CNR No: PHHC011796282025
2026:PHHC:133508

150+250 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-6346-2025 (O&M)

Neelam Rani ….Appellant.

vs.

Presiding Officer, Election Tribunal-cum-Sub Divisional Magistrate ….Respondent.

1	*The date when the judgment was reserved*	*26.08.2026*
2	*The date when the judgment is pronounced*	*17.09.2026*
3	*The date when the judgment is uploaded on the website*	*17.09.2026*
4	*Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced*	*Full*
5	*The delay, if any, of the pronouncement of full judgment, and reasons thereof.*	*Not applicable*

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S.S. Momi, Advocate for the appellant.

Mr. A.S. Thind, Advocate for respondent No.2.

Mr. Gunjan Mehta, Addl. A.G., Punjab.

*****

HARKESH MANUJA J. (Oral)

By way of present appeal, challenge has been laid to an order dated 31.10.2025 passed by the Sub-Divisional Magistrate-cum-Presiding Officer, Election Tribunal, Samana, District Patiala ***(for short, "Election Tribunal")***, whereby, an election petition preferred at the instance of

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

respondent No.2 assailing the election of appellant as Sarpanch of Gram Panchayat, village Dera Gajisalar, Block Samana, District Patiala, was accepted.

2. Briefly stating, on 27.09.2024, the State Election Commission, Punjab issued notification for the election of Gram Panchayat in the State of Punjab. As per the said notification, the following was the schedule:-

> "(i) 27.09.2024, the first date for filing nomination;
> (ii) 04.10.2024, the last date for filing nomination;
> (iii) 05.10.2024, date of scrutiny of nomination;
> (iv) 15.10.2024, date for polling of votes;
> (v) 15.10.2024, declaration of result."

3. The dispute in the present case relates to election for the post of Sarpanch of Gram Panchayat, Dera Gajisalar, Block Samana, District Patiala. The total number of electors in Gram Panchayat, Dera Gajisalar were 1021, out of which 830 votes were polled. The appellant having scored 474 as against respondent No.2, who scored 356 votes, was declared as elected Sarpanch.

4. Being aggrieved, respondent No.2 filed election petition under Section 76 of the Punjab State Election Commission Act, 1994 ***(hereinafter referred to as "1994 Act")*** assailing the validity of appellant having been declared Sarpanch of Village Dera Gajisalar, District Patiala.

5. The main ground raised in the election petition preferred at the instance of respondent No.2 was that the name of the appellant did not find mention in the voter list of Gram Panchayat, Dera Gajisalar, Block Samana, District Patiala and as such, she could not have been permitted to contest the election. In her written statement filed before the learned Election Tribunal,

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

the appellant denied the allegations and asserted that she had furnished correct and complete particulars in her nomination paper, which was duly scrutinised and accepted by the Returning Officer. In the course of arguments before the learned Election Tribunal, the appellant produced the electoral roll of Legislative Assembly Constituency 116-Samana, in which her name was entered at Serial No.1088, and contended that she was on that basis eligible to contest. After affording opportunities to the parties to lead their evidence, the learned Election Tribunal, by its decision dated 31.10.2025, accepted the election petition and set aside the election of the appellant as Sarpanch of Gram Panchayat, Dera Gajisalar, holding that the appellant, not being an elector of Gram Panchayat, Dera Gajisalar, was ineligible to contest for that post.

Being aggrieved, the present appeal came to be filed.

CONTENTIONS

ON BEHALF OF APPELLANT

6. Impugning the aforementioned decision dated 31.10.2025 passed by the learned Election Tribunal, Counsel for the appellant submits that the appellant being a valid elector of the legislative assembly covering the area of Gram Panchayat, Dera Gajisalar was eligible to contest election for the post of Sarpanch of Gram Panchayat Dera Gajisalar. Learned counsel also submits that no findings were recorded by the learned Election Tribunal on the issue of maintainability of the Election Petition preferred at the instance of respondent No.2. Further, learned counsel submits that in terms of Section 90 of the 1994 Act, upon finding the appellant to be ineligible, rather than declaring respondent No.2 as elected Sarpanch, fresh election to the post of Sarpanch was required to be ordered. In support, learned counsel placed

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

reliance upon judgment passed by this Court in ***"Sanjay Kumar vs. Sher Pal Gujjar and others"***, reported as ***2018(3) RCR (Civil) 721***.

