



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

**CWP No.31904 of 2024**

**Reserved on : 27<sup>th</sup> NOVEMBER, 2024**

**DATE OF DECISION : 29<sup>th</sup> NOVEMBER, 2024**

**Palwinder singh**

**.... Petitioner**

**Versus**

**State of Punjab & others**

**.... Respondents**

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR**

**HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

**\* \* \* \***

**Present : Mr. Atinderpal Singh, Advocate for the petitioner.**

**Mr. Maninder Singh, Sr. DAG, Punjab.**

**\* \* \* \***

**SURESHWAR THAKUR, J. (Oral)**

1. Through the instant writ petition, the petitioner seeks the passing of a writ of Certiorari, thus to quash the result dated 15.10.2024 (Annexure P-4) whereby respondent No.7 was declared the elected candidate for the post of Sarpanch. The further relief claimed in the instant petition is for the passing of a writ of Mandamus, thus directing respondent No.4 to appoint the petitioner as the Sarpanch of Village Pandori Takhtmal. Furthermore, a prayer has also been made in the instant petition for staying the declaration of the result made on 15.10.2024 (Annexure P-4).

**Factual Background**

2. It is stated that on 19.09.2024, the Department of Rural Development and Panchayats, issued a Notification vide which general election of the members of the Gram Panchayat were to be held by 20.10.2024. The State Election



Commission of Punjab vide Notification dated 27.09.2024 declared the schedule/program for the Gram Panchayat Election. The petitioner being resident of Village Pandori Takhtmal, Tehsil and District Tarn Taran, contested the election for the post of Sarpanch. He was declared winner by two votes as he got 247 votes out of 540 votes. It is further averred that Gurjinder Singh respondent NO.7 in connivance with MLA of the ruling party, came to the polling booth and forcibly changed the election result by capturing all votes, whereupon he became declared as elected candidate, by adopting the toss system, especially when the petitioner and respondent No.7 got equal votes i.e 247. In the inquiry report dated 17.10.2024 (Annexure P-6), which was submitted by the SDM-cum-ERO Tarn Taran, to the Deputy Commissioner cum Election Officer, Tarn Taran, therein the SDM-cum-ERO specifically stated that the RO concerned has not played a clear and impartial role. The petitioner is stated to have sent e-mails on 15.10.2024 and also submitted a representation dated 11.11.2024 to the Deputy Commissioner, Tarn Taran, thus detailing therein that the result was changed arbitrarily and that the respondent No.7 in the instant petition was illegally declared elected.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER**

3. Learned counsel for the petitioner contends, that at the time of the initial pronouncement of results by the Returning Officer rather the petitioner was declared elected as he had bagged the highest votes i.e 247 votes. Therefore, the subsequent thereto declaration by the Returning Officer, that respondent No.7 had bagged votes equal to the above votes as became bagged by the present petitioner but was arbitrarily made, given the original result sheet making speakings that the present respondent No.7 in the earlier announced result, thus had obtained only 245 votes. However, through the adoption of toss system, in the event of a tie of votes taking place amongst the present petitioner and respondent No.7, in the writ petition, thereby the Returning Officer, given the present respondent succeeding



toss of coin, rather proceeded to declare respondent No.7 to be the winner in the elections. Therefore, it is also contended that the declaration by the Returning Officer vis-a-vis respondent No.7 being the winner, thus through the adoption of the supra untenable toss system but also suffers an infirmity as at the time of adoption of the toss system by the Returning Officer rather the present appellant was not then present.

