



In the High Court of Punjab and Haryana at Chandigarh

CWP No. 7443 of 2024

Reserved on: 9.1.2025

Date of Decision: 4.2.2025

Amit

.....Petitioner

Versus

Rakam Singh and others

.....Respondents

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

Argued by: Mr. A.D.S.Sukhija, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate
for respondent No. 1.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner seeks the quashing of the order dated 10.11.2023 (Annexure P-3), whereby the Election Petition filed by the respondent No.1 under Section 176 of the Haryana Panchayati Raj Act, 1994 (for short 'the Act of 1994), was partly allowed. Moreover, the petitioner also seeks the quashing of the order dated 12.3.2024 (Annexure P-4), whereby the appeal filed by the present petitioner against the order supra order dated 10.11.2023 became dismissed by the learned appellate authority concerned.

Brief facts of the case

2. The elections to the post of Sarpanch of Gram Panchayat Khalila Majra under the Act of 1994 were notified through the apposite notification, whereafter the nomination papers were to be filed by the candidates concerned, before the Returning Officer concerned. The said



election program was notified to commence on 14.10.2022, and, to end on 19.10.2022. The scrutiny of the nomination papers was done on 21.10.2022 and the symbols were allotted to the candidates. It is further averred that the polling of the votes and the counting of the votes, was to be done on 2.11.2022, and, that the declaration of results was also to be done on the said date. The petitioner and respondent No.1 both got 302 and one vote was NOTA, and, the petitioner was declared as winner on the basis of draw of lots.

3. Respondent No. 1 Rakam Singh filed an Election Petition under the Act of 1994 seeking relief thereins, to set aside the election of the petitioner, as Sarpanch of the Gram Panchayat concerned, and, with a consequential relief of declaring him, as the winner for the post of Sarpanch of the Gram Panchayat concerned. It was also prayed therein, that respondents No. 2 and 3 be restrained from giving charge to the petitioner as Sarpanch of the Gram Panchayat concerned.

4. During the pendency of the said petition, respondent No. 1 herein, moved an application, thus for issuance of directions upon respondents No. 2 and 3, to produce voter entry register containing signatures of the voters. The learned Court concerned, through an order made on the said application, on 14.12.2022, directed respondents No. 2 and 3, to produce the voter entry register along with the list of voters who cast their votes in the elections held on 2.11.2022. In pursuance to the order (supra), the Village Secretary of the village concerned, submitted the list of voters and register of voters containing signatures of the voters in two sealed covers.

5. Subsequently, vide the impugned order dated 10.11.2023



(Annexure P-3), the petition (supra) was partly allowed by the learned Court concerned, whereby the election of the petitioner to the concerned post was set aside. The operative part of the order (supra) becomes extracted hereinafter.

“51. On the basis of discussion made herein above, present election petition is partly allowed to the effect that election of respondent No. 1 to the post of Sarpanch of Gram Panchayat Khalila Majra, Panipat by result dated 2.11.2022 is set aside. Respondent No. 2 and 3 are directed to hold fresh elections as per provisions of the Haryana Panchayati Raj Act, 1994. Learned Government Pleader for respondent No. 3 is directed to intimate respondents No. 2 and 3 in this regard for information and necessary compliance. Respondent No.1 shall immediately relinquish the charge of Sarpanch of Gram Panchayat Khalila Majra, Panipat accordingly. Petition partly allowed accordingly. Parties shall bear their own costs. Memo of cost be prepared accordingly and file be consigned to record room”

6. Being aggrieved therefrom, the petitioner preferred an appeal before the learned appellate authority concerned. However, through the impugned order dated 12.3.2004 (Annexure P-4), the said appeal became dismissed.

