

2024:PHHC:146136-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-28691-2024
Reserved on: 23.10.2024
Pronounced on: 06.11.2024

Harpreet Singh
.....Petitioner

Versus

State of Punjab and others
.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Manish Kumar Singla, Advocate
Mrs. Shikha Singla, Advocate,
Mr. Dinesh Kumar, Advocate and
Mr. Kuljinder Singh, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for setting aside the impugned order dated 14.10.2024, whereby the election(s) for the post of Sarpanch of Gram Panchayat Pona, Cluster No.4, Block Jagraon, District Ludhiana, has been cancelled just few hours before the start of polling, thus inter alia on the ground, that the same is illegal, arbitrary and against the principles of natural justice, as the petitioner has been condemned unheard, besides is beyond jurisdiction. The petitioner further seeks the making of a mandamus, thus directing the official respondents to immediately hold the elections for the post of Sarpanch of Gram Panchayat Pona, Cluster No.4, Block Jagraon, District

Ludhiana, between the candidates (i.e. the petitioner and respondent No.8) whose nomination papers were validly accepted and to whom election symbols were allotted by the Returning Officer.

Factual Background

2. Respondent No.3 prepared an election programme for conducting general elections of Gram Panchyats in the State of Punjab, which was published vide notification dated 27.09.2024.

3. The present petition pertains to the elections for the post of Sarpanch of Gram Panchayat Pona, Cluster No.4, Block Jagraon, District Ludhiana. Scrutiny of the nomination papers was completed on 05.10.2024. After scrutiny of nomination papers, as required under Section 41 of the Punjab State Election Commission Act, 1994, (hereinafter referred to as 'the Act of 1994'), respondent No.6 found four candidates to be eligible for the post of Sarpanch and pasted the list on the notice board/wall of the office. Those four candidates are I) the petitioner, II) respondent No.8, III) Bhupinder Singh and IV) Ranjodh Singh.

4. The last date for withdrawal of nomination was 07.10.2024, and, two candidates as per Section 43 of the Act of 1994, namely Bhupinder Singh and Ranjodh Singh withdrew their nomination papers, and, the list of contesting candidates was published as per Section 43 of the Act of 1994.

5. Accordingly, both the candidates i.e. the petitioner and respondent No.8 were allotted election symbols. The petitioner was allotted Tractor as election symbol, while respondent No.8 was allotted Bucket as election symbol and the list of validly nominated candidates

6. When on 15.10.2024 the petitioner along with his election agents and supporters reached the polling station, then he came to know that the election for the post of Sarpanch has been cancelled, through the making of the impugned order by the State Election Commission.

Submissions of the learned counsels for the petitioner

7. Learned counsel for the petitioner submits, that the impugned order dated 14.10.2024 (Annexure P-1) is illegal, arbitrary and against the principles of natural justice, besides breaches the rule of *audi alteram partem*. Moreover, he submits that the impugned order transgresses the mandatory provisions of the Act of 1994, and the apposite provisions existing in the Punjab Panchayat Election Rules, 1994 (hereinafter referred to as 'the Rules of 1994').

8. They further submit that the impugned order shows that the alleged application submitted by respondent No.8, wherein, he claimed that the present petitioner was an encroacher upon the panchayat land, thus became received in the office of respondent No.3, on 08.10.2024, whereas, the last date for scrutiny of nominations was 05.10.2024, thereupon when subsequent to 05.10.2024 rather no objection(s)/ application(s) were amenable to be filed nor the said were entertainable. Resultantly, it is argued that both the entertainment of the applications besides the makings of the impugned decision thereon, is illegal, arbitrary and malafide.

Submissions of the learned State counsel

9. On the other hand, the learned State counsel has vehemently submitted before this Court, while banking his submissions upon the provisions as embodied in Section 208 of the Punjab

Act') that since the relevant disqualification as embodied in clause 'k' of Section 208 of the Panchayati Raj Act, clause whereof becomes extracted hereinafter, did become cogently established against the present petitioner, therebys he submits that the exercise of jurisdiction by the respondent concerned, does not suffer from any material illegality nor it become ingrained with any vice of gross impropriety.

