

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

117

**Reserved on : 25.07.2025
Pronounced on : 01.10.2025**

1. FAO-1809-2025 (O&M)

Gagandeep Singh Appellant

versus

SDM cum Election Tribunal Sri Mukstar Sahib and ors.

..... Respondents

2. FAO-1646-2025 (O&M)

Gurpreet Singh Appellant

versus

**Sub Divisional Magistrate-cum-Election Tribunal
Sri Mukstar Sahib and ors.**

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Nishan Singh Chahal, Advocate,
for the appellant in FAO-1809-2025 and
for respondent No.5 in FAO-1646-2025.

Mr. J.S.Brar, Advocate,
for the appellant in FAO-1646-2025 and
for respondent No.3 in FAO-1809-2025.

Mr. Ishan Kaushal, AAG, Punjab.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Kanishk Swaroop, Advocate,
for respondent No.4 in FAO-1809-2025.

PANKAJ JAIN, J.

1. Present appeals are directed against order dated 06.03.2025 passed by Election Tribunal, Sri Muktsar Sahib allowing the election petition filed by respondent No.4 namely Pargat Singh Brar and declaring him as elected Sarpanch of Gram Panchayat village Harike Kalan, District Sri Muktsar Sahib.

2. Election to the Office of Sarpanch of Gram Panchayat, village Harike Kalan was held on 15.10.2024. There were five candidates in the fray. Respondent No.3 Gupreet Singh was declared elected having secured 2842 votes.

3. Respondent No. 4 Pargat Singh Brar filed election petition challenging the election of Respondent No. 3 as Sarpanch. As per the averments made in the application, it was pleaded that the elected candidate Gurpreet Singh is a convict and was sentenced vide judgment dated 17.09.2014 passed by the Special Court, Patiala in FIR No. 76 dated 12.07.2012 registered for offences punishable under Sections 18, 25 and 61 of the NDPS Act, 1985. In the appeal preferred against the conviction and sentence by Respondent No. 3, his sentence has been suspended but his conviction has not been stayed.

4. Election Tribunal vide impugned order dated 06.03.2025 allowed the election petition holding respondent No.3 to be not eligible to contest election being disqualified under Section 8(1)(f) of the Representation of People Act, 1951. Election of respondent No.3 was accordingly set aside. The Tribunal, accepting the prayer made in election petition, declared respondent No.4 to be the elected Sarpanch

of the village. The appellant who was also one of the candidates in the fray, has challenged the order passed by the Tribunal to the effect the election petitioner has been declared to be elected Sarpanch in FAO No.1809 of 2025.

5. The other appeal i.e. FAO No.1646 of 2025 is at the behest of elected candidate Gurpreet Singh.

6. Learned counsel for the appellant while assailing the impugned order relies upon Section 90 of the Punjab State Election Commission Act, 1994 (for short, 'the 1994 Act') to submit that there being no allegation in the election petition qua votes having been obtained by respondent No.3 by corrupt practices, the Tribunal erred in declaring respondent No.4 as elected candidate. Reliance has been placed upon ratio of law laid down by Supreme Court in the case of ***Prakash Khandre vs. Dr. Vijaya Kumar Khandre*** reported as **2002(5) SCC 568** and ratio of law laid down by Supreme Court in the case of ***Krishnamoorthy vs. Sivakumar*** reported as **2015 AIR Supreme Court 1921**. He submits that where the nomination paper of elected candidate suffers from illegality of non-disclosure of full particulars of criminal cases, election is to be declared null and void. The Tribunal has no reason to go into the question whether it materially effects the election or not. Thus in absence of situation as contemplated under Section 90 of the 1994 Act Tribunal ought not have declared respondent No.4 as elected Sarpanch.

