

prejudice the parties to the *lis*. Therefore, the admission of the writ petition by itself will not convert the petition of Suresh Kumar into a public interest litigation.

(13) We are aware of the essential role which the Bar has to play in the present day system of justice. No one who is interested in public welfare can be happy about the strike which has gone on for over six weeks and threatens to continue indefinitely in the future. The real sufferer is the litigant public. We, therefore, appeal to all the Associations of the Bar to call off the strike to avoid hardship to the litigant public.

(14) In view of the aforesaid factual and legal position, we have no option but to allow Civil Misc. application of the petitioner seeking withdrawal of his writ petition. The same is accordingly dismissed as withdrawn.

R N.R.

Before :—S. D. Agarwala, C.J. and H. S. Bedi, J.

NACHHATTAR SINGH AND ANOTHER.—*Petitioners*,

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*.

Civil Writ Petition No. 1541 of 1993.

28th April, 1993.

Constitution of India, 1950—Art. 226—Punjab Gram Panchayat Act, 1952—S. 13-B—Election to office of Sarpanch and Panch—Election result challenged by way of writ petition—Alternative remedy of election petition available—Maintainability of the writ petition—Scope of powers under Art. 226.

Held, that while the remedy for the purpose of challenging the result of the election by way of an election petition under S. 13-B of the Act may be available yet in the facts and circumstances of a particular case the High Court could interfere under Article 226 of the Constitution. The availability of an alternative remedy is not the solitary test; such a remedy must, in addition, be adequate

and efficacious. It bears repetition that there is no constitutional bar to the maintainability of such a writ petition with respect to local bodies such as Municipal Committees, District Boards or Gram Panchayats in the manner indicated by the Constitution under Article 329(b) with respect to elections held to the State Assemblies or Parliament and, in the absence of such a restraint, the scope of Article 226 is all pervasive and wide enough to reach and remove an injustice suffered. This Court would not, therefore, throw out the writ petition at the very threshold and compound the sense of injury and injustice inflicted on the petitioners with another one at the hands of the Court by circumscribing artificially the scope of Article 226. The Court in exercising restraint must not clip its wings, though interference should be made to use the oft repeated words, in the 'rarest of rare' cases.

(Para 10)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—

- (a) *a writ in the nature of certiorari quashing the election of Gram Panchayat of Village Mothanwala, Block Guru Har Sahai, Tehsil and District Ferozepur be issued;*
- (b) *a writ of mandamus directing the respondent No. 1 and 2 not to notify the election of Gram Panchayat of village Mothanwala, Block Guru Har Sahai, Tehsil and District Ferozepur, be issued.*
- (c) *any other suitable writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the present writ petition be issued;*
- (d) *filing of certified copies of Annexures P/1 to P/3 be dispensed with;*
- (e) *issuance of advance notices on the respondents be dispensed with;*
- (f) *Costs of the petition may be granted.*

It is further prayed that the notification of the Gram Panchayat of village Mothanwala, Block Guru Har Sahai, P. O. Jandwala, Tehsil and District Ferozepur may kindly be stayed during the pendency of the writ petition.

Nirmaljit Kaur, Advocate, for the petitioners.

G. K. Chatrath, Advocate Genl. Punjab, with Anu Chatrath, Advocate, for the respondents.

Sanjay Majithia, Advocate, for respondent No. 5.

JUDGMENT

S. D. Agarwala, C.J.

The present petition has been filed challenging the election held to the Gram Panchayat Mothanwala, Block Guru Har Sahai, Tehsil and District Ferozepur. The facts of the case relevant to its disposal are as under :

