

(50) These directions shall not be deemed to be an aspersion on the newly constituted Haryana Public Service Commission.

(51) A copy of these directions shall immediately be supplied to the Chairman, Punjab Public Service Commission, Patiala for appropriate directions and compliance.

S.C.K.

Before Hon'ble S. S. Grewal & M. L. Koul, JJ.

SMT. CUDDI DEVI,—*Petitioner.*

versus

THE STATE ELECTION COMMISSIONER, HARYANA AND
OTHERS,—*Respondents.*

Civil Writ Petition No. 18057 of 1994.

20th December, 1994.

Haryana Panchayati Raj Act, 1994—Nomination papers of a candidate—Rejection or acceptance of nomination papers not a ground specified under the Act—Competency of Election Petition.

Held, that 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.

(Para 11)

H. S. Hooda, Sr. Advocate with Sanjiv Sheoran, Advocate, for
the Petitioner.

H. L. Sibal, Advocate General, (Arun Nehra Addl. A.G. Haryana
with him) for No. 1 to 4.

C. B. Kaushik, Advocate for No. 5 and 6, *for the Respondent.*

JUDGMENT

S. S. Grewal, J.

(1) This order shall dispose of the present writ petition as well as Civil Writ Petition Nos. 17757 of 1994, 17775 of 1994, 18144 of 1994, 17831 of 1994, 17871 of 1994, 17880 of 1994, 18045 of 1994, 18060 of 1994, 18064 of 1994 and 18100 of 1994, as common questions of law and fact are involved in all these writ petitions.

(2) We have taken the facts from this petition in order to decide the question of law enunciated in all these petitions. According to the averments made in this petition. The State of Haryana decided to hold elections of Gram Panchayat in the State of Haryana. In accordance with the election programme the candidates were required to file their nomination papers before the competent authority from 1st of December, 1994 to 3rd December, 1994. Thereafter the scrutiny by the Returning Officer was to be held on 5th of December, 1994 and the candidates were permitted to withdraw from the election upto 6th of December, 1994. The petitioner and three other candidates had also submitted their nomination papers for contesting the election for the office of the Sarpanch of Gram Panchayat of village Kangthal. The nomination papers of the petitioner were rejected by Block Development and Panchayat Officer-respondent No. 4 on the basis of report of the Tehsildar, Guhla on the ground that Mulak Raj (husband of the petitioner) is in unauthorised possession of the Panchayat land bearing Khasra No. 136. Thereafter the petitioner moved an application on 9th of December, 1994 to the Deputy Commissioner, Kaithal on the ground that nomination papers of the petitioner had been rejected illegally and with *mala fide* intention. It was pleaded that none of her family member was in unauthorised possession of the Gram Panchayat. Apart from that it was pleaded that the petitioner was paying separate Chuhla tax. It was further pleaded that according to the entry in the Jamabandi for the year 1988-89 the ownership of the land in Khasra No. 136 is shown to be as Panchayat Deh whereas under cultivation column it is mentioned that the same is in possession of common purpose (Makbuja Rafayn-am), and in column No. 8 the said Khasra No. is recorded as Gair Gorah Deh. It was next pleaded that even in the latest Khasra Girdawri for the year 1994 neither the petitioner nor any member of her family is shown to be in unauthorised possession of the land and that her nomination papers were rejected on the basis of political pressure and also because of the reason that wife of

Billu Ram ex-M.L.A. and his brother's wife had also filed nomination papers for the office of the Sarpanch of Gram Panchayat of village Kangthali.

(3) Similarly in C.W.P. No. 18100 of 1994 re : Manjit Singh v. State Election Commission, Haryana and others, C.W.P. No. 17775 of 1994 re : Sakooli Bai etc. v. S.D.O. (C) Fatehabad and another, C.W.P. No. 18045 of 1994, Onkar Mal v. The State of Haryana and others, C.W.P. No. 17871 of 1994, Gian Chand v. S.D.O. (C) Fatehabad, C.W.P. No. 17757 of 1994, Dalip and another v. The Deputy Commissioner, Rohtak and others C.W.P. No. 17831 of 1994, Sahabu Deen and others v. State of Haryana and others and C.W.P. No. 18144 of 1994 re : Mangal Singh v. Haryana State and others, the objections raised by the individual petitioner is with regard to illegal rejection of their nomination papers whereas in C.W.P. No. 18060 of 1994 re : Hurmat and others v. District Election Officer (Panchayats) and another and C.W.P. No. 18068 of 1994 re : Dhanno Devi and another v. State of Haryana and others the objection is regarding quashment of voter's lists prepared and notified for the present election and C.W.P. No. 17880 of 1994 relates to alleged illegal acceptance of nomination papers.

(4) In the written statement filed by respondent No. 4 preliminary objection was raised that Bassi Devi wife of Dhillia Ram had already been declared as Sarpanch of the Gram Panchayat unopposed in due course of law. It was also pleaded that the petitioner is in unauthorised occupation of shamlat land and has no right to contest the election of Gram Panchayat and her nomination papers and that of other candidates were rightly rejected on the reports of the Gram Sachiv, revenue Patwari and Tehsildar Gulha. Other averments made in the petition were denied.

(5) The learned counsel for the parties were heard at length.

(6) On behalf of the petitioner, it was mainly contended that there is no specific remedy either under the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the Act) or under the Haryana Panchayati Raj Election Rules, 1994 (hereinafter referred to as the Rules) whereby a candidate whose nomination papers have been illegally rejected or accepted by the Returning Officer can challenge rejection of his or her nomination papers either by way of appeal or revision before any higher authority or specified election forum and even after the election process is complete and the result of the election is declared, the affected candidate such as the present petitioners or even the voters can file an election petition

as contemplated under Section 176(4) of the Act only on the ground of corrupt practice within the meaning of sub-section (5) of Section 176 of the Act.

