

In the High Court of Punjab & Haryana at Chandigarh

C.R. No. 6619 of 2015

Date of Decision: January 12, 2016

Balwinder Singh

... Petitioner

Versus

The Election Tribunal-cum-Additional Deputy Commissioner and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. C.L. Premy, Advocate,
for the petitioner.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 10.08.2015 (Annexure P/11) passed by Sub Divisional Magistrate-cum-Election Tribunal, Ferozepur, whereby application of the petitioner for dismissing the election petition on account of non-joinder of person who has contested for the post of Sarpanch, has been dismissed.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner vehemently contended that in view of provisions of Section 77 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as the "Act"), all the persons were required to be impleaded as a party. Learned counsel to substantiate his contention, relies upon judgments of Hon'ble Supreme Court in **P.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen and others, 1989(1) SCC 526** (Annexure P/7) and **Shri Satyanarain Dudhani vs. Uday Kumar**

Singh, 1993 (Sup.2) SCC 82 (Annexure P/8).

I have considered the contentions raised by learned counsel for the petitioner and perused the record.

Firstly, application has not been filed at the initial stage when he filed his reply to the petition. Said application has been moved only after the evidence of the plaintiff-respondent no.2 was concluded and the present petitioner was directed to lead his evidence. Section 77 of the Act reads as under:-

“77. Parties to the petition- A petitioner shall join as respondent to his petition -

(a) where he, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegation of any corrupt practice is made in the petition.”

Perusal of Section 77 of the Act indicates that when declaration is sought that election of all or any of the returned candidate is void and claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates and any other candidate against whom allegation of any corrupt practice is made, are required to be made party. There is no dispute with the proposition of law laid down in the judgments cited. Since the case has already progressed and the petitioner before the election petition (respondent no.2 herein) has already concluded his evidence, that is not a stage when such application can be entertained. It

should have been moved at the outset when the petitioner filed his reply to the petition.

In view of above, I do not find any justification to interfere in the impugned order.

Dismissed. However, petitioner is directed to lead his evidence and the Election Tribunal shall dispose of the election petition expeditiously and will also take into consideration judgments cited by learned counsel for the petitioner at the time of disposal of election petition.

January 12, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge