

CIVIL MISCELLANEOUS

Before H. R. Khanna, J.

TIRKHA RAM,—*Petitioner.*

versus

THE PRESCRIBED AUTHORITY UNDER THE GRAM-
PANCHAYAT ACT, AND ANOTHER,—*Respondents.*

Civil Writ No. 1303 of 1964.

1964

August, 31st.

Punjab Gram Panchayat Act (IV of 1953)—S.13-0—Prescribed Authority setting aside election of Sarpanch and ordering fresh election—Order—Whether legal—Election petitioner—Whether entitled to be declared sarpanch on the ground that it had been found that he obtained more votes than the returned candidate,

Held, that the Prescribed Authority acted properly in ordering fresh election and not declaring the election petitioner elected to the office of Sarpanch in the petition filed by him in spite of the fact that the Prescribed Authority found that he had obtained more votes than the returned candidate. Section 13-O (1) of the Punjab Gram Panchayat Act, 1952 (IV of 1952) as amended by Punjab Act No. 26 of 1962, specifies the grounds for setting aside the elections and sub-section (2) thereof provides that when an election has been set aside under sub-section (1), a fresh election shall be held. There is no provision in the Act for declaring an election petitioner elected on setting aside the election of the returned candidate similar to the provisions in sections 98 and 101 of the Representation of the People Act, 1951. 3

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued declaring the petitioner as a successful candidate for the office of Sarpanch of Gram Sabha of Mehrana and further praying that pending the final disposal of this writ petition fresh elections to the Gram Sabha, Mehrana, be ordered to be stayed.

D. D. JAIN, AND P. R. JAIN, ADVOCATES, for the petitioner.

ANAND SWARUP, ADVOCATE, for the Respondent No. 2.

ORDER

KHANNA, J.—Tirkha Ram petitioner seeks by means of this petition under Articles 226 and 227 of the Constitution of India to challenge the order, dated 27th of May, 1964, of the prescribed authority in so far as the authority did not declare the petitioner elected to the office of Sarpanch of Gram Sabha, Mehrana. Prayer has accordingly been made for a writ declaring the petitioner as the successful candidate for the office of Sarpanch of the Sabha.

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Election for the office of Sarpanch of the Gram Sabha, Mehrana, district Karnal, was held on 3rd and 4th of January, 1962 and was contested by the petitioner and Piha Ram, respondent No. 2. The Presiding Officer declared that Piha Ram had secured 212 votes while the petitioner had secured 101 votes. Piha Ram was, accordingly, declared elected. The petitioner then filed an election petition under section 13-C of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. IV of 1953)—hereinafter referred to as the Act. The election of Piha Ram, respondent, was

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challenged on two grounds. It was urged that the aforesaid respondent was a tenant of the Gram Sabha and arrears of rent were due from him, and as such he was not qualified to contest the election of the office of Sarpanch. The second ground, on which the election was assailed, was that the petitioner had secured 212 votes as against 102 votes secured by the respondent. The Ilaqa Magistrate, Panipat, who was the prescribed authority for disposing of the election petition and who has been impleaded as respondent No. 1, found that the petitioner had been able to substantiate both the grounds set up by him. Accordingly, the prescribed authority as per order, dated 27th of May, 1964 set aside the election of Piha Ram, respondent as Sarpanch of the Gram Sabha and ordered that a fresh election be held.

Mr. Jain, on behalf of the petitioner, has argued that once it was found by the prescribed authority that the petitioner had secured 212 votes as against 102 secured by Piha Ram, respondent, the only appropriate order that could be made was to declare the petitioner as elected to the office of Sarpanch and not to order fresh election. He has in this connection referred to sub-section (4) of section 6 of the Act which reads as under:—

“(4) The election shall be by secret ballot and direct vote in the manner prescribed and the prescribed number of candidates securing the highest number of valid votes shall be deemed to have been duly elected.”

Reference has also been made to Full Bench case *Risaldar Major Amar Singh v. Shri R. L. Aggarwal and others* (1) wherein it has been held that when a transaction is to be “deemed” as something else, it loses its original character and though it does not approximate to something else, it partakes of all its characteristics and consequences. As against the above, Mr. Anand Swarup on behalf of respondent No. 2 has contended that in case an election petition under the Act succeeds and the election of the returned candidate is set aside, the effect of that inevitably is that a fresh election must be held.

