

2024:PHHC:099372-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-2066-2023 (O&M)
Reserved on 30.07.2024
Pronounced on: 05.08.2024**

SATISH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Sanjay Kaushal, Senior Advocate;
Ms. Gunjan Mehta, Advocate and
Ms. Ojaswini Gagneja, Advocate for petitioner.

Mr. Manish Dadwal, AAG, Haryana.

SUDHIR SINGH, J.

The petitioner seeks a writ in the nature of Certiorari quashing the impugned order dated 25.01.2023 (Annexure P-7), whereby the proceedings of the Meeting of the elected members of Panchayat Samiti, Barwala (Hisar) dated 03.01.2023, conducted by the Prescribed Authority, Panchayat Samiti, Barwala, District Hisar-cum-Sub Divisional Officer (Civil), have been declared as 'null and void' by respondent No.3-State Election Commissioner, Haryana.

2. The facts of the case are that respondent No.2 had issued a notification dated 21.09.2022, whereby the seats/offices of Chairman of Panchayat Samitis in the State of

Haryana, were reserved for the purpose of elections (2022) in exercise of the powers conferred under Section 59 of the Haryana Panchayati Raj Act, 1994 (for short 'the Act') read with Rule 6 of the Haryana Panchayati Raj Election Rules, 1994 (for short 'the Rules'). As per the said notification, under Sr. No.17, the name of the Panchayat Samiti was shown as 'Barwala' having population of 44083 and at Sr. No.18, another name of 'Panchayat Samiti Barwala' was shown with the population of 170784. Still further, at sequential No.10 Panchayat Samiti, Barwala was mentioned and the post of Chairman was reserved for woman, whereas at sequential No.11 another Panchayat Samiti, Barwala was mentioned, wherein the post of Chairman was meant for 'other than women'.

3. It is the case of the petitioner that there were two Panchayat Samitis with the name of Barwala, mentioned in the above notification, which had caused confusion as regards the reservation. Therefore, a clarification was sought by the Block Development and Panchayat Officer from Director General, Panchayats. Advice was further sought with regard to reservation for Chairman Panchayat Samiti, Barwala (Hisar) vide letter dated 16.12.2022. However, no response thereto was received. The elections for the Panchayat Samiti, Barwala, Hisar were held and 30 members, including the petitioner were duly elected. Thereafter, in terms of notice dated 24.12.2022, the elected members were called for a meeting so as to elect Chairman and Vice-

Chairman on 03.01.2023 at 11:00 O'clock. It is further the case of the petitioner that the meeting was successfully held and the petitioner was duly elected as Chairman of the Panchayat Samiti Barwala (Hisar). The proceedings of the meeting dated 03.01.2023 were forwarded by respondent No.5-Prescribed Authority to respondent No.4-District Election Officer (Panchayat)-cum-Deputy-Commissioner, Hisar. Thereafter, the Prescribed Authority Panchayat Samiti, Barwala-cum-SDO (Civil), Barwala, Hisar, issued a declaration for election of the petitioner as Chairman, Panchayat Samiti, Barwala vide certificate dated 03.01.2023.

4. It is further the case of the petitioner that all of a sudden, vide order dated 25.01.2023, respondent No.3-State Election Commission, Haryana, declared the part of the proceedings of meeting dated 03.01.2023 conducted by the Sub-Divisional Officer (Civil)-cum-Prescribed Authority, Panchayat Samiti Barwala, District Hisar, whereby the petitioner was declared as elected Chairman of the said Samiti, as null and void and further directed the Prescribed Authority to conduct the election for the seat/office of the Chairman, Panchayat Samiti Barwala, Hisar, afresh.

5. Upon notice, the respondents appeared and filed their written statements. In their reply, respondents No.1 and 2 stated that the State Election Commission, Haryana, after receipt of the report from the Districts Hisar and Panchkula noticed that a mistake had been committed by the Sub-Divisional Officer (Civil)-cum-Prescribed Authority, Panchayat

Samiti Barwala, District Hisar, while conducting the election for the post of Chairman, Panchayat Samiti, Barwala, Hisar. The said fact was brought to the notice of the Director General, Development and Panchayat Department, Haryana vide letter dated 23.01.2023, with the request to issue a clarification to the State Election Commission, Haryana, as to which of the post of Chairman, Panchayat Samiti, Barwala, was reserved for woman.

