

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH**

...

L.P.A.No.127 of 2007 (O&M)

Sonu alias Sombir

... Appellant

VERSUS

**Civil Judge (Sr.Divn.) Sonapat (Haryana)
and others**

... Respondents

and

L.P.A.No.126 of 2007 (O&M)

Sonu alias Sombir

... Appellant

VERSUS

**Civil Judge (Sr.Divn.) Sonapat (Haryana)
and others**

... Respondents

Decided on : February 19, 2009

CORAM :

HON'BLE MR.JUSTICE UMA NATH SINGH

HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.R.K.Malik, Senior Advocate assisted by
Mr.Sajjan Singh, Advocate for the appellant.

Ms.Ritu Bahri, Deputy Advocate General, Haryana

Mr.S.K.Pipat, Senior Advocate assisted by
Mr.S.S.Heera, Advocate for respondent No.2- Dharam Pal.

Mr.Anil Rathee, Advocate for respondents
No.9,12 and 14.

A.N.Jindal, J. :

This judgment shall disposed of two Letters Patent Appeals Nos.126 and 127 of 2007, as both have been directed against the judgment dated 23.5.2007 passed by learned Single Judge of this Court, whereby, the decision dated 8.6.2006 of the Civil Judge (Senior Division), Sonapat, setting aside the election of the appellant as Sarpanch of Gram Panchayat, Murthal and declaring the respondent No.2 as Sarpanch of the aforesaid village has been upheld.

The factual matrix of the case is that the elections of Gram Panchayat, Murthal were held April, 2005. Since the vacancy of Sarpanch was reserved for Scheduled Castes category, therefore, the appellant being a person belonging to 'Banjara' community representing himself as Scheduled Caste filed the nominations and was elected as such. The said election was challenged by respondent No.2 by way of filing Election Petitions before the Civil Judge (Sr.Divn.), Sonapat, challenging the election and also declaring him as Sarpanch of Gram Panchayat, Murthal, District Sonapat. The said suit was contested by the appellant and the following issues were framed:-

- “1. Whether the election of respondent No.4 as Sarpanch is liable to be set aside on the grounds prayed for? OPP
2. Whether the petition is not maintainable in the present form nor the petitioner has any locus-standi to file the same? OPR
3. Relief.”

The Trial Court while relying upon the judgment delivered by

this Court in **Smt.Anju vs. Additional Civil Judge (Sr.Divn), Pehowa and others**, 1998(1) PLJ 227 observed that illegal acceptance of the nomination papers could be a reason for setting aside of the election. Further while observing that since the appellant (petitioner in the election petition) hailing from the 'Banjara' category, does not fall in any category of Scheduled Castes and Scheduled Tribes, it set aside the election. Consequently, while deciding issue No.1, the Trial Court observed as under:-

“56. From the overwhelming and unequivocal discussion, it is crystal clear that the respondent No.4 belongs to 'Banjara' caste which comes within the definition of 'Backward Class' as per notification of Government. Accordingly, when the post of Sarpanch of village Murthal is reserved for scheduled caste candidate, the election of respondent No.4 as Sarpanch is ordered to be set aside and the petitioner is declared as elected Sarpanch of village Murthal, Tehsil and District Sonapat being a candidate of Scheduled Caste, as the post of Sarpanch of village Murthal was reserved for scheduled caste candidate and he has obtained highest number of valid votes i.e, 1120 after the respondent No.4. Consequently, issue No.1 is decided in favour of the petitioner and against the respondents.”

The aforesaid order passed by the Civil Judge was challenged by way of writ petitions, wherein, the learned Single Judge upheld the

order dated 8.6.2006 and dismissed both the writ petitions. Aggrieved by which, the appellant has preferred the instant two appeals, which are being decided together.

At the motion stage, this Court did not accept the plea of the appellant with regard to his election, but admitted the appeals questioning the declaration of respondent No.2 as Sarpanch as a consequence of setting aside the election of the appellant. The order dated 30.5.2007 passed at the motion stage is reproduced as under:-

“Learned counsel for the appellant has contended that the Election Tribunal as well as the Writ Court committed an error in directing respondent No.2 to be declared as the Sarpanch, in view of the specific provisions of Section 176(4) (aa) of the Haryana Panchayati Raj Act, 1994, which stipulate that in the event of a returned candidate's election being held as vitiated or set aside, the only remedy is holding of fresh elections.