(1) I.L.R. (1960) 1 Punj. 791=1960 P.L.R. 115.

After giving the matter my consideration I am of the view that the prescribed authority acted properly in not declaring the petitioner elected to the office of Sarpanch in the petition filed by him. The Act in question was amended by Punjab Act No. 26 of 1962 as a result of which Chapter II-A, containing sections 13-A to 13-U dealing with disputes regarding elections, was added. Section 13-O specifies the grounds for setting aside the elections and reads as under:—

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"13-O (1) 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 this 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 in so far as it concerns the elected person, has been materially affected—

(i) by the improper acceptance of any nomination; or

(ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iii) by any non-compliance with the provisions of this Act or of any rules made under this Act;

the prescribed authority shall set aside the election of the elected person.

(2) When an election has been set aside under subsection (1), a fresh election shall be held."

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The petitioner, as stated above, challenged the election of respondent No. 2 on two grounds. The first ground that the respondent was a tenant of the Gram Sabha and was in arrears of rent, was covered by clause (a) of sub-section (1) of the above section. The second ground about the election of respondent No. 2 being in violation of the provisions of sub-section (4) of section 6 of the Act already reproduced earlier, as the petitioner had secured more votes than respondent No. 2, was covered by sub-clause (iii) of clause (d) of sub-section (1) of section 13-O of the Act. The prescribed authority in the circumstances set aside the election of respondent No. 2. The consequence of setting aside the election has been stated in sub-section (2) of section 13-O of the Act in very clear language and it is that a fresh election has to be held. There is no provision in the Act for declaring an election petitioner elected on setting aside the election of the returned candidate. The provisions of the Act in this respect are at variance with those of the Representation of the People Act. Section 98 of the Representation of the People Act, 1951 (43 of 1951) gives a power to an election Tribunal in certain contingencies to declare the election of the returned candidates to be void and the petitioner or any other candidate to be duly elected, and reads as under:—

“At the conclusion of the trial of an election petition the Tribunal shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected;”

Section 101 of the Representation of the People Act specifies the grounds for which a candidate other than the returned candidate may be declared to have been elected and is as under:—

“If any person who has lodged a petition has, in addition to calling in question the election of the

returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the tribunal is of opinion—

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(a) that in fact the petitioner or such other candidate received a majority of the valid votes;
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(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the Tribunal shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."

The fact that the legislature inserted no provision in the Punjab Gram Panchayat Act analogous to section 101, and clause (c) of section 98 of the Representation of the People Act, even though a large number of other provisions were inserted in the Punjab Gram Panchayat Act by amendments made by Punjab Act No. 26 of 1962, in my opinion, clearly goes to show that it was not the intention of the legislature that on the setting aside of the election of the returned candidate another person should be declared to be elected in the election petition. It may be that the above omission is accidental and constitutes a lacuna in the Act or is deliberate and intentional. The Court, however, is concerned with the provisions of the Act as they in fact are and not what they would have been if the provisions of the Act had been similar to those of the Representation of the People Act, and the matter essentially has to be decided in accordance with the provisions as they actually exist on the statute book. In this connection it would be pertinent to keep in view the following dictum laid down by their Lordships of the Supreme Court in *Jagan Nath v. Jaswant Singh and others* (2):—

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely

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statutory proceeding unknown to the common law and that the court possesses no common law power.”

In case *Pala Singh v. Nathi Singh and others* (3) dealing with an election petition filed under section 121 of the Punjab Panchayat Samitis and Zila Parishads Act (3 of 1961), the prescribed authority not only set aside the election of the returned candidate but also declared the election petitioner to be successful. There was, however, no provision in section 121 of the Act for declaring the defeated candidate to be elected. On a writ petition having been filed the order of the prescribed authority was quashed and it was held that under section 121 of the Punjab Panchayat Samitis and Zila Parishads Act, fresh election is the only course open if the election of the returned candidate is set aside, and the defeated candidate cannot be declared elected.

I, would, accordingly, hold that on setting aside the election of respondent No. 2, the petitioner cannot be declared to be elected and that the only result of setting aside the election of respondent No. 2 was to hold a fresh election. The petition, consequently, fails and is dismissed, but, in the circumstances of the case, I make no order as to costs.

B.R.T.