7. *Per contra*, Mr. Sidhu, Advocate appearing for the candidate declared to be elected by the Tribunal relies upon observations made by Supreme Court in the case of ***Union of India vs.***

Association for Democratic Reforms & Anr. reported as **(2002) 5 SCC 294** to submit that non-disclosure of the criminal antecedents by elected candidate amounts to corrupt practice. Further reliance is being placed upon *Resurgence India vs. Election Commission of India & Anr.* reported as **(2014) 14 SCC 189** to contend that where Election Commission accepts nomination papers in spite of blank particulars in affidavits, the same violates fundamental right of citizen to know the criminal antecedents, assets and liabilities and educational qualification of a candidate. Reliance is also being placed upon the ratio of law laid down by the High Court of Hyderabad in the case of *Mopuragundu Thippeswamy vs. K. Eranna and others reported as 2018 SCC Online Hyd 413* wherein the High Court in similar circumstances, declared the election petitioner who secured highest votes after the elected candidate to be elected member of legislative assembly constituency under Section 84 of the Representation of People Act. He further brings to the notice of this Court that the Civil Appeal No.11908 of 2018 against the said order was dismissed by the Supreme Court vide order dated 12.12.2008.

8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. Section 210 of The Punjab Panchayati Raj Act, 1994 deals with Panchayat elections. As per the provision, the power to conduct elections vests in State Election Commission. As per Punjab Panchayat Election Rules, 1994, election petition concerning Panchayat elections needs to be filed under Section 76 of the Punjab State Election Commission Act, 1994. Section 78 of the 1994 Act deals with contents

of petition. Section 79 provides for relief that may be claimed by the petitioner. Section 87 deals with the decision of the Election Tribunal. Section 88 deals with other orders to be made by the Election Tribunal. Section 89 deals with grounds for declaring election to be void. Section 90 deals with the grounds for which the candidate other than the returned candidate may be declared to have been elected. The provisions read as:-

The Punjab Panchayati Raj Act, 1994

“210. Election Commission to conduct Panchayat election.-- The superintendence, direction and control of the preparation of electoral rolls for and conduct of, all elections to the Panchayats, shall be vested in the Election Commission.

The Punjab State Election Commission Act, 1994 :-

76. Presentation of petition.- (1) An election petition may be presented on one or more of the grounds specified in sub-section (1) of section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

78. Contents of petition.-- (1) As election petition shall,-

(a) contain a concise statement of the material facts on which the petitioner relies;

(b) set forth full particulars of any corrupt practice that the petitioner alleges, including a statement as possible, of the

names of the parties alleged to have committed such corrupt practice or practices and the date and place of the commission of such practice; and

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, (Central Act 5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the relevant particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

79. Relief that may be claimed by the petitioner-- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim further declaration that he himself or any other candidate may be declared as duly elected.

87. Decision of the Election Tribunal.-- At the conclusion of the trial of an election petition, the Election Tribunal may make an order for,-

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

88. Other orders to be made by the Election Tribunal.- Where any charge is made in the petition of any corrupt practice having been committed at the election, the Election Tribunal shall also make an order at the time of making an order under section 87 indicating,--

- (i) whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice;
- (ii) the names of all persons, who have been proved at the trial to have been guilty of any corrupt practice; and
- (iii) the total amount of costs payable and specifying the persons by whom these costs shall be paid and the persons to

whom these costs shall be paid:

Provided that a person who is not a party to the petition, shall not be named in the order under sub-clause (ii) unless,-

(a) he has been given notice to appear before the Election Tribunal and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness, who has already been examined by the Election Tribunal and has given evidence against him, of calling evidence in his defence and of being heard.

89. Grounds for declaring election to be void.-- (1) Subject to the provisions of sub-section (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."

10. Collective reading of the afore reproduced provisions makes it clear that Section 89(1)(a) and Section (b) contemplates two different situations. Section 89(1)(a) deals with a situation where a returned candidate on the date of election was not qualified or was disqualified to be chosen to fill the seat under the Constitution of India or under 1994 Act. Section 89(1)(b) deals with a situation where any corrupt practice has been committed by a returned candidate or his election agent or any other person with the consent of a returned candidate or his election agent. In both the situations, the result has to be declared as null and void. Though under Section 79, the election petitioner may in addition to seeking declaration qua election of a returned candidate as void, may claim that he be declared as duly elected and under Section 87(c), the Tribunal may make such order. But such order of declaring a person to be elected in addition to declaring

election to be void, has to be only when the grounds as contemplated under Section 90 are satisfied. To declare an unelected candidate elected, the Election Tribunal has to be satisfied that but for the votes obtained by returned candidate by corrupt practices, the petitioner or such other candidate would have obtained majority of valid votes. The precise issue was addressed by Supreme Court in the case of ***Prakash Khandre (supra)*** observing as under:-

