

Inder Devi and ors. Vs. Surjit Kaur and ors.

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Court : Punjab and Haryana

Decided On : Feb-25-1982

Reported in : AIR1982P& H369

Judge : J.M. Tandon, J.

Acts : Punjab Gram Panchayat Act, 1952 - Sections 6(4), 6(5), 13-OO and 13-OO(1); Punjab Gram Panchayat Election Rules, 1960 - Rules 3, 6 and 6(1)

Appeal No. : Civil Writ No. 257 of 1981

Appellant : Inder Devi and ors.

Respondent : Surjit Kaur and ors.

Judgement :

ORDER

1. The election of the Gram Panchayat of village Naruana, Tehsil and District Bhatinda, were held on August 17, 1978. Seven men and two women were to be elected as Panches. Balbir Kaur, Inder Devi petitioner, Surjit Kaur respondent and Gurdev Kaur unsuccessfully contested the election, Balbir Kaur secured 23 votes, Inder Devi 14, Surjit Kaur 12 and Gurdev Kaur 5. Balbir and Inder Devi were declared elected as Panches under sub-section (4) of Section 6 of the Punjab Gram Panchayat Act. 1952, (hereinafter the Act). On the same day Sadhu Singh petitioner was declared elected as Sarpanch of the Gram Panchayat by the Presiding Officer. Surjit Kaur and Hakam Singh respondents filed an election

petition challenging the election of Inder Devi petitioner as a Panch and that of Sadhu Singh petitioner as a Sarpanch. The Prescribed Authority vide order dated March 7, 1980, (Annexure P. 1) set aside the election of Inder Devi as Panch and that of Sadhu Singh as Sarpanch. The appeal filed by Inder Devi and Sadhu Singh against the order of the Prescribed Authority was dismissed by Additional District Judge, Bhatinda, vide order dated December 20, 1980, (Annexure P. 2). The petitioners have assailed the orders Annexures P. 1 and P.2 in the present writ petition.

2. The learned counsel for the petitioners has argued that during the pendency of the election petition Surjit Kaur has submitted an affidavit dated January 8, 1980 stating therein that she had not filed the election petition with the result that the Prescribed Authority vide order dated January 28, 1980, (Annexure P. 4) ordered that her name be struck off. The learned counsel has further argued that in view of the fact that Surjit Kaur had not pressed the election petition the election of Inder Devi as Panch could not be set aside. The contention is without merit. Even assuming that Surjit Kaur did not press the election petition the same could be maintained by Hakam Singh alone who was admittedly a member of the Sabha. Under these circumstances, the order setting aside the election of Inder Devi Panch cannot be quashed merely because Surjit Kaur did not press her election petition.

3. The learned counsel for the petitioners has argued that Surjit Kaur and Hakam Singh could not challenge the election of Inder Devi as Panch and that of Sadhu Singh as Sarpanch in one petition. It was necessary that their election should have been challenged by filing separate election petitions. The impugned orders are liable to be quashed on this ground. This contention is also without merit. Surjit Kaur and Hakam Singh challenged the election of Sadhu Singh Sarpanch also on the ground that Inder Devi whose election was liable to be set aside has participated in the election of Sarpanch. It was, therefore, necessary to find out whether the election of Inder Devi as Panch was valid or was liable to be set aside and if her election was invalid what is the effect of her participation in the election of Sarpanch. The two causes of action--one relating to the election of Inder Devi as Panch and the other to the election of Sadhu Singh Sarpanch are so

inextricably mixed up and interrelated that they must be treated as forming one composite cause of action. In a similar situation which arose in Mahan Singh v. Executive Magistrate 1st Class, Jagraon, 1981 Rev LR 20, it was held that a single election petition challenging the election of Sarpanch and Panchas is maintainable. The learned counsel for the petitioners has placed reliance on Amrik Singh Waryam Singh v. B. S. Malik, AIR 1966 Punj 344, in support of his contention that one election petition could not be filed by Surjit Kaur and Hakam Singh. This authority was discussed and distinguished in Mahan Singh's case (supra). It was held that in Amrik Singh Waryam Singh v. B. S. Malik, AIR 1966 Punj 344 the election of the Sarpanch was not dependent on the election of the Panchas at all. For the same reason the ratio of Amrik Singh Waryam Singh v. B. S. Malik, AIR 1966 Punj 344 cannot be made applicable to the instant case. I, therefore, hold that Surjit Kaur and Hakam Singh could file a joint petition challenging the election of Inder Devi as Panch and that of Sadhu Singh as Sarpanch.

4. Inder Devi was proposed by Mehar Singh, who himself was a candidate for being elected as a Panch. Rule 6 of the Punjab Gram Panchayat Election Rules, 1960, reads :--

'6. Nomination of Candidates :--

(1) Any person who is not disqualified under sub-section (5) of S. 6 of the Act may be nominated as a candidate for election provided that on the date, time and place fixed under R. 3, he or his proposer delivers in person to the Returning Officer a nomination paper completed in the prescribed form.

Provided further that no person shall propose or second more than one candidate and the candidate himself shall not propose or second the name of any other candidate.

(2) & (3).....'

5. Mehar Singh, being himself a candidate for the election of Panch could not propose the name of Inder Devi. The Prescribed Authority has set aside the

election of Inder Devi on the ground that her nomination was defective and was improperly accepted. The learned counsel for the petitioners has argued that under proviso to sub-rule (1) of R. 6 reproduced above it was Mehar Singh (being a candidate himself) who was debarred from proposing the name of Inder Devi as a candidate for election as Panch. The proposal of the name of Inder Devi by Mehar Singh may cause damage to the candidature of the latter but will not adversely affect the former. I do not agree with this contention. The proviso to sub-rule (1) to R. 6 is clear that a candidate for election as Sarpanch cannot propose or second the name of any other candidate. Mehar Singh was admittedly a candidate for election as a Panch. He could not propose the name of Inder Devi as a candidate for her election as a Panch. The nomination of Inder Devi was defective and was improperly accepted. The election of Inder Devi as Panch has rightly been set aside on this ground.

6. The learned counsel for the petitioner has contended that the Prescribed Authority wrongly declared Surjit Kaur as elected after setting aside the election of Inder Devi. The argument proceeds that in view of fact that Gurdev Kaur had also contested the election and had secured 5 votes, the election for a woman Panch should have been conducted afresh. I am not impressed by this contention. The Prescribed Authority was competent to declare Surjit Kaur elected after setting aside the election of Inder Devi under S. 13-OOread with S. 6(4) of the Act.

7. The election of Sadhu Singh as Sarpanch was challenged on the ground that Inder Devi has participated in the election of Sarpanch and also on the ground that the Presiding Officer had helped Sadhu Singh out of the way by making him Sarpanch. The Prescribed Authority found that no proceedings were recorded regarding election of Sarpanch and the Presiding Officer did not give an opportunity to anyone of the remaining Panchas to file nomination papers. The learned counsel for the petitioners has argued that the findings recorded by the Prescribed Authority are not correct and further the details regarding the alleged impropriety committed by the Presiding Officer were not given in the election petition. I do not agree with this contention. The findings of fact which the Presiding Authority was competent to record cannot be assailed in writ proceedings. The objection that the details of the improprieties had not been given

in the election petition were neither raised before the Prescribed Authority nor before the Appellate Authority. The petitioners cannot assail the impugned orders in the writ petition on this ground.

8. The last contention of the learned counsel for the petitioners is that Section 13-OO of the act is ultra vires Article 14 of the Constitution inasmuch as the declaration made thereunder cannot be challenged in an election petition. There is no force in this contention as well. S 13-OO reads :--

'13-00. Grounds for which a candidate other than the returned candidate may be declared to have been elected :--

(1) A petitioner may in addition to claiming a declaration that the election of all or any of the returned candidate is void, claim a further declaration that he himself or any other candidate has been duly elected.

(2) If a petitioner has claimed an additional declaration specified in sub-section (1) and the Prescribed Authority is of opinion that in fact the petitioner or any other candidate received a majority of valid votes, it shall after declaring the election of the returned candidate to be void, declare the petitioners or such other candidate, as the case may be, to have been duly elected.'

9. There is nothing to suggest that a declaration made under sub-section (1) of S 13-OO cannot be challenged in an election petition. In view of this it is difficult to hold that the provision contained thereunder is unconstitutional.

10. In the result, the writ petition fails and is dismissed with no order as to costs.

11. Petition dismissed.