

CR No.523 of 2013
CR No.646 of 2013

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

(1) **CR No.523 of 2013**
Date of decision:06.02.2015

Deepak Mangla ...Petitioner

Versus

Nanakchand and others ...Respondents

(2) **CR No.646 of 2013**
Date of decision:06.02.2015

Deepak Mangla ...Petitioner

Versus

Nanakchand and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arihant Jain, Advocate,
for the petitioner.

Mr. N.S.Shekhawat, Advocate,
for respondent no.1.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CR Nos.523 and 646 of 2013 titled as “Deepak Mangla v. Nanakchand and others” as both are inter-connected. However, the facts are extracted from CR No.523 of 2013.

In short, the petitioner was elected as Sarpanch of village

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Hassanpur, Tehsil Hodal, District Palwal. His election was challenged by the respondents by way of CWP No.12445 of 2012. The said writ petition was disposed of by this Court with the following order:-

“Counsel for the petitioner seeks permission to withdraw this writ petition with liberty to file an election petition to challenge the election.

Dismissed as withdrawn with liberty as prayed for.

The petitioner would also be at liberty to file an application seeking condonation of delay in filing the election petition on the ground that he was pursuing his remedies before this Court. The court shall consider the same, if permissible, in accordance with law.

All the pleas raised in the present Writ Petition are left open to be taken in the Election Petition.”

Thereafter, the respondents filed the election petition along with an application for condonation of delay. The said application has been allowed, vide the impugned order dated 16.08.2012, on the ground that since they were pursuing their remedy by way of writ petition in this Court and after the receipt of the copy of the order dated 09.08.2012 on 14.08.2012, they have filed the election petition immediately, therefore, the delay was condoned. Thereafter, the respondents filed an application under Order 7 Rule 11 read with Section 114 of the Code of Civil Procedure, 1908 for rejection of the election petition but the said application has been dismissed by the Election Tribunal vide the impugned order dated

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18.12.2012.

Aggrieved against both the aforesaid orders dated 16.08.2012 and 18.12.2012, the present revision petitions have been filed.

Counsel for the petitioner has argued that as per Section 176 of the Haryana Panchayati Raj Act, 1994 (here-in-after referred to as the “Act”), the election could be challenged within 30 days of the declaration of result, whereas in this case, the result was declared on 17.06.2012 and the election petition was filed on 16.08.2012, which was beyond the period of 30 days. It is also submitted that the provisions of the Limitation Act, 1963 are not applicable in the election petition to condone the delay as the election petition is like an original suit. In this regard, learned counsel for the petitioner has relied upon various decisions of this Court in the cases of **Rashpal Singh alias Rachpal Singh and others v. Jasvir Singh and others**, 2010(2) R.C.R. (Civil) 408, **Chet Ram and others v. State of Punjab and others**, Civil Revision No.2287 of 2010, decided on 31.08.2010 and **Parkasho v. Bholi Devi**, Civil Revision No.6086 of 2011, decided on 28.05.2012.

Counsel for the respondents has, however, relied upon a judgment of the Supreme Court in the case of **Danda Rajeshwari v. Bodavula Hanumayamma**, 1996(3) R.C.R. (Civil) 529.

I have heard learned counsel for the parties and perused the available record with their able assistance.

There is no dispute that the election petition has been filed by the respondents after the expiry of statutory period of 30 days. It is also not

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in dispute that the respondents had filed the writ petition in this Court to challenge the election and the said writ petition was disposed of on 09.08.2012 when it was found that the remedy to challenge the election lies in the election petition and not in the writ petition and at that time, it was also found that the limitation to file the election petition might have expired, therefore, liberty was given to the respondents to file an application for condonation of delay and the Election Tribunal was directed to consider the same, if permissible, in accordance with law, meaning thereby there was no direction by this Court to the Election Tribunal to condone the delay.

Thus, the judgment relied upon by learned counsel for the respondents in **Danda Rajeshwari's case (supra)** is not at all applicable because in that case, the High Court had allowed the election petitioner to file the election petition within 3 weeks from the date of the disposal of the writ petition and the Election Tribunal was directed to dispose of the same without going into the question of limitation. It was held that the High Court had the jurisdiction to entertain the writ petition but it declined to interfere in view of the alternate remedy of filing of the election petition because questions of fact were involved which were to be decided only on the basis of evidence.

On the contrary, the judgments relied upon by learned counsel for the petitioner are applicable to the facts and circumstances of the present case because in **Rashpal Singh alias Rachpal Singh and others' case (supra)** and in **Chet Ram's case (supra)**, this Court has held that the election petition is just like a suit and the provisions of the Limitation Act,

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1963 are not applicable to it for the purpose of condonation of delay. Thus, the learned Election Tribunal has committed a patent error in condoning the delay only on the ground that the respondents were pursuing the remedy of writ petition and had filed the election petition immediately after withdrawing the same, therefore, it was within the period of 30 days though the High Court had directed the Election Tribunal to consider the application for condonation of delay, if permissible, in accordance with law.

Since the law is otherwise as the election petitions are just like original suits and no applications for condonation of delay could be filed for condonation of delay in filing of the suit, the Election Tribunal had no jurisdiction to condone the delay despite the order passed by this Court wherein no specific direction was given as given in **Danda Rajeshwari's case (supra)**.

Consequently, both the revision petitions are hereby allowed and the impugned orders are set aside.

February 06, 2015
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(**Rakesh Kumar Jain**)
Judge