6. It is further averred that after having found that a mistake was committed in holding the election to the post of Chairman, Panchayat Samiti Barwala, Hisar, respondent No.3 after considering the provisions of Section 161 of the Act and the Rules made thereunder and in exercise of the powers vested as per Article 243K of the Constitution of India declared the proceedings of the meeting dated 03.01.2023, whereby the petitioner was declared as elected Chairman of the Panchayat Samiti, Barwala, Hisar, as null and void. It is further submitted that keeping in view the gravity of the issue, the matter was also brought to the notice of the Government and the Government after considering the facts of the matter, had ordered a fact finding inquiry for fixing the responsibility of the erring officials/officers or Deputy Commissioner, Hisar/SDM, Barwala. Similar is the stand taken by the respondent Nos.4 and 5 in their written statement.

7. Learned Senior Counsel appearing for the petitioner has vehemently argued that the election to the post

of Chairman of the Panchayat Samiti, Barwala, Hisar, was conducted in terms of the notification issued by the Government, as per which the said seat was meant for unreserved category i.e. the category other than woman. It is further argued that the said election was conducted as per the provisions of the Act read with the Rules made there under and the petitioner was also declared as elected Chairman of the said Samiti in terms of Section 161 of the Act and Rules 76 to 78 of the Rules and, therefore, the said process ought not to have been declared null and void by respondent No.3. It is further contended that there is no misconduct on the part of the petitioner so as to render the said election as unfair and once the petitioner was elected as a Chairman and the declaration in this regard was also made, the authorities cannot recall the election of the petitioner as Chairman of the Panchayat Samiti Barwala, Hisar.

7. While placing reliance upon the judgment of the Hon'ble Supreme Court in Civil Appeal No. 4926 of 2000 decided on 20.11.2001- **Malkit Kaur Vs. Jatinder Kaur and Ors.**, and a Division Bench judgment of this Court in **Jasmal Kaur Vs. Punjab State Election Commission and Ors.** in CWP No.11199 of 2008 decided on 05.12.2008, it is contended that once the result has been declared and a certificate in the shape of Form 20-A has been issued to the petitioner, the respondent authorities have become functus officio in respect of the said election and the same could not have been declared as null and void. It is submitted that the

only remedy available thereafter, is to file an election petition. It is further submitted that having not proceeded to follow the said process, respondent No.3 has passed the impugned order in a total illegal and unwarranted manner and, therefore, the impugned order is liable to be quashed by this Court.

8. It is further argued by the learned Senior counsel for the petitioner that right from filing the nomination paper till the declaration of result, no objection was raised as regards the eligibility of the petitioner to contest the election of the Chairman of the Panchayat Samiti, Barwala (Hisar). Still further it is contended that a clarification had earlier been sought from the authorities in respect of the confusion regarding the sequential Nos.10 and 11, whereby two Panchayat Samitis with the same name i.e. Barwala, were mentioned, but no such clarification was ever received. It is not the case where there is complicity or collusion of any kind of the petitioner in his election as a Chairman of the Panchayat Samiti, which could render him ineligible for the said post and/or which could give a cause of action to respondent No.3 to declare the proceedings dated 03.01.2023 as null and void.

9. On the other hand, the learned State counsel while defending the impugned order has drawn the attention of this Court towards the provision of Section 161 of the Act read with Rule 61(1)(b) & 61(2)(a) of the Rules to submit that once the mistake was detected by the authorities in respect of

the election of the petitioner as Chairman of the Samiti, the same was rectified by passing the impugned order. It is further submitted that the provisions of Section 161 of the Act read with Rule 61(1)(b) and 61(2)(a) further read with Article 243K of the Constitution of India, gives ample powers to the respondents to correct the mistake committed during the process of the election to the post of Chairman, particularly when such mistake or irregularity has vitiated the very election proceedings.

10. It is further argued by the learned State Counsel that the judgments of the Hon'ble Supreme Court in **Malkit Kaur** and the Division Bench of this Court in **Jasmal Kaur (supra)**, are not applicable to the facts of the present case as in the said cases, the filing of an election petition has been held to be the remedy for the aggrieved candidate (defeated candidate). However, in the instant case, no election petition is maintainable at the instance of the State Government and, therefore, it cannot be said that once the petitioner has been declared as elected Chairman of the Samiti, that too from the seat which was meant for a woman, the said proceedings cannot be recalled by the respondent-authorities.

11. The Learned Senior counsel for the petitioner, while controverting the arguments of the learned State Counsel, submits that Rule 61(1)(b) read with Rule 61(2)(a) will not be applicable to the facts of the present case. It is further submitted that the said Rule has to be given a conjoint reading with the heading of the said Rule itself which

provides for fresh poll in case of destruction etc. of ballot boxes. It is, thus, submitted that the instant case does not pertain to the destruction etc. of the ballot boxes and, therefore, the election of the petitioner, even if, conducted in an irregular manner, will not fall under Rule 61(1)(b) and 61(2)(a) of the Rules.