*“208. **Disqualifications for membership.**-- A person shall be disqualified for being chosen as, and for being a member of a Panchayat if,-*

xxx

(k) is in un-authorized occupation of property belonging to any local authority; or

xxx”

10. He further submits that since therebys the Election Commissioner concerned, became ably empowered to recourse the provisions (supra), as the present petitioner did acquire the apposite ineligibility to contest the elections. More so, when the said fact becomes unfolded by the report of the BDPO concerned. Therefore, he submits, that the effect of an able empowerment (supra) becoming invested in the Election Commissioner concerned, when becomes combined with the present petitioner, thus evidently incurring the (supra) statutory disqualification, is but that, therebys an inevitable conclusion becoming garnered qua the impugned order rather not suffering from any illegality.

11. The learned State counsel further submits, that the said power was amenable to be exercised, even during the currency of the elections, as the statutory coinage “for being chosen”, as becomes explicitly expressed in the provisions (supra), does cover even the phase

12. Furthermore, he submits that since Section 12 of the Act of 1994, provisions whereof become extracted hereinafter, especially with thereins a mandate occurring vis-a-vis upon arousal of a dispute relating to the incurring of a disqualification by the concerned, thereupon the said dispute becomes enjoined to become referred, thus to the State Election Commission, hence for the latter making an opinion thereons. He further submits that though sub Section 2 of Section 12 of the Act of 1994, thus requires that the apposite opinion be elicited from the State Election Commission concerned. However, he further submits that yet the independent formation of an opinion by the State Election Commission, as unfolded in the impugned decision, when becomes so made after the making of an indepth enquiry in terms of the provisions engrafted in Section 12 of the Act of 1994. Resultantly, *ipso facto* therebys when the said opinion ultimately would when be binding even upon the State Government, as such, it also but becomes the binding and conclusive decision of the State Government, thus within the ambit of sub Section 1 of Section 12 of the Act of 1994.

“12. State Government to decide disputes regarding disqualification.—

(1) if any question arises as to whether a member or any Panchayal or Municipality has become subject to any of the disqualifications specified in Article 243 For 243V of the Constitution of India or in section 11 the question shall be referred for decision of the State Government and his decision shall be final.

(2) Before giving any decision on such question, the State Government shall obtain the opinion of the Election Commission and shall act according to such opinion.”

13. In other words, he submits that the independent formation of an opinion as becomes ably made, thus within the contours of sub

Section 2 of Section 12 of the Act of 1994, thus thereby also the impugned decision but becomes the final and conclusive decision as made by the State Government. Reiteratedly, the above submission is planked on the ground that when the opinion formed by the State Election Commission, thus would become the hinge for the State Government but resting its decision thereons. Therefore, reiteratedly he submits that the said formed opinion is to be foisted, thus the pedestal of a binding and conclusive order as may even become passed by the State Government.

14. Emphatically the opinion formed by the State Election Commission concerned, is required to become foisted thus the pedestal of passing of a binding and conclusive verdict hence by the State Government, especially when the said opinion is rendered in terms of the provisions embodied in Section 125 of the Act of 1994, provisions whereof becomes extracted hereinafter. He further augments the said argument, by submitting that since in the formation of an opinion by the State Election Commission, the latter in terms of Section 125 of the Act of 1994, is required to undertake an enquiry, thus in the manner as becomes undertaken by the Civil Court of competent jurisdiction, while trying a suit as cast under the Code of Civil Procedure.

“125. Power of Election Commission.-- (1) Where in connection with the tendering of any opinion to the State Government under section 12. the Election Commission considers it necessary or proper to make an inquiry and the Election Commission is satisfied that on the basis of the affidavits filed and the documents produced in such enquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Election Commission shall have, for the purpose of such inquiry, the powers of a Civil Court, while trying a suit under

the Code of Civil Procedure, 1908 (central Act 5 of 1908) in respect of the following matters, namely

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents or other material object producible as evidence; -

(c) receiving evidence on affidavits;

(d) requisitioning any public record or a copy thereof from any court or office; and

(e) issuing commissions for the examination of witnesses or documents,

(2) The Election Commission shall also have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in its opinion may be useful for or relevant to, the subject-matter of the inquiry.

(3) The Election Commission shall be deemed to be a Civil Court and when any such offence as described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860) is committed in the view or presence of the Election Commission, the Election Commission may, after recording the facts constituting the offence and the statement of the accused, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded, shall proceed to hear the complaint against the accused as if the order for forwarding the case to the said Magistrate had been made under section 482 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(4) Any proceeding before the Election Commission shall be deemed to be judicial proceedings with the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).”

