

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 8765 of 2014 (O&M)
Date of decision: 17.7.2015

Gamdoor Singh

.. Petitioner

v.

Presiding Officer, Election Tribunal and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jatinder Singla, Advocate for the petitioner.

Mr. Aman Bansal, Advocate for respondent No. 2.

...

Rajesh Bindal J.

The successful candidate in election for the post of Sarpanch of Gram Panchayat of Village Bhasaur, Tehsil Dhuri, District Sangrur, has filed the present petition impugning the order dated 1.12.2014, passed by Presiding Officer, Election Tribunal (Sub Divisional Magistrate), Sangrur (for short, 'Election Tribunal'), vide which he has transferred the Election Petition filed by respondent No. 2 challenging the election of the petitioner to Sub Divisional Magistrate, Malerkotla.

Learned counsel for the petitioner submitted that election for the post of Sarpanch of Gram Panchayat of village Bhasaur, Tehsil Dhuri, District Sangrur was held on 3.7.2013, in which the petitioner was declared successful. The area falls in Sub Division, Malerkotla. Respondent No. 2 filed the Election Petition challenging the election of the petitioner before Election Tribunal, Sangrur. He pleaded in the Election Petition that Election Tribunal at Sangrur has jurisdiction to entertain the same. After notice was received by the petitioner in the Election Petition, he filed application dated 13.12.2013 for dismissal of the Election Petition in view of Sections 75, 81

and 87 of the Punjab State Election Commission Act, 1994 (for short, 'the Act') on the plea that Election Tribunal at Sangrur did not have the jurisdiction to entertain the Election Petition, as the area falls within the jurisdiction of Election Tribunal, Malerkotla. He further submitted that after filing of the application, Election Tribunal at Sangrur adjourned the matter for 24 dates of hearing before passing the impugned order on 1.12.2014 transferring the Election Petition to Election Tribunal, Malerkotla. While referring to Section 75 of the Act, learned counsel for the petitioner submitted that only the Election Tribunal having jurisdiction shall have the power to adjudicate on the Election Petition. As in the case in hand, the territorial jurisdiction vested in Election Tribunal, Malerkotla, the Election Tribunal at Sangrur could not entertain the Election Petition. He further submitted that Section 81 of the Act provides that every Election Petition is to be tried by the Election Tribunal, as nearly as may be, in accordance with the procedure contained in the Code of Civil Procedure (for short, 'CPC'). If a suit is filed in the court having no jurisdiction, the plaint is to be returned to the plaintiff for presentation before the court of competent jurisdiction. The court having no jurisdiction cannot transfer the same to the court having jurisdiction, hence, the order passed by Election Tribunal, Sangrur deserves to be set aside.

On the other hand, learned counsel for respondent No. 2 submitted that as there was large scale bungling in the election, it was challenged by respondent No. 2 by filing Election Petition in August, 2013. The Election Petition can be filed at all places. The Election Tribunals are presided over by Sub Divisional Magistrates. Even Malerkotla falls within District Sangrur, hence, no prejudice as such is caused to the petitioner. It was on the application filed by the petitioner that Election Tribunal at Sangrur had transferred the Election Petition to Election Tribunal of competent jurisdiction. In the alternative, the submission is that in case this court finds that the Election Tribunal having no jurisdiction could not transfer the Election Petition to another Election Tribunal having jurisdiction, then the Election Petition filed by respondent No. 2 may be returned with liberty to present the same before the Election Tribunal

having jurisdiction.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts are that the election for the post of Sarpanch of Gram Panchayat of Village Bhasaur, Tehsil Dhuri, District Sangrur, held on 3.7.2013, was challenged by respondent No. 2 by filing Election Petition before Election Tribunal, Sangrur. It was claimed that village Bhasaur falls in Tehsil Dhuri, District Sangrur. After notice was issued, the petitioner filed application for rejection of the Election Petition on the ground that Election Tribunal, Sangrur did not have the jurisdiction as village Bhasaur falls within the jurisdiction of Election Tribunal, Malerkotla. The application was decided by Election Tribunal, Sangrur by passing the impugned order on 1.12.2014 opining that the Election Petition relating to village Bhasaur comes within the jurisdiction of Sub Divisional Magistrate, Dhuri and Election Tribunal, Sangrur had jurisdiction to hear the Election Petitions pertaining to the area of Sub Division, Malerkotla. Jurisdiction of Sub Division, Dhuri falls with Election Tribunal, Malerkotla. Election Tribunal, Sangrur transferred the Election Petition to Sub Divisional Magistrate, Malerkotla for disposal. Meaning thereby, it is not in dispute that Election Tribunal, Sangrur did not have the jurisdiction. The grievance of the petitioner is against the aforesaid direction.

