

Jalpu Ram
and others
v.
The Deputy
Commissioner,
Kulu
and others

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probing the matter again, I am unable to discern any logical or plausible basis for the suggestion. On the other hand, one may well suggest that in view of the general, social and political backwardness of women in our rural areas, the principal sphere for co-opting women Panches is that of social workers, but preference is given to the more politically conscious women who are prepared to seek election. Of course, the democratic criterion for selecting out of such contestants is the number of votes secured by each one of them, but the very fact that women in the rural areas possess sufficient political conscience to come forward to contest an election is also of no mean importance in the present stage of our rural society; and this, according to the legislative design, may well seem to require to be taken into account. Without, however, pursuing this line of investigation, in my view, when the language of the second proviso talks only of women contesting the election, then there is no reason for adding to it the words "and securing one or more votes".

For the foregoing reasons, this petition succeeds and allowing the same, I set aside the impugned order and direct that Shrimati Chuneswari Gaur be co-opted as a member of the Panchayat Samiti, Naggar, in accordance with section 5(2)(cc)(i) second proviso and set aside the co-option of respondents Nos. 3 and 4. It would of course be open to the authorities concerned to co-opt one more woman social worker amongst women and children in accordance with section 5(2)(cc) first proviso. In the peculiar circumstances of the case, there would be no order as to costs of these proceedings.

Narula, J.

R. S. NARULA, J.—I agree.
B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

MANGA AND OTHERS,—*Petitioners*

versus

SOHLU AND OTHERS,—*Respondents*

Civil Writ No. 2509 of 1964.

1965

May, 13th.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Ss. 6(5), 13-O and 102—Punjab Gram Panchayat Election Rules (1960)—Rule 2(d) and 21—One Panch not qualified to get elected as one of the Panches—Election petition challenging his election—Whether the entire election of all the Panches to be set aside—Election of Panches—Whether one election—Elections not to be lightly set aside—Duty of authorities trying election petition stressed.

Held, that a bare reading of the provisions of sections 13-O and 102 of the Punjab Gram Panchayat Act and Rules 2(d) and 21 of the Punjab Gram Panchayat Election Rules, 1960, clearly shows that it is the election of a Panch or Sarpanch which is treated as the subject-matter of an election petition presented in accordance with the provisions of Chapter II-A of the Gram Panchayat Act. The Prescribed Authority also is empowered to set aside the election of the elected person who, on the date of his election, has been found not to be qualified to be elected under the Act. The election of all the Panches is not one election and so if the election of one panch is set aside on the ground that he was not qualified to seek election, the election of other panches cannot be set aside.

Held, that in the case of section 13-O(1), the prescribed authority has merely to set aside the election of the elected person who was not qualified to be elected under the Act; and unless the statutory intentment clearly and indisputably demands the setting aside of the election of some other duly elected candidate, whose election is not vitiated by any infirmity, it would be illegal usurpation of power on its part to do so. The election of other panches can be set aside only if the prescribed authority comes to a finding according to law that the result of their election had been materially affected by the improper acceptance of the nomination papers of the person who was not qualified to seek election, so as to bring it within the purview of section 13-O(1)(d)(i) of the Punjab Gram Panchayat Act.

Held, that election is an expensive affair both from the point of view of the State and of the electors : the elected candidates are a little more vitally interested in that they claim a somewhat closer personal interest in the sustence of the election. The election of such duly elected candidates who are qualified and whose election is not vitiated by any legal infirmity must not be lightly set aside on grounds which are not sustainable in law.

Held, that the authorities or Tribunals trying election petitions are expected to deal with such petitions with a sense of responsibility and are enjoined to strike a proper balance between the two rival aspects, namely, that of keeping the elections free from illegalities and corrupt practices, and of not too lightly or too readily setting aside the election on legally inadequate and insufficient grounds merely because in their opinion it would secure the return of more suitable candidates if elections are held afresh or merely because no serious harm would be done to anybody by adopting this course. A duly elected person is entitled to remain in office and discharge his duties and functions as an honoured representative of his electors and the electors are also entitled to expect that having properly and legally elected their representatives, this choice should not be undone except on strictly legal grounds.