12. We have heard learned counsel for the parties and have also gone through the record of the case. In our opinion the following questions arise for determination of this Court.

“1. Whether the respondents are empowered to declare as null and void the election of the petitioner as Chairman of the Panchayat Samiti Barwala (Hisar), regarding which a declaration was already made?

2. Whether the impugned order passed by respondent No.3 is legal and valid?”

13. Before adjudicating upon the aforesaid questions, it would be just and relevant to reproduce the following provisions of the Act and the Rules.

Section 161 of the Act.

Election of Gram Panchayat, Panchayat, Samitis and Zila Parishad.

“(1) As soon as, a notification is issued under this Act by the Government, the election of Panches, Up-Sarpanches and Sarpanches of Gram Panchayats, members, Chairmen and Vice-Chairmen of Panchayat Samitis and members, Presidents and Vice-Presidents of Zila Parishads shall be held on such date, as the State Election Commission in consultation with the Government may appoint in this behalf:

Provided that—

- (i) in the case of re-constitution of Gram Panchayat, Panchayat Samiti

- or Zila Parishad on account of the expiry of their duration of five years, such date shall not be earlier than four months or later than fifteen days before the expiry of duration;
- (ii) in case of re-constitution of a Gram Panchayat, Panchayat Samiti or Zila Parishad on account of dissolution of a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be, where the remainder of the period for which the dissolved Panchayat, Panchayat Samiti or Zila Parishad would have continued, is six months or more than six months, such date shall not be later than two months after the date of dissolution of the Gram Panchayat, Panchayat Samiti and Zila Parishad.
- (2) Such election shall be conducted in the prescribed manner.
- (3) The Superintendence, direction and control of the conduct of such election shall be vested in the State Election Commission.
- (4) After the declaration of general election results, the names of the elected Panches, Sarpanches, Members, Chairmen, Vice-Chairmen, Presidents and Vice-Presidents shall be published in the Official Gazette by the State Election Commission not earlier than one week before the expiry of the duration of the existing Gram Panchayat, Panchayat Samiti and Zila Parishad:

Provided that notification regarding all other election results

shall be published in the Official Gazette by the State Election Commission forthwith.

Rule 61 of the Rules

Fresh poll in case of destruction etc. of ballot boxes.—(1) If at any election -

(a) Any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer (Panchayat), or is accidentally or intentionally destroyed or lost or is damaged or tampered with to such an extent, that the result of the poll at that polling station cannot be ascertained; or

(b) Any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station, the Returning Officer (Panchayat) shall forthwith report the matter to the State Election Commissioner through the District Election Officer (Panchayat).

2. Thereupon the State Election Commissioner shall, after taking all material circumstances into account, either-

(a) declare the poll at the polling station to be void and appoint a day, and fix the hours, for taking a fresh poll at that polling station and notify the day so appointed and the hours so fixed in such manner as it may deem fit; or

(b) If satisfied that the result of a fresh poll at that polling station will not, in any way, affect the result of the election or that the error or irregularity in procedure is not

material, issue such direction to the Returning Officer (Panchayat) as it may deem proper for the further conduct and completion of the election.....”

14. Respondent No.3 while passing the impugned order, has noticed that as per the copy of the order dated 21.09.2022, and the clarification issued by his office letter dated 28.09.2022, the seat/office of the Chairman, Panchayat Samiti, Barwala (Hisar) at serial No.10 was for ‘women’ of unreserved category and Serial No.11 for Panchayat Samiti, Barwala (Panchkula) was for ‘other than woman’. Accordingly, it was mentioned in the impugned order that the election of the petitioner to the post of Chairman, Panchayat Samiti, Barwala (Hisar), could not be notified, as the seat/office was for woman whereas, the petitioner is a person other than woman. Relevant part from the impugned order reads as under:-

“5. Whereas, now, the Director General, Development and Panchayat Department, Haryana vide its memo No. ECA-5-2023/11964 dated 23.01.2023 has sent a copy of orders dated 21.09.2022 and clarification issued vide his office letter dated 28.09.2022 and made it clear that the seat/office of Chairman, Panchayat Samiti Barwala (Hisar) at Sr. No.10 is for ‘women’ of unreserved category and Sr. No.11 is for Panchayat Samiti Barwala (Panchkula) is for ‘Other than Woman’. In view of the clarification issued by the Director General, Development and Panchayat Department, Haryana, the election conducted by the Sub-Divisional Officer (Civil)-cum-Prescribed Authority Panchayat Samiti, Barwala, District Hisar for the post of Chairman, Panchayat Samiti, Barwala (Hisar) cannot be notified

since the seat/office was for 'woman' whereas Sh. Satish Kumar s/o Sh. Ram Swarup i.e. person 'other than woman' has been elected on this post. If this is allowed to continue then it would be a grave injustice to the 'women' candidate elected as Member of Panchayat Samiti, Barwala (Hisar) as it would deny them the opportunity to contest as Chairman, Panchayat Samiti, Barwala District Hisar a seat duly reserved for 'woman' (of un-reserved category) by the Development & Panchayat Department/State Government."

