Before M. M. Punchhi, J.

HARBANS SINGH—*Petitioner.*

versus

STATE OF PUNJAB & others—*Respondents.*

Civil Writ Petition No. 3317 *of* 1979.

February 25, 1982

Punjab Gram Panchayat Act (IV of 1953)—Section 13-00—Punjab Gram Panchayat Election Rules, 1960—Rule 33—Constitution of India, 1950—Article 14—Election of a Sarpanch by the elected Panches—Two candidates securing equal number of votes—Rule 33 providing for the draw of a 'lot'—Candidates, however, agreed to have three lots and abide by the result of the majority—Such agreement—Whether binding on the parties—Party losing the election—Whether estopped from challenging the same—Draw of a 'lot'—Meaning of—Section 13-00 giving a right to an election petitioner to seek a declaration that he is duly elected—No provision in the Act for a recriminatory petition by a returned candidate—Section 13-00—Whether ultra vires Article 14.

Held, that it is plain that a challengeable election comes into being only after declaration of a result pronounced by the Presiding Officer or the Returning Officer, as the case may be. What section 13-00 of the Punjab Gram Panchayat Act, 1952 provides is that when the election of an elected candidate is challenged as being void, the petitioner can claim a declaration as a consequence that he himself, or any other candidate, be declared as duly elected. The declaration to be sought is optional at the instance of the election-petitioner and is in the nature of things as equal to the election of the returned candidate being declared void. Nowhere has power been conferred therein on the prescribed authority to declare *suo motu* any candidate to be duly elected in the event of declaring the election of the returned candidate to be void. Such power of the prescribed authority is more or less akin or in substitution of the Presiding Officer or the Returning Officer, as the case may be, as it has only to see whether the election-petitioner, or any other candidate received a majority of valid votes. Once he counts those votes, it is mandatory for him to declare elected the election-petitioner, or such candidate, as the case may be, to have been duly elected. But if the election of the returned candidate is upheld, no such duty is cast on the prescribed authority. The functions of the prescribed authority of declaring the election-petitioner, or any other candidate, duly elected as a substitute to the returned candidate, whose election was held void, is wholly statutory and not in overlapping of his functions as a quasi-judicial authority determining

election disputes *vis-a-vis* candidates declared to be elected. His duty seemingly is as a substitute and more on the plank of being ministerial. But having declared the election-petitioner, or any other candidate, to be duly elected as a consequence of the returned candidate being made to vacate the seat, the declaration *per se* can give rise to a cause for the filing of an election petition to challenge the said declared election for grounds provided under the Act and the Rules. It makes not the slightest difference that the same prescribed authority may have to determine quasi-judicially another election dispute arising out of a result which he himself declared under section 13-00(2) of the Act. These functions of the prescribed authority are distinct and separate, neither do they overlap nor inter-mingle. Even otherwise when the provisions of the Civil Procedure Code are applicable to election disputes, nothing prohibits the returned candidate to make additional pleas in his written statement that in the event of his election being declared void, the claim of the election-petitioner that he himself be declared elected, or any other candidate be declared elected for the office should be tried as an election petition on grounds open to an election-petitioner. But the added pleas so raised cannot be permitted to stall the result of the first election petition, for it has to be determined in the first instance whether the election of a returned candidate is valid or otherwise. It is only then that such a controversy can be gone into and that too on the formal declaration that the election-petitioner or any other candidate is declared to be elected. This is more a matter of substance rather than of form. But where neither of the two steps were taken by the returned candidate before the prescribed authority, he cannot be allowed to raise this question more in the nature of a declaration that section 13-00 is violative of Article 14 or is deficient of the spirit of section 97 of the Representation of Peoples Act, 1951. The Legislature is master in its field with regard to legislation and the High Court cannot arrogate to itself the functions of the Legislature. Still in the interpretative process, it has been spelt out that there is nothing to bar the filing and maintenance of an election petition against a candidate declared elected under section 13-00 of the Act. (Paras 8, 9 and 10).