15. As such, he submits that the report of the BDPO concerned, as became relied upon by the State Election Commissioner concerned,

when became so relied upon, on an enquiry in terms of (supra)

provisions, thus becoming made, besides became relied upon only on an objective satisfaction thus being made by the Election Commissioner concerned, about the veracity of the apposite affidavit. Therefore, therebys he contends that the enquiry as made in terms of Section 125 of the Act of 1994, when is made to enable the authority concerned, to render a well informed opinion to the State Government. Resultantly, he submits that when the opinion formed on the basis of the enquiry (supra), undertaken by the Election Commission, thus also binds the State Government, therebys reiteratedly the decision of the Election Commissioner, rather is to be construed to be a decision, even on the part of the State Government, wherebys it acquires conclusivity, whereupon it is unamenable for a challenge being made theretos.

For the reasons to be assigned hereinafter, this Court finds merit in the instant writ petition, and, as such, is led to quash and set aside the impugned order dated 14.10.2024 (Annexure P-1) with a mandamus upon the respondents concerned, to forthwith announce the schedule for conducting elections to the post of Sarpanch for Gram Panchayat Pona, Cluster No.4, Block Jagraon, District Ludhiana, but with a further direction that the announced list of candidates shall be the only ones who would be permitted to contest the elections to the post of Sarpanch of Gram Panchayat Pona, Cluster No.4, Block Jagraon, District Ludhiana

16. The arguments (supra), raised before this Court by the learned State counsel, appear to be impressive on the facade, but are most mechanically and idly raised, besides they are raised on complete wants, qua the (supra) provisions embodied in the Panchyati Raj Act, rather imperatively requiring combined and harmonious readings thereof, thus being made along with the provisions embodied in Sections 11 and 12 of the Act of 1994, besides along with the provisions embodied in Section 89 of the Act of 1994, provisions whereof becomes extracted hereinafter. Moreover, the said submissions are made with the

learned State counsel but with his being completely unmindful to the mandates as become respectively enclosed in Rules 31 and 32 of the Rules of 1994, provisions whereof also becoming extracted hereinafter, besides with his remaining oblivious vis-a-vis the mandate enclosed in Section 89 of the Act of 1994, respectively whereby on proof emanating in satiation to the ingredients enclosed therein, thus the State Election Commission becomes empowered to cancel or adjourn the elections, and, on cogent proof becoming adduced vis-a-vis the ingredients spelt in the provisions (supra), whereons an election petition becomes constituted, thereby the Election Tribunal becomes empowered to declare the concluded elections to be vitiated.

“89. Grounds for declaring election to be void.-- (1)

Subject to the provisions of subsection (2), if the Election Tribunal is of the opinion,—

(a) that on the date of his election, a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under this Act; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected: or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected,--

(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent: or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act; the Election Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Election Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Election Tribunal is satisfied,—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every, such corrupt practice as committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election: and

(c) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agent; then the Election Tribunal may decide that the election of the returned candidate is not void.

(3) In this section, the expression 'agent' has the same meaning as assigned to it in Explanation (1) given under clause (9) of section 108 but does not include election agent."

Rules 31 and 32 of the Rules of 1994

"31. Adjournment of polls in emergencies (Section 58).-- *(1) The Returning Officer, the Presiding Officer, the District Election Officer or the Election Commission may adjourn the poll in a sabha area or constituency at any time in case the poll is interrupted or obstructed by*

(i) any riot or violence; or

(ii) a direct or indirect threat to the election process or conduct of poll: or

(iii) an action of snatching or destroying the [ballot-papers;] or

(iv) any type of natural calamity: or

(v) booth-capturing at the polling station or at a place fixed for polling ' or

(vi) any other sufficient reason to be recorded in writing.

(2) Whenever the polling is adjourned in terms of the provisions of (sub-rule (1) the Returning Officer shall as soon as practicable, report the matter to the Election Commission who

shall appoint a day for a fresh poll and shall fix the time at which such poll shall be held.

32. Cancellation of Election Programme.-- (1) *Subject to the provisions of rule (30) the Election Commission or District Election Officer, for reasons to be recorded in writing, may by an order, cancel the election programme at any time, before the commencement of the poll, [if, --]*

(i) electors are threatened or prevented from exercising their franchise; or

(ii) electors are threatened or prevented directly or indirectly not to contest the [elections; or]

(iii) there is any type of natural calamity]

(2) Whenever an election programme is cancelled In terms of the provisions of sub-rule (1), the Election Commission shall frame a fresh election programme as provided in section 35 in respect of that Sabha area or constituency.”

