

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

CWP-26877-2022
Date of Decision: 12.05.2023

SUMAIYA KHANAM AND OTHERS Petitioner(s)
Versus

STATE OF HARYANA AND OTHERS Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Sarfraj Hussain, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. Sunil Saharan, Advocate for
Mr. Jitender Dhanda, Advocate
for respondent no.7.

LISA GILL, J.

1. Petitioners who are the unsuccessful candidates in the election to the post of Sarpanch, Gram Panchayat Nai, have filed this writ petition seeking cancellation of election to the post of Sarpanch, Gram Panchayat, Nai held on 02.11.2022, on the ground of casting of bogus votes.

2. It is submitted that all the petitioners alongwith respondent no.7 (who has not even been impleaded as party by name) had contested the election for the post of Sarpanch. It is submitted that polling was held on 02.11.2022. Bogus and fraudulent votes were cast by capturing the booths by supporters of respondent no.7. It is submitted that votes of dead persons were cast alongwith shifted, double and forged votes. It is further submitted that complaint in this regard was given to the authorities on the same day and on 18.11.2022 another

representation was submitted. The factum of booth capturing, it is stated, was duly videographed. Learned counsel for the petitioners thus submits that due to such bungling, which is apparent on the face of it, respondent no.7 should not be permitted to continue on the post of Sarpanch. Furthermore, present writ petition it was stated should be entertained notwithstanding right of the petitioners to file an election petition which in any case, it was urged, was not an efficacious remedy in the given facts and circumstances.

3. We heard learned counsel for the petitioners and the State and went through the file with their assistance, however, we do not find any ground whatsoever to interfere in the matter in exercise of jurisdiction under Article 226 of the Constitution of India for the reasons as described hereinafter.

4. It is pertinent to note that there is a clear-cut bar to interference by Courts in electoral matters as provided in Article 243(O) of the Constitution of India. Article 329 of the Constitution of India also creates a bar to interference by Courts in electoral matters. Consequent to incorporation of part IX in the Constitution of India (73rd Amendment of Act, 1992), which came into force w.e.f. 24.04.1993, the Haryana Panchayati Raj Act, 1994 (for short the 1994 Act) was promulgated and enforced w.e.f. 22.04.1994. Chapter 20 of the 1994 Act deals with provisions relating to elections.

5. Section 170 of the 1994 Act creates a bar for interference in election matters, which reads as under:-

170. No Civil Court shall have jurisdiction—

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to have his name included in a list of voters; or (b) to question the legality of any action taken or decision given by or under the authority of the State Election Commission in connection with the preparation, maintenance or revision of any such list.

6. Section 176 of the 1994 Act provides for presentation of an election petition to Civil Court having ordinary jurisdiction in the area within which election has been or should have been held. Section 176 of the 1994 Act reads as under:-

176. (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of

election and fresh election may be held.

1[(aa) If on holding such enquiry the Civil Court finds that-

(i) on the date of his election a returned candidate was not qualified to be elected;

(ii) any nomination has been improperly rejected; or

(iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.;

(b) If, in any case to which 2[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view to induce a voter to give or to refrain from

giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to

any person ; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.— A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.— The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.

7. The Hon'ble Supreme Court has consistently held that though jurisdiction of the High Court under Article 226 of the Constitution of India is not ousted in matters relating to elections, it is a rule of prudence whereby the High Court while exercising self restraint, would not interfere in the matter, especially if the petition presented before it 'calls in question an election' though anything done towards completion or furtherance of election proceedings, it has been held, cannot be described as questioning the election.

Gainful reference in this regard can be made to judgments of the Hon'ble

Supreme Court in *N.M. Ponnuswami Vs. Returning Officer, Namakkal Constituency and others*, 1952 AIR 64, *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*, 1978(1) SCC 405, *Election Commission of India Vs. Ashok Kumar and others*, 2000 AIR (Supreme Court) 2979 and *Laxmibai Vs. Collector, Nanded and others*, 2020 AIR (SC) 3393.

