

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1129 of 2015 (O&M)
Date of decision: 24.03.2015

Harvinder Kaur

... Petitioner

versus

Presiding Officer Election Tribunal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. H.P.S. Ghuman, Advocate for the petitioner.
Ms. Vandana Malhotra, Addl. Advocate General, Punjab.
Mr. D.S. Dalee, Advocate, for respondent No.2.

K.Kannan, J.

The petition is at the instance of a successful candidate to the election of Sarpanch on being served with notice for setting aside the election before the Election Tribunal. The candidate filed an application under Section 76 for dismissal or rejection of the election petition and stated that the petitioner had not supplied the true and attested copy of the petition, affidavit and documents to respondent No.1 ('petitioner' herein). She also requested for a preliminary issue to be framed whether the petition supplied is an attested copy of the petition and whether she has not complied with the mandatory provisions of the Punjab State Election Act, 1994. The respondent who was the petitioner before the Tribunal filed a reply denying that she had not complied with the mandatory provisions and had not supplied the true and attested copy. She also stated that there was no need for framing of preliminary issue.

The case was previously proceeded without taking up a preliminary issue till this Court intervened in a revision filed by the

present petitioner earlier to direct that preliminary issue shall be disposed of. On direction from this Court, the present petitioner submitted before the Election Tribunal, the copies received by her did not bear the attestation of the party that they were all true copies. While deciding the objections taken by the petitioner, the Election Tribunal relied on some portions of the judgment in T. Phungzathang Vs. Hangkhanlian and others, decided on 28.08.2001, that paraphrased the Constitution Bench judgment in T. M. Jacob Vs. C. Poullose and others, 1999 (4) SCC 274, to say that the objectors serving a copy and the affidavit in support of the allegations is to enable the respondents to understand the charge and the requirement was one of the substance and not of form. The Election Commission, therefore, held that it was not shown before him that the copy furnished to the elected candidate to be different from the original, and therefore, the candidate could file a reply and there was no ground for holding that statutory mandate had not been complied with.

Learned counsel appearing on behalf of the petitioner/applicant before the Court below points out that the judgment of Hon'ble the Supreme Court was in the context of the objection taken to election petition that did not contained due verification and attestation of the Oath Commissioner. The Court was actually examining whether there was a violation of mandate under Section 81 (1) and 83 (i) of the Representation of People Act. The Court was making specific observations that every page of the copy served on the appellant was attested to be a true copy under the signature of the petitioner. What was lacking in the case was the signature at the end of the document as well. The Court said that a fresh signature below the word of the petitioner was not necessary when every page of the copy served had been attested to be a true copy. Elsewhere in the same judgment the Court held after setting out its earlier decisions, that the copy supplied did not contain the verification or affirmation made by the Oath Commissioner but contained no omission of an affirmation that it was

true copy, by the party. The Constitution Bench judgment in Jacob's case (supra) was found to be, therefore, applicable and that the statutory compliance was to be required in substance and not merely in form. Section 76(2) and Section 80 of The Punjab State Election Commission Act, 1994 is reproduced as under:-

“76 (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.

80 (1) The Election Tribunal shall dismiss an election petition which does not comply with the provisions of Section 76 or Section 77 or Section 103.

Explanation- An order of the Election Tribunal dismissing an election petition under this sub-Section shall be deemed to be an order made under clause (a) of Section 87.”

I asked the counsel appearing on behalf of the respondent, whether the Supreme Court judgment was to be understood in the way it is pronounced viz that, the Court was at least expecting the compliance of the statutory provision in substance than form and Section 76(2) in substance meant that copies shall be attested by the petitioner, under his own signature to be a copy of the petition. The requirement must, therefore, be in substance to the extent of affirmation by the candidate who presented the petition that copies were true copies of the original. It cannot be a matter left for a person who is served with an alleged copy to make comparison with the original and complain that the copy served was not true to the original. It will be risky for the respondent to be served with unattested copies, for, it may lead to disastrous consequences if the person who is served makes convenient corrections to suit his/her purpose and then turn around in Court to say that the petition contained certain averments which were

