



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-1047-2025
Date of Decision: 16.01.2025

Gurmit Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate
Mr. S.K.Sandhir, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. Deputy Advocate General, Punjab.

Sureshwar Thakur, J. (Oral)

1. Through the instant writ petition, the petitioners herein pray for the issuance of a writ of Mandamus for directing the official respondents to allow the petitioners to take oath under Section 35 of the Municipal Corporation Act, 1976, as they are duly elected Councillors.

Factual Background.

2. The respondent had notified the Election Schedule for conducting the elections to elect the members of Municipal Corporations, Municipal Councils and Nagar Panchayat within the State of Punjab and same were conducted on 21.12.2024. It is relevant to mention that the last date for the filing of nomination was 12.12.2024, whereas, 13.12.2024 was the date for scrutiny of nomination papers.

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3. The present petitioners had filed nomination papers for the election and their nomination papers were accepted. They were duly declared elected as unopposed, thus as Councillors. In consequence, theretos the apposite winning certificates (Annexure-3 to Annexure-15) were issued by the Returning Officer concerned.

4. Thereafter, four contempt petitions were preferred before this Court alleging that there are discrepancies in the filing of the nomination papers for the several wards in several districts throughout the State of Punjab. Before the date of election i.e. 21.12.2024, the learned Advocate General, Punjab, has submitted before the Contempt Court that the State has taken decision to defer the elections in several wards.

5. It is relevant to mention that the present petitioners were duly elected as Councillors from concerned wards and winning certificates (supra) were issued accordingly to the present petitioners by the concerned authority.

Submissions of learned counsel for the petitioners.

6. At the outset, the learned counsel for the petitioners submit that once the results of the elections were declared, thereby the makings of deferments of Elections, thus is in violation of Section 89 of the Punjab State Election Commission Act, 1994, which states that the remedy of the aggrieved person is to move an election petition before the Election Tribunal.

7. It is submitted that though out of the 13 wards in the Municipal Corporation, Dharamkot, the number of wards which remained uncontested was 13, yet though adoption of an untenable pick and choose method, in consequence thereof, thus elections to only 8 wards of the present petitioners



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were deferred but without any rationale.

8. This Court while deciding CWP-388-2025 has made certain observations wherefroms a conclusion become garnered that the learned Contempt Bench of this Court had proceeded to permit the deferment of the (supra) elections, thus without application of mind. Resultantly, since the present petitioners became declared elected as unopposed, whereupons if the aggrieved therefroms yet claimed that the (supra) declaration rather was an ill made declaration or claimed that thereby their chances of winning, became materially affected. In sequel, the remedy to the aggrieved from the (supra) declaration was not to file a contempt petition but was to institute an election petition before the Election Tribunal concerned

9. The relevant paragraphs of the decision made upon the said petition are extracted herein below:-

13. *A keen perusal of paragraphs No.6 to 9 of the Contempt Petition, unveils, that therein occur attributions of purported indulgences of contumacious conducts, rather by the police agencies, but yet the supra extracted mandamus was made in terms of the supra representation, which however, became addressed to the Election Commissioner concerned. As such, the echoings which occur in paragraphs No.6 to 9 of the Contempt Petition, when do graphically make such attributions which are beyond the domain of the supra representation. Therefore, any attribution of any purported indulgences of contumacious conduct, thus, by the officers named in paragraphs No.6 to 9, but reiteratedly was not only beyond the domain of the representation but also was beyond the domain of the supra mandamus as became passed by this Court in Civil Writ Petition bearing CWP No.33633 of 2024, which however, could not be obeyed, thus for all the supra stated reasons.*

14. *Moreover, since as stated supra, even if there was some*



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dereliction on the part of the officers named in paragraphs No.6 to 9 of the Contempt Petition, yet since there was facilitation to the petitioners to file nomination papers commencing from 09.12.2024 till 12.12.2024. However, significantly yet the making of the supra representation occurred on 12.12.2024, which was the last date for the filing of the nomination papers. The above fact leads to an inference, that thereby a belated representation became filed but merely to stall the conducting of the direct elections to the wards concerned.

