

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

RATTAN SINGH,—Petitioner

versus

THE DEPUTY COMMISSIONER, ROHTAK AND ANOTHER,—
Respondents

Civil Writ No. 1101 of 1961

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Section 6—Punjab Panchayat Samitis (Primary Members) Election Rules, 1961—Rules 7 and 9—Nomination papers—Whether can be rejected only on ground of eligibility of candidates—Section 121—Whether ultra vires.

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Held, that Rule 9 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, requires the Returning Officer to examine the nomination papers at the time appointed in this behalf, and further enjoins on him to hear objections regarding the eligibility of the candidate. While examining the nomination papers, he has to examine them with reference to Rule 7 which requires that the nomination paper should be duly completed as provided in Form II and that it should be signed by two persons as proposer and seconder whose names are included in the electoral rolls published under rule 3(3). Therefore it cannot be held that the only ground on which a nomination paper can be rejected is the ground of eligibility of the candidate alone.

Held, that section 121 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, is not *ultra vires* the Legislature as under this Act the rules relating to election petitions have been framed and the grounds on the basis of which an election can be set aside have been indicated in the rules.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order, dated 16th August, 1961 passed by respondent No. 2 rejecting the nomination paper of the petitioner.

PREM CHAND JAIN, ADVOCATE, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, for the Respondents.

ORDER

Mahajan, J.

MAHAJAN, J.—This is a petition by one Rattan Singh under article 226 of the Constitution and is directed against the rejection of his nomination paper in connection with election to the Primary Members of the Samiti of Block Rai, tehsil Sonapat, district Rohtak. The nomination paper was rejected on the ground that the thumb-impressions of the proposer and the seconder were not clear. This is what the petitioner has stated in paragraph 5 of his petition, whereas the State in its return has stated that the nomination paper was rejected on the ground that the thumb-impressions of the proposer and the seconder were not identifiable and were also objected to as being bogus. Respondent No. 2 (the Returning Officer) directed the candidate “to produce the proposer and the seconder in person, but he failed to do so.”

The contention of the learned counsel for the petitioner is that under rule 9 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, the only ground on which the nomination paper can be rejected concerns merely the eligibility of the candidate and for that one has to go to section 6 of the Act. Rule 9 is in these terms—

“9(1) The Returning Officer shall examine the nomination papers at the time appointed in this behalf, hear objections, if any presented by the objectors in person, to the eligibility of any candidate and determine these objections after

such enquiry as he may consider necessary. The decision, rejecting or accepting a nomination paper, and a brief statement of reasons thereof shall be endorsed on the nomination paper and signed by the Returning Officer:

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Provided that the Returning Officer may—

- (a) permit any clerical error, in the nomination paper, in regard to names or numbers, to be corrected in order to bring them in conformity with the corresponding entries in the electoral rolls; and
 - (b) where necessary, direct that any clerical or printing error in the said entries shall be ignored.
- (2) The person objecting under sub-rule (1) must be an elector”.

Section 6 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, is in these terms—

[His Lordship read section 6 and continued:]
It may also be useful at this stage to refer to rule 7 of the above rules which is in these terms—

- “7(1) Any Panch or Sarpanch whose name appears in the electoral rolls published under sub-rule (3) of rule 3 may be nominated as a candidate for election to the Panchayat Samiti of that block, provided he delivers in person to the Returning Officer a nomination paper completed in all respects on the date, time and place fixed under rule 4.
- (2) The nomination of each candidate shall be made on a separate nomination paper in Form II, and must be subscribed by the candidate himself as assenting to the nomination, and by two persons as proposer and seconder whose names are included in the electoral rolls published under rule 3(3).

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- (3) The nomination paper of a member of the Scheduled Castes or Scheduled Tribes shall also be accompanied by a declaration in form II-A verified by Member of Parliament or the State Legislature, Magistrate, Kanungo, Patwari, Sarpanch or Lambardar, that the candidate is a member of the Scheduled Castes or Scheduled Tribes, specifying the particular caste or tribe to which the candidate belongs."

It will be clear from the combined reading of rules 7 and 9 that the contention of the learned counsel for the petitioner is not sound. Rule 9 requires the Returning Officer to examine the nomination papers at the time appointed in this behalf, and further enjoins on him to hear objections regarding the eligibility of the candidate. Therefore when rule 9 requires him to examine nomination papers he has to examine them with reference to rule 7. Rule 7 requires that the nomination papers should be duly completed as provided in Form II and that it should be signed by two persons as proposer and seconder whose names are included in the electoral rolls published under rule 3(3). Therefore it cannot be held that the only ground on which a nomination paper can be rejected is the ground of eligibility of the candidate alone.

Moreover the allegations made by the petitioner on questions of fact are seriously disputed by the State and they cannot be determined except on evidence and, therefore, it would be a fit case where the matter can only be properly examined either by an election petition as provided by section 121 of the Act or by a separate suit.

The learned counsel for the petitioner further urged that section 121 is *ultra vires* the Legislature and for that he relies on a Bench decision of this Court in *Harke v. Giani Ram* (1). That was a decision with regard to section 8 of the Punjab

(1) 1962 P.L.R. 213.

Gram Panchayat Act (4 of 1953). The language of section 121 of the Act is identical with the language of section 8 of the Punjab Gram Panchayat Act. The only difference in the two statutes is that under the Punjab Panchayat Samitis and Zila Parishads Act the rules relating to election petitions have been framed and the grounds on the basis of which an election can be set aside have been indicated in the rules, whereas there are no such rules so far as the Punjab Gram Panchayat Act is concerned. It is not necessary in this petition to further examine this matter because I am of the view that in view of the disputed questions of fact arising in this case the proper forum would be either an election petition or a civil suit. It cannot be disputed that if no election petition lies, a suit is certainly competent.

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For the reasons given above this petition fails and is dismissed with costs.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Inder Dev Dua, J.

PRITAM SINGH,—Appellant

versus

GURDIAL KAUR AND ANOTHER,—Respondents

L.P.A. No. 332 of 1961

Custom—Declaratory decree obtained by reversioner that the gift would not bind his reversionary interest after donor's death—Effect of—Consent by the next heir—Effect of—Letters Patent Appeal—New point—Whether can be raised.

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Held, that the effect of the declaratory decree obtained by a reversioner challenging an alienation of ancestral immovable property by a person with restricted power of disposition is by now fairly well-settled and not open to any serious controversy. A declaratory decree obtained by one or more reversioners enures for the benefit of the entire reversionary body and the individual reversioner who