Submissions of the learned counsel for the petitioner

7. The learned counsel for the petitioner has argued, that the both the Courts below have wrongly relied upon the document (voter list), despite the said document never becoming proven, in accordance with law. He further submits, that the mere making of an exhibit mark on the apposite document, does not *per se* make the same to be admissible in evidence. The learned counsel further submits, that both the Courts below have failed to appreciate the fact that Section 65 of the Evidence Act, 1872 provides that

only the certified copy of a public document can be tendered into evidence,



thus as secondary evidence vis-a-vis the original. However, the apposite certified copy of the original was never tendered into evidence, nor became proven in accordance with law. In addition, he submits that since votes of both the candidates were found to be equal, and, it was not proved as to who had obtained the benefit of the said twice polled votes. Therefore, it is prayed that the impugned orders be quashed and set aside.

Submissions of the learned counsel for respondent No. 1

8. The learned counsel for the respondent No. 1 has argued, that since same persons have cast multiple votes in the elections (supra), thereby gross illegality has been committed in the said election process. He further submits, that total four votes have been cast twice, therefore the pollings of double votes are void, and, therebys the polling of double votes amounts to corrupt practice. Therefore, it is argued that the election process (supra) has been aptly set aside by the learned Courts below.

Inferences of this Court

9. On the election petition (supra), the hereinafter issues became formulated on the contentious pleadings of the parties-

- “1. Whether election of respondent No. 1 as Sarpanch of Gram Panchayat village Khalila Majra is liable to be set aside ? OPP
2. If issue no. 1 is proved, whether petition is entitled for declaration as winning candidate of post of Sarpanch of Gram Panchayat village Khalila Majra ? OPR
3. Whether petition is not maintainable ? OPR
4. Whether the petitioner has no cause of action and has not come to the court with clean hands ? OPR
5. Whether the petitioner has bad for non-joinder and mis-joinder from the Court ? OPD
6. Relief.”

The learned Additional Civil Judge (Sr. Division), in paragraph



35 of the judgment (supra), para whereof becomes extracted hereinafter, proceeded to make a discussion about *prima facie* there being no signatures/thumb impressions on Ex. P7.

“35. Lastly, it was argued that respondent No. 1 ssecured 302 votes by casting of bogus votes. He also submitted that against certain votes there is no signature or thumb impression in voter list Ex. P7. To my considered opinion, voter list Ex. P7 was prepared as a photocopy from original document. It is highly possible that some thumb impression were not strong or the ink was light for the same to be captured while preparing photocopy. But at the same time, if voter list Ex. P7 is seen, it can be well understood that 4 votes were such which were casted more than once. Same are as follows:-

Sr. No.	Description of vote	Serial Number at which vote was casted in voter list Ex. P7
1.	W-5, 78 (Ward no. 5 vote no. 78)	151, 519
2.	W-7, 112 (Ward no. 7 vote no. 112)	30, 319
3.	W-1, 100 (Ward no. 1 vote no. 100)	57, 66
4.	W-2, 14 (Ward no. 2 vote no. 14)	255, 369

11. However, since Ex. P7 was a photocopy, which became prepared from the original document, therebys, a conclusion was made that there was a possibility that the thumb impressions, as became carried on Ex. P7, exhibit whereof is a photocopy of the original, rather were not legible enough, as presumably the ink used thereons was extremely bleak, so as to become captured in the photocopy Ex. P7. Therefore, as evident on a reading of paragraph 36 of the order (supra) recorded by the learned trial Court concerned, thus the learned trial Judge concerned, proceeded to call for the production of the original of Ex. P7 from the Returning Officer. The said original was produced before the learned Judge concerned, thus in a sealed cover, and, the original of the Ex. P7, as enclosed in the sealed cover,

became retrieved therefrom, and, after retaining photocopy thereof, the same



was kept on the file, while the original was returned. On the basis of a perusal thereof being made, and, with thereons existing the thumb impressions of the voters, which were contended to be not the original thumb impressions, thus a conclusion was formed, that in fact the voters, whose thumb marks were made on the original of Ex. P7, did cast their votes, and, thereby the result of the elections did as such become materially affected.

12. However, without the persons, whose thumb impressions existed, on the original of Ex. P7, being summoned as witnesses, for thereby their testifying about the authenticity of their thumb impressions, as borne on the original of Ex P7, thus the learned trial Court concerned, could not form a conclusion, that the thumb impressions of the voters concerned, as existed on the original, did in fact belong to those, who had embossed their thumb impressions, nor a further conclusion could be made that thereby, they were the persons who had, in fact cast their votes, nor obviously an inference was required to be drawn, that thereby the result of the election did or did not become materially affected.

