

Before N.K. Sodhi, Sat Pal and K.K. Srivastava, JJ

ANJU,—*Petitioner*

versus

Addl. Civil Judge (Sr. Division) Pehowa
and others,—*Respondents*

CWP No. 15310 of 96

12th March, 1998

Haryana Panchayati Raj Act, 1994—S. 176(4)—Haryana Panchayati Raj Election Rules, 1994—Rls. 33 and 34—Constitution (73rd) Amendment Act, 1992—Electoral rights—Nature of—Election of a Sarpanch—Whether can be challenged on a ground other than those specified in S. 176(4)—Held, election can be challenged only on the grounds vis. that returned candidate committed a corrupt practice or some irregularities were committed during the course of counting—Civil Court has no jurisdiction to set aside an election on grounds not mentioned in S. 176(4) including the ground that symbol was changed by the Returning Officer without notice.

(Guddi Devi v. State Election Commissioner Haryana and others, 1995 P.L.J. 285, over-ruled)

Held that it is by now well settled by a catena of judgments of the Apex Court that a right to contest an election or a right to vote therein is neither a fundamental right nor a constitutional right. It is not even a common law right. It is just a statutory right—a right created by the statute providing for such an election. One can contest the election or exercise the right of franchise therein only subject to the conditions imposed by that statute. Similar is the position in regard to the right to dispute an election. Since these are statutory rights, they can be exercised only in conformity with the statute and not otherwise. If the statute provides the grounds on which an election can be challenged then it can be challenged only on those grounds and no other. An Election Tribunal is not a court of plenary jurisdiction and the exercise of its jurisdiction is controlled and limited by the statute creating it and it can entertain an election petition only on the grounds as specified in the statute.

(Para 8)

Further held, that the Legislature in its wisdom has in the Haryana Panchayati Raj Act, 1994 omitted Section 13-O of the Punjab Gram Panchayat Act, 1952 and provided that the election could be challenged only on the aforesaid two grounds. There is

thus a deliberate departure made by the Legislature in this regard and in such a situation to accept the contention that the election could be challenged on grounds other than those mentioned in S. 176 (4) would amount to introducing in the statute grounds which the Legislature has taken away. The election of a returned candidate cannot, therefore, be allowed to be challenged on any ground other than those specified in S. 176 of the Act.

(Part 9)

Further held, that we have carefully gone through the judgment in *Guddi Devi v. State Election Commissioner, Haryana and others*, 1995 P.L.J. 285 and with respect hold that sweeping observations as made therein do not lay down the correct law. The judgments of the Apex Court in *Jyoti Basu and other v. Debi Ghosal and others* AIR 1982 S.C. 983 and *Rama Kant Pandey v. Union of India*, J.T. 1993 (1) S.C. 440 were not brought to their notice. We have, therefore, no hesitation in overruling the judgment in *Guddi Devi's* case. Hence, the election petitions filed by the respondents were not maintainable before the Civil Judge and consequently the impugned orders passed by the Civil Court setting aside the election of the petitioners are quashed.

(Paras 11 and 12)

S.P. Singh, Advocate, *for the Petitioner*

C.B. Goel, Advocate, *for respondent No. 2.*

N.K. Sodhi, J

(1) Whether the election of a Sarpanch could be challenged through an election petition on a ground other than those specified in section 176(4) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the Act) is the short question that arises for determination in these two writ petitions which were ordered to be heard together. When Civil Writ Petition 7300 of 1996 came up before the Motion Bench on 24th July, 1996, it was admitted to be heard by a Full Bench presumably because the correctness of some of the observations made by a Division Bench of this Court in *Smt. Guddi Devi v. State Election Commissioner, Haryana and others* (1) on which reliance was placed by the trial Judge in setting aside the election of the petitioner were doubted. This is how the two petitions have been placed before us for disposal. Arguments were addressed by counsel in both the cases but for the sake of

1. 1995 P.L.J. 285

convenience facts are being taken from Civil Writ Petition 15310 of 1996.

(2) Petitioner is a resident of village Sarsa' Tehsil Pehowa, District Kurukshetra in the State of Haryana which has been declared a Sabha area and for which a Gram Panchayat by the name of Gram Panchayat, Sarsa has been established. Elections to this Gram Panchayat were held on 15th December, 1994 and the office of Sarpanch was reserved for a woman. Petitioner along with respondents 3 to 5 contested the election of Sarpanch and the petitioner was declared successful as she obtained more votes than the other candidates. Respondent 6 also filed her nomination paper but that was rejected on the ground that her name did not figure in the voters' list. Puran Chand respondent who was qualified to vote at the election filed an election petition before the Additional Civil Judge (Senior Division), Pehowa challenging the election of the petitioner on the following three grounds:—

- (i) That the symbols which were allotted to the candidates on 7th December, 1994 were later changed on 12th December, 1994 without notice to them and without their concurrence;
- (ii) That some bogus votes had been polled and that the total number of polled votes did not tally with the votes taken out from the ballot boxes;
- (iii) That polling in Ward No. 13 started late at 11 AM whereas the scheduled starting time was 8 AM and that on account of this irregularity a large number of voters had left the polling station without casting their votes which fact had materially affected the result of the election and invalidated the same.

