

I. L. R. Punjab and Haryana

(1967)2

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*RAJINDER SINGH,—*Petitioner.**versus*MANGE RAM AND OTHERS,—*Respondents.*

Civil Writ No. 1420 of 1966.

October 19, 1966.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 121—Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961—Rules 3, 6, 7 and 8—One election petition challenging the election of Chairman, Vice-Chairman and Members—Whether competent—Code of Civil Procedure (Act V of 1908)—Order 1 Rule 3—Whether applicable.

Held, that the election of members of Zila Parishad and that of Chairman and Vice-Chairman are dealt with by separate rules which indicates that the election of these offices is separate and distinguishable and a composite petition challenging the election of Chairman, Vice-Chairman and members of the Zila Parishad is not competent. The cause of action against the persons elected to these offices is not common. Different allegations have been made against each of the elected persons. It may be that some allegations are common but that would not mean that the trial is based on a common cause of action. The fact that the election was held at the same time on the same day and, may be, by the same presiding officer, does not justify the presentment of a composite petition against the election to the three separate offices.

Held, that the provisions of the Code of Civil Procedure will be applicable in the hearing of election petitions in so far as no separate provision is made in the election rules themselves. Separate rules having been framed for the election of Chairman, Vice-Chairman, and Members and provision having been made particularly in rule 3 of Appendix No. 6 for the election petition against any of the Members, Vice-Chairman and Chairman, it cannot be urged that resort should be had to the provisions of the Code of Civil Procedure. The provisions of Order 1, Rule 3 of the said Code do not apply to election petitions.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus, prohibition or any other appropriate writ, order or direction be issued quashing the order dated 22nd February, 1966 passed by respondent No. 6 and also quashing the election petition filed by respondent No. 1

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and further praying that further proceedings pending before respondent No. 6 be stayed pending the final disposal of the writ petition.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

PITAM SINGH JAIN AND N. C. JAIN, ADVOCATES, for the Respondents.

ORDER

SHAMSHER BAHADUR, J.—The matter raised in this petition under articles 226 and 227 of the Constitution of India concerns the election by members of the Panchayat Samiti, Ganaur Block, to the offices of Chairman, Vice-Chairman and two members of the Zila Parishad, Rohtak. In the election, which was held on 16th of February, 1965, Rajinder Singh (hereinafter called the petitioner) was elected Chairman, Dalip Singh (the second respondent) Vice-Chairman, and Partap Singh and Khubi (respondents 3 and 4), Members of the Zila Parishad, Rohtak. Against this election, a petition was preferred by Mange Ram (the 1st respondent), who was a candidate for the election of Chairman. In the election petition of respondent 1 under section 121 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, (hereinafter called the Act), an objection was raised by the persons elected to these offices that three separate elections could not be challenged by a single petition and the deposit of Rs. 200, which was sufficient for one single petition being inadequate, the petition ought to be dismissed.

Under sub-section (1) of section 121 of the Act, “any person who is a voter for the election of a Member may, on furnishing the prescribed security and on such other conditions, as may be prescribed present an election petition in writing against the election of any person as a Member, Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned”. It is not disputed that the 1st respondent was a voter for the election and was competent to bring the election petition. The single issue framed by the prescribed authority is to this effect:—

“Can the election of respondents 1 to 4 be challenged in one election petition? Whether one security is enough for all these elections? If not, what is its effect? Whether the election petition is liable to be dismissed on this account?”

As would be observed, the issue is compendious and covers objections which are preliminary in nature. The prescribed authority, who is

the Deputy Commissioner of Rohtak, by order of 22nd February, 1966, decided the issue in favour of the election-petitioner and, being of the view that the petition preferred by the first respondent was competent, directed further issues to be framed on 8th of March, 1966. This order of the prescribed authority is sought to be challenged by Rajinder Singh alone. As has been observed before, the petitioner was elected as Chairman of the Panchayat Samiti, Ganaur Block, in the election held on 16th of February, 1965. The writ petition was filed during the course of the election petition on merits and further proceedings have been stayed by the order of the Motion Bench passed on 21st of July, 1966.

