

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

**CR No.5641 of 2016(O&M)**

**Date of decision:9.9.2016**

Rohtash through LRs

....Petitioner

VERSUS

State Election Commission and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Vikram Singh, Advocate for the petitioner.

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**REKHA MITTAL, J.**

**CM No.17342-CII of 2016**

Prayer in this application filed under Order 22 Rule 3 of the Code of Civil Procedure, 1908 is for bringing on record the legal representatives of petitioner- Rohtash (since deceased), statedly passed away on 09.03.2016.

In view of averments made in the application supported by an affidavit of Sushil Kumar son of Rohtash, the application is allowed and the persons mentioned in para 2 of the application are allowed to be brought on record as legal representatives of deceased- Rohtash (petitioner) for the purpose of present *lis*, subject to all just exceptions.

Amended memo of parties is taken on record.

Disposed of accordingly.

**CR No.5641 of 2016**

By invoking Article 227 of the Constitution of India, the present petition directs challenge against order dated 28.07.2016

(Annexure P-4) whereby application filed by Mukesh Kumari – respondent No.4 for dismissal of the election petition has been allowed.

Rohtash filed an election petition under Section 176 of the Haryana Panchayati Raj Act, 1994 (in short ‘the Act’) to challenge election of Mukesh Kumari – respondent No.4 to the office of Sarpanch of Gram Panchayat Untlodha in the elections conducted on 10.01.2016, on the ground of incurring disqualification under Section 175 of the Act on the allegations raised in para 4 onwards of the petition (Annexure P-1). Respondent No.4 filed an application (Annexure P-3) for dismissal of the petition on the premise that the petitioner was not present at the time of presentation of the petition as well as at the time of assignment, thus, the petition is not maintainable. After a response thereto was filed by the petitioner and having heard counsel for the parties, the application of respondent No.4 was allowed and the election petition was ordered to be dismissed.

Counsel for the petitioner has challenged the impugned order with the submissions that it is none of the requirements of Section 176 of the Act that election petition is to be presented by the petitioner in person. In the alternative, it is submitted that as the petitioner was present in person at the time of institution of election petition but his presence was not marked by the Court, the petitioner cannot be made to suffer for some lapse committed by the Court before whom the petition was presented. It is further argued that the petitioner executed his affidavit before Notary Public in Judicial Court Complex, Jhajjar, Haryana, sufficient to prove that he was present at the time of presentation of election petition.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Section 176 of the Act provides for determination of validity of election inquiry by Judge and procedure. A relevant extract from Section 176 of the Act reads as follows:-

“176. (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.”

Before adverting to the provisions of Section 176(1) extracted hereinbefore, it is pertinent to note that Section 81 of the Representation of People Act, 1951 (in short ‘1951 Act’) deals with presentation of petitions. A relevant extract therefrom is reproduced hereinbelow for ready reference:-

“**81. Presentation of petitions.**—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.”

Section 81(1) came up for consideration before Hon’ble the Supreme Court in G.V. Sreerama Reddy and another vs. Returning Officer and others, 2009(3) RCR (Civil) 937. The question before the Court was, whether election petition No.4 of 2008 filed in the Registry of the High Court of Karnataka was proper presentation of the election petition in terms of Section 81(1) of the Act of 1951. Counsel for the appellants

submitted that in the light of language used in sub-Section (1) there is no compulsion/obligation to present the election petition by the candidate himself. According to him, in view of the facts that the election petitioner had executed a Vakalatnama in favour of his Advocate, he is empowered to present it to the authorised office of the Registry. It was also contended that in case of substantial compliance and where it is shown that absence was not to harm the respondents and certain exigencies existed which made the presence difficult, the Court should not dismiss the petition merely for non-compliance of Section 81(1) of 1951.

The Court in para 10 and 11 has held, reads thus:-

“10. A close look of [Section 81](#) reveals that the two remaining Sub-sections after the amendment introduced by Act 47 of 1966, i.e. (1) and (3) deal with two distinct, but inter-related issues. Sub-section (1) deals with the necessary requirements of any petition challenging an election, and Sub-section (3) deals with additional requirements as to the petition presented.

