



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

**CR-2825-2024 (O&M)
Date of decision : 30.07.2024**

KULDEEP SINGHPetitioner

Versus

MOHIT KUMAR AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vikram Singh, Advocate
 for the petitioner.

 Mr. Apporv Garg, Sr. DAG, Haryana
 for respondent No.8.

PANKAJ JAIN, J. (ORAL)

Present revision petition has been filed by respondent in the proceedings arising out of Election Petition aggrieved of the order dated 30th of April, 2024 (Annexure P-6) passed by the Election Tribunal under the provisions of Haryana Panchayati Raj Act.

2. Petitioner along with respondent-Mohit Kumar and other candidates contested elections for the office of Sarpanch of Gram Panchayat Buana Lakhu, Block Israna, District Panipat held on 2nd of November, 2022. Returning Officer issued Form No.19 as per the provisions of Rule 70(1)(a) of the Haryana Panchayati Raj Election Rules, 1994 to the petitioner on having secured the highest number of votes. As a consequence thereof, the



petitioner was issued Form No.21-B by the Returning Officer declaring him as an elected Sarpanch. However, during later part of the day, Returning Officer *suo moto* ordered recounting of votes. When the petitioner reached he came to know that Mohit Kumar has been declared as the winning candidate. Aggrieved by the action of the official respondents, petitioner approached this Court by way of CWP No.25694 of 2022. The writ petition was allowed observing as under :

“16. Upon perusal of the stand taken by the official respondents as well as respondent No. 5, it is evident that initially it is the petitioner, who was declared as the elected Sarpanch of village Buana Lakhu and Form No. 19 as well as Form No. 21-B was issued in favour of petitioner by the Returning Officer.

17. The reasoning put-forth by the official respondents as well as respondent No. 5 for correcting the election result and re-preparing the Form No. 19/21-B in favour of respondent No. 5 is that the Presiding Officer of Polling Both No. 69 had wrongly prepared the result of votes of the said booth No. 69; which was subsequently checked by looking at the videography and accordingly the mistake in preparation of result as regards votes of polling booth No. 69 by its Presiding Officer was corrected and the final result of election was re-prepared, whereupon respondent No. 5 was declared as elected.

18. We have considered the above extracted stand as well as the submissions of the learned State counsel representing official respondents and also the learned counsel representing respondent No. 5; however, we are afraid that the stand/submissions raised on behalf of official respondents as well as the respondent No. 5 cannot be accepted in view of the settled law that once the result has been declared then the same cannot be set aside/altered by the returning officer and only remedy available to an aggrieved party is to file an election petition.



19. In somewhat similar circumstances, Hon'ble the Supreme Court in the case of ***Malkit Kaur Versus Jatinder Kaur, 2001 (Sup2) JT 157***, held as under :-

“2. Learned counsel appearing for the appellant urged that earlier there being mistake and error in form IX prepared by the Returning Officer, the authority was justified in law to correct the form IX subsequently and the High Court committed error in setting aside the subsequent order of the Returning Officer. We do not find any substance in the argument. Under the Act and the Rules thereunder once a candidate has been declared elected in the form IX, the Returning Officer ceases to have any power to alter the said declaration subsequently. The declaration as contained in form IX could only be challenged by means of an election petition before an appropriate tribunal. In that view of the matter, we do not find any merit in this appeal.”

20. A similar view was taken by a Division Bench of this court in ***Kashmir Kaur Versus State of Punjab, 2004 (1) RCR (Civil) 580 and Jasmail Kaur Versus Punjab State Election Commission, 2009 (1) RCR (Civil) 684***.

21. Learned State counsel fairly conceded that in view of the order passed by the Hon'ble Supreme Court in ***Malkit Kaur's*** case (supra), they cannot defend the action taken by respondent No. 4 to revise the entries recorded in Form 19 and Form 21-B, moreso when there was no written request made by respondent No. 5 for re-counting of votes.

