

Harnek Singh vs Charanjit Singh & Ors on 7 October, 2005

Equivalent citations: AIR 2006 SUPREME COURT 52, 2005 (8) SCC 383, 2005 AIR SCW 5459, (2005) 9 JT 352 (SC), (2005) 7 SUPREME 182, 2006 (1) HRR 32, 2005 (8) SLT 237, 2005 (8) SCALE 441, (2006) 2 ALLMR 31 (SC), 2006 HRR 1 32, 2005 (10) SRJ 270, 2006 (2) ALL MR 31 NOC, (2005) 4 RECCIVR 482, (2005) 8 SCALE 441, (2006) 1 LANDLR 7, (2006) 1 PUN LR 709, (2005) 7 SCJ 682

Author: S.B. Sinha

Bench: Ashok Bhan, S.B. Sinha

CASE NO.:

Appeal (civil) 6325 of 2005

PETITIONER:

Harnek Singh

RESPONDENT:

Charanjit Singh & Ors.

DATE OF JUDGMENT: 07/10/2005

BENCH:

Ashok Bhan & S.B. Sinha

JUDGMENT:

J U D G M E N T [Arising out of S.L.P. (C) No. 21724 of 2003] S.B. SINHA, J :

Leave granted.

Whether a writ court should entertain a dispute as regard validity or otherwise of an election falls for decision in this appeal which arises out of a judgment and order dated 18.9.2003 passed by the Punjab and Haryana High Court in CWP No. 1987 of 2003.

The basic fact of the matter is not in dispute. The Appellant and the First Respondent contested an election for the post of the Chairman, Gram Panchayat, Block Samiti, Dhilwan, District Kapurthala, Punjab. The Special Secretary, Government of Punjab, Department of Rural Development and Panchayats by a letter dated 10.1.2003 fixed the date for election to the post of the Chairman and Vice-Chairman of the Panchayat Samitis on 28th January, 2003. 4th February, 2003 was fixed for election to the post of Chairman and Vice-Chairman of the Zila Parishads. The Special Secretary authorized the Deputy Commissioner of each district to chalk-out the election

programme of Chairman and Vice-Chairman. It is not in dispute that pursuant to or in furtherance of the said authorization the Deputy Commissioner appointed the District Transport Officer, Dhilwan as the Returning Officer. A meeting was called for holding election on 28.1.2003. In the said meeting both the contestant secured equal number of votes. A party which was led by the First Respondent herein allegedly created commotion and stopped the legal process of electing the Chairman by toss which was the next step for completion of the electoral process. The situation could not be controlled by the local police and hence the election process was adjourned by the Returning Officer stating:

"Keeping in view the law and order situation, the election of Chairman Block Samiti Dhilwan is hereby adjourned."

Election process was to be completed on 30th January, 2003 at 11.00 A.M. in the Office of D.P.O., Dhilwan. The First Respondent came to know thereabout and by a letter dated 29th January, 2003 questioned the authority of the Returning Officer to fix 30th January, 2003 for holding re-election stating:

"That now the petitioner has come to know that the above said officer without any authority and against all provisions of law has fixed election for 30.1.2003."

It was contended that in terms of Rule 31 of the Punjab Panchayat Election Rules framed under the Punjab Panchayati Raj Act, the Election Commission could only fix a fresh date for poll and fix a time at which such poll shall be held. Therein it was prayed:

"That petitioner prays that action may be taken in this respect according to law and matter be referred to Election Commission for fixing of date, time, hour and place for holding the election of Chairman, Block Samiti, Dhilwan. It is further prayed that the above said officer be directed to not to hold any meeting or proceeding in connection with the election of Chairman, Block Samiti, Dhilwan on 30.1.2003 or any other date until a direction is issued by the Election Commissioner, Punjab."

The Deputy Commissioner, however, by an order dated 29th January, 2003 relying on or on the basis of Rule 45(1) of the Punjab Panchayat Rules refused to refer the matter to the Election Commission stating:

"The officer appointed under section 105 of the Punjab Panchayati Raj Act, 1994 to conduct the meeting of Panchayati Samiti for election of Chairman and Vice Chairman is empowered to adjourn the meeting and fix time place and hours of polling. The present application is devoid of any merit and hence is dismissed."

A writ petition was filed by the Respondents in the High Court of Punjab and Haryana alleging inter alia therein that the Returning Officer did not have the power to fix a date of the adjourned meeting to elect the Chairman of the Panchayat Samiti and only the State Election Commission is

empowered therefor. Accepting the contention of the Respondents, the High Court set aside the election of the petitioner as Chairman of the Panchayat Samiti. Aggrieved by the order of the High Court, the Appellant is before us.

Mr. S. Muralidhar, learned counsel appearing on behalf of the Appellant, relying on the decisions of this Court in *C. Subrahmanyam Vs. K. Ramanjaneyullu and Others* [(1998) 8 SCC 703] and *Jaspal Singh Arora Vs. State of M.P. and Others* [(1998) 9 SCC 594], would contend that an election dispute could not have been entertained by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

Mr. R.S. Randhawa, learned counsel appearing on behalf of the Respondents, on the other hand, would submit that whereas the Punjab Panchayati Raj Act only lays down the manner of holding election, the substantive provisions therefor are to be found in the Punjab State Election Commission Act, 1994 and the Punjab Panchayat Election Rules, 1994.