11. Sub-section (1) has five components, (i) the qualification of the petitioner, i.e. he/she must be either "a candidate at such election" or an "elector"; (ii) the petition must be presented 'by' the petitioner; (iii) the petition must be based "on one or more of the grounds specified in sub-section (1) of [section 100](#) and [section 101](#)"; (iv) it must be presented in the High Court; and (v) it must be presented within 45 days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.”

After taking into consideration the earlier judgments rendered by the Apex Court K. Venkateswara Rao and another vs. Bekkam Narasimha Reddi and others, (1969)1 SCR 679, Hukumdev Narain Yadav vs. Lalit Narain Mishra, (1974)2 SCC 133 and Sheo Sadan Singh Vs. Mohan Lal Gautam, 1969(1) SCC 408, it was held in concluding para 20 that as per sub-Section (1) of Section 81, election petition is to be

presented by any candidate or elector relating to the election personally to the authorised officer of the High Court and failure to address such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation.

Reverting to the case at hand, Section 176(1) of the Act empowers any person contesting the election or qualified to vote at the election to file an election petition. Such a person may file an election petition to challenge validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice Chairman, President or Vice President of Panchayat Samiti or Zila Parishad at any time within 30 days after the date of declaration of results of the election. The impression ‘any person contesting the election or ‘any person’ qualified to vote at the election’ when read in conjunction with the impression ‘such person’ used in Section 176, it becomes apparent that the election petition is to be presented by such a person by presenting it himself/herself and not through his authorised representative or Advocate/Attorney.

In this view of the matter, I find myself unable to accept contention of counsel for the petitioner that it is none of the requirements of Section 176 of the Act to present the election petition in person by the petitioner.

So far as the plea that the petitioner himself was present in person at the time of presentation of the election petition, counsel for the petitioner is not in a position to advance any meaningful arguments to challenge observations of the Court below qua factual controversy that the petitioner was not present in person either at the time of presentation of election petition or before the Court to whom the same was assigned. The

trial Court has noticed that from perusal of the case file, it ex- facie transpires that at the time of institution of election petition on 08.02.2016 the petitioner did not appear personally in the Court rather Sh. Rajnish Sharma, Advocate, counsel for the petitioner appeared and his presence was marked at the time of institution/assigning the case to the Court and subsequently even after assignment, presence of Sh. Rajnish Sharma, Advocate, counsel for the petitioner was marked before the Court. From the zimini order dated 08.02.2016 and subsequent order thereto, it is very much clear that the petitioner was not present at the time of presentation of the petition as well as assignment of the petition to the Court, hence there is no force/credence in the bald unsubstantiated contention of counsel nor he is able to rebut the specific stance of the applicant (respondent No.4 herein) and thus the election petition is not maintainable and liable to be dismissed. In this view of the matter, I do not find any error much less illegality in the findings of the trial Court with regard to petition having not been filed by the petitioner in person nor he being present in person before the assignee Court.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in *limine*.

Before parting with this order, it is appropriate to deal with the provisions of Order 3 Rule 1 CPC. Order 3 deals with recognized agent and pleaders and Rule 1 provides for appearances etc., may be in person, by recognized agent or by pleader. Rule 1 of Order 3 reads as follows:-

“1. Appearances, etc., may be in person, by recognized agent or by pleader— Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for

the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf: Provide that any such appearance shall, if the Court so directs, be made by the party in person.”

Rule 1 specifically provides that any appearance, application or act in/or to any Court authorized by law to be made or done by the party in person or by his recognized agent or by a pleader except where otherwise expressly provided by any law for the time being in force. Section 176 of the Act falls within the exception requiring an election petition to be presented in person by the petitioner and not by his recognized agent or by a pleader on his behalf.

**SEPTEMBER 9, 2016**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | yes/no |
| Whether reportable        | : | yes/no |