

## CIVIL MISCELLANEOUS

*Before R. S. Narula and S. S. Sandhawalia JJ.*

HAZURA SINGH,—*Petitioner*

*versus*

THE ILAQA MAGISTRATE 1ST CLASS (JUDICIAL) POLICE STATION,  
SHAHABAD AND ANOTHER,—*Respondents.*

**Civil Writ No. 2349 of 1964.**

August 19, 1968

*Punjab Gram Panchayat Act, 1952 (IV of 1953 as amended by Act XXVI of 1962)—S. 13-B and 13-O—Constitution of India (1950)—Article 226—Election of a Gram Panchayat set aside by Prescribed Authority on election petition—Order of the prescribed Authority challenged in High Court by way of writ petition—Petition admitted but fresh election not stayed—Fresh election held—Writ petition—Where becomes infructuous—High Court—Whether should grant any relief in such petition.*

*Held*, that an election to a Gram Panchayat cannot be set aside except by way of an election petition provided under section 13-B of Punjab Gram Panchayat Act and grounds of challenge for the same are circumscribed by the provisions of section 13-O of the Act. If on an election petition the Prescribed Authority sets aside the election against which a writ petition under Article 226, Constitution of India is admitted in the High Court but no stay of fresh election is granted, the fresh election held consequently, if not challenged by way of another election petition or writ petition in the High Court, achieves finality and cannot be disturbed by the grant of the previous writ petition. The petition, therefore, becomes infructuous. The decision on merits of the petition is wholly academic and incapable of affording any relief to the petitioner.

(Paras 6, 9 and 14)

*Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 3rd January, 1967 to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice S. S. Sandhawalia on 19th August, 1968.*

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari or any other appropriate writ, order or direction*

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*be issued quashing the order of Judicial Magistrate 1st Class, Karnal, dated 9th October, 1964.*

BAHADUR SINGH, ADVOCATE, for the Petitioner.

H. L. SARIN, SENIOR ADVOCATE, AND B. S. MALIK, ADVOCATE, for the Respondents.

#### JUDGMENT

SANDHAWALIA, J.—Hazura Singh petitioner in this petition under Articles 226 and 227 of the Constitution of India has prayed for the quashing of the order of the Prescribed Authority Shri G. S. Aggarwal, P.C.S., Magistrate, 1st Class, Karnal, dated the 9th of October, 1964; whereby the election of the petitioner to the post of a Sarpanch has been set aside. The petitioner and respondent No. 2, Sawan Singh, had contested an election for the post of the Sarpanch of the Gram Sabha Kalayana, tehsil Thanesar, district Karnal. The petitioner was declared elected by a margin of one vote. Respondent No. 2 then filed an election petition challenging the election of the petitioner and by the impugned order the same was accepted and the election of the present petitioner was set aside. Aggrieved by the said order the petitioner preferred the present petition in this Court and along with that he had also prayed that the re-election which had been ordered for the 2nd of November, 1964, by the Deputy Commissioner, Karnal, should be stayed. The present petition and the petition for stay came up before the admitting Bench consisting of A. N. Grover, and Dua, JJ., and by their order dated the 30th of October, 1964, the petition was admitted but the prayer for stay of the election fixed for the 2nd of November, 1964, was expressly refused. The re-election on the 2nd of November, 1964, was then duly held and the petitioner and respondent both contested the same. In the said election the petitioner was defeated and respondent No. 2 was declared elected by a majority of 43 votes. In the reply to the present petition on behalf of respondent No. 2 filed on the 2nd of December, 1966, two preliminary objections have been raised on his behalf—the first being that the petition has become infructuous as a fresh election has taken place and this election cannot be set aside except by way of an election petition as laid down in section 13(b) of the Punjab Gram Panchayat Act. The second objection is that the petitioner having

willingly participated in the fresh election is now estopped from pressing this petition. When the petition came up before a learned Single Judge on the 3rd of January, 1967, these two preliminary objections were strenuously pressed before him. In view of the fact that similar question is likely to arise in numerous other petitions and because of the obvious importance of the decision in the election matter, the learned Single Judge has referred the petition to a Division Bench and that is how the matter is before us.

(2) Mr. H. L. Sarin, the learned counsel for respondent No. 2 has not pressed the second objection which he had raised before the learned Single Judge, namely, that the fact of the petitioner having participated in the subsequent election operates as an estoppel and debars him from questioning the order made by the Prescribed Authority. He has, however, strenuously contended that the petition has now become infructuous. Mainly the reliance has been placed on the provisions of section 13-B of the Punjab Gram Panchayat Act, 1952, hereinafter called as the Act which is in the following terms:—

“No election of a Sarpanch or Panch shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.”

(3) The contention of the learned counsel, therefore, is that a fresh election having already taken place it cannot now be set aside except in conformity with the provisions of section 13-B, i.e., by way of an election petition. Admittedly no election petition has been filed against the result declared after the fresh election. Mr. Sarin further contends that the second election has also not been challenged in this Court under Articles 226 and 227 of the Constitution of India and has thus now become final. He submits that even if a writ of *certiorari* is to be granted it would be meaningless and would not afford any relief whatsoever to the petitioner. That being so he submits that this Court has always declined to decide issues which are wholly academic and from which no relief could possibly flow to the litigants. Mr. Sarin has, however, not cited any authority or decision in support of his above contention and has argued wholly on principle and based himself on the provisions of the statute.

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(4) Mr. Bahadur Singh, the learned counsel for the petitioner in reply has contended himself by basing his case mainly on the hardship that would be caused to the petitioner if the preliminary objection preferred is allowed to succeed. His contention is that it would be a matter of manifest injustice that the impugned order of the Prescribed Authority should become unchallengeable merely because the admitting Bench was pleased to decline the interim relief praying for the staying of the fresh election. Mr. Bahadur Singh also has been unable to support his contention by any authority and as noticed above either side has frankly conceded that there is no direct decided case on the point.

(5) We have given careful consideration to the point in issue. It may be noticed that the Punjab Gram Panchayat Act, 1952, was amended by the Punjab Gram Panchayat Amendment Act, 1962, being Punjab Act No. 26 of 1962. By the said amendment Chapter 2-A containing sections 13-A to 13-U were placed on the statute. These provisions pertain to disputes regarding elections as is apparent from the heading of the Chapter. Section 13-A is the defining section whilst the provisions of section 13-B have already been noticed. Sections 13-C to 13-N are primarily procedural, prescribing the mode of the presentation of the election petitions, the contents thereof, the authority which is to receive the same, the power to withdraw and transfer petitions vested in the Deputy Commissioner and the procedure to be followed before the Prescribed Authority. The mode of appearance before the Prescribed Authority and the powers of the Prescribed Authority, as well as the procedure for the proceedings to be conducted by the same are laid out in the said provisions. Section 13-O is material and is in the following terms:—

*“Grounds for setting aside elections : (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 sub-section (1) a fresh election shall be held.”

(6) It, therefore, emerges from the provisions of the statute that firstly an election to the Gram Panchayat is not to be set aside except by way of an election petition provided for under section 13-B. Consequently the grounds of challenge for the same are circumscribed by the provisions of section 13-O quoted above and lastly section 13-C provides that the petition must be presented on one or more of the grounds specified in sub-section (1) of section 13-O to the Prescribed Authority.

(7) It is noticeable that the provisions of Chapter 2-A introduced by the amending Act, 1962 are similar to and in many cases in *pari materia* with the provisions of Chapter 2 in part 6 of the Representation of People Act, 1951. Section 80 of the Representation of People Act, 1951, is as follows:—

“*Election Petitions* : No election shall be called in question except by an election petition presented in accordance with the provisions of this part.”

(8) It is thus clear that the provisions of section 80 of the Representation of People Act are identical in terms with that of section 13-B of the Punjab Gram Panchayat Act, 1952. The relevant provisions of the Representation of People Act, 1951 and the almost identical provisions of Article 329(b) were authoritatively interpreted by the Supreme Court in *N. P. Ponnuswami v. The Returning Officer, Namakkal* (1), and it was observed as follows:—

“The law of elections in India does not contemplate that there should be two attacks on matters connected with

(1) A.I.R. 1952 S.C. 64.

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election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court.

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It will be a fair inference from the provisions of the Representation of the People Act to draw that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

(9) In a Division Bench judgment of the Rajasthan High Court reported as *Birma Ram v. The State of Rajasthan and others* (2), it has also been observed as follows:—

"The view is firmly established in this Court that where an election petition lies, this Court will never interfere until the election tribunal has decided the dispute between the parties concerned."

On the facts of this case, it emerges that the results of the fresh election which have not been challenged either by way of an election petition under section 13-B of the Act or by a petition under Articles 226 and 227 have now achieved a finality which cannot be disturbed by the grant of this writ petition and by quashing the impugned order herein.

(10) The matter may also be viewed from another angle. Section 13-O, sub-clause (2), expressly provides that where an election has been set aside under the provisions of the section, a fresh election shall be held. This is obviously a mandatory pro-

vision. When the election of the present petitioner was set aside by way of election petition, the authority acting under the mandate of section 13-O, sub-clause (2) ordered a fresh election and fixed 1st November, 1964 for filing of nomination papers, scrutiny, etc., and November 2, 1964, for polling in the fresh election to be so held. This was sought to be stayed in Civil Miscellaneous No. 3775 of 1964, dated the 27th October, 1964, by the petitioner by way of interim relief at the time of the admission of the present petition. As has already been noticed this Civil Miscellaneous was rejected by the admitting Bench consisting of A. N. Grover and I. D. Dua, JJ., and vide their order, dated the 30th of October, 1964, stay was expressly declined and the following order was passed:—

“Mr. Bahadur Singh.

Notice. No stay. Early date.”

(11) That being so the election held after due publication of the election programme on the 2nd of November, 1964 was wholly in accordance with the law and its validity is not now being impeached in the present petition. Therefore even assuming for the sake of argument that the writ petition were to be allowed and a writ of *certiorari* as prayed were to issue, no relief would be afforded to the petitioner as the result of the fresh election will continue to be of absolute validity. In *M. N. Guruswamy v. The State of Mysore and others* (3), their Lordships of the Supreme Court even when inclined to uphold the contentions of the appellant have observed as follows:—

“A writ would, therefore, be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law.”

(12) In the matter under the U. P. Municipality Act a Full Bench of the Allahabad High Court in *Mahesh Chandra and another v. Tara Chand Modi* (4), has also observed as follows:—

“The election of the President and the Vice-Presidents will take place shortly. Therefore, it would be futile to issue any of the writs prayed for by the petitioners. It

(3) A.I.R. 1954 S.C. 592.

(4) A.I.R. 1958 All. 374.

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is well-established principle on which Courts have acted that the issue of a writ being within the discretion of a Court, the Court would rarely issue a writ if the issue of such a writ was to be futile. As I have said, in this case it would be futile."

(13) With these observations, the learned Judges of the Full Bench then proceeded to dismiss the petition.

(14) We are, therefore, of the view that the decision on merits in this writ petition would on the present facts be wholly academic and is incapable of affording any relief to the present petitioner. Upholding the preliminary objection raised on behalf of the respondent, and finding the present petition to be infructuous we would, therefore, dismiss the same. In the circumstances of the case, there will be no order as to costs.

R. S. NARULA, J.—I agree.

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K.S.K.

CIVIL MISCELLANEOUS

*Before Mehar Singh, C.J. and Bal Raj Tuli, J.*

CH. BISHAN DASS AND OTHERS,—*Petitioners*

*versus*

THE GOVERNOR OF THE PUNJAB AND OTHERS,—*Respondents*

**Civil Writ No. 2146 of 1968.**

August 20, 1968

*Punjab Co-operative Societies (Amendment) Ordinance (2 of 1968)—Whether colourable piece of legislation and beyond the competence of State legislature—“Colourable Legislation”—High Court’s power to determine and principles for such determination stated—S. 26(3-A) inserted by Ordinance—Whether valid—“Co-operate, “Co-operation” and “Co-operative”—Meaning of.*