(3) The election petition was contested by the petitioner who controverted all the allegations made therein. From the pleadings of the parties, the trial Judge framed the following issues:—

- (1) Whether election of Anju respondent 1 is liable to be set aside on the grounds mentioned in the petition? OPP
- (2) Whether the petition is not maintainable in the present form? OPR
- (3) Whether petitioner has no cause of action and *locus-standi* to file the present petition? OPR

(4) Whether the respondent is entitled to special costs under Section 35-A CPC? OPR

(5) Relief.

(4) After recording evidence of the parties and on a consideration thereof, the trial Court came to the conclusion that the symbols which were earlier allotted to the candidates on 7th December, 1994 were subsequently changed on 12th December, 1994 and this, according to the Court, was in contravention of the mandatory provisions of Rules 33 and 34 of the Haryana Panchayati Raj Election Rules, 1994 (for short the Rules). It may be mentioned that Rule 33 provides that the Returning Officer shall assign to each candidate any one of the symbols determined by the State Election Commissioner and that the allotment of symbols by him shall be final. Rule 34 then provides that the Returning Officer shall immediately publish the list of contesting candidates along with the symbols allotted to them on the notice board in his office and shall also supply a copy thereof to each of the contesting candidates on demand. It was contended by the petitioner before the trial court that change of symbols by the Returning Officer was not a ground on which election of a returned candidate could be challenged under Section 176 of the Act and, therefore, the petition deserved to be dismissed on that ground. The argument was rejected by the trial court and it took the view that even though change of symbols was not a ground for challenging the election under Section 176(4) of the Act yet the same could be challenged on the ground of various illegalities or irregularities committed during the course of the election upto the declaration of the result. Reliance in this regard was placed on the observations of this Court in *Smt. Guddi Devis' case (supra)*. It has been held by the trial court that the election was in contravention of the provisions of the Act and the Rules framed thereunder and, therefore, the same was set aside. Issue No. 1 was answered in favour of the election petitioner-respondent and against the petitioner herein. Consequently, by an order dated 21st September, 1996 the election petition was allowed and the election of the petitioner set aside. It is against this order that the present petition has been filed.

(5) Section 176 of the Act provides for challenging the validity of any election amongst others of a Sarpanch of a Gram Panchayat by any person contesting the election or by any person qualified to vote at the election. The person challenging the election is required to file within thirty days after the date of the declaration of results

of the election an election petition to the Civil Court having ordinary jurisdiction in the area in which the election has been or should have been held. Sub-section (4) of this Section enumerates the grounds on which the election of a returned candidate can be challenged. The provisions of this sub-section may be reproduced hereunder for facility of reference:—

“4(a) If, on the holding of such inquiry the Civil Court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section(5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest-number of valid votes in his favour, to have been duly elected:

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the Judge in such manner as he may determine.”

A perusal of the aforesaid provision would show that the only two grounds on which an election can be challenged are: (a) that the returned candidate committed a corrupt practice within the meaning of sub-section (5); (b) that some irregularities or illegalities were committed during the course of counting on which plea the Court may order scrutiny and recounting of votes and declare the candidate who is found to have largest number of valid votes in his favour to be duly elected. Sub-section (5) of Section 176 then defines what a corrupt practice means and when a person shall be deemed to have committed the same. The ground regarding change of symbols is not a ground mentioned in Section 176(4) on which the election of a returned candidate could be challenged.

(6) The argument of Mr. S.P. Singh, Advocate for the

petitioner is that since the change of symbols is not a ground on which the election of the petitioner could be challenged before the Civil Court, the latter acted illegally and without jurisdiction in setting aside the same on the ground that the symbols had been changed by the Returning Officer.

(7) Mr. Chater Bhuj Goel, Advocate learned counsel for the respondent (election petitioner), on the other hand, advanced before us the same argument which was advanced on behalf of his client before the trial court. It is urged that even though sub-section (4) of Section 176 of the act provides only two grounds for challenging the validity of an election of a Sarpanch yet if any other illegality or irregularity is committed during the course of the election, the same could be challenged on those grounds as well. Reliance in this regard is placed on the Division Bench judgment of this Court in *Smt. Guddi Devi's case (supra)*.

(8) Having heard counsel for the parties, we find merit in the contention advanced on behalf of the petitioner. In order to answer the question posed in the opening part of the judgment, we will have to examine as to what is the nature of electoral rights and the right to challenge an election. It is by now well settled by a catena of judgments of the Apex Court that a right to contest an election or a right to vote therein is neither a fundamental right nor a constitutional right. It is not even a common law right. It is just a statutory right—a right created by the statute providing for such an election. One can contest the election or exercise the right of franchise therein only subject to the conditions imposed by that statute. Similar is the position in regard to the right to dispute an election. Since these are statutory rights, they can be exercised only in conformity with the statute and not otherwise. If the statute provides the grounds on which an election can be challenged then it can be challenged only on those grounds and no other. An Election Tribunal is not a court of plenary jurisdiction and the exercise of its jurisdiction is controlled and limited by the statute creating it and it can entertain an election petition only on the grounds as specified in the statute. This rule of law was laid down by a Constitution Bench of the Supreme Court as early as in the year 1951 in *N.P. Ponnuswami vs. Returning Officer, Namakkal (2)* and

followed by their Lordships in *Jyoti Basu and others vs. Debi Ghosal and others* (3) wherein it was observed as under:—

“A right to elect, fundamental though it is to democracy, is anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down.”

