

SURINDER KAUR
v.
STATE OF PUNJAB AND ORS.

FEBRUARY 23, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Election Laws:

Punjab Gram Panchayat Election Rules :

Rule 14A—Election to the office of Sarpanch—One person prevented from filing her nomination papers by one of the candidates—Despite complaint no action taken by Police—Writ petition filed and High Court granting stay—Even after communicating the stay Returning Officer proceeding with the election and declaring the results—Held: The election not valid in law as one of the prospective candidates, who was Sarpanch for 15 years was unlawfully prevented from filing her nomination papers—Election of returned candidates set aside—However he may continue till the repoll which the authorities should conduct within four weeks.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4393 of 1996.

From the Judgment and Order dated 13.9.93 of the Punjab & Haryana High Court in C.W.P. No. 863 of 1993.

Sudhir Walia and H.A. Raichura for the Appellants.

G.K. Bansal and Satish Vig for the Respondents.

The following Order of the Court was delivered :

Leave granted.

Heard the counsel.

This appeal by special leave arises from the Order of the Punjab and Haryana High Court dated September 13, 1993 made in Writ petition No. 863/93. the appellant, admittedly, was a sarpanch for 15 years of the Gram Panchayat village Dialgarph, District Gurdaspur. It is her case that the poll

to the office of Sarpanch was to be held on January 18, 1993 and nomination paper was to be filed by January 17, 1993. She had obtained all the no objection certificates and other certificates on January 15, 1993. On January 17, 1993 she went at 12 noon to submit her nomination papers. Her husband was wrongfully detained by the police. It is her case that the 7th respondent, Tara Singh had forcibly snatched the nomination papers and torn them off. In spite of her complaint to the police, they did not pay any heed to her protest nor acted on her complaint. Consequently, she was constrained to complain at about 4.30 p.m. to the Sub-Divisional Magistrate present in the gypsy vehicle. There was an entry in the log book in that behalf. But no action had come through. Since the election was to take place on January 18, 1993, she had approached the High Court and filed the writ petition. Admittedly, stay was granted at 2.p.m. and it was communicated telegraphically at 3 p.m. on the same day. It is also seen that the advocate had communicated the same and it was received at 3.50 p.m. The poll was closed at 4.00 p.m. it would thus be seen that the poll was closed after the stay was granted by the High Court and having had the knowledge of the stay granted by the High Court at 3.00 p.m., the Returning Officer should have stayed his hands back and awaited the decision of the High Court. Unfortunately, instead of awaiting the decision, he had gone in post haste in declaring the 7th respondent to have been duly elected as a Sarpanch.

Though it is denied that the appellant had submitted her nomination papers for contest as a Sarpanch, it would be difficult to believe the statement of the respondents that she had not filed the nomination papers. She had taken all necessary steps to file the nomination papers well within time. She had already been a sitting Sarpanch for over 15 years. Under those circumstances, one would legitimately expect that she have had an intention to contest the election and having secured necessary papers, in normal course she would have filed the nomination papers but for some supervening event. It is her case that the 7th respondent had forcibly taken the nomination papers from her and torn them off since her husband was already under police custody at the relevant time. She was incapable of resisting the high handed action. It is obvious that she was prevented from filing the nomination papers. Under those circumstances, she was constrained to approach the authorities. But when she did not get any tangible result, she had gone to the High Court and filed the writ petition making

all the allegations therein. Under these circumstances, we are of the considered view that the conduct of the election in the circumstances was not valid in law.

Though the learned counsel for the appellant seeks to rely upon Rule 14-A of the Punjab Gram Panchayat Election Rules, we do not think that the facts of the case fall in any of the grounds enumerated in that rule. She can not file an election petition equally. However, in view of the facts stated above, it being a case of unlawful prevention of the appellant from contesting the election, the election to the office of Sarpanch held is clearly in violation of the law. Therefore, the election of the 7th respondent as Sarpanch is set aside. He may, however, continue till the re-poll is held. The authorities are directed to conduct the election according to the rules within four weeks from the date of the receipt of the this order.

The appeal is allowed. Writ is issued accordingly, No. costs.

Appeal allowed.