“xx xx xx

11. However, the question which requires consideration is - if there are more than two candidates for one seat and the elected candidate is subsequently found to be disqualified, whether the candidate who has secured more votes than remaining candidates should be declared as elected or not? For this, we would consider the ingredients of Section 101 which *inter alia* provide that after declaring election of returned candidate to be void, the High Court may declare the petitioner or such other candidate to have been duly elected if

- (a) in fact the petitioner or such other candidate received a majority of valid votes; or
- (b) but for the votes obtained by the returned candidate by the corrupt practices, the petitioner or such other candidate would have obtained a majority of the valid votes.

12. Therefore, the first ingredient for declaring the election- petitioner or other candidate to have been duly elected depends upon error for various reasons in counting of valid votes and if it is found that in fact the petitioner or such other candidate received a majority of valid votes, he is to be declared elected.

13. Second ingredient provides for establishing that the votes obtained by the returned candidate were obtained by corrupt practices and but for such votes the petitioner or such other candidate would have obtained a majority of valid votes. Say as in the present case, the difference between the elected candidate and the election petitioner is of 10327 votes and if it



is established that elected candidate obtained more than 10327 votes by corrupt practices then petitioner or such other candidate who has obtained majority of valid votes could be declared as elected.

14. However, in an election where elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, there is no specific provision under the Act under which the person who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been secured by the next candidate who has secured more votes. If disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than other remaining candidates would be a question in the realm of speculation and unpredictability. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected.

15 to 21. xx xx xx

22. In view of the aforesaid settled legal position, in our view, the impugned order passed by the High Court declaring the election petitioner as elected on the ground that the votes cast in favour of elected candidate (appellant) are thrown away was *totally erroneous and cannot be justified*. As held by the Constitution Bench in Kanappa's case that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as "thrown away" only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter. As stated earlier, in the present case for one seat, there were five candidates and it

would be impossible to predict or guess in whose favour the voters would have voted if they were aware that elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been voting pattern. Therefore, order passed by the High Court declaring the election petitioner-Dr. Vijay Kumar Khandre as elected requires to be set aside.”

11. There is no dispute to the proposition canvassed by Mr. Sidhu, Advocate that non-disclosure of criminal antecedents by the elected candidate is a corrupt practice and for the said reason, his election has to be declared as null and void. However, the said situation would fall within the ambit of Section 89(1)(a) and not Section 89(1)(b). It is in these circumstances that Supreme Court in the case of ***Krishnamoorthy (supra)*** observed as under:-

“86. In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be

declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature.”

12. In view of above, this Court finds that the Tribunal erred in declaring respondent No.4 as elected candidate without there being any allegation or satisfaction that but for the votes obtained by returned candidate by corrupt practices, the election petitioner would have obtained majority of the valid votes. Objective behind enactment of Section 80 cannot be ignored. The voters when respond to the corrupt practice of an elected candidate, they pollute their franchise and thus their votes being polluted, need not be included in the democratic process. On the other hand, where a disqualified person has been allowed to contest on account of act or omission of the Election Commission and there is no allegation that the voters connected with the corrupt practice exercised by the returned candidate, the votes polled by him cannot be kept out of the democratic process.

13. In view of above, this Court finds that the order passed by the Election Tribunal declaring respondent No.4 to be elected candidate, cannot be sustained.