Case referred by the Hon'ble Mr. Justice I. D. Dua on 19th March, 1965, to a large Bench for decision of an important question of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice I. D. Dua and the Hon'ble Mr. Justice R. S. Narula, on 13th May, 1965.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the order of the Prescribed Authority, dated 18th September, 1964.

RAJINDER SACHER, AND RAJINDER KUMAR CHHIBBER, ADVOCATES,
for the Petitioners.

ANAND SARUP, ADVOCATE, AND J. N. KAUSHAL, ADVOCATE-GENERAL,
for the Respondents.

ORDER OF THE D. B.

The following judgment of the Court was delivered by—

Dua, J.

DUA, J.—This petition under Articles 226 and 227 of the Constitution has been placed before us in pursuance of my order of reference dated 19th March, 1965.

The controversy has arisen out of an election of the members of the Executive Committee, i.e., Panches of the Gram Sabha of village Kurlan held on 4th January, 1964, in which Zila Singh, Manga, sons of Neki, Manga, son of Devtia, Ranjit and Chatra were declared elected. One Sohlu, son of Pahlade, thereupon filed an election petition challenging the election of Zila Singh who according to the election petitioner, had been born on 1st November, 1941, with the result that on the date of the election, he was 22 years and a few months old. Being less than 25 years of age, he was not qualified to be elected under the Punjab Gram Panchayat Act (hereinafter described as the Act). Reference was made in the petition to section 6(5) (a) of the Act and Article 173 of the Constitution. The Prescribed Authority (Illaqa Magistrate) on 18th September, 1964 came to the conclusion that Zila Singh was less than 25 years of age on 3rd January, 1964, the date for filing of nomination papers and was, therefore, not qualified to contest the election of the office of Panch in accordance with section 6(5)(a) of the Act read with Article 173

of the Constitution. After so holding, the learned prescribed authority proceeded to set aside the election of all the returned candidates in the following words :—

“In view of issue No. 1 having been decided in favour of Sohlu petitioner, there are sufficient grounds to set aside the election of Zila Singh, etc., respondents as Panches of the Gram Sabha, Kurlan, and I order accordingly.”

In the present proceedings initiated by Manga, son of Devita, Ranitt, son of Marhma and Chatra, son of Panshi, the challenge is directed against this order on the ground that under the law it was only Zila Singh's election which could be set aside and the prescribed authority had no jurisdiction to set aside the election of the other returned Panches. In the application for the necessary writ or directions in this Court, it has been averred in paragraph 11 that the order of the prescribed authority itself showed that it was only concerned with the matter about the disqualification of respondent Zila Singh. The concluding portion of the order, therefore, is not consistent with the judgment, nor is it supported by the evidence and the pleadings of the case. In paragraph 12, the plea has been elaborated by urging that every Panch has his own qualification and disqualification and the disqualification of one of the Panches cannot and does not in law invalidate the election of the other Panches. In the return filed by the Illaqa Magistrate, reply to these two paragraphs is given in the following words:—

“No doubt the election of the Panches other than Zila Singh was not challenged by Sohlu, yet their election was inter-linked with that of Zila Singh. The order dated 18th September, 1964, setting aside the election of the petitioners is, therefore, fully justified.”

It has also been pleaded in this return that Zila Singh having been wrongly allowed to contest, this fact materially affected the entire election in respect of the Panches of the Gram Sabha. The written statement filed by Zila Singh, however, contains the plea that the whole election of the Panches of village Kurlan was challenged by the

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election petition and, therefore, the order of the prescribed authority is just and legal. It has also been averred in this written statement that the constituency for electing all the Panches being one and the election being by way of a single non-transferable vote, it is impossible to ascertain as to who would have been the returned candidates in case one of the five elected candidates was not in the field. In the present case, therefore, the finding that the answering respondent was not qualified to contest for the office of a Panch, the only course open to the prescribed authority was to set aside the whole election and order a fresh election, the election of Panches to a Gram Panchayat being one and indivisible. The entire election must stand or fall as a whole.

