

## CIVIL MISCELLANEOUS

*Before D. K. Mahajan, J*BHAGAT SINGH AND OTHERS,—*Petitioners**versus*THE SUB-DIVISIONAL MAGISTRATE, JHAJJAR AND  
OTHERS,—*Respondents*

Civil Writ No. 1021 of 1961

1961

Oct., 25th

*Gram Panchayat Act (IV of 1953)—Section 8—Election of one out of many elected Panches challenged in election petition—Elections Tribunal—Whether can set aside the elections of other Panches—Defect in the election of one Panch—Whether renders the entire election bad.*

*Held*, that it is apparent from the operative part of sub-section (1) of section 8 of the Gram Panchayat Act, 1953, that in an election petition, an election of one out of many elected Panches can be called in question, and if the election of any one of the Panches is called in question, the Election Tribunal cannot set aside the election of other Panches where their election has not been called in question.

*Held, also* that the defect in the election of one Panch or the removal or suspension of one Panch will not render the entire election bad.

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated the 29th June, 1961 and that it be declared that the petitioners are duly elected members of the Gram Sabha of village Ahri.*

P. C. JAIN AND B. S. GUPTA, ADVOCATES, for petitioners.

H. R. AGGARWAL, ADVOCATE, for Respondents.

## ORDER

MAHAJAN, J.—This is a petition under Article 226 of the Constitution of India by Bhagat Singh, Ram Mehar, Manohar, Rati Ram and Asa Ram, who were declared duly elected Panches of the Gram Sabha of village Ahri. Election to this Gram Sabha was fixed for the 3rd December, 1960. It was contested by Bhagat Singh, Ram Mehar, Manohar, Rati Ram, Asa Ram, Karori Mal, Badri, Kamalu and Lalti. Bhagat Singh secured 127 votes, Ram Mehar 80, Manohar 87, Rati Ram 83, Asa Ram 5, Karori Mal 74, Badri 74, Kamalu 27 and Lalti 50. The Returning Officer declared the petitioners as duly elected members of the Gram Sabha. Asa Ram was declared elected on the basis of section 6(4)(c). Against Asa Ram's election, an election petition under Section 8 was preferred by Karori Mal. The basis of the petition was that Asa Ram could not be declared elected under section 6(4)(c) inasmuch as Rati Ram, who was a Harijan by caste, had been duly elected in the poll. Therefore, no question arose of the use of the power by the Returning Officer under section 6(4)(c) of the Gram Panchayat Act. The Election Tribunal, however, came to the conclusion that the election of Rati Ram was bad and in consequence set aside the entire election. Against this order, the present petition is directed.

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The contention of the learned counsel for the petitioners is that the order of the election tribunal is erroneous on the face of it. He contends that Rati Ram's election could not be held to be bad under any provisions of the Act. If at all, according to the learned counsel, the election of Asa Ram could alone be set aside. Moreover, he contends that the election tribunal had no jurisdiction to set aside the entire election. In my view, the contentions of the learned counsel are correct. Section 8 of the Act is in these terms:—

[His Lordship read section 8 and continued:]

It will be apparent from the operative part of subsection (1) that in an election petition, an election

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of one out of many elected Panches can be called in question and if the election of any one of the Panches is called in question, I fail to see how the election tribunal could set aside the election of the other Panches, whose election has not been called in question. In the present petition also, the prayer was made by Karori Mal to the effect that Asa Ram's election be quashed and he be declared duly elected. The learned counsel for the respondent further relies on section 8(2)(a) for the contention that the entire election has to be set aside, but section 8(2) cannot be read in an isolated manner. It has to be read along with sub-section (1) of section 8 and if it is so read, it will be apparent that the election of one of the Panches can be set aside. In this connection reference may also be made to the provisions of sections 9, 10, 11 and 102. In section 9(2) proviso, there is a provision for the removal of a Panch or a Sarpanch by two-thirds majority of the votes of the members of the Sabha at its extraordinary general meeting held with the previous permission of the Director. Section 10 provides for the election to the office of a Panch by reason of his death, resignation or removal. This clearly shows that there can be a separate election for a single Panch. Section 11 provides for the nomination of a Panch or Panches in case of failure to elect Panch or Panches to fill in the vacancy caused by reason of death, resignation or removal of a Panch or panches and section 102 gives power to the Director to remove or suspend a Panch. Thus, it will be seen from the aforesaid provisions that the defect in the election of one Panch or the removal or suspension of one Panch will not render the entire election bad. Therefore, the contention of the learned counsel is correct that the election tribunal had no jurisdiction to set aside the entire election. It could only set aside the election of a Panch, whose election, it came to the conclusion, was bad.

The other contention of the learned counsel for the petitioners is that Rati Ram's election could not be held to be bad because the provisions

of section 6(4)(c) only come into play when no Harijan candidate is duly elected, or in other words when no Harijan candidate comes within the five elected Panches, as in this case. In the present case, Rati Ram was one of the five elected Panches. Therefore, the Returning Officer had no jurisdiction to declare Asa Ram as elected. In this connection I need only quote the relevant part of section 6 which is as under:—

[His Lordship read section 6(1) and (4) of the Act and continued: ]

It will be apparent from these provisions that the contention of the learned counsel for the petitioners is well founded. The result, therefore, is, that the order of the election tribunal is patently erroneous and without jurisdiction and I, therefore, quash it. The result would be that the election petition of Karori Mal will still be pending before the election tribunal and the same will determine it in accordance with law.

Parties are directed to appear before the election tribunal on the 13th November, 1961.

There will be no order as to costs.

K.S.K.

REVISIONAL CIVIL

*Before D. Falshaw, J.*

LEKH RAM,—*Petitioner*

*versus*

FIRM CHANDER BHAN-RAJINDER PARKASH,—  
*Respondent*

Civil Revision No. 348 of 1960

*East Punjab Urban Rent Restriction Act (III of 1949)—  
Section 13(2)(ii)(a)—Tenant subletting a portion of the  
premises—Sub-tenancy terminating some months before*

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and others  
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and others  
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