Held, that the plea of waiver or acquiescence cannot stand before the mandate of the statute. The mere fact that a party consented to have a draw of three lots and abide by the result of the majority, would not stand in his way to seek protection of the law as it stands. From rule 33 of the Punjab Gram Panchayat Election Rules, 1960, it becomes patent that the word 'lot' has been used in the singular sense and carries with it an important qualification that the lot drawn would tantamount to the securing of one additional vote in favour of the candidate in whose favour the lot is drawn. So, the

singular 'lot' is equated with an additional vote. The rule framers have, with good sense, put it in the singular sense as otherwise it would lead to a lot of speculation and confusion leading to squabbles in election disputes. The mandatory language of the rule further is that the drawing of the lot has to be 'forthwith', meaning thereby that it has to be the next immediate step. So, certainty being one of the essential attributes of laws, the interpretation of the rule which can give rise to looseness and speculation has to be discarded and rather it has to be put on a firm and straight footing. The Punjab General Clauses Act, though permits that singular in a statute can be read as plural, but this is subjected to the qualification of the context so permitting. Here, the context of the rules specifically puts it at the level of a singular lot for a single additional vote.

(Para 11).

Petition under Articles 226/227 *of the Constitution of India praying that this Hon'ble Court may be pleased:—*

(*i*) *to declare the provisions of section* 13 *of the Punjab Gram Panchayat Act, to be* ultra vires *of the Constitution of India* ;

(*ii*) *to set aside the order dated 24th May,* 1978 *passed by Respondent No.* 2 *and the order dated 9th August,* 1979 *passed by Respondent No.* 3 *being illegal and without jurisdiction;*

(*iii*) *to grant any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case;*

(*iv*) *to exempt the petitioner from filing certified copies of Annexures P-*1 *to P-*3;

(*v*) *to dispense with the service of advance notice on the respondents ;*

(*vi*) *to award the cost of the petition to the petitioner.*

It is further prayed that pending decision of the writ petition, the operation of the impugned orders dated 24th May, 1979 *passed by Respondent No.* 2 *and order dated 9th August,* 1979 *passed by Respondent No.* 3, *be stayed.*

R. L. Sharma, Advocate, *for the Petitioner.*

M. S. Rakkar, Advocate, *for respondent No.* 4.

JUDGMENT

M. M. Punchhi, J. (oral).

(1) This petition raises rather an interesting election dispute. What is a 'lot' as envisaged under rule 33 of the Punjab Gram Panchayat Election Rules, 1960 (hereinafter called the Rules) is the domain of this petition.

(2) The petitioner got elected as a Panch on 21st August, 1978 in the Sabha area of village Saroya, Tehsil Garhshankar, District Hoshiarpur. Out of the eight Panches elected, a Sarpanch had to be elected. The petitioner, as also respondent No. 4, contested for the office. Each of them secured four votes. This resulted in a tie. It was to be settled under rule 33 of the Rules which is in the following terms:—

> "33. *Procedure in case of tie.*—If after the counting of votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the Presiding Officer or the Returning Officer, as the case may be, shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls has received an additional vote."

According to the averment made specifically in the petition, the Returning Officer recorded the statements of both the candidates to an agreement that the lots would be drawn three times and the candidate successful in the majority would get the additional vote. Such consent is statedly signified from the writing (Annexure P1 to the writ petition) which embodies the result on that basis in favour of the petitioner. Seemingly, after the three lots were drawn, the first one went in favour of respondent No. 4 and the succeeding two in favour of the petitioner. He, thus, was declared by the Returning Officer as Sarpanch.

(3) Respondent No. 4 filed an election petition before respondent No. 2, the Executive Magistrate, who is the prescribed authority under rule 42 of the Rules. A challenge was made therein to the manner of

drawing of the lot. Emphasis was laid therein that respondent No. 4 was given to understand that the rules prescribed that the lots had to be drawn thrice and he was made to sign in consent thereof on that misunderstanding. Claim was built on his behalf on the strength of the first lot having been decided in his favour. The prescribed authority allowed the election petition by resolving the factual controversy in these words:

> "After going through this record thoroughly one point becomes clear that even if the petitioner did not agree with as he has alleged not to draw the lot three times but he subsequently signed on the election proceedings. But main point to be considered here is that whether it is correct and the lot means drawing up the lot only once, then Shri Daljit Singh should be considered as genuinely elected Sarpanch. As I have discussed above, the definition of the lot is that draw has to be made only once.....But since the Returning Officer was unable to cope with the heavy responsibility thrust upon him, so he bungled the whole issue. Why should a candidate who secured the first lot be made to suffer because the Returning Officer was ignorant regarding the relevant law. Therefore, I accept this plea of the petitioner and decide this issue in his favour."