6.1. Learned counsel also points out that neither there were pleadings nor any observation in the order passed by learned Election Tribunal that the votes casted in favour of the appellant were to be treated as thrown away upon finding that her nomination was wrongly accepted. He submits that in the absence of any such specific pleadings by respondent No.2, by treating the votes casted in favour of the appellant to be thrown away, respondent No.2 could not have been declared elected. He thus, submits that the decision dated 31.10.2025 passed by learned Election Tribunal, was liable to be set aside.

ON BEHALF OF RESPONDENT

7. On the other hand, learned counsel appearing on behalf of respondent No.2 submits that as per the provisions of the 1994 Act, the appellant was required to be an elector of the Sabha Area of Gajisalar and in the absence of appellant being an elector entered under the electoral roll for Gram Panchayat, Dera Gajisalar, she was never eligible to contest the election for Sarpanch of the said village and therefore, the learned Election Tribunal, rightly set aside the election by accepting the election petition.

7.1. Learned counsel further submits that in the given circumstances when there were only two candidates and the total votes polled were 830, out of which, the appellant got 474 votes, whereas respondent No.2 got 356 valid votes, the learned Election Tribunal rightly declared respondent No.2 as the elected candidate having obtained second highest valid votes in her favour, by treating the votes casted in favour of appellant to be thrown away. In support, learned counsel placed reliance upon judgment passed by the

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

Hon'ble Apex Court in ***"Ramadebi Rautray vs. State of Odisha and others"***, reported as ***2026 INSC 243***. Thus, learned counsel submitted that the present appeal was liable to be dismissed being devoid of merits.

DISCUSSION AND REASONING

8. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of the appellant.

9. Keeping in mind the controversy involved, it may be relevant to take note of the following provisions of the 1994 Act:-

SECTION 2(b)

(b) "constituency" means an area of a Panchayat or a Municipality delimited as a constituency for the purpose of elections to these bodies;

SECTION 2(h)

(h) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications specified in section 11;

SECTION 11

11. Disqualifications for membership of a Panchayat or a Municipality *A person shall be disqualified for being chosen as, and for being a member of a Panchayat or a Municipality, -*
(a) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; or
(b) if he is of unsound mind and stands so declared by a competent court; or
(c) if he is an undischarged insolvent; or
(d) if he has in proceedings for questioning the validity or regularity of an election, been found guilty of any corrupt practice; or
(e) if he has been found guilty of any offence punishable under Section 153A or section 171E or section 171F or section 376 or section 376A Or section 376B or section 376C or section 376D or section 498A or section 505 of the Indian Penal Code, 1960 or any offence punishable under Chapter XIII of this Act unless a period of six years has elapsed since the date of such conviction; or
(f) if he holds an office of profit under a Panchayat or a Municipality; or
(g) if he holds an office of profit under the Government of India or any State Government; or
(h) if he is interested in any subsisting contract made with, or any work being done for, that Panchayat or Municipality except as a share-holder (other than a Director) in an incorporated company or as a member of a co-operative society; or
(i) if he is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner, or with which he is engaged in a professional capacity, in connection with any cause or proceeding in

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

which the Panchayat or the Municipality is interested or concerned; or
(j) if he, having held any office under the State Government or any Panchayat or any Municipality or any other State level authority or any Government company or any corporate body owned or controlled by the State Government or Government of India, has been dismissed from service, unless a period of four years has elapsed since his dismissal.