17. Reiteratedly, the said submission(s) are also made with a complete un-mindfulness to the statutory rules, as embodied in Rule 32 of the Rules of 1994, to the true tenor and spirit of the mandates as enclosed in Rules 31, and 32 of the Rules of 1994, whereunders, on proof of the mandates enclosed therein, thus the State Election Commission becomes empowered to cancel or adjourn the announced election programme.

18. At the very outset, the election programme became announced on 27.09.2024, and, as stated (supra), only two candidates were left in the fray, one amongst whom was the present petitioner and the other being respondent No.8.

19. Both the (supra), were declared to be the ones to be left in the fray for contesting elections to the post of Sarpanch in the Gram Panchayat Pona, Cluster No.4, Block Jagraon, District Ludhiana.

Conspicuously also, both became allotted (supra) election symbols.

20. Emphasizingly also the acceptance of the nomination papers of the petitioner were made on the ground, that there was no objection furnished by the BDPO concerned, with respect to an information, that he was an encroacher upon the panchayat land, and as such, he had not incurred the apposite disqualification as embodied in clause 'k' (supra) of Section 208 of the Panchayati Raj Act.

21. Be that as it may, yet subsequently, on a complaint being made by the other contesting contestant i.e. respondent No.8, thus the said Election Commission, elicited a report report from the BDPO concerned, who therein in deviation from his earlier report favourable to the present petitioner, rather made speakings therein, that the present petitioner had incurred the disqualification, as occurs in Clause 'k' of Section 208 of the Panchayati Raj Act. Consequently, the said Election Commission was led to pass the impugned order.

22. Now assuming that the present petitioner acquired the apposite disqualification, whereby he became forbidden to "*become chosen or becoming elected as Sarpanch to the Gram Panchayat concerned*". However, yet the determination of the imperative factum qua the incurring of the apposite disqualification by the present petitioner for his being, thus chosen by the electorate, as the Sarpanch of the Gram Panchayat concerned, but could have been done only at the post election stage, rather than the same becoming taken as a prohibitive fact besides a determination being made thereovers. Tritely, both the rearing of the prohibitive imperative factum (supra), thus was unamenable nor was amenable to become determined nor was required to be put to a quietus, thus by the State Government, rather during the

was unamenable for being either raised or becoming determined by the State Government or through its agencies rather during phase of the ongoing elections. Moreover, the verdict to be made by the State Government in terms of sub Section 1 of Section 12 of the Act of 1994, thus was to be made at the post election stage wherebys alone but at the said phase it would have an effective binding and conclusive effect.

23. The reason for making the said conclusion, becomes spurred from the fact, that though Section 208 of the Panchayati Raj Act opens with the statutory phrase “*A person shall be disqualified for being chosen as, and for being a member of a Panchayat if*”, besides when the disqualifying statutory norm appertaining to the instant case, as occurs in clause ‘k’ thereof, thus voicing that the concerned “*is in un-authorized occupation of property belonging to any local authority*”.

24. However, at the outset, the said provisions, thus exist in the Panchayati Raj Act, whereupon the statute (supra), thus is completely different from the Act of 1994. Resultantly, though two legislations become enacted, i.e. the Act of 1994 and the Panchayati Raj Act, which may be overlapping besides may be complementary. However, the inter-se distinction between the Panchayati Raj Act, and, Act of 1994, is that, though the competent authority when exercising thereunders, an able jurisdiction, thus may proceed to pass an order for removing the democratically elected candidate, whereas, the State Election Commission while trying an election petition, but on cogent proof becoming adduced vi-a-vis the grounds taken in the election petition, rather may well proceed to declare the apposite election to become vitiated.

25. Be that as it may, even otherwise, recourse to two different statutes which may be overlapping or may be complementary and/or when therebys there may be investment of complementary competent jurisdiction, thus in the authorities concerned, to snatch the office concerned, from the democratically elected person to the post concerned, but yet the effect of the two enactments (supra), is to be gauged.

26. The relevance of gauging the effect of the two enactments, besides the effect of the provisions thereof being availed or resorted, but in the alternative, is to set at rest the conundrum, whether the relevant provisions embodied in the special enactment (supra), are to be availed at the pre-election stage or at the post election stage or during the currency of the ongoing elections.

27. The answer to the said conundrum is very simple inter alia on the following grounds: (a) the phrase "*A person shall be disqualified for being chosen as, and for being a member of a Panchayat if*", as exists in the opening of Section 11 of the Act of 1994, especially the one "being chosen", thus requires the impartings thereto of a signification, to the extent that it pertains only to the post election stage. Even if the said phrase opens with the explicit expression "*for being chosen*", yet to the said phrase, no connotation can be imparted, that therebys even during the course of the ongoing elections, thus the aggrieved becoming foisted with a leverage to avail the (supra) provisions.