(2) *Vide* an election programme issued by the competent authority, applications were invited on 21st January, 1993 for nomination of candidates for election to the office of Sarpanch and four Panches. The nominations were to be followed by scrutiny of the papers to be held at 4.00 P.M. on the same day and the polling, if necessary, was to be held on 22nd January, 1993. It appears that the petitioners as also six other persons, including respondent No. 5 (Kishan Singh) filed their nomination papers for election to the office of Sarpanch, whereas as many as 22 candidates filed their nomination papers for the election to the office of Panch. It has been averred that all the candidates for both the offices fulfilled the requisite qualifications and were entitled to fight the election. It appears, however, that during the course of scrutiny of the nomination papers by Mohinder Singh, Presiding Officer, respondent No. 4, the papers of all the candidates for the office of Sarpanch other than those of Kishan Singh, respondent No. 5 and the nomination papers of 19 of the 22 candidates who intended contesting for the office of Panch except those of respondent Nos. 6 to 8 i.e. Satpal Singh, Gurmeet Singh and Pritam Kaur were rejected with the result that respondent No. 5 was unanimously elected as Sarpanch and respondent Nos. 6 to 8 were also similarly elected as Panches leaving one vacancy in the number of Panches to be elected. It has been averred that the rejection of the nomination papers of the petitioners as well as those of the others for no reasons whatsoever was a *mala fide* exercise of power on the part of the Presiding Officer, respondent No. 4 as all the persons elected belonged to one family; that is Kishan Singh was elected as Sarpanch, whereas his son Gurmeet Singh, wife Smt. Pritam Kaur and brother-in-law Sat Pal Singh were elected as Panches. In elaboration, it has also been stated that even the nomination paper of one Jagroop Singh son of Jassa Singh who was a candidate for the office of Sarpanch and a member of the outgoing Panchayat had also been rejected and no reasons had been recorded for doing so.

(3) Notice of motion was issued in this case on 2nd February, 1993 and as an interim measure the result of the election held in respect of the Gram Panchayat was directed to be stayed. The said stay order is still in operation.

(4) In response to the writ petition, two written statements—one on behalf of respondent Nos. 1 to 4 and second on behalf of respondent No. 5 i.e. Kishan Singh, the Sarpanch elect, have been filed. The common stand in both the replies is that a writ petition challenging the election held was not competent as an alternative remedy by way of an election petition was available under section 13-B of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act). In the written statement filed on behalf of respondent Nos. 1 to 4 the reasons for the rejection of the nomination papers, except those of respondent Nos. 5 to 8, have been spelt out and the averment in para No. 4 is "that the nomination papers were rejected by the returning officer as he did not find the same to be in order." On the question of relationship *inter se* between the sarpanch and the panches it has been stated "it is immaterial whether the elected candidates were relatives to each other. When the nomination papers of other candidates were not found in order then there was no option with the returning officer except to declare the result of the election." A similar reply has been given in para 5 wherein it has been stated "it is submitted that the nomination papers of the other candidates were rejected on solid grounds under the rules. Otherwise also, this fact is now a matter of record." In the reply filed on behalf of respondent No. 5, an additional stand taken is that Jagroop Singh son of Jassa Singh to whom reference has been made above, had filed an election petition and the petitioners being a party thereto, should take their chance there. In response to paras 3, 4 and 5 of the writ petition, the reply of the respondent is that the nomination papers of seven candidates were rejected on account of material irregularities as none of them had attached Form No. IV and the scheduled caste candidates had not attached the S.C. Certificate. With regard to the rejection of the nomination paper of the candidates for the office of Panch, the objection taken is that such candidates had not attached the S.C. certificate and in the nomination papers instead of mentioning Gram Panchayat Mothanwala only Mothanwala had been mentioned. In para 5 it has been categorically submitted that it was only the Returning Officer i.e. respondent No. 4 who could properly reply as to under what circumstances the nomination papers of the other candidates had been rejected. It has also been stated that the nomination paper of Jagroop Singh was rejected as he had been found travelling in a train without a ticket.

(5) A replication has been filed on behalf of the petitioners in which it has been stated that the scheduled caste certificates had been appended along with the nomination papers but these had been returned by the returning officer to the candidates as being not required.