SECTION 24

24. Electoral Rolls for every constituency
For every Panchayat and Municipality there shall be an electoral roll which shall be prepared in accordance with the provisions of this Act, under the superintendence, direction and control of the Election Commission.

SECTION 30

30. Preparation and revision of electoral rolls
(1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(2) The electoral roll for each constituency,--

(a) shall unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date-

(i) before each general election to a Panchayat or a Municipality; and

(ii) before each bye-election to fill a casual vacancy in a Panchayat or a Municipality; and

(b) may be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:
Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the electoral roll shall not be affected.
(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded in writing, direct for special revision of the electoral roll for any constituency or part of a constituency in such manner, as it may think fit:
Provided that subject to the provisions of this Act, the electoral roll for the constituency as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

SECTION 38

38 - Presentation of nomination paper and requirements for a valid nomination
(1) On or before the date appointed under clause (a) of section 35, each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under Section 36, a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:
Provided that no nomination paper shall be delivered to the Returning

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

Officer on a day which is a public holiday.
(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste of which he is a member and the area in relation to which that caste is a Schedule Caste of the State.

(3) Where the candidate is a person who, having, held any office referred to in clause (j) of section 11 has been dismissed and a period of four years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:
Provided that no misnomer or inaccurate description or clerical or technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical or technical or printing error in regard to the electoral rolls numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical or technical or printing error to be corrected and where necessary direct that any such misnomer, inaccurate description, clerical or technical or printing error in the electoral roll or in the nomination paper shall be overlooked.
(5) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:
Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer for election in the same constituency.

SECTION 76

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.

SECTION 89

89. Grounds for declaring election to be void:- (1) Subject to the provisions of sub- Grounds for section (2), if the Election Tribunal is of the declaring opinion,-- election to
(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

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

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, insofar 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 was 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. Further, it would also be important to go through the following rules and provisions under Punjab Panchayati Raj Act, 1994 and the Punjab Panchayat Election Rules, 1994 *(hereinafter referred to as **"the Rules")***.

SECTION 2(y) OF THE PUNJAB PANCHAYATI RAJ ACT, 1994

***2(y) "Gram Sabha"** means a body consisting of persons registered as voters in the electoral rolls of the area of the Gram Panchayat, constituted under Section 3 of this Act;*

SECTION 2(z) OF THE PUNJAB PANCHAYATI RAJ ACT, 1994

***2(z) "Gram Sabha area"** means territorial area of a Gram Sabha;*

SECTION 4 OF THE PUNJAB PANCHAYATI RAJ ACT, 1994

***4. Constitution of Gram Sabhas**. (1) The State Government*

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

may. by notification establish a Gram Sabha by name for every area declared as Gram Sabha area under section 3.

(2) Every person who is entered as voter on the electoral roll prepared by the State Election Commission and for the time being in force pertaining to the area of a Gram Sabha, shall be member of the Gram Sabha.

RULE 2 OF THE 1994 RULES

***2. Definition.**— In these rules, unless the context otherwise required:-*

(a) 'Agent" means any person appointed in writing by a candidate at an election to be his agent for the purposes of these rules, with the acceptance by such persons of the office of such election agent;

(b) Backward Classes means castes, races or classes declared as Backward Classes by the State Government from time to time

(c) 'Commission" means the State Ejection Commission;

(d) 'Section means election of a Panch, Sarpanch of a Gram Danchayat, member of Panchayat Samiti, Zila Parishad -----J,

(e) Elector means a person who is entered in the electoral roll for the ram Panchayat elections held in January. 1993, as revised at the time of election to be held from time to time

(f) Form means a form appended tn these rules,

(g) Government' means the Government of Punjab.

(h) 'Act means the Punjab State Election Commission Act, 1994,

(i) 'Political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party under Representation of the People Act, 1951

(j) 'Section' means a section of the Act.

