

CWP-28716-2024 (O&M)

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

**CWP-28716-2024 (O&M)
Date of decision: 13.11.2024**

Gurmeet Kaur and others

.....Petitioners

Versus

State Election Commission and others

.....Respondents

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

Argued by: Mr. Sangram S. Saron, Advocate and
Ms. Shubreet Kaur, Advocate for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

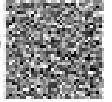
Mr. N.P.S. Maan, Advocate for respondent Nos.9 to 31.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein pray for the issuance of a writ of Certiorari, thus for setting aside the impugned order dated 11.10.2024 (Annexure P-8), whereby the election(s) of Zones 1 to 5 of Block Gidderbaha, District Sri Muktsar Sahib for the post of Sarpanch, has been cancelled, by respondent No.1, *inter alia* on the ground that the same is illegal, arbitrary and against the principles of natural justice.

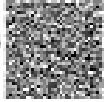
Factual Background

2. In terms of notification dated 19.09.2024 issued by respondent No.8, general election of members of Gram Panchayats were notified to be held by 15.10.2024. Subsequently, in terms of notification dated 27.09.2024 issued by respondent No.1, programme for the said

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3. In all zones i.e. zone Nos.1 to 5 of Block Gidderbaha, District Sri Muktsar Sahib the petitioners were declared as the winning candidates as Sarpanches of their respective Gram Panchayats, being the only candidates available vide Form No.5 issued by the Returning Officer, thus in terms of Rule 13 of the Punjab Panchayat Election Rules, 1994 (hereinafter referred to as the 'Rules of 1994'). In Zone No.1 of Gidderbaha, the Returning Officer issued Form No.5 in terms of Rule 13 of the Rules of 1994. The said Form No.5 depict petitioner Nos.1 to 4 as the only contesting candidates for the respective villages. Similarly in Zone No.2, Form No.5 was issued, wherein depict petitioner Nos.5 to 9 as elected through '*Sarab Samiti*'. In zone No.3 the Returning Officer issued lists of villages Bharu and Kothe Himmatpura depicting petitioner Nos.10 and 11, as the successful candidates without contest. In Zone No.4, Form No.5 was issued by the Returning Officer qua villages Bhunder and Lundewala depict petitioner Nos.12 and 13 as the successful candidates without contest. In Zone No.5, Form No.5 was issued by the Returning Officer of villages Smagh, Mannian Wala, Sekha, Khunna Khurd, Madhir and Buttar Bakhuan, which depict petitioner Nos.14 to 19 as the successful candidates without contest.

4. Certain candidates levelled allegations regarding wrongful rejection of their nomination papers, upon which respondent No.1 passed the impugned order dated 11.10.2024 (Annexure P-8), whereby the elections of Gram Panchayats of Block Gidderbaha, were cancelled by observing that there was a probability that the nominations of the complainants were wrongly shown to be withdrawn.

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5. The epicenter of the dispute which has emerged amongst the contesting litigants, relates to the purported unwarranted rejection of the nomination papers of respondent Nos.9 to 31 by the Returning Officer, whereby the present petitioners after being the sole candidates left in the fray in their respective Gram Panchayats, were declared elected as unopposed by the Returning Officer concerned.

6. For resolving the said controversy, this Court extracts the provisions as embodied in Section 89 of the Punjab State Election Commission Act, 1994, (hereinafter referred to as 'the Act of 1994').

“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,--

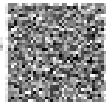
(i) by the improper acceptance of any nomination; or

(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



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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;

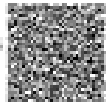
(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election: and

(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.”

7. Since clause (c) of the said provisions, sets forth therein the ground relating to the improper rejection of nomination papers of the candidates concerned. Moreover, when the said ground also covers the instant controversy, inasmuch as, the respondents concerned, claim that their nomination papers become improperly rejected by the Returning Officer. Resultantly, when after the rejection of the nomination papers of the respondents concerned, by the Returning Officer concerned, since the present petitioners were the singular candidate left in the fray in their respective Gram Panchayats, thereby they became declared elected as unopposed.