14. FAO No.1646 of 2025 is at the behest of elected candidate whose election was challenged by respondent. The appellant has raised plea with respect to the procedure followed by the Election Tribunal. A bare perusal of the order passed by the Election Tribunal would reveal that the same has been passed without following due procedure. No issues have been framed. No evidence was recorded. Even issue *qua*

presentation of petition deserves to be decided afresh in accordance with ratio of law laid down by Supreme Court in ***G.V. Sreerama Reddy & anr. Vs. R.O. & another, 2009(3) RCR (Civil) 937.*** The issue regarding following of procedure by the Election Tribunals came before this Court in FAO No.523 of 2025 titled as ***Sarbjeet Kaur V/s Kamaljit Kaur & ors.***, decided on 01.08.2025, this Court observed as under:-

“8. In view of above, the Tribunal is obligated to follow procedure laid down in Civil Procedure Code, 1908.

9. Underlining the importance of the procedure to be followed in election petition and the effect of the result of the election petition, Supreme Court in the case of '**Makhan Lal Bangal vs. Manas Bhunia**', (2001) 2 SCC 652 observed as under:

"19. An election petition is like a civil trial. The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the Court reflecting the pleadings of the parties pinpoints into issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of Order 14 of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of a distinct issue. An obligation is cast on the Court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first bearing If it appears



that the parties are not at issue on any material question of law or of fact and the Court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies, not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.

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26. An election petition is not a dispute between the petitioner and respondent merely, the fate of the constituency is on trial.
Xx”

(emphasis supplied)

10. From the perusal of the order, it is clear that leave aside framing of issues, the Tribunal did not even bother to call for response from the respondent. Tribunal proceeded to decide the election petition as if he was resolving a trivial dispute without realizing that he was dealing with democratic rights of the parties. The order is bereft of application of mind. Neither the response has been called for nor issues have been framed. No evidence was recorded. The election petition has been adjudicated by passing a callous order. It is while noticing similar conduct of Election Tribunal that Division Bench of this Court in the case of '**Sham Lal vs. State Election Commission**', (1997) 1 RCR (Civil) 82 painfully observed as under:-

“19. Before parting with the case we would like to enter a caveat on the desirability of constituting the Tribunals by appointing members of Indian Administrative Service or Provincial Civil Service or Class I officers of the State Government. We do not wish to suggest even for a moment that officers of these cadres cannot adjudicate the dispute relating to the election but want to point out that lack of time available at the disposal of such officers and absence of their continued association with judicial work results in passing of wholly inappropriate orders by them which give rise to unnecessary litigation in the higher Courts. There is no necessity to emphasise in detail the obvious difference between the bent of mind of judicial officers on the one hand and the administrative officers on the other hand. Officers belonging

to the former class have to keep themselves abreast with latest development in law and the decisions of the High Courts and the Apex Court whereas those belonging to the latter class neither have the time nor the aptitude to keep in touch with such developments. It would, therefore, be appropriate for the Government to examine the desirability of amending Section 73(2) of '1994 Act' by making a provision for constituting Election Tribunals consisting of judicial officers.”

11. In view of above, this Court finds that the impugned order is unsustainable and deserves to be quashed. Present appeal is allowed. Order dated 12.11.2024 passed by Election Tribunal, Sri Anandpur Sahib, is hereby set aside.

12. Parties are directed to appear before the Tribunal on 26.08.2025. The Tribunal is directed to decide the same in accordance with law.

13. A copy of this order be sent to Chief Secretary Punjab to apprise him of the casual approach of the Tribunal in dealing with the election dispute. He is requested to issue proper instructions to all the Election Tribunals across the State to follow procedure as contemplated under law.”

15. In view of above, this Court finds that the Tribunal not only erred in law, but also erred in procedure. Tribunal unfortunately devised his own procedure ignoring the procedure established by law.

16. Consequently, the present appeals are allowed. Impugned order dated 06.03.2025 passed by Election Tribunal, Sri Muktsar Sahib is hereby set aside. Parties are directed to appear before the Tribunal on **27.10.2025**. The Tribunal is directed to decide the election petition afresh after framing issues based upon the pleadings on record in accordance with law.

17. A copy of this order be sent to the Chief Secretary, Punjab to apprise him of the causal approach of the Election Tribunal in dealing with the democratic rights of the citizens.



18. Ordered accordingly.
19. A photocopy of this order be placed on the file of other connected case.
20. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

01.10.2025
Dinesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No