

## CIVIL WRIT

Before Kapur J.

S. BUTA SINGH RANDHAWA,—Petitioner

versus

ITBAR SINGH ETC.,—Respondents

Civil Writ No. 34 of 1954

*Gram Panchayat Act (IV of 1953) Sections 5 and 10 and Rules 29, 32, 33, 43 and 44—Election of Panches—Election of one Panch not valid—Whether the whole election should be set aside or only election of Panch not validly elected.*

1954

Nov., 24th

Held, that the word election in the rules means election of one panch or all the panches put together. On an election petition being made the prescribed Authority has to institute an enquiry into the petition and an election has to be set aside if there is a material irregularity and thereupon a fresh election has to be held. It may be that material irregularities are such which affect every body's election or it may be that they affect the election of one panch. And if the election of one panch is found on enquiry to be invalid that election alone must be set aside and not the election of all the panches, for the setting aside the whole election including that of the other panches, would lead to an absurdity which could not have been the intention of the legislature.

*Petition under Articles 226 and 227 of the Constitution of India praying that petition be accepted and—*

- (a) *writs in the nature of certiorari and prohibition be issued setting aside the order of Shri R. D Malhotra, Resident Magistrate, Batala, dated 5th January, 1954;*
- (b) *writ in the nature of prohibition be issued restraining respondents No. 8 and No. 9 from holding re-election;*
- (c) *that this Hon'ble Court may be pleased to grant such other relief in the nature of writ or otherwise either in the alternative or in addition to which in the circumstances of the case the petitioner may be deemed entitled with costs.*

DALJIT SINGH, for Petitioner.

H. L. SARIN, for Respondents.

## ORDER

Kapur, J.

KAPUR, J. This is a petition by Buta Singh Randhawa under Articles 226 and 227 of the Constitution of India praying that record of the Prescribed Authority appointed under section 10 of the Gram Panchayat Act, Act IV of 1953, be brought up before this Court and the order be quashed.

At the election held for the Panchayat of Talwandi Lal Singh and Rikhia, Tahsil Batala, the petitioner Buta Singh and respondents Nos. 2 to 6 Jagdev Singh, Karnail Singh, Ganga Singh, Gutta and Mittar Singh were declared elected to the village panchayat. This was on the 4th July 1953. Buta Singh was elected Sarpanch. Besides these successful candidates Respondent No. 1 Itbar Singh and respondent No. 7 Bachan Singh were also candidates for election and the former Itbar Singh obtained 57 votes and Jagdev respondent No. 2 obtained 56 votes and one vote was tendered which the Returning Officer counted as being vote in favour of respondent No. 2 Jagdev Singh. As there was a tie lots were drawn and respondent No. 2 Jagdev Singh was declared to be elected.

An election petition was then filed by Itbar Singh in which it was prayed that the election of Jagdev Singh be set aside and that Itbar Singh be declared elected. The prescribed Authority Mr. R. D. Malhotra, Resident Magistrate, Batala, held in favour of Itbar Singh and came to the conclusion that the tendered vote should not have been counted in favour of Jagdev Singh, and after referring to section 10 of the Gram Panchayat Act of 1953 he has set aside the whole of the election of the Gram Panchayat and has ordered a re-election. Buta Singh Randhawa, as I have said

who is one of the successful candidates, has come to this Court for quashing the order of the Appointed Authority *qua* the other successful candidates at the election.

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It is not necessary to decide as to whether by wrongly counting the tendered vote in favour of Jagdev Singh the election was materially affected. In my opinion it was and it has been so held. But it was the election of Jagdev Singh alone which was affected and not of everybody else. The rules seem to show that after the counting of votes of all the ballot papers in the manner prescribed in rule 32(2) (f) the Returning Officer shall declare the election of the candidate, who is found to have obtained the largest number of valid votes, and if more than one candidate is to be elected for the Gram Panchayat area, then the candidates who are found to have obtained the largest number of valid votes, shall be declared to have been elected in accordance with the provisions of section 5 of the Act. Rule 33 lays down the procedure in case of a tie and prescribes that after lots have been drawn the candidates in whose favour the lot falls must be deemed to have received an additional vote and therefore that person would stand elected.

