

Before Satish Kumar Mittal & Jaswant Singh, JJ.

SUKHDEV SINGH AND OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 13116 of 2008

12th September, 2008

Constitution of India, 1950—Art. 226—Punjab Panchayati Raj Act, 1994—S. 13-A—Jurisdiction of Election Tribunal—Respondent No. 4 challenging election of Panches—Election Tribunal staying convening of meeting under section 13 for election of Sarpanch—Challenge thereto—Whether Election Tribunal has jurisdiction to stay election of Sarpanch—Held, no—Election Tribunal has no power to pass an injunction or stay order during pendency of election petition—Petition allowed, order of Tribunal set aside.

Held, that the impugned order passed by the Election Tribunal is wholly without jurisdiction. A Division Bench of this Court in **Sham Lal versus State Election Commission, Punjab**, 1997 (1) R.C.R. (Civil) 82, has already decided the issue while holding that no power has been conferred upon the Tribunal to pass an injunction or stay order during the pendency of the election petition. On perusal of the order, dated 16th July, 2008 passed in CWP No. 12039 of 2008, it is clear that this Court had directed the Election Tribunal to decide the application of respondent No. 4 before the final selection of Sarpanch. The direction of the High Court was to decide that application in accordance with law, but the law does not empower the Election Tribunal to pass an order staying the election of Sarpanch during the pendency of the election petition. The impugned order amounts to restraining the elected Panches to elect their Sarpanch in the meeting convened under Section 13-A of the Act, which is not permissible under the scheme of the Act.

(Paras 8 & 9)

S.P.S. Sidhu, Advocate, *for the petitioners.*

N.S. Virk, Addl. A.G., Punjab, *for respondents No. 1 and 2.*

N.S. Shekhawant, Advocate, *for respondent No. 3.*

S.S. Grewal, Advocate, *for respondents No. 4, 6 and 7.*

SATISH KUMAR MITTAL, J.

(1) The sole question for consideration in this writ petition is whether the Election Tribunal has the jurisdiction to stay the election of Sarpanch which is to be held in the meeting convened under Section 13-A of the Punjab Panchayati Raj Act (hereinafter referred to as 'the Act'), during the pendency of the election petition filed for challenging the election of the Panches of the Gram Panchayat.

(2) In the present case, in the Panchayat elections held in the State of Punjab, five members of the Gram Panchayat of village Basti, including the petitioners and respondents No. 6 and 7, were elected. After the election, their election was duly notified by the State Government. Petitioner No. 1 was elected against the seat reserved for General Category, whereas petitioners No. 2 and 3 were elected against the seats reserved for General Women category. Other two persons, namely, Bikramjit Singh and Nachhattar Singh (respondents No. 6 and 7) were also elected as Panches from the categories of Scheduled Caste and General, respectively.

(3) It is the case of the petitioners that one Baljeet Kaur, who has been arrayed as respondent No. 4, had also filed her nomination papers for contesting the election of Panch against the seat reserved for General Category. At the time of election she was given the symbol of Goat and her name was mentioned in General Category. But, she was wrongly declared defeated by showing that she contested the election from the seat reserved for Woman category. After the election, said, Baljeet Kaur filed an election petition before the Election Tribunal. In the said election petition, she filed an application for staying the convening of the meeting under Section 13-A of the Act for the election of Sarpanch. The said application has been allowed by the impugned order staying the election of Sarpanch which was to be held on 22nd July, 2008. The said order of the Election Tribunal has been challenged in this writ petition.

(4) Pursuant to notice, separate written statements have been filed on behalf of respondents No. 1 & 2 and 3.

(5) We have heard the counsel for the parties.

(6) Counsel for the petitioners while relying upon a Division Bench judgment of this Court in **Sham Lal versus State Election Commission, Punjab (1)**, contends that under Sections 73 and 107 of the Punjab State Election Commission Act, 1994, the Election Tribunal has no power to pass any stay order during the pendency of the election petition and only at the time of final adjudication, the Election Tribunal can make appropriate order. Therefore, the Election Tribunal has committed jurisdictional error while passing the impugned order staying the election of Sarpanch which was to be held on 22nd July, 2008,

(7) On the other hand, counsel for the respondents argued that the Election Tribunal has passed the impugned order in view of the direction issued by this court in CWP No. 12039 of 2008 titled as "**Baljit Kaur versus State of Punjab and others**" decided on 16th July, 2008, therefore, there is no illegality in the impugned order.

