

Zile Singh etc. v. The State of Haryana etc. (R. S. Narula, C.J.)

Collector is directed to decide the surplus area case of the petitioner after giving him full opportunity of hearing. Having regard to the circumstances, there will be no order as to costs.

TULI, J.—I agree.

TEWATIA, J.—I agree.

B. S. G.

FULL BENCH

Before R. S. Narula, C.J., Bhopinder Singh Dhillon and M. R. Sharma, JJ;

ZILE SINGH ETC.,—Petitioners.

versus.

THE STATE OF HARYANA ETC.,—Respondents.

Civil Writ No. 3573 of 1973

September 18, 1974.

Punjab Gram Panchayat Act (IV of 1953 as amended and applied to State of Haryana)—Sections 13-B and 13-O(1)(c)—Election of all the panches to a Panchayat at one time—Whether can be called in question by a single election petition—Prescribed authority—Whether has the jurisdiction to entertain and decide such petition on merits—Impleading of all the elected panches in the petition—Whether necessary.

Held, that under Punjab Gram Panchayat Act, 1953 as amended and applicable to State of Haryana, all the panches to a Panchayat are elected in a single combined process of election, and it is the elected Panches who (after the statutory co-option if any) proceed to elect their Sarpanch out of themselves. The result of an entire election is affected in a case of improper rejection of any nomination paper, and that is why the election is liable to be set aside on mere proof of improper rejection of any nomination paper, though it is not set aside without proof of material affect on the election of the person elected in case of illegal or improper acceptance of a nomination paper. Where all the Panches are elected at one time, a single election petition to call in question the entire election is competent. The Prescribed Authority under section 13-O(1)(c) of the Act has the jurisdiction to entertain such petition and on coming to the conclusion that the nomination papers of any candidate had been improperly rejected, set aside the election of all the Panches. However, in order to satisfy the principles of natural justice and also in view of the applicability of the provisions of the Code of Civil Procedure to the proceedings before the

Prescribed Authority, it is imperative to implead all the persons elected as Panches. (Paras 9, 12 and 14).

Case referred by Hon'ble Mr. Justice M. R. Sharma to a Full Bench on 7th November, 1973 for deciding an important question of law. The Full Bench consisting of the Hon'ble the Chief Justice Mr. E. S. Narula, Hon'ble Mr. Justice Bhopinder Singh Dhillon and Hon'ble Mr. Justice M. R. Sharma had finally decided the case on 18th September, 1974.

Petition under Articles 226 & 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction, be issued quashing the impugned order of respondent No. 2, dated 6th of August, 1973 (Annexure 'B') and staying the operation of impugned order till the decision of this writ petition.

R. S. Mittal and M. L. Bansal, Advocates for the petitioners.

Mr. D. S. Lamba, Senior Deputy Advocate-General (Haryana), for respondents 1 & 2.

Surinder Sarup, and Rameshwar Puri, Advocates, for respondent No. 3.

JUDGMENT.

R. S. NARULA, C.J.—The important question of law which has necessitated the reference of this writ petition by my learned brother Sharma, J., to a Full Bench is whether an election petition under section 13-B of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act), as amended and applied in Haryana calling in question the election of all the six panches elected at one time to a particular panchayat, is competent, and whether the prescribed authority under section 13-C of the Act has the jurisdiction to entertain and decide such a petition on merits. The circumstances which have given rise to this question are neither in dispute nor complicated. Petitioners Nos. 1 to 4 and respondents 4 and 5 were elected Panches of the Gram Panchayat, Chirasmī, tahsil and district Sonapat, in the election to that Gram Panchayat held on June 29, 1971. The elected Panches co-opted petitioner No. 5 as the lady Panch by election. The Panchayat consisting of the above-mentioned seven Panches then elected petitioner No. 1 as its Sarpanch. Respondent No. 3 filed the election petition, dated July 28, 1971, before the prescribed authority in which he arrayed petitioners 1 to 4 and respondents 4 and 5 (all the Panches elected on June 29, 1971) as respondents 1 to 6. The other candidates who had contested the election but had been defeated therein (including

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petitioner No. 5) were impleaded as respondents 7 to 11. Annexure 'A' to the writ petition is a copy of the election petition of respondent No. 3. The only ground on which the election of all the Panches (petitioners 1 to 4 and respondents 4 and 5) was sought to be declared void was that the Returning Officer had illegally and wrongly rejected the nomination papers of the election petitioner. A sum of Rs. 100 was deposited by the election petitioner on account of security for costs of the respondents to the election petition.