**CONCLUSIONS AND INFERENCES BY THIS COURT FOR REJECTING THE SAID ARGUMENT**

4. It is apposite to reproduce Section 89 of the Punjab State Election Commission Act, 1994 and Rule 35 of Punjab Panchayat Election Rules, 1994 (for short “the Rules”), both whereof read as under:

*“89. Grounds for declaring election to be void.-- (1) Subject to the provisions of subsection (2), if the Election Tribunal is of the opinion,—*

*(a) that on the date of his election, a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under this Act; or*

*(b) that any corrupt practice has been committed by a returned candidate or his election agent or by other person with the consent of a returned candidate or his election agent; or*

*(c) that any nomination has been improperly rejected: or*

*(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected,--*

*(i) by the improper acceptance of any nomination; or*

*(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent: or*

*(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or*

*(iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act; the Election Tribunal shall declare the election of the returned candidate to be void.*

*(2) If in the opinion of the Election Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Election Tribunal is satisfied,—*



*(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every, such corrupt practice as committed contrary to the orders, and without the consent, of the candidate or his election agent;*

*(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election: and*

*(c) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agent; then the Election Tribunal may decide that the election of the returned candidate is not void.*

*(3) In this section, the expression 'agent' has the same meaning as assigned to it in Explanation (1) given under clause (9) of section 108 but does not include election agent.”*

**35. Procedure in case of tie (Section 68)-** *If, after the counting of votes is completed, votes polled by two candidates are equal, and the addition of one vote will entitle any of these candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by draw of lots and proceed as if the candidate in whose favour the lot [falls] has received an additional vote.*

5. Though after conclusion of the elections, to the democratically elected office concerned, the remedy as available to the aggrieved therefrom, is embodied in Section 89 of the Punjab State Election Commission Act, 1994 (hereinafter to be referred as “the Act”), provisions whereof become extracted hereinabove. Though a reading of the supra extracted provisions unveil, that if the declaration of the result by the Returning Officer, brings any grievance to the aggrieved, grievances whereof, may be on the various grounds as detailed in Section 89, one amongst of the said grounds, is the causing of deep pervasive vitiations, to the declaration of result, through the Returning Officer including in the count, thus those votes, which were to be rejected or which were to be declared void. Apart from above supra, vitiations to the declaration of the election result, may also become cast in the election petition on various other grounds as detailed in the



hereinabove provisions. However, only on such grounds being cast in an election petition whereafters on the contentious pleadings thus issues are struck, resulting in adduction of cogent evidence by the petitioner on whom the evidence discharging onus becomes laid, thereupon the Election Tribunal becomes empowered to declare that the declaration of result as made by the Returning Officer rather is void.

6. Be that as it may, though only on cogent proof becoming adduced by the aggrieved from the declaration of result vis-a-vis the supra grounds set forth in the election petition, thus the election Tribunal concerned becomes empowered to quash and set aside the result declared by the Returning Officer concerned. However, what startles the judicial conscience of this Court is, that, the procedure to be adopted in case where there was a purported tie amongst the present petitioner and respondent No.7, was the one as becomes embodied in Rule 35 of the Rules supra, provisions whereof become hereinabove extracted.

7. Readings of the above extracted rules, but patently unfold the trite fact that in case, when there occurs any purported tie of votes amongst the contestants therebys rather than the Returning Officer choosing to resolve the said tangle through his making a toss of coin. Contrarily, he is to proceed to adopt the recourse of drawing lots and the candidate whereupons whom the lot successfully falls, thus is to be declared as the winner. Though the said fact is not pleaded in the instant petition but the omission of pleading of the fact supra, in the instant petition but does not dis-empower this Court to both allude to and prima facie determine the tenacity of said factum despite the same not being pleaded, as law is not required to be pleaded.

8. Nonetheless if on account of the said mis-adoption being made by the Returning Officer concerned, that too obviously, in derogation of the procedure as encapsulated in Rule 35 of the Rules 1994, therebys yet this Court cannot proceed



to either embark upon the exercise of determining whether therebys there is vitiation caused to the declaration of results, on the said count, besides on the count that the incidental thereto purported collusive corrupt practices became indulged into collectively by the returned candidate and by the Returning Officer concerned. The reason for stating so arises from the fact, that the said finding is to be returned only on a election petition becoming instituted by the aggrieved before the Election Tribunal concerned, whereupons after the strikings issues on the contentious pleadings set forth by the parties arrayed as such in the election petition, thereupons the Election Tribunal supra but is required to be asking for evidence thereon becoming adduced by the litigant, whereupon whom the evidence discharging onus becomes cast.