(4) On his election being set aside by the prescribed authority, the petitioner filed an appeal under section 13-V of the Punjab Gram Panchayat Act, 1952 (for short, the Act), which lay before the District Judge, Hoshiarpur. It was an exercise in futility. The learned District Judge too endorsed the view of the prescribed authority and came to the view that the word 'lot' used in rule 33 of the Rules was singular in spirit and essence. On the dismissal of the appeal, the petitioner has approached this Court under Articles 226/227 of the Constitution of India to get quashed the impugned orders of the prescribed authority, as also of the appellate authority, so as to activate his electoral success.

(5) It is unnecessary to give other facts in detail as nothing hinges on them. Similarly it is unnecessary to detail out the return as to how the facts are highlighted in colour by respondent No. 4. The findings as recorded by the quasi-judicial authorities on the subject

provide a sufficient basis for the understanding of the controversy and the decision of this petition.

(6) Two questions have been raised by the learned counsel for the petitioner. One is that respondent No. 4, in his election petition, had challenged the petitioner's election as the returned candidate and had at the same time sought a declaration for his election as a Sarpanch. He did so since section 13-00 of the Act so provided. The grouse has been built thereon that no corresponding right has been provided in that section, or even otherwise under the Act, to the returned candidate to file a recriminatory petition for getting declared that the sought for election of the election-petitioner was invalid. The second question posed by the writ-petitioner is that the interpretation put by the quasi-judicial authorities on the word 'lot' in rule 33 of the Rules is contrary to the scheme of the Act, canons of interpretation and is violative of the principles of Punjab General Clauses Act. Supportive argument is sought from the fact that respondent No. 4 had submitted to the interpretation employed by the Returning Officer, and having entered the contest and lost, he could not turn around to make a grievance thereto. In nutshell, waiver or acquiescence has been pleaded to repel the claim of respondent No. 4.

(7) Elaborating the first point, learned counsel for the petitioner takes aid of section 97 of the Representation of Peoples Act, 1951, wherein there is a provision for filing a recriminatory petition when the seat on vacation is claimed by the election-petitioner. It was contended that the wisdom and philosophy of the election process, as evolved by the Parliament had simultaneously to permeat in Gram Panchayat Elections, and since such right had compulsorily to be provided in section 13-00 of the Act, the same is *ultra vires* of Article 14 of the Constitution of India. It is claimed that the election-petitioner under section 13-00 of the Act was better off than the returned candidate inasmuch as he could blow the seat of the elected candidate to smithereens whereas the elected candidate was supposed to stand mute and suffer the ignominy, and not hit back in recrimination. At the same time, it is asserted that equality is antithetic to arbitrariness, and here was a glaring case of denial of the equality of opportunity or equal protection of laws.

(8) The argument, indeed, is ingenuine and attractive. It seems to have also been raised, though not in so many words, in a case decided by J. M. Tandon, J. on 25th February, 1982 in Civil Writ Petition No. 257 of 1981 (Inder Devi & another v. Surjit Kaur & others). Tandon, J., has held therein that there was nothing to suggest that a declaration made under sub-section (1) of section 13-00 of the Act cannot be challenged in an election petition, and it was difficult to hold that the provision contained thereunder is unconstitutional being violative of Article 14 of the Constitution on the plea that a declaration made under section 13-00 of the Act cannot be challenged in an election petition. On precept I agree with what has been held by Tandon, J. A cursory look at the frame of Chapter II-A, providing for disputes regarding elections under the Act makes it plain that an 'election' means the election of a Sarpanch or Panch and includes the co-option of a Panch (as in Punjab). An election petition is maintainable under section 13-B of the Act before the prescribed authority. The procedure before the prescribed authority is, as nearly as it can be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Section 13-00 provides for the grounds for setting aside an election. And finally, section 13-T and 13-U give details of 'corrupt practices' for the purposes of the Act. Now it is plain that a challengable election comes into being only after a declaration of a result pronounced by the Presiding Officer or the Returning Officer, as the case may be. What section 13-00 provides is that when the election of an elected candidate is challenged as being void, the petitioner can claim a declaration as a consequence that he himself, or any other candidate, be declared as duly elected. The declaration to be sought is optional at the instance of the election-petitioner and is in the nature of things a sequel to the election of the returned candidate being declared void. Nowhere has power been conferred therein on the prescribed authority to declare *suo motu* any candidate to be duly elected in the event of declaring the election of the returned candidate to be void. Such power of the prescribed authority is more or less akin or in substitution of the Presiding Officer or the Returning Officer, as the case may be, as it has only to see whether the election petitioner, or any other candidate received a majority of valid votes. Once he counts those votes, it is mandatory for him to declare elected the election-petitioner, or such candidate, as the case may be, to have been duly elected. But if the election of the returned candidate is upheld, no such duty is cast on the prescribed authority.