28. The reason for so concluding, is also extremely simple inasmuch as, if the above interpretation is not assigned to the phrase "*for being chosen*", therebys there would be open and blatant conflict

titled as '*N.P. Ponnuswami Versus The Returning Officer, Namakkal Constituency and others*', reported in *1952 SCC Online (SC) 3*, wherein in paragraph 25 thereof, paragraph whereof becomes extracted hereinafter, it becomes expostulated, that once the election process commences therebys vis-a-vis the ongoing elections rather no interference is required to be made. Contrarily, the remedy to the aggrieved is to institute an election petition in terms of the relevant statutory provisions, thus before the Election Tribunal concerned.

"25. The conclusions which I have arrived at may be summed up briefly as follows :--

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

29. It is but trite that even if there are concurrent vestments of jurisdiction under the Panchayati Raj Act, and in the Act of 1994, thus whereunders the competent authority(ies), become invested with the

concerned, from the post he/she becomes elected. Moreover, though therebys the choice lies with the aggrieved to avail the remedy either under the Panchayati Raj Act or under the Act of 1994. However, reiteratedly the availment of the said remedies, as created respectively under Section 89 of the Act of 1994 or under Section 208 of the Panchayati Raj Act, is to be done only at the post election stage and not when the elections are ongoing.

30. Be that as it may, even within the Act of 1994, thus the supra statute preserves a duo of alternative remedies to the aggrieved. The said alternative remedies are respectively cast in Section 89 of the Act of 1994 and in Section 11 and 12 of the Act of 1994. If the aggrieved chooses to avail the remedy cast under Section 89 of the Act of 1994 through his instituting an election petition before the Election Tribunal concerned, therebys the said dispute is to be rested by a decision being made on the relevant lis by the Election Tribunal concerned. However, when the aggrieved chooses to avail the remedy cast under Section 11 and 12 of the Act of 1994, therebys the State Government in terms of sub Section 2 of Section 12 of the Act of 1994, becomes enjoined to elicit an opinion from the State Election Commission, opinion whereof binds the State Government and also becomes the plank for resting thereons, thus a binding and conclusive decision.

31. As such, within the same statute (supra) i.e. there are (supra) two alternative remedies preserved vis-a-vis the aggrieved. Moreover, the statutory remedy enshrined in Section 208 of the Panchayati Raj Act, is also alternate to the twin remedies (supra). In

encapsulated in Section 208 of the Panchayati Raj Act, thereby too, since there is no statutory provision encapsulated in the Panchayati Raj Act, thus empowering the authority concerned, to after the conducting of an in depth enquiry into the relevant complaint, rather cause the removal of the democratically elected person concerned, nor when any authority becomes designated to do so. As such, this Court is of the considered opinion, that thereby too, the provisions embodied in Sections 11 and 12 of the Act of 1994, and the one embodied in Section 125 of the Act of 1994, thus are able conjoint provisions for becoming adopted by the State Government rather for ultimately the latter proceeding to order for the removal of the democratically elected person from the post concerned.

32. Therefore, at this stage the arguments (supra), raised by the learned State counsel, that the opinion formed by the State Election Commission, thus in terms of the mandate enclosed in sub Section 2 of Section 12 of the Act of 1994, is to be foisted conclusivity and finality, but becomes an ill made argument and requires rejection.

33. Moreover, the factum that there is a complete bar against any interference being made with the announced election schedule, especially when the elections are ongoing, thus even at the instance of the State Election Commission, as has been untenably done, through the making of impugned order dated 14.10.2024, becomes also generated, from Rule 32 of the Rules of 1994, whereunders alone, but on evident proof emerging vis-a-vis the therein spelt ingredients, thus an able and competent jurisdictions becomes foisted in the State Election Commission, thus to proceed to cancel or adjourn the polling.

State Election Commission becomes empowered to even post, the allotment of election symbols to the nominated candidates concerned, that too merely on receiving an adverse report against the present petitioner from the BDPO concerned, as appertaining to his allegedly being an encroacher, upon, the panchayat land, to thus cancel the elections.