RULE 9 OF THE 1994 RULES

***9. Presentation of nomination papers (Section38**).— (1) Nomination papers shall be presented to the Returning Officer in Form IV in person by the candidate himself on or before the date, time and place fixed for filing the nomination papers.*

(2) The nomination papers of a member of Scheduled Castes or Backward Glasses shall also be accompanied by a declaration in Form-IV-A-1.

Provided that no person snail propose Or second more than one candidate and the candidate himself shall not propose or second the name of any other candidate.

Provided further that the candidate contesting for Gram Panchayat should be an elector in the Sabha Area and candidate contesting for Panchayat Saniiti should be an elector in the concerned constituency of that Samiti Area and candidate contesting for Zila Parishad should be an elector in the concerned constituency of that Zila Parishad area.

(3) The nomination of each candidate shall be made on a separate nomination Form as prescribed in sub-rule (1) above and must be subscribed by the candidate himself as assenting to the nomination.

(4) the nomination of a member of Scheduled Caste from a constituency reserved for Scheduled Castes or Backward Classes, as the case

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

> *may be shall be accompanied by a declaration verified by an (MP.. M.L.A.], Magistrate, Tehsildar, Naib-Tehsildar for Panchayat Samiiti and for Zila Perished by (M.P., M L.A.) Magistrate, Tehsildar, or any other gazetted officer specifying the particulars of the caste to which the candidate belongs.*
>
> *(5) The nomination paper shall be accompanied by a fee Rs. 100 for a Panch or Sarpanch of the Gram Panchayat, Rs. 200 for member of the Panchayat Samiti and Rs 400 for member of the lb Parishad:*
>
> *Provided that for Scheduled Castes and Backward Classes the fee Will be half of the fee specified in sub-rule (3).*

11. The objective underlying the Punjab State Election Commission Act, 1994 is that separate electoral rolls be prepared and maintained for elections to Panchayats and Municipalities in the State, distinct from the rolls prepared for any other election. This scheme flows from Sections 24 and 30(2) of the 1994 Act, under which every constituency, being an area of a Panchayat or Municipality as defined in Section 2(b) of the 1994 Act, is to have its own electoral roll, revised before each general election. An elector, in terms of Section 2(h) of the 1994 Act, is a person whose name is entered in the electoral roll of that particular constituency and who is not subject to any disqualification specified in Section 11 of the 1994 Act. Rule 9 of the Rules imposes the further condition that a candidate contesting for Gram Panchayat must be an elector in the Sabha Area, and Section 38(4) of the 1994 Act correspondingly obliges the Returning Officer, at the time of presentation of the nomination paper, to satisfy himself that the name and electoral roll number of the candidate correspond to those entered in the electoral roll.

12. The expression Sabha Area takes its content from Sections 2(y), 2(z) and 4 of the Punjab Panchayati Raj Act, 1994, being the territorial area of a Gram Sabha established by notification under Section 3 of that Act, whose members are the persons entered as voters on the electoral roll

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

pertaining to that area. The conjoint effect of the provisions noticed above is therefore that a candidate seeking to contest an election to a Gram Panchayat must be an elector borne on the electoral roll of that very Gram Panchayat, and entry on the roll of any other constituency, howsoever the area may overlap, does not answer that requirement.

13. Tested on this touchstone, the appellant was admittedly never recorded as a voter in the electoral rolls of the Sabha Area of Gram Panchayat, Dera Gajisalar. No evidence was led before the learned Election Tribunal to establish the contrary. She was accordingly not qualified to contest the election, and her election was liable to be declared void under Section 89(1)(a) of the 1994 Act. The learned Election Tribunal having so held, the finding calls for no interference.

