

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

**FAO 210 of 2008 (O&M)**

Date of decision: 29.2.2008

Balkar Singh

...Appellant

Versus

Presiding Officer, Election Tribunal, Amritsar  
& ors

...Respondents

Present: Mr VK Jain, Sr Advocate with  
Mr VK Sandhir, Advocate for the appellant.  
Mr KS Rekhi, Advocate for respondent-2.  
Mr HS Gill, DAG Punjab

**S.S. SARON, J (oral).**

This appeal has been filed by Balkar Singh who was elected Sarpanch of Gram Panchayat Village Radala, Block Harsha Chhina Tehsil Ajnala, District Amritsar on 29.6.2003. In pursuance of the impugned order dated 1.1.2008, his election as Sarpanch has been set aside.

Heard counsel for the parties.

The election of the appellant as Sarpanch was assailed by the respondent – Gurdeep Singh by way of a petition under Section 76 of the Punjab State Election Commission Act, 1994 read with Rules 50 and 51 of the Punjab Panchayat Election Rules, 1994. The appellant was proceeded against exparte during the course of hearing and an exparte order dated 1.1.2008 was passed by the Presiding Officer, Election Tribunal-cum-Commissioner, Municipal Corporation, Amritsar (Tribunal – for short). In terms of the exparte impugned order, the election of the appellant as Sarpanch has been set aside and the respondent – Gurdeep Singh has been declared elected Sarpanch of the Gram Panchayat, Radala.

During the course of hearing of the election petition, the Tribunal vide order dated 24.11.2006 ordered the recounting of votes of the election that was held on 29.6.2003. The said order dated 24.11.2006 ordering recount was assailed in this Court by way of Civil Revision 6486 of 2006. The revision petition initially came up for hearing on 7.12.2006 on which date notice of motion was issued for 18.1.2007 and operation of order dated 24.11.2006 regarding recount of the votes was stayed. The Tribunal, in view of the stay granted by this Court on 19.1.2007 adjourned the case sine die with liberty to any party to get the matter revived after decision of this Court. The revision petition before this Court was admitted on 15.2.2007 and the interim order was ordered to continue till further orders. However, it was directed that the learned Tribunal may continue with the proceedings in the election petition in accordance with law. The revision petition was to be listed for hearing within six months. In view of the order dated 15.2.2007, the respondent filed an application dated 6.6.2007 for revival of the proceedings. The learned Presiding Officer asked for a report. A perusal of the record of the Tribunal shows that summon was issued to the appellant – Balkar Singh for 19.6.2007. The said summon only contains the seal of the Court of the Presiding Officer with some initials and does not appear to be signed by the Presiding Officer. Besides, there is no order for issuing summons for 19.6.2007. In any case, in terms of the report recorded by the Process Server on 15.6.2007, it has been mentioned that the appellant was avoiding summons and a copy of the summons had been pasted. Thereafter, another summon was issued by the Tribunal on 26.2.2007 for 3.7.2007. There is no order on record showing the issuance of summon for 3.7.2007. Besides, the summon is not signed by any Presiding Officer and only a seal has been put with some scribbling

between the seal. On this, the report has been made by the Process Server that he went to the spot for effecting the service in village Radala; however, the appellant despite being asked to accept the summon, flatly refused. Then a line appears to be added that later he had accepted a copy of the summon but refused to sign. The report was accordingly submitted. In any case, there are no orders after 19.1.2007 in the photostat copies of the interim orders that have been submitted regarding issuance of summons to the respondent. It may at this stage be noticed that when the records of the case were requisitioned by this Court from the Tribunal by way of a special messenger, one of the files which contained the interim orders was initially not given to Rajesh Kumar of the Accounts Branch of this Court who had gone to get the records. He was thereafter called and then given the copy of the file containing some interim orders. The said file now is not traceable. In any case, Mr Mukesh Jaswal, Legal Advisor of Municipal Corporation, Amritsar and Mr Ishar Singh Clerk of the Corporation have submitted photostat copies of the interim orders that were stated to be missing. The same were taken on record vide order dated 13.2.2008. A perusal of the same would show that after 19.1.2007, the proceedings were recorded on 3.8.2007 only. Therefore, it is not understandable as to how the summons were issued to the appellant by the Tribunal for 19.6.2007 and thereafter on 3.7.2007 without the orders of the Presiding Officer. On 3.8.2007, an order was passed to open the record. The same was not passed in the presence of any counsel as the relevant column regarding presence of the counsel has not been tick marked. The case was then taken up on 10.8.2007. A perusal of the proceedings recorded on 10.8.2007 shows that initially an order was passed: "Exparte opening of record". Thereafter, the following order was passed which clearly shows that it has been interpolated later. The order is;