34. Further fortifying vigor to the above inference, becomes garnered from the factum, that in the making of the impugned order, the Election Commissioner, though has purportedly exercised jurisdiction under Section 208(k) of the Panchayati Raj Act, whereas, as stated (supra), the invested thereunders jurisdiction was to be exercised only after adherence being made to the provisions embodied, respectively in Sections 11, 12 of the Act of 1994 and in Section 125 of the Act of 1994. However, in the instant case, given the piquant heretos (supra) alluded facts, the said exercised jurisdiction, but ex facie becomes exercised with a gross illegality and/or with a material impropriety. Inevitably for reasons (supra) qua even the (supra) limited jurisdiction invested in the State Election Commission, but was in view of the verdict rendered by Hon'ble Apex Court in ***N.P. Ponnuswami's case (supra)***, thus ably exercisable not during the currency of the ongoing elections but the same rather was ably exercisable only post the conclusion of the election process.

35. Significantly though the provisions enclosed in Rule 31 and 32 of the Rules of 1994, purportedly empower the State Election Commission to either cancel or adjourn the elections. However, readings of the mandates enclosed in (supra) provisions, do not unveil,

the (supra) enclosed mandates in the (supra) provisions. Therefore, therebys too, the cancellation of the elections by the State Election Commission concerned, was unwarranted or became exercised most arbitrarily and in a malafide manner.

36. Emphatically, when after allotment of election symbols, to the contesting candidates, thus the announced election programme was to culminate, in the electorate being led into polling booth. However, contrarily on account of the arbitrary cancellation of the election programme, the electorate was debarred to enter the polling booth, therebys they became arbitrarily forbidden to exercise their lawful franchise. In sequel, therebys the electorate has been untenably forbidden to choose a candidate to the democratic office of the Sarpanch of the Gram Panchayat concerned.

37. Furthermore, since Section 89 of the Act of 1994, does also detail therein, the ingredients of the provisions enshrined also in Section 208(k) of the Panchayati Raj Act. Resultantly, when thereins become set forth the grounds for declaring vitiated, the election as became conducted, but only upon an election petition becoming filed before the Election Tribunal concerned. Resultantly, after the making of a notification wherebys the present petitioner were declared to be the ones to be chosen by the electorate, as such, the said State Election Commission was required to be ensuring, that the electorate became permitted to exercise their franchise. Therefore, even in the event of the present petitioner becoming, on the anvil of Clause 'r' of Section 11 of the Act of 1994, being purportedly disqualified, therebys reiteratedly the said was to be taken as a ground, for the election(s) being set aside, but

Tribunal concerned. Moreover, if the remedy under Section 208 of the Panchayati Raj Act, was also chosen in the alternative, to the statutory remedy (Supra), the same being but complementary to the remedy created under Section 89 of the Act of 1994, therebys also on the relevant motion being cast, but under Sections 11 and 12 of the Act of 1994, thereupons the said State Election Commission was required to purvey to the State Government the elicited and well informed opinion, thus for enabling the State Government to make a final and conclusive decision, whether the returned candidate has incurred or not incurred the statutorily prohibited disqualification against his being chosen by the electorate. Necessarily, the said exercise was to be done only post the culmination of the election process through the declaration of results being made and not during the phase of the ongoing elections.

38. Additionally, besides the purported incurring of the statutory disqualification (supra), wherebys the present petitioner became besides forbidden to be chosen to the democratic office concerned, thus was to be taken as a ground for his removal but only on a motion being made before the competent authority. The said motion was reiteratedly required to be made not during the spell when the elections were in progress, but was required to be set forth through the casting an apposite motion but only after the conclusion of the elections.

Final Order of this Court

39. In aftermath, there is merit in the instant writ petition and the same is allowed, and, the impugned order dated 14.10.2024 (Annexure P-1) is hereby quashed and set aside with a mandamus upon the respondents concerned, to forthwith announce the schedule, for

Cluster No.4, Block Jagraon, District Ludhiana, besides with a further direction that the announced list of candidates, shall be the only ones who would be permitted to contest the elections to the post of Sarpanch of Gram Panchayat Pona, Cluster No.4, Block Jagraon, District Ludhiana. Needless to say, the aggrieved from the announced election results, may avail the remedy either under Section 208 read with clause k of the Panchayati Raj Act, and alongwith the provisions incorporated under Sections 11 and 12 of the Act of 1994, besides alongwith the provisions engrafted under Section 125 of the Act of 1994 and/or may avail the remedy created under Section 89 of the Act of 1994 as all supra remedy(ies) though are alternative but are also complementary to each other.

40. On availment(s) of the said remedy(ies), the competent authority shall lawfully and expeditiously decide the same.

(SURESHWAR THAKUR)
JUDGE

06.11.2024
Ithlesh

(SUDEEPTI SHARMA)
JUDGE

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