enquiry made by the petitioner, official concerned of the Court of Ld. SDM-cum-Election Tribunal, Tarn Taran told him that it was typographical error and reissued the certified copies of said zimni orders which are at Annexure P-6.

In this background the present Transfer Application has been filed by the petitioner on the apprehension that due to political influence he may not get justice from the Election Tribunal, Tarn Taran and hence prayer for transfer, as noticed in the opening para of this order, has been made.

Vide order dated 24.11.2022 notice of motion was issued and further proceedings before the Election Tribunal were stayed.

Upon notice, respondent No. 1 appeared and filed Reply dated 17.11.2022 to the Transfer Application stating therein that (i) his nomination papers were wrongly rejected; (ii) in terms of order dated 17.8.2022 passed by this Court in FAO 3325/2022 petitioner chose not to appear in the election proceedings as reflected in zimni order dated 30.8.2022; and (iii) now petitioner has filed the present Transfer Application to further delay the proceedings in the election petition. It is further averred in the said reply that Transfer Application was filed on 23.9.2022 wherein the petitioner has concealed the fact that he along with his counsel had appeared before the Election Tribunal, Tarn Taran on 6.9.2022, 15.9.2022, 20.9.2022, and

27.9.2022 and his presence was duly recorded in the zimni orders, annexed at Annexure R-1/3 with the reply, for said dates. It is further alleged that present Transfer Application has been filed only after the Election Tribunal, Tarn Taran sought report from the BDPO as to against which house of respondent no.1, House Tax is due. It is further stated that in the villages there is no requirement of filing house tax, besides the same being not a disqualification for membership of a Panchayat as per Section 11 of the Act. It is emphatically denied that anything was due from the respondent no.1 so as to disqualify him from contesting the election of the Gram Panchayat and that his nomination papers were wrongly rejected. Allegations of being an aide of Cabinet Minister, Punjab are also denied and dubbed as baseless and false. Allegations of taking illegal possession of Panchayati Land by the petitioner have also been levelled, which matter is sub judice before this Court in CWP No.20788 of 2017, now posted for hearing on 24.1.2023.

Learned counsel for the petitioner submits that bias of the Election Tribunal is evident from the fact that respondent filed an election petition which was dismissed on 18.3.2021 for want of prosecution. However, on an application for restoration filed by the respondent no.1, the same was allowed on 19.3.2021 itself without issuing notice to the petitioner and even no service was effected upon the petitioner as a result of which the Election Tribunal vide order dated 19.4.2022 allowed the Election Petition ex-parte and election for the post of Sarpanch of Gram Panchayat held on 30.12.2018 was set aside. It is submitted that only after FAO 3325/2022 filed by the petitioner was allowed by this Court vide order dated 17.8.2022 (Annexure A-2) and the matter was remanded back to the Tribunal, with the direction that the Election Petition be decided after hearing both sides in accordance with law that the petitioner came present in Court on the date fixed in the

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matter i.e. 30.8.2022 but even then his attendance was not marked. It is submitted that not only appearance of the petitioner was not marked but the Tribunal also refused to accept the petitioner's application for marking his presence. It is further submitted that respondent no.1 is very close to the local MLA/ Cabinet Minister and therefore, petitioner apprehends that he may not get justice. It is submitted that accordingly, there is a genuine apprehension on the part of the petitioner that due to pressure from the political establishment in the area he may not get justice and therefore, he is seeking transfer of the Election Petition.

In response, it is submitted by the learned counsel for the respondent no.1 that Panchayat Elections were held in the year 2018 wherein nomination of respondent no.1 was rejected. Accordingly, Election Petition Annexure A-1 was filed by the respondent which was allowed, against which the petitioner had filed aforementioned FAO 3325/2022 whereby the matter was remanded back to the Election Tribunal, Tarn Taran with a direction to the petitioner to appear. However, the petitioner chose not to appear on 30.8.2022 and was therefore, correctly marked absent. However, the petitioner did appear before the Election Tribunal on 6.9.2022, 15.9.2022 and 20.9.2022 as is evident from the zimni orders at Annexure R-1/3. It is submitted that the present Transfer Petition has been filed on 23.9.2022 after passing of the abovesaid zimni orders by the learned Tribunal, but this fact has not been divulged in the present Transfer petition. It is further submitted that the allegation of the applicant that the respondent no.1 has close connection with the local MLA is wholly misconceived and misplaced. It is submitted that in fact respondent no.1 is associated with Shiromani Akali Dal and therefore, the said allegations of the petitioner in this regard are baseless and false. It is further submitted that it is very clear that the present Transfer

Petition has been filed with the mal-intent to only delay the proceedings in the Election petition before the Tribunal.

Heard learned counsel for the parties.

The main contention of the learned counsel for the petitioner for seeking transfer of the Election Petition is his apprehension that he may not get justice as respondent No. 1 allegedly has close relation with Cabinet Minister, Punjab. Ld. Counsel for the petitioner has also attempted to show from the record, mainly from the zimni orders, that his apprehension is well-founded. However, I find no merit whatsoever in the submissions advanced on behalf of the petitioner.

First and foremost, it does not stand to reason that if respondent no.1 was so influential and so close to the current political establishment as alleged, in such a case it would have been unlikely that his nomination papers would have been rejected, and that too twice over. Moreover, mere bald assertions have been made throughout the Transfer petition regarding the alleged proximity of the respondent No. 1 with the local MLA/ Cabinet Minister, without a single instance mentioned or any proof thereof. Even otherwise, this allegation has been categorically denied by respondent No. 1 in his reply, and further stated that he belongs to the Shiromani Akali Dal, which is currently not in power. Accordingly, I find no merit in this submission on behalf of the petitioner.

The second contention of the learned counsel for the petitioner is that though the petitioner had appeared before the Election Tribunal on 30.8.2022 and on 15.9.2022, yet intentionally he was marked absent, and therefore, bias of the Tribunal is evident. In my considered opinion, the said contention of the petitioner is non-sequitur in view of the

fact that admittedly, presence of the petitioner has been duly recorded in the orders dated 6.9.2022, 15.9.2022 and 20.9.2022, and 27.9.2022. Assertion of the petitioner that he was marked absent on 15.9.2022 is contrary to the record as is evident from Annexures A-5, and A-6 appended by the petitioner himself, and Annexure R-1/3.

As regards the fact that in the earlier round of litigation the petitioner was proceeded against ex-parte, it has come on record that the Tribunal had even directed that service by munadi be effected upon the petitioner.

Accordingly, I find that no ground is made out to transfer Election Petition No.76/SDM/TT dated 11.2.2019 titled as ‘Ranjit Singh v Tarsem Singh’ pending in the Court of SDM-cum-Election Tribunal, Tarn Taran.

Dismissed.

24/01/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No