“Respondent despite service of summons not present. Proceeded exparte. Adjourned for opening of record”. In fact, no summons are on record to show that the appellant was summoned for 10.8.2007. Then on 4.8.2007 the record was opened and the case was fixed for orders on 24.8.2007. Thereafter on 29.10.2007, the respondent submitted an application by placing on record the certified copy of the order dated 8.10.2007 passed by this Court in Civil Revision 6486 of 2006. In terms of the same, the order dated 24.11.2006 passed by the Tribunal regarding recount of votes had been set aside with a direction to the Tribunal to proceed with the matter in accordance with law. Accordingly, it was ordered that the file be put up on 2.11.2007. On that day, the file was taken up and it was ordered that let notice be issued to Balkar Singh along with counsel – Shri Rajesh Nanda, Advocate for 16.11.2007, who is the counsel for the respondent. On 16.11.2007, it was observed that notice issued to Balkar Singh in the case has not been received back served or unserved. Fresh notice was ordered to be issued through registered letter with AD for 29.11.2007. On 29.11.2007, it was recorded that notice issued through registered post had not been received back served or unserved from respondent. Moreover, the Presiding Officer was away to Chandigarh. The case was adjourned to 7.12.2007. On that day, the summons issued to the respondent on 2.11.2007 for 16.11.2007 had been received back with the report that the appellant had refused to receive the summons and also did not appear on 16.11.2007 before the Tribunal. The summons issued through registered AD post were received back with the report that the appellant was avoiding service. He was proceeded against exparte and the case adjourned to 13.12.2007 for further proceedings. On that day, it is recorded that the petitioner (i.e. now respondent) was present along with his counsel Mr Rajesh Nanda. Part

arguments were heard and Mr Nanda wanted time to submit written arguments. The case was adjourned to 18.12.2007. Written arguments were submitted on 18.12.2007 and the case was adjourned to 26.12.2007 for orders. On that day, the Presiding Officer was on official tour and the case was adjourned to 27.12.2007. Thereafter, the impugned order has been passed on 1.1.2008.

The manner in which the record has been kept and dealt with and some of the summons have been issued without orders of the Presiding Officer casts doubt as to whether the summons were indeed issued and served on the respondent. During the course of hearing vide order dated 6.2.2008, Mr HS Gill, Deputy Advocate General, Punjab was requested to assist the Court in finding out the true position. Mr Gill was of the view that the learned Tribunal has not maintained proper record with regard to service of summons and he was of the view that the conduct of the officials of the Corporation was not free from doubt. In the circumstances, it would be just and expedient that the impugned order dated 1.1.2008 is set aside and the matter is re-heard by the Tribunal after granting an opportunity of hearing to both the parties. Mr VK Jain, learned Senior Counsel for the appellant has submitted that the appellant is not to lead any more evidence in the case and the matter would be argued on the basis of material on record. Therefore, it would be just and expedient that the learned Presiding Officer passes a fresh order on the election petition after hearing both the sides. In terms of order dated 31.1.2008 passed by this Court, it was ordered that meanwhile charge of Sarpanch shall remain with the Administrator to be appointed by the Collector-cum-DDPO. Learned counsel for the parties submit that the charge of Sarpanch at present is with the Administrator appointed by the Collector-cum-DDPO. In the

circumstances, till the matter is disposed of by the learned Tribunal, it would be just and expedient that the charge of Sarpanch shall remain with the said Administrator.

Accordingly, the appeal is allowed and the order dated 1.1.2008 is set aside. The parties, through their counsel are informed to put in appearance before the Tribunal on 11.3.2008. It is made clear that the parties are to appear before the Tribunal on 11.3.2008 and no summons for this purpose are required to be issued by the Tribunal. The records of the Tribunal be remitted back immediately by calling a special messenger telephonically from the Municipal Corporation, Amritsar. The Tribunal shall proceed to hear the arguments and pass fresh orders in the case in accordance with law preferably within a period of two weeks.

29.2.2008.  
ASR

( S.S.SARON )  
JUDGE