(2) By his order, dated August 6, 1973 (Annexure 'B' to the writ petition), Shri S. Y. Quraishi, I.A.S., Executive Magistrate First Class, Sonapat, the Prescribed Authority under the Act, allowed the election petition (on the finding that the nomination papers of the election petitioner had been wrongly rejected), and set aside the election of the elected Panches (described as respondents in the order). The validity and correctness of the judgment and order of the Prescribed Authority (Annexure 'B') was impugned in this writ petition, dated October 3, 1973, by four out of the six panches who had been originally elected as such on June 29, 1971.

(3) When the petition came up for hearing before my learned brother Sharma, J., it was argued on behalf of the writ-petitioners that a single election petition to challenge the election of all the six Panches was not competent in view of my judgment in *Amrik Singh Waryam Singh v. B. S. Malik and others*, (1) which had been subsequently followed by Sharma, J. himself in *Ram Bakhsh and others v. Shri J. P. Narang and another* (2). The other grounds on which the order of the Prescribed Authority was attacked were gone into by the learned Judge, but did not find favour with him. Those grounds of attack do not, therefore, survive for decision before us.

(4) So far as the first and the main ground is concerned, it was sought to be argued before my learned brother by Mr. Surinder Sarup, learned counsel for respondent No. 3, that the law laid down by me in *Amrik Singh's case* (1) (*supra*) deserved to be reconsidered by a larger Bench in view of what had been subsequently held by a Division Bench of which I was also a member in *Mange Ram and Mst. Shanti v The State of Haryana and others* (3) particularly because *Amrik Singh's case* (1) as well as *Mange Ram's case* (3)

(1) A.I.R. 1966 Pb. 344.

(2) C.W. No.2013 of 1972 decided on 28th July, 1972.

(3) 1972 P.L.J. 405.

arose out of this very Act. Sharma, J., therefore, thought it advisable to refer this case to a larger Bench. It is in the above-mentioned circumstances that this writ petition came up for hearing before us.

(5) As already stated, the solitary question on the decision of which the fate of this petition now depends is the one posed in the opening sentence of this judgment. It may be profitable to have at this stage a bird's eye view of the scheme and the relevant provisions of the Act and the Rules framed thereunder to facilitate the decision of the question which we have been called upon to answer.

(6) "Gram Panchayat" is defined in section 3(g) of the Act to mean "the Panchayat constituted under section 5" of the Act. "Panch" has been defined in clause (i) of section 3 to mean amongst others a member of a Gram Panchayat elected or appointed under the Act, and includes a Sarpanch. Chapter 2 of the Act commencing with section 4 and ending with section 13 deals, *inter alia*, with the establishment and constitution of Gram Panchayats. Under sub-section (1) of section 5, the Government may by notification establish a Gram Panchayat by name in every Sabha area. Sub-section (2) of that section provides that every such Gram Panchayat shall consist of such number of Panches not being less than five or more than nine as the Government may determine taking into account certain relevant prescribed factors. That sub-section further states that such Panches shall be elected by the Sabha in the prescribed manner from amongst its members provided that if no woman is elected as a Panch of any Gram Panchayat, the elected Panches shall co-opt in the prescribed manner a woman Panch as a member of the Sabha who is otherwise qualified to be elected as a Panch. Every woman co-opted as a Panch under the proviso to sub-section (2) of section 5 has been given the right by sub-section (3) of that section to vote at a meeting of the Gram Panchayat. Sub-section (4) states that the election of the Panches shall be by secret ballot and direct vote in the manner prescribed and the requisite number of candidates securing the highest number of valid votes shall be deemed to have been elected. The various contingencies mentioned in the proviso to sub-section (4) of section 5 are not relevant for our purposes. Nor are we here concerned with the qualifications or disqualifications for becoming a Panch prescribed under sub-section (5) of section 5. Sub-section (6) provides for the election of a Sarpanch