(9) The functions of the prescribed authority of declaring the election-petitioner, or any other candidate, duly elected as a substitute to the returned candidate, whose election was held void, is, to my mind, wholly statutory and not in overlapping of his functions as a quasi-judicial authority determining election disputes, *vis-a-vis* candidates declared to be elected. As said before, his duty seemingly is as a substitute and more on the plank of being ministerial. But having declared the election-petitioner, or any other candidate, to be duly elected as a consequence of the returned candidate being made to vacate the seat, the declaration *per se* can give rise to a cause for the filing of an election petition to challenge the said declared election for grounds provided under the Act and the Rules. It makes not the slightest difference that the same prescribed authority may have to determine quasi-judicially another election dispute arising out of a result which he himself declared under section 13-00(2) of the Act. These functions of the prescribed authority are distinct and separate; neither do they overlap nor inter-mingle. The petitioners plea on that account is totally misconceived.

(10) Even otherwise when the provisions of the Civil Procedure Code are applicable to election disputes, nothing prohibits the returned candidate to make additional pleas in his written statement that in the event of his election being declared void, the claim of the election-petitioner that he himself be declared elected, or any other candidate be declared elected for the office, should be tried as an election petition on grounds open to an election-petitioner. But the added plea so raised cannot be permitted to stall the result of the first election petition, for it has to be determined in the first instance whether the election of a returned candidate is valid or otherwise. It is only then that such a controversy can be gone into and that too on the formal declaration that the election-petitioner or any other candidate is declared to be elected. This is more a matter of substance rather than of form. But here concededly neither of the two steps were taken by the petitioner before the prescribed authority. Had he taken any such step in the matter, and those has been thwarted, then alone could a grouse be made. Having not taken any such steps, the writ-petitioner cannot be allowed to raise this question, more in the nature of a declaration that section 13-00 is violative of Article 14 or is deficient of the spirit of section 97 of the Representation of Peoples Act, 1951. The Legislature is master in its field with regard to legislation. This Court cannot arrogate to

itself the functions of the Legislature. Still in the interpretative process, it has been spelt out, with which I am in full agreement, as held by J. M. Tandon, J., that there is nothing to bar the filing and maintenance of an election petition against a candidate declared elected under section 13-00 of the Act.

(11) With regard to the second question it must be mentioned at the outset that the plea of waiver or acquiescence cannot stand before the mandate of the statute. The mere fact that respondent No. 4 consented to have a draw of three lots and abide by the result of the majority, would not stand in his way to seek protection of the law as it stands. From rule 33 of the Rules, as reproduced above it becomes patent "that the word 'lot' has been used in the singular sense and carries with it an important qualification that the lot drawn would tantamount to the securing of 'one additional vote' in favour of the candidate in whose favour the lot is drawn. So, the singular 'lot' is equated with an additional vote. The expression "singular nature" is met with another expression "singular in nature". The rule framers have, with good sense, put it in the singular sense, as otherwise it would lead to a lot of speculation and confusion leading to squabbles in election dispute. Conceivably it can be visualised that the candidates, with or without the consultation of the Returning Officer, may not even agree to the number of lots, resulting in a difficult situation. The mandatory language of the rule further is that the drawing of the lot has to be 'forthwith', meaning thereby that it has to be the next immediate step. So, certainity being one of the essential attributes of laws, the interpretation of the rule which can give rise to looseness and speculation has to be discarded, and rather it has to be put on a firm and straight footing. The Punjab General Clauses Act, though permits that singular in a statute can be read as plural, but this is subjected to the qualification of the context so permitting. Here, the context of the rules specifically puts it at the level of a singular lot for a single additional vote. On this ground also, the attack of the petitioner is misplaced and, thus, the argument raised is repelled. Thus, it is held that respondent No. 4 had successfully drawn the first, which has now to be the last, lot in his favour and consequently the election of the petitioner was rightly set aside by the quasi-judicial authorities, viz., respondent Nos. 2 and 3.

(12) For the foregoing reasons, there is no merit in this writ petition which fails and is hereby dismissed. No costs.

N.K.S.