Affidavits to this effect and the respective scheduled caste certificates of Pritam Kaur, Bachan Singh son of Chuhar Singh and Mango daughter of Shingara Singh have been appended as Annexures P-4 to P-6 with the replication. The averments made by respondent No. 5 that Sat Pal was not his brother-in-law has also been controverted and an affidavit by one Jagmohan Singh claiming to be a close relative of Kishan Singh and Sat Pal Singh has been filed as Annexure P-10.

(6) The first and primary question that needs to be dealt with is as to whether the present petition was maintainable in the facts stated or was it necessary for the court to drive the petitioners to their remedy under the Act. Section 13-B of the Act provides that no election to the office of a Sarpanch or Panch shall be called in question except by an election petition presented in accordance with the provisions of Chapter-II.A. Section 13-O enumerates the grounds on which an election can be set aside and sub-section (c) thereof provides for the setting aside of the election if a nomination paper has been improperly rejected. Undoubtedly, therefore, the Act itself provides a machinery for settling an election dispute such as the present one. It has been urged on this basis that the petitioners should be relegated to their remedy under the Act. Our attention has been drawn to the various judgments cited in the written statement.

(7) In reply to the preliminary submissions made by the respondents, the stand of the petitioners is that in the facts and circumstances of the case a blatant irregularity had been committed by the returning officer in rejecting the nomination papers of all the candidates except those belonging to one family and it would be unjust and unfair to relegate the petitioners to an election petition as it would not be an efficacious remedy. It has also been urged that most of the judgments cited by the respondents in the written statement pertained to interference in the elections held to the legislative assemblies and Parliament whereby under Article 329(B) of the Constitution of India a bar has been created circumscribing the scope of the courts in interfering in election disputes. It has been urged on this basis that as far as elections to local bodies and such like institutions are concerned, there being no similar constitutional bar, interference by the High Court under Article 226 can be made in the facts and circumstances of the case. It has also been pointed out that even the Division Bench decision of this Court in *Prem Nath v. The Addl. Deputy Commissioner, Jalandhar and others* (1), relied upon by the respondents wherein the attempt of the petitioner to call in question an

(1) C.W.P. 11604 of 1992 decided on 3rd September, 1992 (P&H).

election to the Municipal Committee was rejected, holding that an appropriate remedy was available to the party by way of an election petition, it had been laid down that in the extraordinary situations the writ jurisdiction could be invoked. In addition, our attention has been drawn to three Division Bench decisions of our High Court reported in *Mange Ram and another v. The State of Haryana and others* (2), *Tarsem Lal v. The State of Punjab and others* (3) and *Ajaib Singh v. Mohinder Singh and another* (4), a single Bench decision of this Court in *Joginder Singh v. The State of Haryana and others* (5) and finally a Full Bench judgment reported as *Jagraj Singh v. State of Punjab and others* (6).

(8) We have considered the arguments of the learned counsel for the parties in the light of the facts and circumstances of the present case. It is true that while Article 329-B of the Constitution debar the interference of the Courts in an election dispute, except by way of an election petition, there is no such embargo in respect of election disputes relating to local bodies such as Municipalities and the like. In this situation, if the courts have declined to interfere it is as a matter of restraint in the exercise of their power and not because it is not available. The very purpose of Article 226 of the Constitution would be frustrated if the court while finding that there had been a gross and blatant misuse of authority justifying interference would yet turn a Nelson's eye and drive the person concerned to his alternative remedy. In *Manga Ram's case* a similar challenge had been repelled in the following words :

“Section 13-B of the Act does create a bar to any election being called in question “except by an election petition” presented in accordance with the provisions of Chapter-IIA of the Act. Whereas that bar excludes the possibility of an election being called in question otherwise than in the manner provided in section 13-B in all other courts. It cannot cut an inroad into the constitutional jurisdiction of this court under Art. 226 of the Constitution. It cannot therefore be held that this court has no jurisdiction to

(2) A.I.R. 1973 (P & H) 142.

(3) 1973 P.L.R. 770.

(4) 1976 P.L.R. 618.

(5) 1986 P.L.J. 501.