13. Therefore, without undergoing the rigour of efficacious evidentiary proof becoming lent thereto, through the persons who had subscribed their thumb impressions thereons, being summoned, as witnesses, and, their testifying whether their thumb impressions, as existed on the original of Ex. P7 did belong to them or did not belong to them. Resultantly thereby, the learned trial Court concerned, rather could not draw such conclusions but adversarial to the present petitioner, which has been so drawn in Annexure P-3, whereby the election petition was partly allowed, and, the elections to the post of Sarpanch of Gram Sabha Khalila



Majra, were declared to be vitiated or became declared to become materially affected.

14. Assumingly, if the thumb impressions subscribed on the original of Ex. P7 were so scribed allegedly by dead voters, thereupon too, since the purported dead voters could not be summoned, yet the family members of the purportedly deceased voters yet were required to be summoned for theirs stepping into the witness box. Moreover, the relatives of the purportedly deceased voters were also required to be bringing along with them the admitted thumb marks of their respective predecessor(s)-in-interest, so that resultantly the learned Court concerned becomes enabled, to send the admitted thumb impressions of the purportedly dead voters, along with the disputed thumb impressions, as carried on the original of Ex. P7, thus to the Finger Print Bureau, rather for enabling the latter to make inter se comparisons. In case, the said comparisons were adversarial to the present petitioner, thereby a conclusion may have been drawn, that as such there was double polling of votes, whereby the election results became materially affected. However, even the said exercise never became recoured, and, the learned Courts below, merely on the makings of *suo moto* examinations of the thumb impressions, as existed over the original of Ex. P7, came to a conclusion, that they were forged thumb impressions.

15. Additionally, in case there was denial by the voters concerned, about the thumb impressions existing on Ex. P7, thereupon, a duty became cast upon the learned trial Judge concerned, to after obtaining the specimen/admitted thumb impressions of the voters concerned, send them along with the disputed thumb impressions, as existed over the original of Ex. P7, thus to the Finger Print Bureau. The apposite report of the Finger



Print Bureau would have been the best forensic evidence for proving the respective denials or admissions, as made by the voters concerned.

16. Be that as it may, all the supra required recourses for assigning the completest truth to the subscribing of thumb impressions on the original of the voter list Ex. P7, but remained unadopted by the learned trial Court concerned. The lack of adoption of the said recourses by the learned trial Court concerned, and, yet the learned trial Court concerned, after concluding that they were forged thumb impressions, resultantly also concluding that there was double casting of votes in favour of the present petitioner, were but all ill made conclusions, or became based on pure surmises, and, no sanctity theretos can be assigned.

17. Be that as it may, the voters, whose votes were cast twice, upon theirs stepping into the witness box, were required to be presented with all the thumb impressions/signatures, as purportedly became made by them on the voters list, and, that too twice. However, even the said recourse remained unadopted. For failure of the said recourse being made, no conclusion was required to be made, as became inaptly drawn qua the voters concerned, thus voting twice.

Final order

18. For all the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed. The impugned orders are quashed and set aside. The matter is remanded to the learned trial Court concerned, but with a direction to it to after restoring the petition to its original number, thus ensure the stepping into the witness box of those voters, or their respective relatives, whose thumb impressions were made on the voter list, so that thereby they



can express whether the same belong to them or do not belong to them. In case, the voters or their relatives deny the subscriptions of the apposite thumb impressions, as exist on the original of the voter list, thereupon the learned trial Court concerned, after obtaining the sample thumb impressions/admitted thumb impressions of the voters, shall send them along with the disputed thumb impressions of the voters concerned, to the Finger Print Bureau, who after making the apposite comparisons, shall make a report, whereafter on the basis of the said report, the learned trial Court concerned, shall re-draw a fresh decision.

19. The entire exercises (supra) be ensured to be completed with but within four months from today.

20. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

February 4th, 2025

Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No