Notice of motion to the extent indicated above, for 26.7.2007.”

Now, the election of Dharam Pal as Sarpanch has been challenged on the following two grounds:-

(i) No provisions of the Panchayati Raj Act provides for declaring the respondent No.2 – Dharam Pal as Sarpanch, even in case the election of the appellant is set aside and the

only option was to conduct fresh election;

(ii) Despite the specific plea raised by the appellant in the writ petition, the Single Judge did not touch this issue. Similarly, the Trial Court proceeded to declare the respondent No.2 as Sarpanch, without framing any issue and calling for any evidence, in this regard.

To the contrary, respondent No.2 while countering the arguments of the appellant has argued that he had also set up a plea with regard to wrong counting of the votes, but that was also not met with by the learned Single Judge. As such, notwithstanding all the pleas, even if recounting is made, then he could be declared as Sarpanch.

As regards the plea of recounting set up by respondent No.2, the same is covered by issue No.1 as framed by the Trial Court. The Trial Court discussed all the arguments raised by respondent No.2, therefore, non-consideration of this contention or absence of observations on the said argument, would entail the presumption that either the plea was not pressed or the Trial Court was not inclined to accept such plea.

As regards the first argument, advanced by the counsel for the appellant, it may be observed that the learned Single Judge has already returned a finding that the appellant being a 'Banjara' hailing from Backward Class, was not competent to contest the election to the post of Sarpanch, reserved for Scheduled Castes category. On filing the instant appeal, setting aside of the election stood confirmed as the LPA was not admitted on that issue. In the absence of any order of correction, reversion

or modification of the said order by way of appeal or otherwise, the same has attained finality.

Now, we are left to determine the only question, whether in case of disqualification, the respondent No.2 could be declared as elected in the same breath without holding the fresh election. This argument stands answered by Section 176 of the Panchayati Raj Act, which reads as under:-

“176. Determination of validity of election enquiry by judge

and procedure.-- (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

(2) & (3)

(4)(a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section(5), he shall set aside the election and declare the candidate disqualified for the

purpose of election and fresh election may be held.

[(aa) If on holding such enquiry the Civil Court finds that -

(i) on the date of his election a returned candidate was not qualified to be elected;

(ii) any nomination has been improperly rejected; or

(iii) the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.]”

On bare perusal of the aforesaid provision of the Act, it transpires that in case the election of a candidate is set aside on the ground of improper rejection or acceptance of the nomination papers and any candidate is declared disqualified for contesting the election, then the election of such candidate shall be set aside and fresh election will be held. The Trial Court while accepting this relief clause in favour of respondent No.2, declared him elected, but did not take note of clause (a) of sub-Section 176(4)(aa) of the Haryana Panchayati Raj Act. This fact also

appears not to have been brought to the notice of the learned Single Judge. As such, the declaration of respondent Dharam Pal as Sarpanch by the Civil Judge (Sr.Divn.), Sonapat is erroneous and deserves to be reversed and similar is the position with regard to the judgment passed by the learned Single Judge.

An abortive bid has been made by counsel for respondent No.2, saying that since the appellant did not raise any such contention before the learned Single Judge, therefore, it appears that this issue was not touched by him. As such, this legal plea cannot be raised at the appellate stage. With due reverence to arguments, it would suffice to say that irrespective of the fact that this legal plea was not raised by the appellant before the Single Judge, the same could be raised at any stage. The appellant appears to be helpless in meeting with the requirements of sub-Section (4)(aa) of Section 176 of the Haryana Panchayati Raj Act that he could not be declared elected in the same breath without holding fresh elections when the election of the returned candidate was set aside, on the ground of improper acceptance of nomination papers.

For the foregoing reasons, we accept the appeals, set aside the impugned order dated 8.6.2006 passed by Civil Judge (Senior Division), Sonapat and order dated 23.5.2007 passed by learned Single Judge and hold that the declaration of Dharam Pal as Sarpanch without fresh election is illegal. Consequently, respondent No.4 – Deputy Commissioner, Sonapat is directed to take over the office of Sarpanch of Gram Panchayat, Murthal, forthwith, and proceed to hold fresh elections within three months, in

accordance with law.

(UMA NATH SINGH)
JUDGE

(A.N.JINDAL)
JUDGE

February 19, 2009
'gian'