15. As per the provisions of the Act and the Rules made thereunder, the election to the post of Chairman is to be considered complete only when a notification in this regard, has been issued. However, in the instant case, before the notification could be issued, it was found that the petitioner was elected against the seat/office reserved for women category and accordingly, no notification was issued and rather, the process of the election of the petitioner, has been declared as null and void.

16. Now we are to examine whether the respondents were justified in declaring such election as null and void and if yes, then under what provisions of the Act or Rules made thereunder. Respondent No.3 has declared the part of the proceedings of the meeting dated 03.01.2023, in respect of the conduct of the election of the petitioner as Chairman of the Panchayat Samiti, Barwala (Hisar) as null and void by deriving the power from Article 243K of the Constitution of India and Section 161 of the Act and Rules made thereunder.

17. The provisions of Section 161 of the Act deal with the election of the Panches, Up-Sarpanches and Sarpanches

of Gram Panchayats, members, Chairmen and Vice-Chairmen of Panchayat Samitis and members, Presidents and Vice-Presidents of Zila Parishads. Sub-Section (2) provides that such election shall be conducted in the prescribed manner whereas Sub-Section (3) stipulates that the Superintendence, direction and control of the conduct of such election shall be vested in the State Election Commission. Sub-Section (4) provides for the publication of the notification regarding the election in the Official Gazette. Rule 61 of the Rules provides for a fresh poll in case of destruction etc. of ballot boxes whereas Sub Rule (1)(b) provides that if, any, such error or irregularity in the procedure as is likely to vitiate the poll, is committed at a polling station, the Returning Officer (Panchayat) shall forthwith report the matter to the State Election Commissioner through the District Election Officer (Panchayat). Sub-Rule (2) provides that thereupon the State Election Commissioner shall, after taking all material circumstances into account, either declare the poll at the polling station to be void and appoint a day, and fix the hours, for taking a fresh poll at that polling station and notify the day so appointed and the hours so fixed in such manner as it may deem fit. The controversy involved in the present case if examined on the touchstone of the aforesaid provisions, it would be clear that Rule 61(1)(b) and 61(2)(a) gives power to the State Election Commission to declare any result null and void if the proceedings are vitiated due to any error or irregularity in the procedure.

18. In the instant case because of the mistake/error, the petitioner was elected to the post of Chairman of the Panchayat Samiti, Barwala, (Hisar), whereas the said seat/office was reserved for women category. Thus, it is to be seen as to whether the petitioner has got any right to claim the seat/office of the Chairman of the Panchayat Samiti, Barwala (Hisar), especially when the said seat/office is reserved for women.

19. In our opinion, the petitioner cannot be allowed to take benefit of any error or irregularity committed during his election to the post of Chairman. Still further, as noticed above, the election is only complete when the notification is issued. However, in the instant case, before such notification could be issued, the error/irregularity in the conduct of the election was detected and the same was found to have vitiated the very proceedings.

20. The judgments in **Malkit Kaur and Jasmail Kaur (supra)** are not applicable to the facts of the present case. In the said cases, it was held that once a candidate has been declared elected in Form IX, the Returning Officer ceases to have any power to alter the said declaration subsequently. The declaration as contained in Form IX could only be challenged by means of an election petition before an appropriate Tribunal. However, the said remedy is available to a defeated candidate or the general public if they are aggrieved against the election of a winning candidate. Thus, we negate the argument raised by the learned Senior counsel

for the petitioner that the State is not empowered to declare the election of the petitioner as null and void. Still further, in the aforesaid cases, there was no finding that the process of election was vitiated due to an error or irregularity.

21. In view of the above, while answering Question No.1, it is held that respondent No.3 was justified in law to declare the part of the proceedings of meeting dated 03.01.2023 conducted by the Sub-Divisional Officer (Civil)-cum-Prescribed Authority, Panchayat Samiti Barwala, District Hisar, whereby the petitioner was elected as Chairman of the said Panchayat Samiti, as null and void.

22. Rule 61(1)(b) read with Rule 61(2)(a) of the Rules empowers the State Election Commission to declare any election null and void if the same contains any error or irregularity. Therefore, in view of the aforesaid detailed discussion, we hold that respondent No.3 has the power to pass the impugned order. Thus, we find no illegality in the said order. Question No.2 is answered in affirmative.

23. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

05.08.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No