9. The said exercise obviously cannot be undertaken by this Court in the instant proceeding nor this Court in the face of existence of supra alternative remedies, can proceed to either convert itself into an Election Tribunal nor this Court can proceed to determine a contentious fact which otherwise is to be determined through the adoption of the above recourses, which but are required to be initially adopted only by the alternative thereto thus the supra alternative quasi judicial Forum.

10. Obviously, thereby the invocation of the writ remedy is a mis-availed remedy at the instance of the present petitioner, thus in the face of availability of an alternative supra remedy to the institution of the instant writ petition. Resultantly, therebys the instant writ remedy is to be declared as pre mature, as the writ remedy would be available to become recoured at the instance of the aggrieved, but only after a reasoned order becoming recorded by the Election Tribunal concerned, thus on the apposite election petition concerned.

11. However, the learned counsel appearing for the petitioner has made reliance on two judgments passed by this Court rendered respectively in case titled



as **Baljit Singh and Others vs. State of Punjab and Others** and another in **Mehta Singh vs. State of Haryana and others** to which respectively **CWP No.14201 of 2008** and **LPA No.866 of 2010** to become assigned. Learned counsel appearing for the petitioner emphasizes upon paragraph 10 of the judgment rendered by this Court in **Baljit Singh's case (supra)** paragraph whereof become extracted hereinafter.

*“After hearing counsel for the parties on this point, in the above facts and circumstances of the case, we are not inclined to accept the contention of learned counsel for respondent No.6. It is true that when the remedy of election petition is available, this Court should refrain itself from entertaining the petition under Article 226 of the Constitution of India, questioning the election of the returned candidate, but in the facts and circumstances of this case, this Court cannot be a silent spectator, particularly when a fraud has been played by a Presiding Officer to the election process and electors of the village. Admittedly, a Sarpanch is to be elected by majority of the Panches of a Gram Panchayat. In the present case, out of 9 Panches, 5 are before this Court. They were present in the first meeting, but the remaining 4 were not present on that day. The said meeting was adjourned due to lack of quorum. In the next meeting held on 20.7.2008, all the 9 Panches were present, but the Presiding Officer, without any justification adjourned the meeting without conducting the election of the Sarpanch, which under the law he was duty bound to conduct. The said meeting was adjourned to 21.7.2008. On that day, the Presiding Officer did not come present at the venue and did not conduct the election of Sarpanch. Later on, the proceedings were recorded at a different place, which was shown to be attended by 6 Panches, who elected one of them as Sarpanch. Once we have come to the conclusion that on 20.7.2008, when all the 9 Panches were present, there was no justification to adjourn the meeting, without holding the election of*



*Sarpanch, and further that on 21.7.2008, no meeting was held, as the Presiding Officer did not come present at the time and venue of the meeting, we cannot refrain from interfering on the ground that the remedy of election petition is available, particularly, when the same Presiding Officer has also played similar fraud in another village and declared one Panch elected as Sarpanch, without there being any election.”*

12. Moreover, he also emphasizes upon paragraph 6 as become carried in the decision made by this Court in **Mehta Singh’s case (supra)** para whereof becomes extracted hereinafter:

*“In our view, the facts of the present case as recorded by the learned Single Judge would fall within the ambit of law laid down in Baljit Singh’s case (supra). Further-more, we notice that the finding of the learned Single Judge that mal-practices had been resorted to by the Returning Officer is demonstrated unequivocally by the certificates which he issued to both respondent No.7 as well as the appellant. Even if it is assumed that the certificate in favour of respondent No.7 was issued belatedly, as averred by the appellant though denied by respondent No.7, nevertheless, the Returning Officer who takes such a stand which obviously demonstrates falsehood, cannot be relied upon. In any event, the learned Single Judge did not declare respondent No.7 to be elected but merely directed that action be taken under Rule 71 of the Haryana Panchayati Raj Election Rules, 1994. Since there is no interim order staying the operation of the judgment of the learned Single Judge, we are informed that the election process has been carried out and respondent No.7 has been duly elected as per Rule 71 of the aforesaid Rules. Accordingly, we are satisfied that this appeal has no merit and is dismissed as such with no order as to costs.”*

13. On the anvil of the above extracted paragraph, the learned counsel for the petitioner submits, that even if the remedy of filing of an election petition though is the permissible remedy to be resorted by the petitioner. Moreover, he



also argues that even if said remedy is alternative to the filing of the instant writ petition besides though therebys unless the said alternative remedy becomes availed at the instance of the present petitioner, therebys the filing of the instant writ petition is a mis-availed remedy.