Mr. Sachar for the petitioner in support of his argument, that the election petition should have been dismissed as incompetent, has relied on the various provisions of the rules relating to elections. He has rightly laid emphasis that there are separate sets of rules concerning the election of Chairman and Vice-Chairman on the one hand and Members of the Zila Parishad on the other. Constitution of Panchayat Samitis is the subject-matter of section 5 of the Act. In its constitution a Panchayat Samiti consists of a variety of Members. In the case of a Panchayat Samiti of a Block, with which we are concerned, it consists, according to sub-section (2) of section 5, firstly of primary Members—16 to be elected by the Panches and Surpanches of Gram Panchayats, two by Members of Co-operative Societies and one by the producer members of the Market Committees. The second category of Members of a Panchayat Samiti of a Block consists of Associate Members under clause (b) of sub-section (2) of section 5, and every Member of the Punjab Legislative Assembly representing the constituency of which the block forms part is such an Associate Member and also such Member or Members of the Punjab Legislative Council as the Government may, by order, specify. The election petition Rules in Appendix No. 6 to the Act are described as Punjab Panchayat Samitis and Zila Parishads (Election Petition Rules), 1961. Appendix No. 3, relates to Punjab Panchayat Samitis and Zila Parishads Chairman and Vice-Chairman (Election) Rules, 1961, while Appendix No. 2 is concerned with the Punjab Zila Parishad Election Rules, 1961. The members, who are elected by the Panchayat Samitis Blocks to the Zila Parishad, are governed by Appendix No. 2, while the election of Chairman and Vice-Chairman is dealt with under Appendix No. 3.

The first rule to which my attention has been drawn, is rule 3 of Appendix No. 6. It reads as under:—

“The election of any person as a Member, Vice-Chairman or Chairman of a Panchayat Samiti or Zila Parishad, as the

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case may be, may be called in question by an elector through an election petition on the ground that such person has been guilty of a corrupt practice specified in the schedule or has connived at, or abetted the commission of any such corrupt practice or the result of whose election has been materially affected by the breach of any law or rule for the time being in force or there has been a failure of justice.”

Rule 6 is concerned with the deposit and sub-rule (1) of this rule says that “at the time of, or before presenting an election petition, the petitioner or petitioners shall deposit in the treasury or sub-treasury a sum of rupees two hundred in cash or in Government promissory notes of equal value as security for all costs that may become payable by him or them”. This deposit has to be returned to the petitioner if the election petition is withdrawn by him and in other cases after final orders have been passed on the election petition, after deducting the expenses which may be ordered to be paid by him. Under rule 7, “if any of the provisions of sub-rule (1) of rule 4 or sub-rule (1) of rule 6 have not been complied with, the prescribed authority shall pass order dismissing the election petition and such order shall be final”. Rule 8 reads as under :—

“The procedure provided under the Code of Civil Procedure, 1908, in regard to the trial of suits shall, in so far as it can be made applicable, be allowed in the hearing of election petitions:

Provided that—

- (a) any two or more election petitions relating to the election of the same person may be heard together;
- (b) * * * * *
- (c) * * * * *
- (d) * * * * *
- (e) the order of the prescribed authority shall be final;
- (f) * * * * *

Mr. Sachar has contended that rule 3 envisages a single petition relating to the election of a Member or Vice-Chairman or Chairman. “The election of any person as a Member, Vice-Chairman or Chairman of a Panchayat Samiti or Zila Parishad, as the case may be” can only mean that the voter, who presents any election petition, can

challenge the election of any Member, Vice Chairman or Chairman consolidated petition against the election of the Chairman, Vice Chairman and Member is not contemplated in rule 3. Support is sought for this contention from what is stated in the election petition itself. The allegations made by the first respondent in his election petition may be categorised under two headings. In the first place, there are general allegations of corrupt practice. In the second place, there are allegations of a specific nature against the election of Chairman and likewise against the election of Vice-Chairman and the two Members. It is quite obvious that while the allegations against the petitioner himself are to be enquired into, respondents 2 to 4 will not be interested in them, and, similarly, while allegations against respondents 2, 3 and 4 individually are to be enquired into, the petitioner would not be interested. The election, no doubt, of Chairman, Vice-Chairman and Members was held about the same time on the same date and may be said to have been a simultaneous process.

Adverting to Appendix No. 3 relating to the election of Chairman and Vice-Chairman, it is pointed out that presiding officer under clause (d) of rule 2 "means the Deputy Commissioner concerned or such Gazetted Officer, not below the rank of Extra Assistant Commissioner, as may be appointed by the Deputy Commissioner for the purposes of these rules". Under rule 3, "the election of the Chairman and Vice-Chairman of a Panchayat Samiti shall be held in the office of the Panchayat Samiti or such other place as may be specified in that behalf by the Presiding Officer, who shall convene and preside over the meeting called for that purpose". Rule 4 relates to notice of meeting while rule 5 is concerned with proposing and seconding of candidates. Rule 6 relates to withdrawal of candidature. Under rule 8, the Presiding Officer is required to provide, where the meeting is held, two voting compartments—one for the election of Chairman and the other for that of Vice-Chairman in which Members can record their votes. Rule 9 relates to validity of ballot-papers.

Appendix No. 2, is concerned with the Punjab Zila Parishad Election Rules, 1961 and the Presiding Officer is to be appointed by the Deputy Commissioner, and in a proviso it is stated that "no Block Development and Panchayat Officer shall be appointed as Presiding Officer". Notice of meeting for election is to be sent to a different category of persons altogether. Rule 4 relates to nomination of candidates and rule 5 sets out the procedure after names of candidates have been read out. Rule 6 says that one-half of the total number of members shall constitute the quorum. It is the same as in the case of election of Chairman and Vice-Chairman.