22. In view of the above, the instant writ petition is allowed. It is held that after the petitioner was duly declared elected as Sarpanch of Gram Panchayat Buana Lakhu and Form 19

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and Form 21-B stood issued in favour of the petitioner, then subsequent to declaration of such result, the respondent No. 4 did not have the jurisdiction to alter or change or correct the so-called mistake in Form 19 and Form 21-B in favour of respondent No. 5. Consequently, the action of the concerned authority to declare respondent No. 5-Mohit Kumar as elected Sarpanch by issuing a revised/fresh Form 19 and Form 21-B, in his name, subsequent to declaring petitioner as elected Sarpanch of village Buana Lakhu upon issuance of Form 19 and Form 21-B, in the name of petitioner; is declared illegal and accordingly the Election Certificate Form No. 21-B dated 02.11.2022 (Annexure P-3), issued to respondent No. 5 (Mohit Kumar) is set aside. Respondent No. 4 is directed to notify the name of the petitioner as an elected Sarpanch of Gram Panchayat Village Buana Lakhu and respondent No. 4 is directed to ensure that the petitioner is administered oath of office of the post of Sarpanch within a period of 15 days from the date of presentation of copy of this order.

However, liberty is given to respondent No. 5 to challenge the election of the petitioner by filing an election petition under Section 176 of Haryana Panchayati Raj Act, 1994 and it is hoped that the petition filed by respondent No. 5 will be disposed of by the Election Tribunal as early as possible but latest within 3 months after the service of notice.”

3. The order was pronounced on 5th of March, 2024. Respondent Mohit Kumar filed election petition on 16th of March, 2024. Petitioner was summoned for 19th of March, 2024. On 1st of April, 2024 the petitioner filed application under Order 7 Rule 11 CPC seeking rejection of the Election Petition claiming that the same was barred by limitation. It was claimed that limitation prescribed under law for filing the Election Petition was 30 days after the date of declaration of the result and once result was declared on 2nd



of November, 2022 the petition, if any, to challenge the said election could have been filed within 30 days thereafter. Tribunal vide impugned order has dismissed the application filed by the petitioner holding that period of limitation would begin to run from the date of cause of action and in the present case the cause of action arose in favour of the petitioner i.e. the respondent herein only on 5th of March, 2024 when his election was set aside by the High Court and Kuldeep Singh was declared as an elected Sarpanch.

4. Assailing the impugned orders passed by the Courts below Mr. Vikram Singh, Advocate representing the petitioner has relied upon Section 176 of the Haryana Panchayati Raj Act, 1994 to submit that the limitation prescribed is 30 days from the declaration of the result and the same cannot be extended by the Court while exercising powers under Article 226 of the Constitution of India. He relies upon law laid down in the case of **Suman Devi vs. Manisha Devi, 2018 AIR (SC) 3912, Lachhman Das Arora vs. Ganeshi Lal and others, (1999) 8 SCC 532, Reji Thomas vs. State of Kerala, 2018(7) Scale 101, Geeta Rani vs. State of Haryana, 2020 (3) PLR 526, Sonu vs. State of Haryana and others, 2019(3) RCR (Civi) 1018, Chet Ram and others vs. State of Punjab and others 2010(4) PLR 718, Parkasho vs. Bholi Devi, 2012(3) PLR 541 and Joginder Singh vs. Baldev Singh and others, 2010 (1) PLR 769**

5. I have heard counsel for the petitioner and have carefully gone through records of the case.



6. In order to appreciate the plea being raised by counsel for the petitioner, it will be apposite to peruse Section 176(1) of the 1994 Act which reads as under :

"Section 176 (1) of the Panchayati Raj Act 176.- Determination of validity of election enquiry by judge and procedure.-

(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....."

7. There is no dispute w.r.t. prescription of 30 days as limitation for filing the Election Petition after the date of the declaration of the results of the election. However, in the present case, admittedly Form 19 and Form 21-B issued to the petitioner were annulled by the official respondents and thereafter Form 19 and Form 21-B were issued in favour of Mohit Kumar on the date of declaration of result itself i.e. on 2nd of November, 2022. The question thus is: *"Could Mohit Kumar prefer an election petition after being issued Form 19 and Form 21-B?"* The Answer is 'no'.