(6) 1986 Pb. Legal Reports & Statutes 225.

entertain a petition for questioning an election which could be impugned under section 13-B of the Act. At the same time it appears to be equally clear that this Court would normally be loath to take upon itself the functions of the prescribed authority under the Act to hear election petitions. Each case must depend on its own facts for the purpose of exercise of jurisdiction by this court under Art. 226 of the Constitution."

In *Tarsem Lal's case* (supra) the High Court while declining to interfere in the writ jurisdiction as the petitioner had come to Court belatedly held as under :

"It is now well settled that the mere fact that the normal mode of challenging an election is an election petition, would not oust the jurisdiction of this Court to interfere in a proper case and grant relief in the exercise of its extraordinary jurisdiction notwithstanding the fact the petitioner has not exhausted his normal remedy as provided in rule 52. In this connection reference was made to three Division Bench decisions of this Court in *Debi Ram v. State of Punjab*, 1986 P.L.R. 1135, *Bagirath Singh v. The State of Punjab*, A.I.R. 1965 Punjab 170 and *Nanak Singh and others v. The Deputy Commissioner, Amritsar* (1968) 70 P.L.R. 1095."

As already observed above for arriving at this conclusion the Division Bench had relied on three earlier Division Bench decisions of this Court. In *Ajaib Singh's case* (supra) the Court dismissed the L.P.A. filed against the judgment of the learned single Judge and allowed the writ petition challenging the election to the Panchayat Samities and observed as under :

"Thus, the ratio of the decision of their Lordships in the said case cannot be construed as laying down and invariable rule that in election matters no writ petition under Articles 226 and 227 of the Constitution of India is maintainable challenging a particular election. There can be no dispute with the proposition that normally an election could be challenged through an election petition because generally there are a number of disputed matters of fact in which evidence is called for. However, the law is well settled that where there is no dispute about facts and no evidence is to be led, a writ petition under Articles 226/227

of the Constitution of India may be an appropriate and speedy remedy in the circumstances of a particular case."

To the same effect are the observations in *Joginder Singh's case* (supra). Even the Full Bench in *Jagraj Singh's case* (supra) the Court while declining to interfere in the writ jurisdiction because of the availability of an alternative remedy, observed as under :

"To conclude, it seems to emerge clearly from the aforesaid catena of authorities that particularly in the election field, *the existence of an alternative statutory remedy is virtually a bar to the exercise of the writ jurisdiction without first resorting to the remedy by way of an election petition. It is only in exceptionally extraordinary circumstances that the Court would deviate from the hallowed rule.*

The Division Bench decision in *Prem Nath's case* (supra), which is the latest in point of time, considered the entire matter afresh and observed thus :

"The existence of an alternative remedy by way of election petition under the rules does under Article 226 of the Constitution. There is no dispute with respect to the proposition of law laid down but in view of the later judgment of the Hon'ble Supreme Court, it is only in the extraordinary situation that the writ jurisdiction may be invoked. No such extra-ordinary situation has been pointed out in these writ petitions by the learned counsel for the petitioners to invoke the extra-ordinary jurisdiction under Article 226 of the Constitution and closing the statutory remedy provided by the Legislature, which the legislature thought to be efficacious one."

(9) On a consideration of the judgments quoted above, it is clear that while the remedy for the purpose of challenging the result of the election by way of an election petition under section 13-B of the Act may be available yet in the facts and circumstances of a particular case the High Court could interfere under Article 226 of the Constitution. The mere availability of an alternative remedy is not the solitary test; such a remedy must, in addition, be adequate and efficacious. It bears repetition that there is no constitutional bar to the maintainability of such a writ petition with respect to local bodies such as Municipal Committees, District Boards or Gram Panchayats in the

manner indicated by the Constitution under Article 329(b) with respect to elections held to the State Assemblies or Parliament and, in the absence of such a restraint, the scope of Article 226 is all pervasive and wide enough to reach and remove an injustice suffered. This Court would not, therefore, throw out the writ petition at the very threshold and compound the sense of injury, and injustice inflicted on the petitioners with another one at the hands of the Court by circumscribing artificially the scope of Article 226. The Court in exercising restraint must not clip its wings, though interference should be made, to use the oft repeated words, in the 'rarest of rare' cases. We, therefore, hold that though an alternative remedy by way of an election petition is available to the petitioners yet we find that it is not an efficacious one in the facts and circumstances of the present case which we now proceed to enumerate.