(8) After hearing the counsel for the parties, we are of the opinion that the impugned order passed by the Election Tribunal is wholly without jurisdiction. A Division Bench of this Court in **Sham Lal's case (supra)** has already decided the issue while holding that no power has been conferred upon the Tribunal to pass an injunction or stay order during the pendency of the election petition, while making the following observations :—

"7. Perusal of the provisions contained in Part IX of the Constitution generally and Article 243-K in particular shows that the Legislature of State has been vested with the power to make laws with respect to all matters relating to or in connection with elections to the Panchayats. With a view to avoid judicial interdiction in the process of election, constitutional bar has been imposed against entertaining of any petition involving challenge to the validity of laws relating to delimitation of constituencies. At the same time it has been made clear that no election to any Panchayat shall be challenged except by way of an election petition presented to an authority which is constituted by or under any law made by the State Legislature. In order to provide a forum for adjudication of election disputes,

(1) 1997 (1) R.C.R. (Civil) 82

comprehensive provisions have been made in chapter XII of 1994 Act. Provisions of that chapter deal with the constitution of Election Tribunal, presentation of election petitions, contents thereof and the relief, trial of election petitions, the procedure to be followed by the Election Tribunal, the manner of recording of evidence, the decision of the Tribunal, the grounds for setting aside the election and appeal etc. It is thus clear that the entire gamut of challenge to the election is regulated by the statutory provisions contained in Sections 73 to 107. None of these provisions confer power upon the Election Tribunal to pass injunction/stay order during the pendency of the election petition. Sections 87 and 88 refer to the nature of orders which can be passed by the Election Tribunal. Section 87 provides that at the conclusion of trial of election petition, the Tribunal may dismiss the election petition or declare 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. In cases where an election petition is filed on the ground of any corrupt practice, the Tribunal is required to make further order whether any corrupt practice has or has not been proved to have been committed and also to indicate the nature of such corrupt practice, the name of persons who have been found guilty of corrupt practice and the costs payable. This shows that only at the time of final adjudication, the Election Tribunal can make appropriate order. But it has no power to pass injunction/stay order. The only provisions under which an order of injunction or stay order can be passed is to be found in Section 101 which authorises the Election Tribunal and the High Court to stay the operation of the order made under Sections 87 or 88 of 1994 Act. The Election Tribunal can *suo motu* stay an order passed by it under Section 87 or 88. Likewise, in an appeal filed under Section 100 against the order of the Election Tribunal, the High Court can stay the operation of the order passed by the Election Tribunal.

- (8) Prohibitive provisions contained in Article 243-O and absence of any provision in Part IX of the Constitution or Chapter XII of 1994 Act except Section 101 empowering the Election Tribunal to pass an injunction stay order in an

election petition gives a clear indication to the legislative intendment, namely not to allow any obstruction in the process of elections or the implementation of the will of the people which is reflected in the result of the elections. If the Legislature had so desired nothing prevented it from conferring statutory power upon the Election Tribunal to grant interim stay or injunction or restraint order during the pendency of the election petition. However, for obvious reasons the legislature did not consider it appropriate to permit an Election Tribunal to obstruct execution of people's will which is manifested in the result of the ballot. We, therefore, hold that the Election Tribunal constituted under 1994 Act has no power to pass any injunction or stay order or any other order which may impede the implementation of the result of elections. We are also of the opinion that once a person has been elected as Panch or Sarpanch, he cannot be prevented from assuming office by taking oath as envisaged in Section 13 and the only mechanism by which an elected Sarpanch or Panch can be divested of his office is final verdict of the Election Tribunal or no confidence motion."

(9) The contention of the counsel for the respondent that the impugned order was passed in terms of the directions issued by this court in CWP No. 12039 of 2008 is not acceptable. On perusal of the order, dated 16th July, 2008, copy of which has been annexed with the petition as Annexure P-6, it is clear that this Court had directed the Election Tribunal to decide the application respondent No. 4 before the final selection of Sarpanch. In our view, the direction of the High Court was to decide that application in accordance with law, but the law does not empower the Election Tribunal to pass an order staying the election of Sarpanch during the pendency of the election petition. In our view, the impugned order amounts to restraining the elected Panches to elect their Sarpanch in the meeting convened under Section 13-A of the Act, which is not permissible under the scheme of the Act.

(10) In view of the above, the petition is allowed and the impugned order dated 21st July, 2008 passed by the Election Tribunal is set aside, and the respondent-authorities are directed to hold the election of Sarpanch of the Gram Panchayat in accordance with law.

R.N.R.

11390/HC ILR—Govt. Press, U.T., Chd.