14. Be that as it may, he yet further submits that since there is an apparent ex-facie fraud committed by the Returning Officer in his taking into account certain votes which were rather to be declared as void. Moreover when subsequently he also rendered them on to the account of the present respondent, therebys the said purported malpractice indulged into by the Returning Officer, does not yet forbid this Court to proceed to accept the writ petition. Moreover, he argues that thereupons this Court is empowered to declare the present petitioner to be elected but after setting aside the declaration by the Returning Officer, wherebys the present respondent was declared as the winner to the democratically elected office of Sarpanch.

15. Both the paragraphs supra as carried in the verdicts supra, would require utmost deference becomes meted theretos, but only when the facts stated therein were co equal to the facts existing in the instant writ petition. Now, for discerning whether the facts encapsulated in the verdict supra are similar to the facts encapsulated in the present writ petition, thereupons this Court has proceeded to make a keen discernment of the fact existing in the cases supra.

16. In the said endeavour, this court finds that in the factual strata as became erected in the cases supra, thus therein the democratically elected Panches to the Gram Sabhas concerned after theirs becoming sworn as such, thus constituted the apposite electoral college, for theirs subsequently electing the Sarpanches to the Gram Sabhas concerned.

17. Resultantly, therebys in the supra case, there were no direct elections held to the office of the Sarpanch of the Gram Panchayat concerned, whereas,



pointedly in the instant case, direct elections were conducted to the office of the Sarpanch of the present Gram Panchayat. Therefore the above *inter se* contra distinctivity in the foundational facts stated therein vis-a-vis the facts in hand, thereby the *ratio decidendi* as becomes spoken in the above extracted paragraphs but naturally does not squarely apply to the contra distinct thereto facts as exists in the instant case. Significantly, the propounded therein *ratio decidendi* is applicable only to the facts therein and is not applicable to the facts which are completely distinct from the facts as set forth in the verdict supra.

18. In sequel, this Court is not inclined to accept the view propounded in the judgments supra whereby earlier this Court was led to conclude that, despite the existence of an alternative remedy, inasmuch as, the aggrieved availing the remedy of filing an election petition before the Election Tribunal concerned, thus on grounds supra, which also cover the subject matter of the instant matter, yet in the wake of the pervasive malpractices detailed in the verdict supra, yet the writ Court became led to invoke its writ jurisdiction, rather to undo the said malpractices.

19. Moreover, conspicuously since the facts as stated in the said decisions are dis-similar to the facts at hand whereby the *ratio decidendi* propounded therein is also inapplicable to the present lis. Resultantly when the present petitioner has ill-chosen to avail the writ remedy despite availability to him of the supra alternative remedy thereto remedy, comprised in his filing a election petition before the Election Tribunal concerned. In sequel, this Court declares the instant petition to be at this stage thus to be pre maturely instituted besides is led to declare it to be a mis constituted remedy.

20. Finding no merit in the present petition, the same is dismissed leaving to the liberty to the petitioner to file the said election petition before the Election Tribunal concerned and if the said election petition is time barred, thereupon the



present petitioner may append therewith an application cast under Section 40 of the Limitation Act, whereons, a just and fair order shall be passed and subsequently the election petition shall be registered, and thereons an expeditious and lawful decision shall become rendered by the Election Tribunal concerned.

- 21. Disposed of accordingly.
- 22. All pending application(s), if any, shall also stand disposed of.

**(SURESHWAR THAKUR)**  
**JUDGE**

**November 29, 2024**  
manoj

**(SUDEEPTI SHARMA)**  
**JUDGE**

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No