(10) From the facts of as stated at the start of the judgment, it is apparent that the relationship *inter se* between the Sarpanch and the Panches stands proved beyond a shadow of doubt. The State in its reply has not denied this relationship and the reply is that as they were the only validly nominated candidates, their unanimous election was in order. Moreover, as already mentioned earlier, no reasons have been spelt out by respondent Nos. 1 to 4 in their reply (which includes the returning officer respondent No. 4) as to why the nomination papers of as many as 26 candidates had been rejected. In the reply filed by respondent No. 5 an attempt to raise disputed questions of fact has been made, but it has been admitted that Gurmeet Singh and Pritam Kaur were related to him as averred whereas the relationship *qua* Satpal has been denied. This denial has been met by the affidavit of Jagmohan Singh filed along with the replication who claims to be a relative of Kishan Singh and Satpal Singh. Moreover, even assuming that Sat Pal Singh was not related to the other yet it would not really make any difference as the conduct of the returning officer has called into question his integrity and on that basis the entire election. Respondent No. 5 has stated that as far as candidates for the office of Panch was concerned the nomination papers of scheduled caste candidates were rejected as the scheduled caste certificate had not been appended therewith and secondly that in the nomination papers instead of identifying the village as Gram Panchayat Mothanwala only Mothanwala had been mentioned. These reasons, to our mind, are wholly untenable. It is to be noted that out of 22 candidates for the office of Panch there were only 3/4 candidates who were of the scheduled caste category and even assuming that their papers could be validly rejected, this ground was not available *qua* the other candidates. The second ground urged is so absurd that it requires

no comment. As per the reply of respondent No. 5 the nomination paper of Jagroop Singh who was a candidate for the office of Sarpanch was rejected as he had been fined for travelling in the train without a ticket. This averment is also without any basis and a mere assertion to this effect cannot be believed; more so as the said Jagroop Singh was a member of the outgoing Panchayat. The assertion that Form No. IV was not filled necessitating the rejection of the other nomination papers is also without basis respondent No. 5 was not competent to make this reply. The objection that an election petition filed by Jagroop Singh is pending, has no bearing on the result of this case as clearly the petitioners herein have not filed any election petition.

(11) It may be noted that under section 13-B of the Act any member of the Sabha may file an election petition on the various grounds set out in Section 13-O. In other words, any member of the Gram Panchayat is entitled to challenge the election to the office of Sarpanch or Panch, although he may or may not have been a candidate in the election. We are, therefore, of the view that the petitioners who had also contested for the office of Sarpanch were entitled to challenge not only the election to the office of Sarpanch, but also to the office of Panch as well. The relief that could have been given to the petitioners by way of an election petition is, therefore, available to them in the present petition.

(12) It is apparent to us that election to the Gram Panchayat of Mothanwala was a farcical exercise. In the facts as set out above, it would be a travesty of justice if this Court would shut its eyes and relegate the petitioners to the alternative remedy of an election petition under the Act. The action of respondent No. 4, the returning officer, in rejection 26 out of 30 nomination papers on flimsy grounds just to see that the members of one family win the election is nothing but a *mala fide* act which shocks the conscience of the Court and calls for interference.

(13) For the reasons recorded above, the present writ petition is allowed; the election to the Gram Panchayat Mothanwala, Block Gurga Har Sahai, tehsil and district Ferozepur, is set aside and a further direction issued to respondent Nos. 1 to 3 to hold a fresh election to the Gram Panchayat within a period of one month of the receipt of a copy of this judgment. Costs of the petition are determined at Rs. 1,000 to be recovered from respondent No. 4 alone.

S.C.K.