14. Another point for consideration before this Court in the present appeal is, whether in the given facts and circumstances when there were only two candidates contesting for the post of Sarpanch of Village Dera Gajisalar, the defeated candidate can be declared elected by treating the votes casted in favour of the returned candidate as thrown away, once the election of the returned candidate was declared void on the ground of disqualification. In this regard, reference needs to be made to Sections 79, 87 and 90 of the 1994 Act:

SECTION 79

> ***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.*

SECTION 87

> ***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*

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

> *(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.*

SECTION 90

> ***90. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—*** *If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Election Tribunal is of the opinion,—*
> *(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or*
> *(b) that but for the votes obtained by the returned candidate by corrupt practices, the petitioner or such other candidate would have obtained a majority of the valid votes;*
> *the Election Tribunal shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.*

14.1. Upon a reading of the above provisions, it is clear that a petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, further claim that he himself or any other candidate be declared duly elected, and that the Election Tribunal may pass such an order where, in its opinion, the election petitioner or such other candidate received a majority of the valid votes. The Hon'ble Apex Court considered Sections 84 and 101 of the Representation of the People Act, 1951, which are in pari materia with Sections 79 and 90 of the 1994 Act, in ***"Vishwanatha Reddy vs Konappa Rudrappa Nadgouda and another"***, reported as ***1969 AIR SC 604***. The relevant paras of the said judgment are reproduced hereunder:-

> *"6. Section 84 of the Representation of the People Act provides that:-*
> *"A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."*
>
> *Nadgouda by his election petition did make a claim that the election of Reddy be declared void and that he-Nadgouda -be declared duly elected. Section 100 sets out the grounds on which an election may be declared void, and Section 101 sets out the grounds on which a candidate other than the returned candidate may be declared to have been elected. That*

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

section provides:

"If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, "the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate as the case may be, to have been duly elected."

The expression "valid votes' used in Section 101 has not been defined in the Act. But this Court has held in Keshav Laxman Borkars case, that a candidate whose nomination paper is accepted after scrutiny, is a validly nominated candidate "at least for the purpose of receiving votes at the election", and that the candidate must be treated as a person for whom votes could be given. The Court on that view held that where there are only two candidates for a seat and the election of the candidate declared elected is set aside on the ground that he was disqualified the defeated candidate cannot be declared elected, and there must be a fresh election. In the opinion of the Court the votes cast in favour of the disqualified candidate cannot be said to be thrown away unless there is a "special pleading" that certain voters had cast their votes with the knowledge or notice that the candidate for whom they had voted was not eligible for election, and they had deliberately thrown away their votes in favour of the disqualified person: in the absence of such a plea it cannot be said that the votes cast in favour of a person who was by law disqualified from being nominated, but who was in fact nominated, were thrown away. In the Court's view a defeated candidate out of the two who contested the election may be declared elected under Section 84 read with Section 101 of the Act, if he proves that the voters had notice of the disqualification of the successful candidate. Correctness of this view is challenged before us.*

xxxxx

11. The cases decided by the Courts in the United Kingdom appear to have proceeded upon some general rule of election law 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 notice before the poll of the disqualification of the candidate.

12. But in our judgment the rule which has prevailed in the British Courts for a long time has no application in our country. Section 53 of the Representation of The People Act renders a poll necessary only if there are more candidates contesting the election than the number of seats contested. If the number of candidates validly nominated is equal to the number of seats to be filled, no poll is necessary. Where by an erroneous order of the Returning Officer poll is held which, but for that order, was not necessary, the Court would be justified in declaring those contesting candidates elected, who, but for the order, would have been declared elected. The rule enunciated by the