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by the Panches from amongst themselves in the prescribed manner after the election of the Panches, and the co-option of the woman Panch, if any. Sub-section (2) of section 9 gives the Sarpanch and all the Panches a life of five years in office. In the absence of Government's instructions to the contrary, the outgoing Sarpanch or Panch continues to hold his office even after the expiry of the prescribed period of five years until his successor has taken the oath. Provision is however made by section 10 of filling the casual vacancy of a Panch or a Sarpanch (by the death, resignation or removal of a Panch or a Sarpanch) in the prescribed manner, and the person so elected is authorised to hold office for the unexpired portion of the term for which the person in whose place he was elected would have otherwise continued in office.

(7) Chapter 2-A of the Act contains provisions relating to disputes regarding elections. Section 13-A contains the definitions. Section 13-B states 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 this Chapter.". Sub-section (1) and (2) of section 13-C which contains provisions relating to presentation of election petitions, are in the following words:—

"(1) Any member of the Sabha may, on furnishing the prescribed security in the prescribed manner,—

(a) where an election was held after 12th August, 1960, and before the 27th September, 1962, within thirty days of the latter date; or

(b) where an election is held after the 27th September, 1962, within thirty days of the date of announcement of the result thereof;

present on one or more of the grounds specified in sub-section (1) of section 13-O to the prescribed authority an election petition in writing against the election of any person as a Sarpanch or Panch.

(2) The election petition shall be deemed to have been presented to the prescribed authority—

(a) When it is delivered to the prescribed authority—

(i) by the person making the petition; or

- (ii) by a person authorised in writing in this behalf by the person making the petition; or
- (b) When it is sent by registered post and is delivered to the prescribed authority."

Section 13-D deals with the contents of an election petition. Section 13-E refers to the procedure to be followed by the prescribed authority on the receipt of an election petition. It enjoins a duty on the prescribed authority to dismiss an election petition either if the prescribed security is not furnished in the prescribed manner or if the petition is not presented within the period specified in section 13-C. Of course the election-petitioner is entitled to an opportunity of being heard before his petition is dismissed on either of the two grounds referred to in the said provision. Sub-section (1) of section 13-G provides that every election petition shall be tried by the prescribed authority as early as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits subject to the provisions of the Act and of any rules made thereunder. The next relevant provision in the Act is section 13-O which contains the grounds for setting aside elections. It states, *inter alia*, that if the prescribed authority is of the opinion (a) that on the date of his election the elected person was not qualified or was disqualified to be elected under the Act; or (b) that any corrupt practice has been committed by the elected person or his agent or by any other person with the consent of the elected person or his agent; or (c) that any nomination has been improperly rejected; or (d) that the result of the election insofar as it concerns the elected person, has been materially affected by anyone of the various matters mentioned in sub-clauses (i) to (iii) of clause (d) of sub-section (1) of section 13-O, the prescribed authority shall set aside the election of the elected person. Sub-section (2) of section 13-O provides that when an election has been set aside under sub-section (1), a fresh election shall be held.

(8) Out of the Haryana Gram Panchayat Election Rules, 1971, framed under section 101 of the Act, the only one relevant for our purposes is rule 46 which reads as follows:—

- "(1) At the time of, or before presenting an election petition the petitioner, or petitioners, when there are more than one petitioners, each of the petitioners shall deposit in the

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treasury or sub-treasury a sum of rupees one hundred in cash or in Government promissory notes of equal value, as security, for all costs that may become payable by him or them.