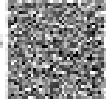
8. Though the ground relating to the improper rejection of the nomination papers of the candidates concerned, by the Returning Officer concerned, was required to be taken as a ground in the election petition to be filed before the Election Tribunal concerned, for thereby

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Election Tribunal, then became jurisdictionally empowered to declare the election to be vitiated. However, the State Election Commission, through the making of impugned order, has proceeded to after accepting the (supra) ground, raised by the respondents concerned, relating to their nomination papers becoming improperly rejected, by the Returning Officer concerned, thus has proceeded to cancel the elections concerned.

9. Consequently, for the reasons to be assigned hereinafter, the making of the impugned order, whereby the elections became cancelled, despite the petitioners being declared elected as unopposed, thus is made, with a complete non-application of mind appertaining to the jurisdiction as became instantly exercised, rather being exercisable only by the Election Tribunal concerned, but on an election petition becoming filed therebefore by the aggrieved. Therefore, the controversy (supra) was required to be put a quietus only by the Election Tribunal concerned, but on an election petition becoming filed therebefore by the aggrieved concerned.

10. Resultantly, in the making of the impugned order, the State Election Commission has ill assumed the jurisdiction respectively of the State Government as invested under Sections 11 and 12 of the Act of 1994, besides has also ill assumed the jurisdiction over the dispute(s), jurisdiction whereof otherwise became well invested only in the Election Tribunal concerned. Consequently, the assumption of ill assumed jurisdiction(s) over the dispute (supra), by the State Election Commission, is completely vitiated, and, thereby requires being quashed and set aside.



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11. In coming to the said submission that there is a complete bar in the exercise of jurisdiction by the State Election Commission, thus during the currency of the ongoing elections, this Court finds support from the verdict drawn by Hon'ble Supreme Court in case 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 :--

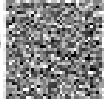
(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes 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."

12. The learned State counsel has further alluded to Section 54 of the 'Act of 1994', provisions whereof become extracted hereinafter.

54. Procedure in contested and uncontested elections.--

(1) If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.



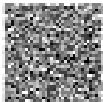
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(2) If the number of such candidates is equal to the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the Returning Officer shall forthwith declare all such candidates to be elected and the Election Commission shall, by notification in the Official Gazette, call upon the constituency or the elected members, to elect a person or persons to fill the remaining seat or seats, as the case may be:

Provided that where the constituency or the elected members having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Election Commission shall not be bound to call again upon the constituency, or such members to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency of such members”

13. Since Sub Section (3) of Section 54 of the 'Act of 1994' makes a candid expression, that when the number of candidates contesting against a particular seat, is less than the number of seats to be filled, and/or wherebys the implication, is that, in case only a single candidate is left in the fray, therebys, a statutory injunction is made upon the Returning Officer, to forthwith declare elected thus as unopposed, hence the singular candidate left in the fray. Consequently, when no elections became held to the seat concerned, nor also when there was any necessity for the electorate through theirs entering the polling booth concerned, to thus exercise NOTA. Resultantly, the non assigning of any right of NOTA to the electorate concerned, rather is completely irrelevant. The said exercising of NOTA by the Electorate would arise only, if there was a contest amongst at least two candidates. Contrarily, when there is no contest, especially, also when even Sub Section (3) of Section 54 of the 'Act of 1994' makes a statutory injunction upon the Returning Officer, to thus declare elected as unopposed, thus even the singular candidate who is left in the fray. As such, when there is no breach made to the statutory provision (supra).



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Resultantly the non assigning of an opportunity to the electorate to exercise NOTA, but also therebys becomes reiteratedly inconsequential.

14. In the instant case, the Returning Officer concerned, rejected the nomination papers of the respondents concerned, whereafters on the motion of the aggrieved thus, the State Election Commission proceeded to also quash the elections.

Final Order of this Court.

15. In aftermath, there is merit in the instant writ petition and the same is allowed, and, the impugned order dated 11.10.2024 (Annexure P-8) is hereby quashed and set aside but with a mandamus upon the respondents concerned, to forthwith declare the petitioners to be elected unopposed as Sarpanch of their respective Gram Panchayats, given the petitioners being the only candidate left in the fray for the post of Sarpanch in their respective Gram Panchayats, besides were elected as such. For clarificatory purposes, in case the aggrieved avail the remedy against the declaration of results, especially through theirs instituting an election petition before the Election Tribunal concerned, thereupon, the latter shall lawfully and expeditiously make a decision thereons.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

13.11.2024
Ithlesh

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