

Before S. C. Mital and S. S. Kang, JJ.

KANSHI RAM,—Petitioner.

versus

SIRI RAM and another,—Respondents.

Civil Writ Petition No. 4152 of 1979.

December 19, 1979.

Punjab Gram Panchayat Act (IV of 1953).—Sections 13-N, 13.00 and 13-V—Election of a sarpanch set aside and election petitioner declared duly elected—Composite order passed under sections 13-N and 13.00—Appeal against such order—Whether competent.

Held, that unless and until an election is set aside under section 13-N of the Punjab Gram Panchayat Act 1953, the consequential declaratory order envisaged by section 13-00 of the Act cannot be passed. Thus, it is clear that the very foundation of an order passed under section 13-00 of the Act declaring the election petitioner duly elected is the order under section 13-N of the Act. When the statute (section 13-V of the Act) has clearly made an order passed under section 13-N of the Act appealable there is no reason to take away the statutory right merely because section 13-V does not in its terms make mention of an order passed under section 13-00 of the Act. An order passed under this section has no independent existence, inasmuch as passing of an order under section 13-N setting aside an election must precede it. Another way of looking at the matter is that if the appeal filed by the elected sarpanch under section 13-V of the Act against the order setting aside his election under section 13-N is allowed, the consequential order passed under section 13-00 declaring the election petitioner duly elected falls to the ground automatically. It is well settled that a right of appeal is a substantive right and not a procedural matter and Courts should construe such provisions liberally and not narrowly. Unless there be an express provision to the contrary, a right of appeal is not to be easily restricted. Therefore, a composite order passed under sections 13-N and 13-00 is appealable under section 13-V of the Act. (Paras 4 and 5).

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to:—

- (i) *Issue a Writ in the nature of Writ of Certiorari calling for the records relating to the Orders, Annexure 'P/1' and 'P/2' and after a perusal of the same, quash the impugned order, Annexure 'P/2' and remand the case to the District Judge, Bhiwani, directing him to hear the appeal of the petitioner on merits. In the alternative while quashing the impugned order, Annexure 'P/2' quash the impugned order,*

Annexure 'P/1' by which the election as Sarpanch of the petitioner has been set aside and nullify the declaration of respondent No. 1 to have been elected as Sarpanch in place of the petitioner.

- (ii) Issue an ad interim order staying operation of the impugned Orders, Annexures 'P/1' and 'P/2' and restrain the respondent No. 1 to take the charge from the petitioner pending the disposal of this Writ petition by this Hon'ble Court.*
- (iii) Any other appropriate Writ, Direction or Order that this Hon'ble Court may deem fit in the circumstances of this case may please be issued.*
- (iv) Dispense with the prior service of notices of motion on the respondents as required by Article 226 (4) of the Constitution of India as if the same is done, the very purpose of filing the Writ Petition will be defeated inasmuch as the impugned orders will be implemented and the charge of the office of Sarpanch will be taken from the petitioner.*
- (v) Dispense with the filing of certified copies of the documents appended as Annexures to the Writ Petition.*
- (vi) Award costs of this petition to the petitioner.*

Mr. D. S. Bali, Advocate, Mr. Chandra Singh, Advocate,—for the Petitioner.

S. P. Jain, Advocate, for Respondent No. 1.

JUDGMENT

S. C. Mital, J.

(1) The salient facts of this writ petition are that the election petition filed by Siri Ram challenging the election of Kanshi Ram to the office of Sarpanch of the Gram Panchayat of village Badhawana, was allowed by the prescribed authority and under section 13-00 of the Punjab Gram Panchayat Act, Siri Ram was declared as duly elected Sarpanch. The appeal of Kanshi Ram, instituted under section 13-V of the Act, has been dismissed by the District Judge, Bhiwani, on the ground that the impugned order was not appealable. Feeling aggrieved, Kanshi Ram has preferred this writ petition.

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(2) Now the relevant part of section 13-N (1) of the Act lays down:—

“Where an election petition has not been dismissed under section 13-E, the prescribed authority shall inquire into the election petition and at the conclusion of the inquiry shall make an order:—

(a) dismissing the election petition; or

(b) setting aside the election

(3) Then section 13-00 of the Act provides that a petitioner may in addition to claiming a declaration that the election of any of the returned candidates is void, claim a declaration that he himself has been duly elected. Sub-section (2) of section 13-00 of the Act further provides that the prescribed authority shall after declaring election of the returned candidate to be void, declare the petitioner to have been duly elected. The next provision of the Act deserving consideration is of section 13-V which reads:—

“(1) any party aggrieved by an order made by the prescribed authority under section 13-N may appeal to the Court of the District Judge within thirty days of the date of such order.

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(4) The District Judge, Bhiwani, has passed the impugned order on the ground that section 13-V provides appeal from only order under section 13-N of the Act. According to the District Judge the impugned order being a composite one, that is, passed under sections 13-N and 13-00, the same is not appealable. The approach of the District Judge appears to be untenable. It is to be borne in mind that unless and until an election is set aside under section 13-N the consequential declaratory order, envisaged by section 13-00 of the Act, cannot be passed. Thus, it is clear that the very foundation of an order passed under section 13-00 of the Act is the order under section 13-N of the Act. When the statute (section 13-V of

the Act) has clearly made an order passed under section 13-N of the Act appealable, one fails to see how the statutory right can be taken away merely because section 13-V does not in its terms make mention of order passed under section 13-00 of the Act. An order passed in this section has no independent existence, inasmuch as passing of an order under section 13-N setting aside an election must precede it. Another way of looking at the matter is that if the appeal filed by Kanshi Ram under section 13-V of the Act against the order under section 13-N is allowed the consequential order passed under section 13-00 declaring Siri Ram duly elected as Sarpanch, falls to the ground automatically. It is well settled that a right of appeal is a substantive right and not a procedural matter. Courts should construe such provisions liberally and not narrowly. Unless there be an express provision to the contrary, a right of appeal is not to be easily restricted.

(5) For the foregoing reasons there appears no force in the view that since the impugned order is a composite order passed under sections 13-N and 13-00 of the Act, therefore, the right of appeal given by section 13-V against an order passed under section 13-N is taken away. The impugned order of the District Judge thus cannot be sustained, and, it is set aside. The District Judge to entertain the appeal and decide it according to law. The writ petition stands disposed of accordingly. Parties to appear before him on 2nd January, 1980.

N.K.S.