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That the election of Members of Zila Parishad and that of Chairman and Vice-Chairman are dealt with by separate rules, does indicate that the election of these offices is separate and distinguishable, and independently of any authority I should be inclined to hold that the objection raised by the petitioner to the election petition of the first respondent was substantive. A ruling of Narula, J., has also been cited before me, *Amrik Singh v. B. S. Malik and others* (1). In that case, election for the Sarpanch and Panches was conducted on the same date, namely, 30th of December, 1963, under the provisions of the Punjab Gram Panchayat Act, 1952. The objector in an election petition called in question the election of the Sarpanch as well as the Panches by a composite election petition and deposited only one set of security deposit. The substantive provisions of the Act and relevant rules are not at variance with those in the present instance. It was held by the learned Judge that a composite petition calling in question the election of Sarpanch on the one hand and the four Panches on the other is not competent and the provisions of the Code of Civil Procedure will apply only when it is competent to combining several causes of action in one suit. In the case in point also the prescribed authority has laid emphasis on rule 8 of Appendix No. 6 which says that the procedure provided under the Code of Civil Procedure shall be made applicable to the hearing of the election petitions. It is to be observed that the provisions of the Code of Civil Procedure will be applicable in the hearing of election petitions in so far as no separate provision is made in the election rules themselves.

Mr. Sachar has also cited a Division Bench authority of the Assam High Court, *Abhoy Charan v. Surendra Ballav* (2), where it was said by Nayudu, J., speaking for the Court, as follows :—

By permitting Surendra Ballav Dutta, the petitioner before the Munsiff, to call into question a number of elections in which he was not interested and the result whereof he could not question, there has been a gross misjoinder of causes of action with the result that a number of elections were called into question by one single petition preferred by an individual who could only question one of the elections.”

The *ratio decidendi* of this case will not apply to the case in hand because it appears that the petitioner before the Assam High Court

(1) I.L.R. (1966) 1 Punj. 803.

(2) A.I.R. 1964 Assam 101.

was not entitled under the statutory rules to question the election, while here, as I pointed out at the outset, the first respondent, being a voter, is entitled to challenge the election of the petitioner and respondents Nos. 2 to 4.

The prescribed authority, as also Mr. Jain, the counsel for the respondents, have placed reliance on the provisions of Order 1, rule 3, Civil Procedure Code, under which "all persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any common question of law or fact would arise." The trial of elections is a technical matter and, as pointed out by Chief Justice Mahajan in *Jagan Nath v. Jaswant Singh* (3) "The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law." Separate rules having been framed for the election of Chairman, Vice Chairman and Members and provision having been made particularly in rule 3 of Appendix No. 6 for the election petition against any of the Members, Vice-Chairman and Chairman, it cannot be urged that resort should be had to the provisions of the Code of Civil Procedure. I am in respectful agreement with Narula, J., in his conclusion in *Amrik Singh v. B. S. Malik and others* (1) that in such a situation a composite petition is not competent. It may be noted that the prescribed authority has decided in favour of the first respondent because in its view, "since the causes of action against all the respondents are common and the provisions of Civil Procedure Code are applicable to the trial of the election petition there is no misjoinder of parties and causes of action in the present election petition". Now it cannot be said that the cause of action against the petitioner and respondents 2 to 4 is common. Different allegations are made against the persons elected to the offices of Chairman, Vice-Chairman and Members. It may be that some

(3) A.I.R. 1954 S.C. 210.

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allegations are common but that would not mean that the trial is based on a common cause of action. The fact that the election was held at the same time on the same day, and, may be, by the same Presiding Officer, does not justify the presentment of a composite petition against the election to the three separate offices. Rule 3 of Appendix No. 6 is quite clear, in my opinion, to uphold the contention of Mr. Sachar that there should have been three separate election petitions.

It has been contended by Mr. Jain that even if the view which I have taken is correct, the first respondent may be permitted to confine his petition against either the petitioner or any one of respondents 2 to 4. I am afraid I do not see my way clear to adopt such a course. If the order of the prescribed authority is invalid on the fact of it, I have to set it aside and this will have to be done, if I find that the petition, as presented by the first respondent, was not in accordance with the provisions of the election rules. To permit the first respondent at this state to pick and select the respondent whose election alone he may choose to contest, is not a matter for his Court to decide in these proceedings. It may be that the first respondent, if so advised, may be able to make such an application to the prescribed authority, and this is a matter on which I express no opinion. All that I do, therefore, in this case is to set aside the order of the prescribed authority passed on 22nd of February, 1966, being in contravention of the requirements of the election rules. I will, accordingly allow this petition and quash the impugned order. In the circumstances, I make no order as to costs.

B. R. T.

