

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.178 of 2015 (O&M)
Date of Decision:21.01.2015

Surinder Kaur

....Appellant

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 appellant.

Mr. V.K. Sandhir, Advocate for the caveator/respondent No.5

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 petitioner Avtar Kaur (respondent No.5 herein) was illegal and the nomination papers filed by her 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 the post of Sarpanch would be taken by the Election Department.

2. The appellant, who was the elected candidate, challenged the order on the ground that the nomination papers filed by Avtar Kaur 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 candidate as required. It was pleaded in the grounds of appeal that the election petition was not presented in person by respondent No.5 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 appellant 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 petitioner was present. Thereafter, the proceedings were recorded. This would mean that the petitioner Avtar Kaur was not present at that time. Counsel for respondent No.5, 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 candidate herself. 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 appellant per contra argued that unless it was specifically mentioned that the petition was presented by the petitioner herself, the presumption would be that she was not present and, therefore, the petition was not maintainable. The arguments advanced on behalf of the appellant 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 petitioner Avtar Kaur was not even marked present on that date, meaning thereby, she had presented it personally.

5. Counsel for the appellant 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 respondent, 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 Avtar Kaur 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 respondent No.5 are based on record and are convincing. It was written by the officer concerned that Avtar Kaur wife of Gurbachan Singh 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 Avtar Kaur appeared on both pages of the nomination papers as required. There was no reason for rejection of the nomination papers.

7. Counsel for the appellant 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 appellant 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 petitioner i.e. Avtar Kaur and on behalf of the respondents i.e. the

present appellant 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 appellant 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 appellant should have been attested by respondent No.5 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 copy was not supplied to the appellant. Even in court, during arguments, counsel for the appellant 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 appellant.

9. Counsel for the respondent pointed out that interestingly the nomination papers of all other candidates of one side were rejected and the candidate concerned i.e. the appellant was declared elected unopposed. It may not be out of place to mention here that the similar appeal has been filed by Amarjit Singh and others, where election petition was filed by Sukhdeep Singh and others on the same ground because his nomination papers were rejected and for the posts of Panch also, the candidates were declared elected unopposed.

10. Connivance of the appellant 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 appellant was 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 respondent No.5 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