(7) For the sake of convenience Section 176 of the Act, Rule 30 of the Rules and Article 243 (F), (K) and (O) of the Constitution of India are reproduced hereunder :—

“176 (1) *Determination of validity of election enquiry by judge and procedure.*—If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Up-Sarpanch, Sarpanch or Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the Civil Court having ordinary jurisdiction in the area which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;

(b) any other candidate against whom allegation of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question shall be heard by the same Civil Court.

(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 selection 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 the favour of such candidate or candidates, as the case may be, elected by lots drawn in the presence of the judge in such manner as he may determine.
- (5) A person shall be deemed to have committed a corrupt practice.
- (a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or
- (b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or
- (c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.—A corrupt practice shall be deemed to have been committed by a candidate if it has been committed with his knowledge and consent by a person

who is acting under the general for special authority of such candidate with reference to the election.

Explanation 2.—The expression ‘vehicle’ means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.”

Rule 30

“Scrutiny of nomination :

- (1) On the date fixed for the scrutiny of nomination papers under rule 24, the candidates, their election agents, and one other person duly authorised in writing by each candidate, but no other person, may attend at the time and place appointed in this behalf under rule 24 and the Returning Officer (Panchayat) shall give them all reasonable facilities for examination the nomination papers of all candidates which have been delivered as required by rule 27.
- (2) The Returning Officer (Panchayat) shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may either on such objections or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination paper on any of the following grounds, that is to say :—
 - (a) that the candidate is disqualified for being elected to fill the seat by or under the Act ;
 - (b) that there has been a failure to comply with any of the provisions of rules 26, 27 or 28 ; and
 - (c) that the signature of the candidate on the nomination paper is not genuine.
- (3) The Returning Officer (Panchayat) shall not reject any nomination paper on the ground of mere clerical or printing error or any defect which is not of a substantial character.
- (5) The Returning Officer (Panchayat) shall endorse on each nomination paper his decision regarding accepting or

rejecting the same and if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection. The order passed by the Returning Officer (Panchayat) shall be final.

- (6) For the purpose of this rule the production of a certified copy of an entry made in the voters list of the relevant village shall be conclusive evidence of the right of any voter named in that entry to stand for election unless it is proved that the candidate is disqualified.
- (7) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer (Panchayat) shall prepare a list of candidates whose nomination papers have been accepted. After the scrutiny is over the Returning Officer (Panchayat) shall affix the list on his notice board and shall record the date on which, and the time at which, the list was so affixed."

243 (F) *Disqualifications for membership :*

- (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat :—
- (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned :

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty-one year.

- (b) If he is so disqualified by or under any law made by the Legislature of the State.
- (2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may by law, provide.

243 (K) *Elections to the Panchayats :*

- (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all

elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

- (2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioners, shall be such as the Governor may by rule determine.

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not varied to his disadvantage after his appointment.

- (3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).
- (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with elections to the Panchayats.

243 (O) :

Bar to interference by courts in electoral matters :

Notwithstanding anything in this Constitution :—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K shall not be called in question in any court ;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

(8) Under Article 243-K (1) the superintendence, direction and control of the preparation of electoral rolls for and the conduct of, all elections to the Panchayats are vested in the State Election Commission and under sub-clause (4) of Article 243-K subject to

the provisions of the Constitution, the legislature of a State may by law, make provision with respect to all matters relating to, or in connection with elections to the Panchayat. In compliance with the aforesaid mandatory provisions of law the State of Haryana has passed the Act and framed rules thereunder. Careful perusal of Section 176 (1) and (4) of the Act as well as those of Rule 30 of the Rules clearly indicate that neither there is any specific provision nor any specific legal bar that objections with regard to illegal acceptance or rejection of nomination papers or irregularities concerning preparation of electoral rolls would constitute a ground in the election petition for setting aside the election on the basis of such objections. However, on careful perusal of the provisions of Section 176(1) of the Act and other relevant provisions it is quite apparent that validity of election of a member of a Gram Panchayat, Samiti can be challenged either by any person contesting the election or even by a voter before the Civil Court having jurisdiction by filing election petition for determination of such question.

(9) We are of the considered view that the election process starts with the publication of notification by the State Government or other competent authority and the same is complete with the culmination of the declaration of the election result. The objections concerning illegal rejection or acceptance of nomination papers or with regard to irregularities in preparation of electoral rolls also form an important constituents or links in the election process. As such these two important stages certainly cannot be delinked or taken to be unimportant or remote stages in the entire electoral process.

(10) We find support in our view from the authority of the apex Court in *N. P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Distt. and others* (1), wherein it was observed that rejection or acceptance of nomination papers is included in the term 'election'. We find further support in our view from the authority of the apex Court in *Hari Vishnu Kamath v. Ahmed Ishague and others* (2), wherein on the basis of the authority in *N. P. Ponnuswami's case* (supra), it was held that the word 'election' in Article 329 (b) was used in a comprehensive sense as including the entire process of election commencing with the issue of notification and termination with the declaration of election of a candidate and that an application under Article 226

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

(2) A.I.R. 1955 S.C. 233.

**Smt. Cuddi Devi v. The State Election Commissioner, Haryana 341
and others (S. S. Grewal, J.)**

challenging the validity of any of the acts forming part of that process would be barred. These are instances of original proceedings calling in question an election, and would be within the prohibition enacted in Article 329 (b)".

(11) 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 or 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 *prima 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.

(12) For the foregoing reasons, we are of the considered view that the petitioners, if so advised, may file election petition concerning their grievances according to law and procedure. With these observations all these writ petitions stand disposed of. Copy of order be given dasti.

S.C.K.