Drawing our attention to various provisions and in particular Section 44 occurring in Chapter VIII of the Punjab State Election Commission Act, 1994 as also Section 58 occurring in Chapter X thereof as well as Rule 31 of the Rules, the learned counsel would contend that the Deputy Commissioner is merely a delegatee of the State Government. According to the learned counsel, only a meeting was fixed and not an election and as such an election petition will not be maintainable.

It was further contended that recourse to filing of an election petition as envisaged under Section 89 of the Punjab State Election Commission Act could not be resorted to as therein jurisdiction of the Deputy Commission could not have been questioned.

It is not correct to say that only a meeting was fixed. The meeting was fixed for holding election. The parties hereto took part in the election process on 28th January, 2003. The Returning Officer in his proceeding dated 28th January, 2003 observed:

"After the completion of the process of election, ballot box was opened in the presence of all. 15 no. of votes were found in that box and these votes were counted in the presence of all the members. During counting of votes, one vote was declared invalid due to wrong marking and from the rest of 14 valid votes, 7 votes have gone in favour of Shri Harnek Singh and 7 votes in favour of Charanjit Singh. Therefore, both have secured equal no. of votes.

Now due to this result of the election will be declared as per rule 35 of Punjab Panchayat Election Rule, 1994. As soon as they were informed regarding draw of lots, Shri Charanjit Singh and his supporter Shri Sukhapal Singh Khera came inside and started creating ugly scenes. They created interruption in the process and started raising slogans and tried to do manhandling. Due to this law and order problem was created and local police was unable to control the same. Therefore, the remaining process for the election of Chairman is being stopped due to compulsion and seriousness of the situation."

It is, therefore, clear that on 30th January, 2003, only lot was to be drawn and, thus, the election process which was started on 28th January, and could not be completed owing to commotion created by the Respondents' group, was to be completed.

It may be true that the Respondent herein questioned the jurisdiction of the Deputy Commissioner and/ or the Returning Officer in fixing a date for election but in his writ petition he had prayed inter alia for the following:

"(a) issue a writ, order or direction quashing the entire process, manner and method adopted by respondent No. 3 in holding the election and for quashing the result declared by respondent no. 3 in declaring respondent no. 4 elected as Chairman of the Block Samiti to be illegal and bad.

(b) issue a writ, order or direction, quashing the action of respondent no. 3 in rejecting the valid vote case in favour of the petitioner, the same being actuated with malice and motive and otherwise being arbitrary and illegal.

(c) issue a writ, order or direction declaring the petitioner elected as Chairman of the Block Samiti on the basis of votes cast in his favour if necessary by calling for the records of the election and ballot papers and after examining the same.

(d) issue a writ, order or direction commanding the respondents to restart the election process from the stage respondent no. 3 illegally adjourned and reassemble the meeting or alternatively, to direct the respondent to hold a fresh election by following the process of law and the procedures and rules prescribed in the Act and the Rules.

(e) issue a writ, order or direction quashing the order passed by DC on the representation filed by the petitioner, the same being illegal and in violation of the statutory provision.

(f) dispense with service of advance notice on the respondents."

Prayers (b) and (c) aforementioned, evidently, could not have been granted in favour of the petitioner by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution of India. Such jurisdiction being discretionary in nature may not be exercised inter alia keeping in view of the fact that an efficacious alternative remedy is available therefor. [See Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., 2005 (7) SCALE 290] Article 243-O of the Constitution of India mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.

In *C. Subrahmanyam (supra)*, a 3-Judge Bench of this Court observed that a writ petition should not be entertained when the main question which fell for decision before the High Court was non-compliance of the provisions of the Act which was one of the grounds for an election petition in terms Rule 12 framed under the Act.

Yet again in *Jaspal Singh Arora (supra)*, this Court opined:

"3. These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court."

Mr. Randhawa placed strong reliance on a decision of this Court in *Election Commission of India Through Secretary Vs. Ashok Kumar and Others* [(2000) 8 SCC 216]. In that case while laying down the law as to under what circumstances an application for judicial review would be maintainable against an order passed by the Election Commission and referring to the provisions of Section 100 of the Representation of the People Act, 1951, this Court observed:

" The conclusions which inevitably follow are: in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination."

It was held that Section 100 of the Representation of the People Act provides for a complete remedy.

Section 89(1)(d)(iv) of the Punjab State Election Commission Act, 1994 reads, thus:

"89. Grounds for declaring election to be void. (1). Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion, -

*** **

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

(i) *** **

(ii) *** **

(iii) *** **

(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."

In view of the aforementioned provision, which is in pari materia with Section 100(1)(d)(iv) of the Representation of People Act, a writ petition may not be held to be maintainable.

In this view of the matter, we are of the opinion that it was not a fit case where the High Court should have exercised its writ jurisdiction.

Furthermore, it was not even a case where the Respondent was not aware of the postponed date. It is not in dispute that the Respondent was present on the adjourned date of poll but refused to sign the proceeding book as would appear from the records which have been produced before us. The Respondent, however, contested the said statement contending that the same had been done with a mala fide motive. But, it is not in dispute that he took part in the proceedings.

We, therefore, do not think that it was a fit case in which the High Court should have exercised its discretionary jurisdiction.

For the reasons aforementioned, the impugned judgment is set aside. The Appeal is allowed. No costs.