8. Hon'ble Supreme Court in *Ashok Kumar's* case (supra) while referring to its earlier judgments has held as under:-

"28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over-enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution. The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill's case (supra)). The provisions of the Constitution and the Act

read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the Courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy

31. The founding fathers of the Constitution have consciously employed use of the words 'no election shall be called in question' in the body of Section 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court 'calls in question an election' the bar of Article 329(b) is attracted. Else it is not.

9. Hon'ble Supreme Court in ***Laxmibai's*** case (supra) yet again reiterating the position held that 'Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the result of the elections, but relegate parties to the remedy contemplated by the statute.'

10. Full Bench of this High Court in the case of **Prithviraj Vs. Election Commission of India, 2007(3) RCR (Civil) 817**, while holding that exercise of judicial restraint cannot be equated with lack of or bar of jurisdiction, has held as under:-

“26. The aforementioned judgments, thus, set out, in no uncertain terms, that a Court shall not entertain a petition "calling in question", an "election," once the "election" has been notified.

27. An "election", under the Municipal Act, commences with the issuance of a notification, by the State Government, under Section 13-A(2) of the Municipal Act. The election is thereafter held by the State Election Commission. The 'election' concludes, as provided in the aforementioned statutory provision, with the declaration of the result. Thus, a petition that "calls into question" an "election", during the period of the "election", would not be entertained, under Article 226 of the Constitution of India. Redress to any such grievance, would have to await the outcome of the election and then also would be urged, by filing an election petition, under the provisions of the Election Commission Act. The aforementioned conclusions, however, shall not be construed to oust the jurisdiction of a High Court, under Article 226 of the Constitution of India. A High Court's power of judicial review is merely postponed, to a time and a stage, after the conclusion of the election and then also to a judicial appraisal of any judgment or order that may be passed by an Election Tribunal, duly constituted, in terms of Section 73 of Election Commission Act.”

x x

29. However the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as, such a petition does not call into question an election. A petition, seeking an expeditious conclusion of an election, or filed with the object of facilitating the conduct of an election, would not be a cause, calling into question, an election and, adjudication, thereof would not be declined, by relegating the aggrieved petitioner to the remedy of filing an election petition. Thus, the words, appearing in Article 243 ZG(b) of the Constitution, clearly postulate that the legislative intent expressed therein, would come into operation only where a petition discloses a grievance, that calls into question an election.

x x

33. An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an "election" would be justifiable, only by way of an election petition. Interference by Courts in election matters, after the commencement of the election process, would not be permissible, except to the limited extent noticed herein above.”

11. This Court in the case of ***Surender Kumar Vs. The State Election Commission, Haryana and others CWP-26255-2022***, decided on 11.04.2023 while following the aforesaid precedents held that the High Court in such situations should refrain from exercising jurisdiction under Article 226 of the Constitution of India at this stage.

12. Apart from the fact that the arguments as raised would be a matter of evidence. Casting of bogus votes cannot be a ground for interference in exercise of jurisdiction under Article 226 of the Constitution of India as the same can be challenged by taking recourse to the remedies as available in accordance with law. Arguments raised on behalf of the petitioners cannot in any manner be taken to be a step towards completion or furtherance of election proceedings. The petitioners in fact, clearly seeks to call the election of respondent no.7 in question, which does not brook interference at this stage in the present proceedings. All the reliefs claimed are clearly within the purview of the prescribed authority/Tribunal as has been succinctly explained by the Hon'ble Supreme Court in ***Mohinder Singh Gill's*** case (supra).

13. In the given facts and circumstances, learned counsel for the petitioners is unable to point out any ground whatsoever, which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India at this stage.

14. No other argument has been addressed.

15. This writ petition is accordingly dismissed.

16. It is clarified that there is no expression of opinion on the merits of the allegations and averments as raised in the writ petition.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

12.05.2023
Sunil

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