- (2) If the petitioner by whom the deposit referred to in sub-rule (1) withdraws his election petition and in any other case after final orders have been passed on the election petition, the deposit shall, after such amount as may be ordered to be paid as costs, charges and expenses, has been deducted, be returned to the petitioner by whom it was made, and if the petitioner dies during the course of the enquiry into the election petition, any such deposit, if made, by him shall after the amount of such costs as may be ordered to be paid, have been deducted, be returned to his legal representative.
- (3) All applications for the refund of a deposit shall be made to the Deputy Commissioner, who shall pass orders thereon in accordance with these rules."

(9) The petitioners mainly base their claim for quashing the impugned order of the Prescribed Authority (setting aside the election of petitioners 1 to 4 and of respondents 4 and 5) on my judgment in *Amrik Singh's case* (1) (supra). The facts and circumstances of that case are, however, entirely different and have practically nothing in common with facts of the present case. The law laid down therein has obviously no application to the present dispute. While posing the question, which called for decision in that case in the opening part of my judgment in *Amrik Singh's case* (1), I had clearly indicated that the question related to the legality and maintainability of one single petition calling in question the election of a Sarpanch and various Panches of a Gram Panchayat which had been held on a single day under the Punjab Gram Panchayat Act (4 of 1953) as applicable to that State. One basic distinction which has to be borne in mind between the Act as applicable to Punjab on the one hand, and the Act as applicable to Haryana on the other is that whereas the election of a Sarpanch in Punjab is a separate and independent election from that of the Panches, it is not so in Haryana where all the Panches are elected in a single combined process of election, and it is the elected Panches who (after the statutory co-option if any) proceed to elect their Sarpanch out

of themselves. The law laid down in this respect in a Punjab case cannot, therefore, be cited as an authority for the applicability of the same proposition to a Haryana case, particularly when it was the election of a Sarpanch and of various Panches which had been questioned by a composite petition before the Prescribed Authority in *Amrik Singh's case* (1) and which had been dismissed by the Prescribed Authority on the ground that one petition was not maintainable for questioning two separate elections. In the instant case, the election of petitioners 1 to 4 and of respondents 4 and 5 was one composite election, and did not involve two separate elections. Out of the candidates for election as Panches those were declared elected who secured the highest number of votes in one single process of election. In *Amrik Singh's case* (1) (*supra*) in a separate scrutiny of the nomination papers of candidates for the office of Sarpanch, the papers of Amrik Singh and another had been rejected. Similarly in a scrutiny of the nomination papers filed for the election of four Panches, the Returning Officer had rejected some other nomination papers. The ground on which both the elections were sought to be set aside by Amrik Singh before the Prescribed Authority was that the rejection of his nomination papers for the office of Sarpanch, and the rejection of the nomination papers of the others for election as Panches was illegal. The legal objections against the writ petition taken in so many words in the return of the respondents (who were contesting the writ petition) were these:—

- (i) the writ petition should be dismissed as the election of a Sarpanch and of Panches had nothing in common except that the same had been held on the same day in the same manner as elections to Parliamentary and State Assembly seats are held on the same day, and that, therefore, the order of the prescribed authority is correct; ,
- (ii) the constituency in question is a single member one so far as the election of the Sarpanch is concerned while it is a multi-member constituency so far as the election to the seats of the Panches is concerned; and
- (iii) the wrongful rejection or acceptance of the nomination papers of a candidate for being elected as a Sarpanch did not in any way affect the election of Panches and *vice versa*.

(10) None of these three consideration arises in the instant case. The fourth ground which was pressed by the counsel for the respondents in *Amrik Singh's case* (1) has been relied upon by the learned

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counsel for the present petitioners, as the objection relating to only one set of security amounting to Rs. 100 having been deposited by the election petitioner is common to both the cases. That by itself does not, however, make any difference as the provisions for the amount of security to be deposited under the Act varies (under rule 46) with the number of petitioners and not with the number of respondents. Without dilating any further on this matter, it is apparent to me from the facts stated above that no observation made in *Amrik Singh's case* (1) has any bearing on the case in hand.