The short question, therefore, is if under the law setting aside the election of Zila Singh on the ground that he was less than 25 years of age it must necessarily entail setting aside of the entire election. Section 6(5)(a) of the Act lays down that no person who is not a member of the Sabha and who is not qualified to be elected as a member of the Legislative Assembly shall not be entitled to stand for election as or continue to be a Sarpanch or Panch. According to Article 173 of the Constitution, a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless he is not less than 25 years of age. According to section 13-B, no election 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 of the Act. According to Section 13-C(1), a member of the Sabha on furnishing the prescribed security in the prescribed manner 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. Section 13-D (1) provides for the contents of an election petition. Section 13-O contains grounds for setting aside an election. We are here concerned with sub-section (1) clauses (a) and (d) (i) which may here be reproduced :—

“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 the result of the election in so far as it concerns the elected person, has been materially affected :—

(i) by improper acceptance of any nomination.

* * * * *

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

Rule 2(d) of the Gram Panchayat Election Rules, 1960 (hereinafter described as the Rules) defines election to mean the election of a Panch other than the Panch of an Adalti Panchayat or the election of the Chairman of the Sabha and Rule 21 tells us that the election is to be by means of non-transferable votes. Section 102 of the Act provides for the suspension and removal of Panches, etc., Sub-section (2) empowers the Government after such enquiry as it may deem fit to remove any Panch, *inter alia*, on any of the grounds mentioned in section 6(5). A bare reading of these provisions clearly suggests that it is the election of a Panch or Sarpanch which is treated as the subject-matter of an election petition presented in accordance with the provisions of Chapter II-A, of the Act. The prescribed authority also is empowered to set aside the election of the elected person, who on the date of his election has been found not to be qualified to be elected under the Act. In order to justify the setting aside of the election of the Panches other than Zila Singh, the prescribed authority had in the present case to come to a finding according to law that the result of their election had been materially affected by the improper acceptance of the nomination papers of Zila Singh so as to bring it within the purview of section 13-O(1)(d)(i). Now this was neither the case put in the election by Sohlu nor was this case tried during the trial of the election petition, nor was there any finding to this effect given by the prescribed authority. On the language of the statute and the rules, therefore, the impugned order is clearly tainted with a serious legal infirmity and deserves to be set aside.

On behalf of the respondents, however, it has been very strongly urged that the election of all the Panches in question was from one constituency and each elector was given one ballot paper, with the result that the entire

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election should be considered to be one election and, therefore, if the election of one of the candidates is set aside, it would automatically entail the setting aside of the election of all. Support for this submission has been sought by analogy from a Supreme Court decision in *Surendra Nath Khosla, v. S. Dalip Singh* (1), made to the following passage :—

“Lastly it was urged that assuming that the Tribunal was justified in declaring the election to be void so far as the general seat was concerned, there was no reason to set aside the election as a whole and that, therefore, the election of the second appellant should not have been set aside. But section 100 in terms provides that if the Tribunal was of the opinion, as it was in this case, that the result of the election had been materially affected by the improper rejection of the nomination paper, “the tribunal shall declare the election to be wholly void”. The election in this case was in respect of a double seat constituency and was one integral whole, if it had to be declared void, the Tribunal was justified in setting aside the election as a whole.”