not even in the original. In the interest of the petitioner herself, it is essential that she leaves nothing to chance and make no room possible for any manipulation to be made. It is in that context that we must understand yet another judgment of Hon'ble the Supreme Court in G.V. Sreerama Reddy and another Vs. Returning Officer and others, Civil Appeal No.6269 of 2008 decided on 11.08.2009, that election petitions mark a different approach for very strict observance to statutory provisions. The Supreme Court was holding that the election petition that challenges an election is an attempt to dislocate a pronounced result of a democratic process and consequently the standard of proof of what is required to be proved under Statute and the degree of observance to the procedures laid down must be placed very high. The point that had to be seen was if there was no attestation of the petitioner herself in the manner required under Section 76 (2), whether the consequence of Section 80 of dismissal of the election petition is inescapable.

Learned counsel appearing on behalf of the respondents made a faint attempt to set up a case of what was not clearly stated so in the reply. He wanted to contend that even attested true copies had been actually served, but, the applicant did not receive the same, but, her uncle received it. He was trying to make capital of the fact that summons had been served on the applicant's uncle and according to him, along with service of summons the attested copies of the petition must have been also served. The unattested copies have been produced by the petitioner to mislead the Court. This argument would have some meaning if there was a specific denial to the application filed by the applicant that there had been no attested copies filed in the manner mandated by law. The reply says nowhere in specific terms that the attested copies had been filed and had been received by the uncle. The reply, on the other hand, is a bald denial that copies were not filed and that the statutory mandate had not been complied with. If we must import procedural aspect of the Civil Procedure Code that denial in

order that takes effect as a valid denial, the guidance shall be through Order 8 Rule 3 of CPC that enjoins that denial must be specific and that it shall not be sufficient to deny generally the grounds alleged in the petition and that it must deal specifically each and every contention and fact of which is not admitted to be true. The denial found in this case can hardly to be seen specific to the express averments that attested copies with signatures of the petitioner in the election petition had not been filed.

The result may be drastic that a copy served was not shown to be attested as true copy by the petitioner, to result in a summary rejection of the petition. Raison d'être for such an approach is only that election petition forms a distinct genre where punctilious observance of every statutory provision shall be insisted. The statute itself makes it so, or otherwise or it is unusual that there must be a specific reference through a sub-clause in a Section that a document would required to be attested by the party and yet another provision setting out the consequence of dismissal for non-observance of such a requirement. These expressions found under Section 76(2) and 80(1) cannot be taken to be mere words shorn of meaning and acuteness of purpose. I will uphold the objection be taken before the Election Tribunal and hold the election petition cannot be proceeded further.

Before parting I need to state that the office of the Election Commission must behave with greater responsibility in the manner of appraisal of election petitions. Considering the fact that Panchayati Raj Act bring to centre stage an important constitutional wish to make democratic institutions function from grass root levels upwards, it is essential to strengthen this institution and ensure that the elected candidates have arrived without any blemish in this election process. We have examined in this case itself that even the elected candidate admitted that she was illiterate. It is a sad day that representatives of Village who will manage vital affairs of the Village should be illiterate people. That is however the reality and, therefore, there must be

attempts by officers who are trained in law and who, I expect to be even educated and literate to assist the parties who file the petitions that all the statutory compliances are made when the election petitions are presented. It requires, but least effort for an official receiving the election petition to see that all the requirements of statute are properly complied with, insofar as they are procedural. The office may not correct a petition as regards the content but it should at least help the party to see that appropriate copies are given and are duly certified and it is presented by the person who is competent to present. The mindless receipt of the petitions when no care about the statutory compliance may result in perhaps wrong candidates or undeserving candidates taking advantage of the mistakes that come about in petitions and challenge their elections. The unsatisfied milieu at the grass root level against a person who claimed the post by deceit or corrupt practice is the worst affront to the democratic institution. The summary rejection of the election petition is never a ground to cheer about but a moment to hand the head in shame that simple statutory provisions are allowed to be trampled, with officials being insensitive to the ultimate consequences. The orientation programmes that are held before the election for the various officials who man the election booths cannot merely stop with training on how to prepare the booth and how to help the candidates cast their votes. The training must be given as far as to see that procedural aspects of preparation of election petitions and how they are presented and received in the offices of Election Tribunal are also taught.

The civil revision petition is allowed with these observations.

(K.KANNAN)
JUDGE

24.03.2015

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