This view has again been reiterated in *Rama Kant Pandey vs. Union of India* (4). A Division Bench of this Court in *Baldev Singh vs. State of Punjab and others* (5) taken a similar view following the aforesaid judgments of the apex Court.

(9) After the Constitution was amended by the Constitution (Seventy third) Amendment Act, 1992 with effect from 24th April, 1993 when Part-IX relating to the Panchayats was introduced, the Punjab Gram panchayat Act, 1952 which was applicable to the State of Haryana was repealed and the Act came into force with effect from 22nd April, 1994. In the repealed Act it was provided in Section 13-0 thereof that an election could be set aside on the ground of improper acceptance of any nomination paper or non-compliance with the provisions of the Act or of any Rules made thereunder if such improper acceptance or non-compliance materially affected the result of the election. The Legislature in its wisdom has in the

A.I.R. 1982 S.C. 983

4. JT 1993 (1) S.C. 440

5. 1993 P.L.J. 736

present Act omitted these provisions and provided that the election could be challenged only on the aforesaid two grounds. There is thus a deliberate departure made by the Legislature in this regard and in such a situation to accept the contention that the election could be challenged on grounds other than those mentioned in section 176(4) would amount to introducing in the statute grounds which the Legislature has taken away. The election of a returned candidate cannot therefore be allowed to be challenged on any ground other than those specified in Section 176 of the Act.

(10) In *Guddi Devi's* case (*supra*) a bunch of petitions was disposed of by the Division Bench and in most of those cases, the petitioners therein sought to contest elections for the post of Sarpanch but their nomination papers, according to them, were illegally rejected. However, in one of the cases the grievance of the petitioner was regarding illegal acceptance of nomination paper of another candidate. Against the rejection of their nomination papers the petitioners therein filed writ petitions in this court. It was contended on their behalf that there being no specific remedy either under the Act or under the Rules whereby a candidate whose nomination papers were illegally rejected could challenge that rejection by way of appeal or revision or before any specified election forum, the writ petitions were maintainable and that this court should examine the validity of the orders illegally rejecting or accepting the nomination papers. The argument was rejected by the learned Judges constituting the Division Bench holding that the election process starts with the publication of the notification and the same is complete with the declaration of the election results and even though sub-section (4) of Section 176 of the Act furnished limited grounds for challenging an election the same could be challenged on the ground of other mistakes, irregularities or illegalities committed during the election process and that the affected party could approach the competent authority by way of an election petition. The petitioners therein were left to have their grievances redressed by filing an election petition and the writ petitions were disposed of with the following observations:—

“It is true that under sub-section (4) of Section 176 of the Act it is provided that the election shall be set aside for committing corrupt practice within the meaning of sub-section (5). However, we are of the firm view that the provision of sub-section (4)(a) for setting aside the

election of a candidate on the basis of corrupt practice within the meaning of sub-section (5) cannot in any manner be interpreted to mean that only ground for setting aside the election would be on the basis of corrupt practice and not on the basis of illegal rejection or acceptance of nomination papers of a candidate or illegalities or irregularities committed in preparation of electoral rolls and all such matters connected with the conduct of the election process right from its very beginning upto its final culmination with the declaration of the election results. Mere fact that neither under the Act nor under the Rules framed by the State Legislature any remedy has been provided against illegal rejection or illegal acceptance of nomination papers or illegalities or irregularities committed in preparation of the electoral rolls before the culmination of the election process in our view would not in any manner debar the affected party from taking up all such objections in the election petition while challenging the validity of election at a stage subsequent to the declaration of the election results. Rather such an interpretation which we have taken is in consonance with the prime object of completing the entire election process expeditiously, and without any undue delay and would certainly be helpful in holding the election process according to the schedule. The mistakes, irregularities or illegalities committed in the election process can certainly be rectified at a later stage when the affected party approaches the competent authority by way of election petition.”

(11) We have carefully gone through the judgment in *Guddi Devi's case (supra)* and with respect hold that sweeping observations as made therein do not lay down the correct law. The judgments of the Apex Court in *Jyoti Basu's case (supra)* and *Rama Kant Pandey's case (supra)* were not brought to their notice. We have, therefore, no hesitation in overruling the judgment in *Guddi Devi's case (supra)*.

(12) In the result, the writ petitions are allowed and it is held that the election petitions filed by the respondents were not maintainable before the Civil Judge and consequently the impugned orders passed by the civil court setting aside the election of the petitioners are quashed. There is no order as to costs.

RNR.