

REVISIONAL CIVIL

Before R. S. Narula, Chief Justice.

INDER NATH BASSI,—Petitioner.

versus

THE SUB-DIVISIONAL MAGISTRATE (EXECUTIVE MAGISTRATE FIRST CLASS), NAWANSHAHR, DISTRICT JULLUNDUR ETC.,—Respondents.

Civil Revision No. 1386 of 1973

July 16, 1975.

The Punjab Gram Panchayat Act (IV of 1953)—Sections 6(5) (1), 13-B, 13-C and 13-O(1) (a)—Amendment of an election petition introducing a new ground of disqualification after the expiry of limitation prescribed for presenting it—Whether should be allowed—Such new ground could result in the removal of the returned candidate—Whether a ground for allowing the amendment.

Held, that section 13-B of the Punjab Gram Panchayat Act 1952 specifically provides that no election of a Sarpanch or a Panch shall be called in question except by an election petition presented in accordance with the provisions of Chapter 2-A of the Act. Section 13-C in that Chapter prescribes the period of limitation for filing an election petition, which is 30 days from the date of announcement of the result of the election. An election petition can be presented to the prescribed authority on one or more of the grounds specified in sub-section (1) of section 13-O. No petition for setting aside an election on any other ground is provided for by the Act. The very first ground specified in clause (a) of section 13-O on which an election can be set aside is that the elected person was not qualified or was disqualified to be elected under the Act. It is, therefore, patent that the ground which is sought to be introduced into the election petition could have been made a ground for setting aside the election at the time when the election petition was filed. If such a ground is not taken in the election petition, it will not be allowed to be taken after the expiry of the period of limitation for presenting the election petition. The fact that the new ground of disqualification sought to be added is not only a ground for setting aside an election but may, if enquired into, result in the removal of the returned candidate even after his election is otherwise upheld, is no ground for permitting it to be introduced in the election petition after the expiry of the period of limitation for presenting the same.

(Para 2).

Petition under Article 227 of the Constitution of India praying that the order passed by Sh. Ripudaman Singh, Executive Magistrate

Nawanshahr on 6th November, 1973 whereby he allowed an application of the election petitioner for amendment of the election petition be set aside and direction be issued to the respondent No. 1 for revision of the order dated 6th November, 1973.

M. S. Rakkar, Advocate, for the Petitioner.

Inderjit Malhotra, Advocate, for Respondent No. 2.

NARULA, C. J.—This is a petition under Article 227 of the Constitution for setting aside and quashing the order of Shri Ripudaman Singh, Executive Magistrate, 1st Class, Nawanshahr, dated November 6, 1973, whereby he has allowed an application of the election petitioner for amendment of the election petition so as to introduce therein a new ground for setting aside the election of the present petitioner. The election petition was filed within time. Issues were struck on all the grounds on which the election was sought to be set aside. The evidence of the parties was recorded and the case was then fixed for final arguments on June 28, 1973, when an application was made by the election petitioner for permission to amend the election petition under Order 6, rule 17 of the Code of Civil Procedure so as to add therein a ground, for setting aside the election, to the effect that the returned candidate was a tenant under the Gram Panchayat at the time of filing of his nomination papers, which was a disqualification under clause (1) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act, 1952. The above provision reads as under:—

“No person who is not a member of the Sabha and who is a tenant or lessee holding a tenancy or lease under the Gram Sabha or is in arrears of rent of any lease or tenancy held under the Gram Sabha, or is a contractor of the Gram Sabha, shall be entitled to stand for election as, or continue to be Sarpanch or Panch.”

The application was contested by the returned candidate. It was allowed by a somewhat cryptic order of the Executive Magistrate, dated July 10, 1973. The returned candidate's petition under Article 227 of the Constitution for quashing that order (Civil Revision No. 795 of 1973) was allowed by the judgment and order of Tuli, J. (as he then was), dated September 28, 1973, on the short ground that

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the order allowing the amendment was not supported by any reasons and did not even mention what the exact amendment was. It was, therefore, directed by this Court that the learned Magistrate should redecide the petition for amendment by passing a speaking order. In pursuance of the directions of Tuli, J., the application of the election petition for amendment of the election petition was re-heard by the learned Magistrate and allowed by the impugned order.

(2) Section 13-B of the Act specifically provides that no election of a Sarpanch or a Panch shall be called in question except by an election petition presented in accordance with the provisions of Chapter 2-A of the Act. Section 13-C in that Chapter prescribes the period of limitation for filing an election petition, which is 30 days from the date of announcement of the result of the election. An election petition can be presented to the prescribed authority on one or more of the grounds specified in sub-section (1) of section 13-O. No petition for setting aside an election on any other ground is provided for by the Act. The very first ground specified in clause (a) of section 13-O on which an election can be set aside is that the elected person was not qualified or was disqualified to be elected under the Act. It is, therefore, patent that the ground which is now sought to be introduced into the election petition could have been made a ground for setting aside the election at the time when the election petition was filed. The ground was admittedly not taken in the election petition. Long after the expiry of the period of limitation for presenting the election petition, that ground has now been allowed to be added by permitting the amendment prayed for by the election petitioner. The only ground on which the amendment has been allowed is that the disqualification in question is not only a ground for setting aside an election but is also a ground for the removal of a Panch or Sarpanch even after his election is otherwise upheld. The prescribed authority has observed in the impugned order that since the election of the present petitioner already stands challenged within the time limit prescribed by section 13-C of the Act, the new ground of attack does not involve a fresh question of limitation. This is contrary to the elementary principles of the Election Law. If the above-quoted observation of the prescribed authority were to be correct, then all that an election petitioner would do is to file an election petition for setting aside an

election and thereafter add in it different grounds for that purpose even after the expiry of the period of limitation by amending the petition. Such a procedure appears to me to be unimaginable. The fact that the disqualification can be inquired into at any time and may indeed result in the removal of the returned candidate (i.e. the petitioner before me) from the office of Sarpanch is no ground at all for permitting it to be introduced in the election petition after the expiry of the period of limitation for presenting the same. The election petitioner, if so advised, may move the appropriate authorities for removal of the petitioner on the ground of his having incurred a disqualification or being disqualified to continue to be a Sarpanch. Such a petition, if presented, would be disposed of by the competent authority in accordance with law. That however is no ground for permitting the amendment of the election petition.

(3) For the foregoing reasons, I allow this petition, set aside the order of the prescribed authority, dated November 6, 1973, and dismiss the application of the election petitioner for amendment of the election petition. The prescribed authority shall now proceed to hear the final arguments of the parties and dispose of the election petition in accordance with law. The petitioner will be entitled to recover from respondent No. 2 the costs incurred by him in this Court.

N. K. S.