Section 75 of the Act provides that only the Election Tribunal having jurisdiction shall have the power to adjudicate upon the Election Petitions. It is not in dispute that Election Tribunal, Malerkotla was having the jurisdiction. The issue is as to what should have been the procedure adopted by the Election Tribunal in case an Election Petition had been filed pertaining to the area, which does not fall within the jurisdiction of that Election Tribunal.

Section 81 of the Act, which is reproduced below, provides that every Election Petition shall be tried, as nearly as may be, in accordance with the procedure laid down in CPC, pertaining to trial of suits:

“81. Procedure before the Election Tribunal.- (1) Subject to the provisions of this Act and of the rules made thereunder,

every election petition shall be tried by the Election Tribunal, as nearly as may be, in accordance with the procedure contained in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) to the trial of suits.

Provided that the Election Tribunal shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the election petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings of the election petition.

(2) The provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872) shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

Order 7 Rules 10 and 10A of the CPC provide for procedure for return of plaint and its presentation before the court having jurisdiction. The same are extracted below:

“ ORDER VII
PLAINT

XX XX XX

10. Return of plaint.- (1) [Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[*Explanation.-* For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree in a suit, the return of the plaint under this sub-rule].

(2) Procedure on returning plaint.- On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

[10A. Power of Court to fix a date of appearance in the

Court where plaint is to be filed after its return.- (1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

- (a) specifying the Court in which he proposes to present the plaint after its return,
- (b) praying that the court may fix a date for the appearance of the parties in the said Court, and
- (c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

- (a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and
- (b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),-

- (a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and
- (b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule

(2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.]”

Order 7 Rule 10 CPC provides that plaint can be returned at any stage of the suit to be presented to the court in which the suit should have been instituted. While returning the plaint, the Judge shall endorse thereon the date of its presentation, return, the name of the party presenting it and a brief statement of reasons for returning it.

Order 7 Rule 10A CPC provides that where the Court opines that the plaint deserves to be returned to the plaintiff, it shall before doing so intimate its decision to the plaintiff. On receipt of such intimation, the plaintiff has liberty to file application to the court specifying the court in which he proposes to present the plaint after returning making a prayer to the court returning the plaint to fix a date for appearance of the parties in the said court. When any such application is filed, the court before returning the plaint, notwithstanding that the same is on account of jurisdiction to try the same, fix a date for appearance of the parties in the court in which the plaint is proposed to be presented and give notice to the plaintiff and the defendant of such date for appearance. Where such a notice for appearance had been given, it shall not be necessary for the court in which the plaint is presented after return to serve the defendant with a summon for appearance, unless that court, for reasons to be recorded, otherwise directs.

From a bare perusal of the aforesaid scheme in the CPC regarding return of plaint, it is clear that the court, which did not have the jurisdiction to try a suit, could not transfer the plaint to the court having jurisdiction, on an objection raised by the defendant, rather, the plaint had to be returned to the plaintiff for presentation before the court having jurisdiction.

As in the case in hand, Election Tribunal, Sangrur did not have the jurisdiction to entertain the Election Petition in question, it could not transfer the same to Election Tribunal, Malerkotla, having jurisdiction. The Election Petition should have been returned for presentation before the competent court. Accordingly, the part of the order, vide which Election Tribunal, Sangrur had directed transfer of the Election Petition to Election

Tribunal, Malerkotla is set aside. This court could have directed for return of the Election Petition to respondent No. 2, however, considering the fact that the respondent in the Election Petition, namely, the petitioner had put in appearance before Election Tribunal, Sangrur, the election petitioner has option to file application in the manner provided for under Order 7 Rule 10A CPC, if he chooses so, this court would not like to exercise that power.

Accordingly, while upholding the order of Election Tribunal, Sangrur opining that it did not have the jurisdiction to entertain the Election Petition, the matter is remitted back to Election Tribunal, Sangrur for dealing with the same further in terms of the provisions of law and on the basis of any application made by the parties.

Parties through their counsels are directed to appear before Election Tribunal, Sangrur on 31.7.2015.

The petition stands disposed of, accordingly.

(Rajesh Bindal)
Judge

17.7.2015
mk