

2024:PHHC:146137-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-29407-2024
Reserved on: 29.10.2024
Pronounced on: 07.11.2024

Simarpreet Kaur
.....Petitioner

Versus

State of Punjab and others
.....Respondents

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

Argued by: Mr. Manjinder Singh Bhullar, 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, thus for setting aside the impugned order dated 11.10.2024, whereby the election(s) for the post of Panch and Sarpanch of village Chak Haraj, Tehsil Mamdot, District Ferozepur, has been cancelled, by respondent No.2, inter alia on the ground that the same is illegal, arbitrary and against the principles of natural justice. The petitioner further seeks a mandamus, thus directing the official respondents to hold the elections only for the post of Panches.

Factual Background

2. Petitioner filed nomination paper for the post of Sarpanch of village Chak Haraj, Tehsil Mamdot, District Ferozepur of Gram

Panchayat elections. Respondents No.4 to 10 also filed nomination papers respectively for the post of Panches and Sarpanch.

3. The present petition pertains to the election for the post of Sarpanch of village Chak Haraj, Tehsil Mamdot, District Ferozepur. Scrutiny of the nomination papers was completed on 04.10.2024. After scrutinizing the nomination papers of the candidates, respondent No.3, pasted the list of candidates whose nominations were rejected. In the said list, the nomination(s) of respondents No.6 to 8 for the post of Sarpanch became rejected, besides the nomination(s) of respondents No.4, 5, 9 and 10 for the post of Panch became also rejected. The apposite reasons of rejections (supra) became mentioned against their names.

4. Respondents No.4 to 10 on 07.10.2024, thus approached respondent No.2 against the rejection of their nominations, on the ground that their nominations have been rejected, thus on malicious ground(s). Subsequently, on 11.10.2024 respondent No.2 passed the impugned order whereby the election(s) for the posts of Panches and Sarpanch of village Chak Haraj, Tehsil Mamdot, District Ferozepur, which was scheduled to be held on 15.10.2024, thus became cancelled.

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.6 to 8 by the Returning Officer, whereby the present petitioner after being the sole candidate left in the fray, thus became purportedly required to become 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 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 petitioner was the singular candidate left in the fray, thereby she became purportedly entitled to become 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 on able proof emerging in satiation of the said grounds, thus the 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

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, besides when therebys despite the present petitioner being the singular candidate left in the fray, whereby the petitioner became entitled to receive a declaration from the Returning Officer, that she be 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, therebys requires being quashed and set aside.

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. In the instant case, the Returning Officer concerned, rejected the nomination papers of the respondents concerned, whereafter on the motion of the aggrieved thus, the State Election Commission proceeded to also quash the announced elections. In-so-far as the cancellation of the election schedule as appertaining to the post of Panches is concerned, the said cancellation as made through the impugned order is also vitiated, thus on the very same reasons as

becomes spelt hereinabove by this Court thus for allowing the present writ petition.

Final Order of this Court.

13. 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-1) is hereby quashed and set aside but with a mandamus upon the respondents concerned, to forthwith declare the petitioner to be elected unopposed as Sarpanch of village Chak Haraj, Tehsil Mamdot, District Ferozepur, given the petitioner being the only candidate left in the fray for the post of Sarpanch. It is further directed that the respondents concerned, shall forthwith announce the schedule for conducting elections to the post of Panches of village Chak Haraj, Tehsil Mamdot, District Ferozepur, but with only those candidates being left in the fray whose nomination papers were accepted. For clarificatory purposes, in case the aggrieved avail the remedy against the declaration of results, in pursuance to the freshly announced election programme, 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

07.11.2024
Ithlesh

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