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

> *Courts in the United Kingdom as only the merit of antiquity. But the rule cannot be extended to trial of disputes under our election law, for it is not consistent with our statute law, and in any case the conditions prevailing in our country do not justify the application of that rule. If the rule is applied in our country, the provisions of Section 84 read with Section 101(a) would practically be nugatory. Apart from the immense cost of intimating each voter in the vast electorate in the constituencies the rule that a defeated candidate may be declared elected only if he pleads and proves that the voters had notice of the disqualification would render the exception in the context of prevailing illiteracy and ignorance of large sections of the electorate in our country, a dead letter. A very large percentage of the electorate in our country is, unfortunately illiterate and sections thereof not infrequently speak a language different from the language of the Majority. It would be well-nigh impossible to give information of the disqualification of a candidate in a medium which the illiterate electors understand.* ***We are again unable to see*** *any logic in the assumption that votes cast in favour of a person who is regarded by the returning officer as validly nominated but who is in truth disqualified, could still be treated as valid votes, for the purposes of determining whether a fresh election should be held. When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate.*
>
> *xxxxx*
>
> *14.* ***We are of the view that*** *Keshav Laxman Borkar's case, (1960) 1 SCR 962 was not correctly decided. We, therefore, restore the order passed by this Court by judgment dated July 19, 1968. Reddy will pay the costs of the review petition as well as of the appeal."*

14.2. From the above, it is apparent that where there are only two contesting candidates and one of them is under a statutory disqualification, the votes casted in favour of the disqualified candidate may be regarded as thrown away, and the Court is bound to declare the other candidate elected if, excluding the votes polled by the disqualified returned candidate, such candidate would have secured a majority of the valid votes. Applying this principle to the facts of the present case, the appellant having been

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

disqualified from contesting, the votes casted in her favour were necessarily liable to be treated as thrown away, leaving respondent No.2 as the recipient of the majority of the remaining valid votes. The learned Election Tribunal was therefore justified in declaring respondent No.2 as the elected Sarpanch.

14.3. The reliance placed on behalf of respondent No.2 upon the recent judgment of the Hon'ble Apex Court in ***Ramadebi Rautray's case (supra)***, is well founded. There too, the election petitioner and the returned candidate were the only two contestants for the post of Chairman of a Panchayat Samiti; the returned candidate was found to be under a statutory disqualification; and the Election Tribunal, having declared her election void, declared the election petitioner, being the next highest vote-getter, to have been duly elected. The Appellate Tribunal and the High Court set aside that consequential declaration and directed a fresh election. Restoring the order of the Election Tribunal, the Hon'ble Apex Court held that with the disqualification of the returned candidate affirmed, no other contestant remained in the fray, and that to deprive the election petitioner of the fruits of her successful challenge by requiring her to contest a fresh election would amount to a travesty of justice. Section 44-E of the Orissa Panchayat Samiti Act, 1959, there considered, is in terms virtually identical to Section 79 of the 1994 Act. So far as the reliance placed on behalf of the appellant upon ***Sanjay Kumar's case (supra)*** is misplaced. That case arose under Section 176 of the Haryana Panchayati Raj Act, 1994, a different enactment, and in the humble opinion of this Court, the law laid down in ***Vishwanatha Reddy's case (supra)*** does not appear to have been noticed therein. In any event, the view taken in ***Vishwanatha Reddy*'s *case (supra)*** also accords with the more recent decision in ***Ramadebi Rautray*'s case (supra)**,

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document

rendered on materially similar facts.

15. Likewise, in the considered opinion of this Court, there is no merit in the contention raised on behalf of the appellant that the issue of maintainability was not specifically dealt with by the learned Election Tribunal. The only ground urged in this behalf is that, in terms of Section 76(2) of the 1994 Act, the requisite number of copies of the election petition were not presented at the time of its filing, and that the petition was therefore not maintainable. A perusal of the record shows that no such objection was pleaded in the written statement filed by the appellant before the learned Election Tribunal, nor was it established by leading any evidence. In these circumstances, the objection as to the maintainability of the election petition preferred at the instance of respondent No.2 is without substance.

16. Accordingly, in view of the discussion made hereinabove, the present appeal being devoid of merits is hereby dismissed.

17. Pending application, if any, also stands disposed of.

17.09.2026 **(HARKESH MANUJA)**
sonika **JUDGE**

(i) Whether speaking/reasoned: Yes/No (ii) Whether reportable: Yes/ No

SONIKA
2026.09.17 14:52
I attest to the accuracy and
authenticity of this document