15. *However, assumingly if the said pre-emptions were, as a matter of fact, employed by some miscreants, thereby if some actions before the police agencies became drawn, besides if the said drawn actions against the miscreants before the police agencies also remained unactioned, thereby the aggrieved were bestowed with a privilege to make a motion before the jurisdictionally empowered Courts, to make a direction upon the police authorities to register an FIR against the errant miscreants/officers concerned. However, for supra evident omissions on the part of the aggrieved, after no action being taken by the police authorities on the relevant motions, thus, to access the jurisdictionally competent Magistrate Courts, thereby garners a prima facie, inference that both the representations supra and also the pursuant thereto, but for reasons supra a pretextual allegation, being made against the errant miscreants/officers concerned, vis-a-vis, theirs taking no action on the complaints as became made before them by the aggrieved concerned. The effect of supra pretextual allegations being made leads to further inferences that they were ill-maneuvered to attempt to ill-forestall the conducting of the direct elections concerned.*

16. *Though, the supra mandamus made by this Court, for all supra stated reasons, was not required to be resulting in the drawing of contempt actions against the errant officers, but yet it appears that through the making of the hereinafter extracted supra consensual order, that thereby, prima facie, there has occurred the ill-stalling of the election process for direct elections to the 7 wards of Municipal Corporation, Patiala. Moreover, it also appears that though therein i.e. in the representation supra, there are no detailings about the*



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tearings of the nomination forms, at the instance of the rival candidates concerned or by the agents of the rival candidates concerned. If so, the supra decision as became rendered by the learned Contempt Bench of this Court appears to, prima facie, create a ground in favour of the aggrieved which was however, not as such detailed in the representation. Even the said created ground but was not required to be resulting in the hereinafter consensual order being made, resultantly therebys prima facie, the said passing of the consensual order, thus prima facie, breaches the supra expostulated principles of law made in the verdict supra.

17. *Conspicuously also the fact whether the aggrieved carrying nomination papers, at the relevant time, or were carrying some other papers, besides the fact whether, as a matter of fact, the nomination papers were torn or some other papers were torn, but was contentious fact which may have materially affected the election results. Therebys, the prejudice ensuing, if any, to the aggrieved therefroms and/or therebys, the election result becoming materially affected, but was a grievance which was to be ventilated only through an election petition becoming filed before the Election Tribunal concerned, yet only after the pronouncement of election results and not earlier thereto as has been ill-done through the passing of the hereinafter extracted order:-*

“In COCP-5302-2024, reply dated 20.12.2024 filed on behalf of the respondents is taken on record. Copy thereof has been supplied to counsel opposite.

Registry to tag the same at appropriate place.

At the outset, learned Advocate General, Punjab, on instructions, submits that a decision has been taken by the State to defer the elections pertaining to the following Wards:-

MUNICIPAL CORPORATION, PATIALA:

1. Ward No.1
2. Ward No.32
3. Ward No.33
4. Ward No.36

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5. Ward No.41

6. Ward No.48

7. Ward No.50

**MUNICIPAL COUNCIL, DHARAMKOT, DISTRICT
MOGA:**

1. Ward No.1

2. Ward No.2

3. Ward No.3

4. Ward No.4

5. Ward No.9

6. Ward No.10

7. Ward No.11

8. Ward No.13

It has also been assured by learned Advocate General, Punjab, that proceedings in accordance with law shall be initiated against the erring officials/ private individuals, those who are visible in the videos appended by the petitioner(s) along with the present contempt petitions, at the earliest.

List on 15.01.2025.

A photocopy of this order be placed on the file of connected case(s).”

10. Reiteratedly since though the ground relating to the improper rejection of the nomination papers of the aggrieved 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 therebys on able proof emerging in satiation of the said grounds, whereupons thus the Election Tribunal, then became jurisdictionally empowered to declare the election to be vitiated.

11. However, without the recouring of (supra) able remedy by the



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aggrieved from the (supra) declaration, yet there being a *prima facie* untenable deferment of election to the (supra) wards, therebys;

a) There being assumption of jurisdiction by the contempt Bench concerned, which was otherwise invested in the election Tribunal concerned.

b) The results of the election (supra) becoming untenably and arbitrarily, besides contrary to the principles of natural justice becoming snatched from the present petitioners.

12. In other words, the making of the impugned order dated 20.12.2024 (Annexure P-17), whereby the elections became deferred, despite the present petitioners becoming declared elected, as unopposed, but has snatched from the petitioners, who are declared elected as unopposed against the apposite seats, thus the fruits of the said declaration of results, and that too without the availment of the remedy by the aggrieved vis-a-vis the filing of an election petition. 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, than an untenable consensual deferment being made.

13. Emphatically, during the currency of the ongoing elections, there is a complete bar in the exercise of writ jurisdiction to interfere with. In taking the said view, 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



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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.”

14. In-so-far as the deferment of the election schedule as appertaining to the post of Councillors, is concerned, since the said deferment is made through the vitiated consensual order, as passed by the learned Contempt

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Bench of this Court, thus thereby the said passed consensual order is declared null and void, whereupon this Court allows the instant writ petition.

Final Order of this Court.

15. In aftermath, this Court finds merit in the writ petition and with the observations aforesaid, the same is allowed.

16. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

January 16, 2025*Varinder*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No