8. Rule 70 of the Haryana Panchayati Raj Election Rules, 1994 deals with the declaration of results of the election. The same reads as under:

“70 Declaration of results—(1) The Returning Officer (Panchayat) or the Assistant Returning Officer (Panchayat), shall—

- (a) declare to be elected the candidate for the office of Panch who has secured the largest number of valid votes and certify the return of election in Form 18. Similarly the result of Sarpanch shall also be declared forthwith but if there are more than one polling stations in the sabha area the result sheets for the office of Sarpanch shall be sent to the Polling Station presided over by the Presiding Officer nominated by the District Election Officer (Panchayat) for this purpose, on the same day who shall, after compiling the result sheets in Form 19 declare forthwith the candidate who received the largest number of valid votes elected as sarpanch. For the purpose of declaration of result for the office of Panch and Sarpanch, the Presiding Officer shall be deemed to be Returning Officer and in case of more than one polling stations in the sabha area, nominated Presiding Officer shall be deemed to be the Returning Officer for declaration of result for the office of Sarpanch;
- (b) send from the place specified in clause (e) of rule 24 (substituted by Leg Sup. Part III dated 04.11.94) the result sheet for the offices of members of Panchayat Samiti and Zila Parishad to the concerned Returning Officer for Panchayat Samiti at block level and to the Deputy Commissioner respectively;

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- (c) for the election of member of Panchayat Samiti, compile all the result sheets in Form 16 and prepare Form 20 and declare the candidate, who received the largest number of valid votes elected and shall certify the return of election in Form 20; and
- (d) for the election of member of Zila Parishad, compile the result sheets in Form 17 and prepare Form 21 and declare the candidate, who received the largest number of valid votes, elected and shall certify the return of election in Form 21.

(2) The Returning Officer (Panchayat) or the officer authorized by him shall send the signed copy of the returns under this rule to the District Election Officer (Panchayat) and to the State Election Commissioner.”

9. As per Rule 70 (1)(a) of the 1994 Rules the District Election Officer (Panchayat) declares forthwith the candidate who received the largest number of valid votes elected as Sarpanch in Form 19. Once Mohit Kumar/respondent was declared as Sarpanch by issuance of Form 19 and Form 21-B in his favour he could not have preferred election petition on that day. It is only after this Court found that the action of the respondents was illegal and in the teeth of law that Form 19 and Form 21-B issued in favour of Mohit Kumar were set aside and the petitioner was declared elected. There can't be any dispute w.r.t. the proposition canvassed in the case of Chet Ram and others vs. State of Punjab and others (supra), Parkasho vs. Bholi Devi (supra) and Joginder Singh vs. Baldev Singh (supra) that the Court while exercising jurisdiction under Article 226 cannot extend the



period of limitation. However, the expression used in Section 176 of 1994 Act is the date of declaration of the result. In the present case, the petitioner having been declared elected by the orders passed by this Court, this Court finds that for the purpose of filing of Election Petition at the hands of Mohit Kumar, the date will be when the order was pronounced by this Court i.e. 5th of March, 2024. It is matter of record that the Election Petition was preferred by Mohit Kumar within 30 days. There is no doubt that by deeming fiction once Form 19 and Form 21-B issued in favour of Mohit Kumar have been declared to be invalid, the result in favour of the petitioner shall relate back to the earlier date. However, the time taken by High Court in deciding the *lis* cannot be read to the disadvantage of the respondent- Mohit Kumar leaving him without remedy. *Dehors* the fiction, the fact remains that the petitioner has been declared to be an elected Sarpanch on the day this Court pronounced judgment in his favour i.e. 5th of March, 2024 and it is only thereafter that the limitation for Mohit Kumar to file election petition shall commence.

10. In view of above, this Court does not find any reason to interfere in the instant revision petition. Resultantly, the same is dismissed.

July 30, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes