

REVISIONAL CIVIL

Before R. S. Narula, Chief Justice.

KUNDAN SINGH,—Petitioner.

versus

THE EXECUTIVE MAGISTRATE 1ST CLASS, BARNALA, ETC.,—
Respondents.

Civil Revision No. 1001 of 1972

July 3, 1975.

The Punjab Gram Panchayat Act (IV of 1952)—Sections 13-G (1) and 13-I—Constitution of India 1950—Article 227—Trial of an election petition—Election Tribunal—Whether can issue temporary injunction to restrain the returned candidate from functioning—Order without jurisdiction—Whether can be annuled under Article 227.

Held, that the Code of Civil Procedure contain several types of provisions including those relating to the procedure for the trial of civil suits and those governing ancillary matters such as grant of temporary injunction etc. The operation of sub-section (1) of section 13-G of the Punjab Gram Panchayat Act 1952 is confined to the procedure applicable for the trial of a suit and not to any ancillary matter which does not directly relate to such procedure. Moreover, while defining the powers of the prescribed authority, section 13-I of the Act has scrupulously avoided to refer to order 39 of the Code of Civil Procedure. An Election Tribunal is a specially constituted court of limited jurisdiction and has no authority to pass any order outside those limits. In the absence of any specific provision to the contrary, an Election Tribunal has no inherent jurisdiction like that vested in an ordinary civil court and therefore it would outstep the limits of its jurisdiction, if it grants an application for temporary injunction as no law vests such a jurisdiction in it. Thus an Election Tribunal cannot issue a temporary injunction to restrain the returned candidate from functioning.

(Para 3).

Held, that a High Court under Article 227 of the Constitution of India 1950, has power to set aside or annul any order passed by any judicial tribunal functioning within its jurisdiction if the order is without jurisdiction.

(Para 6).

Petition under Articles 227 of the Constitution of India praying that impugned order dated 23rd August, 1972 be set aside and the revision petition be accepted, and further praying that the operation of the impugned order be stayed till the decision of this petition by this Hon'ble Court.

B. S. Shant, Advocate, for the Pettitioner.

I. S. Vimal, Advocate for Advocate General, Punjab, for Respondent No. 1.

Narula, C.J.—(1) The circumstances in which an order of a somewhat extraordinary nature was passed by Shri M. S. Kailay, P.C.S., Executive Magistrate, Ist Class, Barnala on August, 23, 1972 (in the course of trial of the election petition) which has been impugned by the returned candidate in this petition under Article 227 of the Constitution, are as under :—

Kundan Singh, petitioner was elected as the Sarpanch of the Gram Panchayat, Kutba. His election was called in question by Joginder Singh respondent No. 2 by means of an election petition filed by him on July 27, 1972. The election petition was being tried by the Executive Magistrate. The election petitioner filed an application before the Executive Magistrate for the grant of a temporary injunction restraining the returned candidate from functioning as Sarpanch during the pendency of the election petition. The returned candidate objected to the grant of the application on the merits as well as on the ground that the Election Tribunal had no jurisdiction to entertain or allow such an application. Both the objections of the returned candidate were turned down, the application was allowed by the impugned order and the returned candidate was restrained from taking charge of the office of Sarpanch.

(2) At the time of admitting this petition no order was passed by this Court staying further proceedings before the Election Tribunal. Notwithstanding the care taken by this Court in declining to stay the proceedings, the Election Tribunal does not appear to have disposed of the election petition so far.

(3) Two contentions have been raised by Mr. Shant in support of his client's claim for setting aside the impugned order, namely (1) that the Election Tribunal had no jurisdiction to issue a temporary injunction in the course of the trial of the election petition, and (2) that even if he had such jurisdiction, the order passed by him is perverse and is liable to be set aside on that ground. In the view that I am taking of the first point, it is not necessary to go into the second one. Section 13-G of the Punjab Gram Panchayat Act, 1952 (hereinafter called 'the Act'), which admittedly governs the trial of the election petitions, provides as below :—

“13(G). (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the prescribed authority, as nearly as may be,

Kundan Singh v. The Executive Magistrate 1st Class, Barnala etc.
(R. S. Narula, C. J.)

in accordance with the procedure applicable under the Code of Civil Procedure, (5 of 1908), to the trial of suits :

Provided that the prescribed authority shall have the discretion to refuse for reasons to be recorded in writing to examine any witness or witnesses if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

“(2) The provisions of the Indian Evidence Act, 1972 (I of 1872) shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

Section 13-I of the Act refers to the powers of the prescribed authority in the following terms :—

“13-I. The prescribed authority shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters :—

- (a) discovery and inspections ;
- (b) enforcing the attendance of witnesses and requiring the deposit of their expenses ;
- (c) compelling the production of documents ;
- (d) examining witnesses on oath ;
- (e) granting adjournments ;
- (f) reception of evidence taken on affidavit ; and
- (g) issuing commissions for the examination of witnesses; and may summon and examine *suo moto* any person whose evidence appears to it to be material; and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

Explanation.—For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the prescribed authority shall be the limits of the State of Punjab.”

What the prescribed authority has held in the instant case is that since section 13-G of the Act vests in him the power to try an election petition “in accordance with the procedure applicable under the Code of Civil Procedure”, it is clear that the provisions of the Code of Civil Procedure including those contained in Order 39, rules 1 and 2, are applicable to the trial of an election petition in the same manner as they are applicable to trial of a civil suit. The Code of Civil Procedure contains several types of provisions including those relating to the procedure for the trial of civil suits and those governing ancillary matters such as grant of temporary injunction etc. The operation of sub-section (1) of section 13-G is confined to the procedure applicable for the trial of a suit and not to any ancillary matter which does not directly relate to such procedure. Moreover, while defining the powers of the prescribed authority, section 13-I of the Act has scrupulously avoided to refer to Order 39 of the Code of Civil Procedure. An Election Tribunal is a specially constituted Court of limited jurisdiction and has no authority to pass any order outside those limits. In the absence of any specific provision to the contrary, an Election Tribunal has no inherent jurisdiction like that vested in an ordinary civil Court. The first respondent (the prescribed authority) appears to me to have outstepped the limits of his jurisdiction in granting the application for temporary injunction as no law has vested such a jurisdiction in him. The distinction between “procedure” on the one hand, and “power, jurisdiction or authority” on the other has been succinctly brought out by a Division Bench of the Allahabad High Court in *Rameshwar Dayal v. Sub-Divisional Officer, Chatampur*, (1). The judgment of the Allahabad High Court in *Rameshwar Dayal's case* appears to me to be on all fours with the present one. It was held in that case that there being no provision in the U.P. Panchayat Raj Act conferring the powers to grant an injunction on the Sub-Divisional Magistrate, he could not exercise such a power. I am in full agreement with the view taken by the learned Judges of

(1) I.L.R. (1961) 2 All. 298 (Corresponding to A.I.R. 1963 All 518).

Kundan Singh v. The Executive Magistrate 1st Class, Barnala etc.
(R. S. Narula, C. J.)

that Court in *Rameshwar Dayal's case*. No power to grant an injunction having been conferred on the prescribed authority by any law, the impugned order passed by him is, in the above circumstances, wholly without jurisdiction and accordingly, accepting the petition, I set aside the same.

(4) Mr. Shant has referred to paragraph 16 of the petition in order to show that the impugned order is arbitrary, discriminatory and perverse. Paragraph 16 of the petition reads as below :—

“16. That the Prescribed Authority has acted in contradictions in the grant of *ad interim* relief in various election petitions. It is mentioned for the purpose of record that in Election Petition No. 9/Misc. of 11th July, 1972, decided on 17th July, 1972, re: *Piara Singh v. Sher Singh* the same Prescribed Authority has held, *vide* its order dated 17th July, 1972, that it has no jurisdiction to grant any *ad interim relief* and also that there is no provision under the Gram Panchayat Act to grant such a relief. In another Election Petition No. 8/Misc. of 10th July, 1972 decided on 17th July, 1972, re: *Bhagwan Singh v. Pritam Singh*, the same authority has passed a similar order on the same date.”

He has also offered to produce certified copies of the orders referred to in the above-quoted paragraph, which he claims to be holding with him.

(5) Though respondent No. 1, the prescribed authority, has chosen to contest the petition and has engaged a counsel, he has not filed any reply denying the allegations made in paragraph 16. The contents of that paragraph have, therefore, to be presumed to be correct. Mr. Vimal, learned counsel for this respondent has resisted this petition on two grounds. He firstly urged that the petition should not be entertained as it is not accompanied by a copy of the impugned order which is sought to be quashed. I, however, find that a certified copy of the impugned order is attached to the petition. He then submits that it has not been made an annexure to the petition and may have been filed subsequently. From the court-fee stamps affixed on the petition as well as on the certified copy of the impugned order, it appears that all of them were cancelled on the

same date, that is, on 5th September, 1972. That shows that the copy of the impugned order was filed along with the petition.

(6) It is then contended that a claim in the nature of a writ of certiorari for quashing an order passed by a quasi-judicial tribunal could not be made under Article 227 of the Constitution but under Article 226. This objection is misconceived. This Court under Article 227 of the Constitution has power to set aside or annul any order passed by any judicial tribunal functioning within the jurisdiction of this Court if the order is without jurisdiction. Having held that the order is without jurisdiction, there is no bar to the grant of this petition under Article 227.

(7) On the merits of the controversy Mr. Vimal tried to reiterate the grounds on which the order was passed by the prescribed authority, in which I have already found no force.

(8) So far as the matter of costs is concerned, normally the election petitioner should have been burdened with costs of this petition. He has, however, been well advised not to appear and contest this petition. Respondent No. 1 alone has contested the petition. He will, therefore, pay the costs of the petitioner.

N. K. S.

CRIMINAL MISCELLANEOUS

Before Kulwant Singh Tiwana, J.

RAM KALA ETC.,—Petitioners.

versus

STATE OF HARYANA AND ANOTHER—*Respondents.*

Criminal Misc. No. 472-M of 1975 (O&M)

July 8, 1976.

Code of Criminal Procedure (V of 1898)—Sections 107, 150 and 202—Application to a Magistrate under sections 107 and 150—Whether can be sent to the Police for inquiry—Proceedings started on a police report—Whether vitiated.