(11) My learned brother Sharma, J., while allowing the writ petition of *Ram Baksh and others* (2) (supra), merely followed my judgment in *Amrik Singh's case* (1). That judgment does not by itself, therefore, advance the matter any further. Nor does the judgment prepared by me for the Division Bench in *Mange Ram's case* (3) (supra), on which reliance has been placed by the respondents, help the decision of the question before us. The question which was decided by R. N. Mittal, J. and myself in *Mange Ram's case* (3) related to the maintainability of a joint petition under Article 226 of the Constitution, and had nothing to do with the question of the validity of a composite election petition as such. This is apparent from the discussion of the subject in paragraph 4 of that judgment, wherein the objection was noticed and decided in the following words:—

“He (counsel for the respondents in that writ petition) has firstly contended that this petition suffers from a misjoinder of parties inasmuch as the defeated Sarpanch and the defeated candidate for election as a woman Panch cannot be permitted to join together in filing a writ petition for questioning two separate elections for two separate offices. At the first sight this argument appears to be quite attractive. On the facts of this case, however, much of the charm in the argument is lost by the fact that both the petitioners impugned both the elections on grounds which are common to each of the two elections. Though Mr. Mittal (counsel for the writ petitioners) went to the length of suggesting that if we feel that a joint petition could not be filed by the two petitioners, we may in the circumstances of this case entertain, hear and decide this petition as confined to the claim of Mange Ram petitioner No. 1, and not dismiss the petition on that ground, yet he made it clear that he was not asking for

that course being adopted at his instance. After having heard counsel on the merits of the controversy, we are of the opinion that even if we entertain and decide the claim of petitioner No. 1 alone, we will have to pronounce on the validity of all the grounds urged against the legality of the election of the co-opted woman Panch by which the second petitioner is aggrieved. Mr. Hooda has relied in support of this objection of his on my judgment in *Amrik Singh Waryam Singh v. B. S. Malik and others* (1). The real objection in the case of *Amrik Singh Waryam Singh* (1) was against a single election petition having been filed for calling in question the election of a Sarpanch and a Panch. It was on those facts that I had held that in view of the provisions of sections 13-B and 13-C of the Act and rules 44 and 45 of the Election Rules, one composite election petition could not be filed. In the case before us we are concerned with the legality of two independent persons having joined together in filing a single writ petition to question two separate elections. We cannot, however, lose sight of the fact that neither the joint petition has caused any prejudice to any of the respondents, nor has it in any manner complicated the issues involved in this litigation. After carefully considering the submissions made by the learned counsel, we are inclined to think that in view of the peculiar facts of this case and in view of the common grounds sought to be urged by both the petitioners, it cannot be said that this petition is liable to be dismissed on account of multifariousness or misjoinder of petitioners."

It is apparent from a perusal of the above-quoted paragraph in the judgment of the Division Bench in *Mange Ram's case* (3) that the contesting respondents in that petition called in aid my judgment in *Amrik Singh's case* (1), but the distinction therein was pointed out even then. Neither *Amrik Singh's case* (1), nor *Mange Ram's case* (3) is, therefore, relevant for deciding the issue before us.

(12) In this situation counsel for the petitioners laid emphasis on the expression "election of a Sarpanch or Panch" having been used in section 13-B of the Act in singular, and argued that any petition which questions the election of more than one Panch cannot be said to have been presented in accordance with the provisions of Chapter 2-A of the Act, and must, therefore, be dismissed by the