Election petitions can be brought under rule 43 of the rules made under the Gram Panchayat Election Rules of 1953. Rule 44 prescribes the contents of the petition. In the petition which was filed under these rules the complaint of the petitioner was only in regard to Jagdev Singh. But relying on section 10 of the Gram Panchayat Act, 1953, the prescribed Authority has set aside the whole election and it is to this that Buta Singh

S. Buta Singh and other successful candidates excepting Jagdev Singh are objecting. Section 10 of the Gram Panchayat Act provides:—  
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“10(1) Any voter of the Gram Panchayat, and in the case of election of Adalti Panches, any Panch, may within twenty-one days of the date of announcement of the result of an election, prefer a petition in writing to the prescribed authority against the said election, in the prescribed manner.

(2) The prescribed authority shall institute an inquiry into the petition and shall set aside the election, if a material irregularity has occurred and thereupon a fresh election shall be held.

(3) Except as provided in this section, no election of a Panch or a Sarpanch or an Adalati Panch shall be called in question before any authority or any Court”.

The word ‘election’ has not been defined in the Act, but in the rules the definition is in rule 2(b) which states—

“ ‘Election’ means an election to fill a seat or seats in the Gram Panchayat, Thana Panchayat Union or an Adalti Panchayat, including that of a Sarpanch.”

This definition is capable of meaning that the word ‘election’ means election of one Panch or of all the Panches put together. Under section 10(1) of the Panchayat Act any voter of the Gram Panchayat or any Panch in the case of Adalti Panchayat can make a petition against the said election and then the Prescribed Authority has to institute an enquiry into the petition and an election has to be set aside if there is a material irregularity and thereupon a fresh election has to be

held. It is in subsection (3) that the meaning seems to become clearer, because it provides that no election of a Panch can be called in question before any authority or in Court except as provided in the Act, and material irregularity also refers to the result of an election. It may be that material irregularities are such which affect everybody's election or it may be that they affect the election of one Panch. If an interpretation were put upon the word election in the manner that it has been interpreted by the Prescribed Authority, then, in my opinion, it will lead to absurdity. Every time that there is some dispute between one elected Panch and another person everybody's election will be set aside which could not have been the intention of the legislature. If two interpretations are possible, one of which will lead to absurd results and the other will not, the latter interpretation will have to be accepted, and, in my opinion, if we put the interpretation which has been put by the Prescribed Authority, the result will be an absurd one. Besides, subsection (3) of section 10 does make a distinction between the election of a Panch or a Sarpanch and of the whole body of the Panchayat and, in my opinion, it clarifies that the word 'election' mentioned in section 10 refers to the election of one Panch and could not by itself mean election of everybody unless the irregularity is such which would really affect the election of the whole Panchayat. I am of the view, therefore, that the order of the Prescribed Authority setting aside the whole election, in the circumstances of this case, is erroneous and that portion of the order should be quashed, and I would, therefore, quash the order in regard to Buta Singh, Karnail Singh, Ganga Singh, Gutta and Mittar Singh.

There is no provision in the Act or in the rules by which by an election petition a man can be

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S. Buta Singh declared elected if as a result of a material irregularity the result of his election has been materially affected and, therefore, I cannot quash that portion of the order which must be taken to order a fresh election in regard to the seat held by Jagdev Singh and as a result there will be a re-election as far as the seat of Jagdev Singh is concerned.

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etc.

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Kapur, J.

This is not a case in which the respondent should be burdened with any costs because it is no fault of theirs that the order complained of was made by the Prescribed Authority. I would, therefore, leave the parties to bear their own costs.

#### CIVIL WRIT

Before Kapur J.

LABH SINGH FAKHAR,—*Petitioner*

*versus*

THE STATE OF PUNJAB,—*Respondent*

Civil Writ No. 101 of 1954

1954

Nov., 24

*Punjab Municipal Act (III of 1911) Section 16, 22,—Removal of member from membership of the Committee—Powers of Government—Condition precedent—High Court when can interfere under Article 226 of the Constitution of India.*

*Held*, that all that the law requires is that if the State Government are of the opinion that there has been flagrant abuse of position by a member, he can be removed provided the reasons for his proposed removal are communicated to him and he is given an opportunity of tendering an explanation in writing. The intention of the Legislature is clear from the words of the section which does not require an inquiry to be held, and all that it requires is that the person against whom action is proposed to be taken should be allowed to make a representation in writing. It is not open to this court to interfere with the discretion of the Government if the forms of law have been complied with in that a notice as required under section 16(1)(e) and section 22 of the Municipal Act was given to the petitioner, and it is not open to the Court to go into the sufficiency of the reasons except on the ground of *mala fide*.