

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.177 of 2015 (O&M)
Date of Decision:21.01.2015

Amarjit Singh and other

....Appellants

Versus

Sub-Divisional Magistrate-cum-Chief Returning Officer and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Raj Kumar Garg, Advocate for the appellants.

Mr. V.K. Sandhir, Advocate for the caveator/respondents
No.5, 6,7 & 9.

NAVITA SINGH, J.

1. This appeal has been filed challenging the order dated 10.11.2014 whereby it was held by the Election Tribunal that the rejection of the nomination papers of petitioners Sukhdeep Singh, Jaswinder Kaur, Sawran Kaur, Mohinder Singh and Gurbachan Singh (respondent No.5 to 9 herein) was illegal and the nomination papers filed by them were in order. The order passed by the officer concerned rejecting the papers was set aside. It was directed that further action for election to all the posts of Panch would be taken by the Election Department.

2. The appellants, who were the elected candidates, challenged the order on the ground that the nomination papers filed by them were not in accordance with the procedure laid down and had been rightly rejected. The reason for rejection was that the each page of the nomination papers was not signed by the candidates as required. It was pleaded in the grounds of appeal that the election petition was not presented in person by respondents No.5 to 9 and, therefore, the same was liable to be dismissed outright. Another ground taken was that the Election Tribunal did not adopt the procedure laid down in the

Civil Procedure Code (CPC for short) because neither issues were framed nor evidence was taken.

3. Learned counsel for the appellants argued that so far as the presentation of the petition in person was concerned, the relevant zimni order dated 19.8.2013 mentioned that the file was presented and counsel for the petitioners was present. Thereafter, the proceedings were recorded. This would mean that the petitioners Sukhdeep Singh etc. were not present at that time. Counsel for the contesting respondents, however, pointed out that the petition was not presented on 19.8.2013 but was rather presented on 29.7.2013, on which date it was written that the petition had been presented on that date and was to be put for consideration for 19.8.2013. He contended that it was nowhere written that the petition was presented by the counsel, which would mean that it was presented by the candidates themselves. Since the procedural law on the subject required the petition to be presented in person, it would be presumed to have been so presented because it was not observed by the official receiving the petition that it was not presented in person or that it was presented by the counsel.

4. Counsel for the appellants per contra argued that unless it was specifically mentioned that the petition was presented by the petitioners themselves, the presumption would be that they were not present and, therefore, the petition was not maintainable. The arguments advanced on behalf of the appellants cannot be accepted because if it was simply written that the petition was presented, it would mean that it was presented as required by law. Counsel for the petitioners was not even marked present on that date, meaning thereby, they had presented it personally.

5. Counsel for the appellants then argued that the Tribunal in compliance with Section 81 of the Punjab State Election Commission Act (Act for

short) did not follow the procedure laid down in CPC because no issues were framed and no evidence was taken. The order was passed in an arbitrary manner. Counsel for the contesting respondents, however, argued that Section 81 of the Act uses the words 'as nearly as may be', and Election Tribunal is to proceed in accordance with CPC as nearly as may be. It is not a compulsion. The Tribunal was not thus obliged to adhere to the procedure laid down in CPC especially in the given facts and circumstances where the nomination papers were rejected for want of signatures of Sukhdeep Singh and others and on summoning the original record, the Tribunal was able to satisfy itself that the signatures were there and the papers were in order. Issues were thus not required to be framed and evidence was also not needed.

6. Arguments advanced on behalf of the contesting respondents are based on record and are convincing. It was written by the officer concerned that Sukhdeep Singh and others had not signed the papers as required and those were rejected. The papers, however, show (photocopy shown at the time of arguments) that the signatures of Sukhdeep Singh and others appeared on both pages of the nomination papers as required. There was no reason for rejection of the nomination papers.

7. Counsel for the appellants went on to argue that though the Tribunal erred in not taking evidence, it passed the order whimsically even without hearing the arguments. He referred to copies of zimni orders which were a part of grounds of appeal and stated that it was nowhere written in any of the orders that arguments had been heard. This contention of counsel for the appellants is absolutely far-fetched and without comprehension because on 13.10.2014 it was ordered that the case be put up on 20.10.2014 and on that day, the matter was adjourned to 27.10.2014 for arguments and lastly it was adjourned to 10.11.2014 for consideration, on which date the impugned order was passed. Also the order

under challenge categorically mentioned that the arguments of counsel for both the parties were heard. Even the arguments presented before the Tribunal on behalf of the petitioners and on behalf of the respondents i.e. the present appellants and others were also mentioned in the order. How it could be said by any stretch of imagination that arguments were not heard, is not understandable.

8. Counsel for the appellants relied on the judgment reported as Sharif-ud-Din Vs. Abdul Gani Lone 1980 AIR (SC) 303 stating that as per law every copy of the election petition for the appellants should have been attested by respondent No.5 to 9 and non-compliance of such mandatory requirement necessarily would result in the dismissal of the petition. The question here would not be only of the law on the point but also whether attested copies were not supplied to the appellants. Even in court, during arguments, counsel for the appellants had been asked as to whether he could show the copy supplied to him to see if it was not attested as alleged. Despite that, the copy was not shown nor any request was made for producing it afterwards. This would mean that the duly attested copy was provided to the appellants.

9. Counsel for the contesting respondents pointed out that interestingly the nomination papers of all other candidates of one side were rejected and the candidate concerned i.e. the appellants were declared elected unopposed. It may not be out of place to mention here that the similar appeal has been filed by Surinder Kaur, where election petition was filed by Avtar Kaur on the same ground because his nomination papers were rejected and for the post of Sarpanch also, the candidate was declared elected unopposed.

10. Connivance of the appellants with the officials/officers concerned thus cannot be ruled out because it was not believable that the nomination papers of many candidates were rejected on identical grounds and the appellants

were declared elected unopposed. The very manner in which things were handled smacks of illegality and corrupt practice.

11. The Election Tribunal verified from the original record that the signatures of the contesting respondents were existing on the nomination papers wherever required and that the papers had been rejected arbitrarily. The officer who rejected the papers in such manner should be taken to task.

12. The appeal is dismissed. It is also ordered that an enquiry be made by the Deputy Commissioner of the district concerned and action as per rules/law be taken against the officer who rejected the nomination papers in an illegal manner.

(NAVITA SINGH)
JUDGE

21.01.2015
Ishwar

Whether to be referred to reporter: Yes