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Prescribed Authority on that short ground. The emphasis was on the singular and not the plural expressions having been used in section 13-B. This argument is wholly fallacious in view of the provision of section 11(2) of the Punjab General Clauses Act which states that in all Punjab Acts, unless there is anything repugnant in the subject or context, words in the singular shall include the plural and *vice versa*. Counsel could not point out to us anything repugnant to section 11(2) of the General Clauses Act in the subject or context of section 13-B. Moreover, on the facts of this case it is clear that if the nomination papers of the election-petitioner had been illegally rejected, the whole of the election of all the six Panches elected on June 29, 1971, had to be set aside by the Prescribed Authority under section 13-O(1)(c) of the Act, and it did not matter at all from the point of view of the question before us whether all the persons elected at the said election had or had not been impleaded in the election petition, or whether a specific prayer for setting aside the election of all of them had or had not been made in the election petition. The result of the entire election is presumed to have been affected in the case of improper rejection of any nomination paper, and that is why the election is liable to be set aside on mere proof of improper rejection of any nomination paper though it is not set aside without proof of material affect on the election of the person elected in case of illegal or improper acceptance of a nomination paper. Nothing stated in the judgment of the Assam High Court in *Dev Kanta Barooah v. Kusharam Nath and others* (4) (which case relates to a double member constituency) points to the conclusion which the petitioners went to draw from that judgment. The Division Bench judgment of this Court (I.D. Dua, J. and myself) in *Manga and others v. Sohlu and others* (5) was a case of wrongful acceptance of nomination papers which, as pointed out, is very different from the case of wrongful or improper rejection of nomination papers. The basic difference between the case of improper rejection or improper acceptance of nomination papers has been most lucidly brought out in the judgments of their Lordships of the Supreme Court in *Vashist Narain Sharma v. Dev Chandra and others* (6) and in *Surendra Nath Khosla and another v. S. Dalip Singh and others* (7).

(13) The Single Bench judgment of this Court (Suri, J., as he then was) in *Parbhu and others v. Illaqa Magistrate (Prescribed*

(4) 15 Election Law Reports 66.

(5) 1965 P.L.R. 955.

(6) A.I.R. 1954 S.C. 513.

(7) A.I.R. 1967 S.C. 242.

Authority), *Mohindergarh, and others* (8) was concerned with the law laid down in *Mange Ram's case*, which, as already stated, relates to the question of misjoinder of parties and their causes of action in a writ petition, and had nothing to do with the point in issue before us. Mr. D. S. Lamba, learned counsel for the respondents, referred to the judgment of a learned Single Judge of this Court (P. D. Sharma, J. as he then was) in *Bishan Singh v. Amba Datt and others* (9) and argued that the election of all the members elected at an election under the Punjab Panchayat Samitis and Zila Parishads Act, 1961, at which some nomination papers were improperly rejected has to be set aside. I have already noticed that point.

(14) In this view of the matter we are unable to find any defect in the order of the Prescribed Authority repelling the preliminary objection against the maintainability of the election petition for setting aside the election of all the six candidates who were declared elected as Panches in one single election by calling the same in question in a single election petition. In view of the law laid down by the Supreme Court in *Vashist Narain Sharma's case* (6) and *Surendra Nath Khosla's case* (7) (supra) read with section 13-O of the Act, the election of all the six elected Panches had to be set aside by the Prescribed Authority on coming to the conclusion that the nomination papers of the election-petitioner had been improperly rejected. In order to satisfy the principles of natural justice and also in view of the applicability of the provisions of the Code of Civil Procedure to the proceedings before the Prescribed Authority, it was imperative for the election-petitioner to implead all the persons elected as Panches on June 29, 1971. He had to pray for setting aside the election of all the elected Panches as it cannot possibly be said that improper rejection of a nomination paper has affected the result of election of one Panch and not any other. The entire election had to be set aside by the Prescribed Authority. The election petition was, therefore, properly framed and the impugned finding of the Prescribed Authority is correct.

(15) This petition must, therefore, fail and is accordingly dismissed with costs.

B. S. DHILLON, J.—I am in respectful agreement with the Judgment of the learned Chief Justice.

M. R. SHARMA, J.—I also agree.

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(8) 1973 P.L.J. 105.

(9) 1967 Curr. L.J. (Pb. & Hr.) 12.