After considering the arguments and going through the various provisions of the Act and the rules, I have not the least doubt that the impugned order is liable to be quashed and the support sought from the decision in the case of *Surendra Nath Khosla*, is not available to the respondent in the present case. In the reported case, the election had taken place in February, 1954 and the provision of law which fell for construction was section 100 of the Representation of the People Act, 1951, as it stood before the amendment by Act, 27 of 1956. Section 100, as it then stood and which was construed by the Supreme Court in the above case may here, so far as relevant for our purpose, be read:—

“100. Grounds for declaring election to be void.—(1)

If the Tribunal is of opinion—

(a) * * * * * ; or

(b) * * * * * ;or

(1) A.I.R. 1957 S.C. 242.

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void.

* * * * *

It is clear that this provision of law imposed an obligation on the Tribunal to declare an election to be wholly void if it formed the opinion that the result of the election had been materially affected by the improper acceptance or rejection of any nomination. A plain look at this provision and the provisions of section 13-o (1) (a) and (d) (i) of the Act brings out the marked difference between the language used in the two provisions of law. In the case of section 13-o (1), the prescribed authority has merely to set aside the election of the elected person, who was not qualified to be elected under the Act and unless the statutory intendment clearly and indisputably demands the setting aside of the election of some other duly elected candidate, whose election is not vitiated by any infirmity, it would be illegal usurpation of power on its part to do so. The ratio of the Supreme Court decision is accordingly of no assistance to the respondents. I may here emphasise that election is an expensive affair both from the point of view of the State and of the electors: the elected candidates are a little more vitally interested, in that they claim a some what closer personal interest in the sustenance of the election. The election of such duly elected candidates, who are qualified and whose election is not vitiated by any legal infirmity must not be lightly set aside on grounds which are not sustainable in law. The importance of this aspect cannot be too strongly impressed on the officers appointed as prescribed authorities under the Act and if our democratic set-up is to inspire the confidence of the people as a system, which is both firm, efficient and workable, the prescribed authorities must be properly instructed on the responsible nature of their duty in this regard. They should be well-informed on the basic purpose these elections are intended to serve and properly educated in the law they are called upon to apply: they are expected to deal with the election petitions with a sense of responsibility and are enjoined to strike a proper balance between the two rival aspects, namely, that of keeping the elections free from illegalities

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and corrupt practices, and of not too lightly or too readily setting aside the election on legally inadequate and insufficient grounds merely because in their opinion it would secure the return of more suitable candidates if elections are held afresh or merely because no serious harm would be done to anybody by adopting this course. A duly elected person is entitled to remain in office and discharge his duties and functions as an honoured representative of his electors and the electors are also entitled to expect that having properly and legally elected their representatives, this choice should not be undone except on strictly legally grounds. This aspect requires to be properly recognised in all quarters concerned and it is hoped that adequate steps would be taken to properly educate and inform those, who are entrusted with the responsible duty of trying election petitions.

On the view that I have taken, it is unnecessary to refer in detail to some other decisions cited at the bar: I may merely note them, in fairness to the counsel:—

Vashist Narain Sharma, v. Dev Chandra, etc., (2) *Buta Singh v. Itbar Singh*, Civil Writ No. 34 of 1954 decided on 24th November, 1954 (3), *Milka Singh v. Hardial Singh*, Civil Writ No. 149 of 1965, decided on 3rd March, 1965 (4) *Hari Ram v. Hans Raj*, Civil Writ No. 902 of 1964, decided on 20th November, 1964 (5) and *Hukam Singh v. Ram Narain Singh*, L.P.A. No. 29-A of 1965 decided by Dulat and Mahajan, JJ., on 20th April, 1965.

As a result of the foregoing discussion, this petition succeeds and allowing the same, we quash and set aside the impugned order in so far as it sets aside the election of the successful candidates other than Zila Singh.

The net result, therefore, is that the election of the candidates other than Zila Singh, must be held to be good. In the peculiar circumstances of the case, there would be no order as to costs of these proceedings.

R.S.

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- (2) A.I.R. 1954 S.C. 513.
 - (3) A.I.R. 1955 N.U.C. (Pb.) 4927.
 - (4) 1965 P.L.R. Short Note No. 49.
 - (5) 1965 P.L.R. Short Note No. 16.