

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6616 of 2016 (O&M)
Date of decision:03.10.2016

Seema Devi

... Petitioner

Vs.

Suman and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Sahu, Advocate
for the petitioner.

AMIT RAWAL J.

Notice of motion

Mr. Amit Rana, Advocate accepts notice on behalf of the respondents.

The question posed in the present revision petition is as to whether election petition filed under Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as “1994 Act”) or any of its provisions challenging the election petition of the returned candidate has to be filed by the effected petitioner-in-person along with advocate or not?

In order to answer the aforementioned question, it would be apt to reproduce the provisions of Section 176 of 1994 Act which read thus:-

“176. Determination of validity of election enquiry by Judge and procedure (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.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

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

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

[(aa) If on holding such enquiry the Civil Court finds that-

(i) on the date of his election a returned candidate was not qualified to be elected;

(ii) any nomination has been improperly rejected; or

(iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice

committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.;]

(b) If, in any case to which clause (a) or clause (aa) does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or

(b) who, with a view to induce any person to stand or not

to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.”

For the purpose of adjudication of the question aforementioned by conjunctively reading of the aforesaid provisions of the Act, the succinct facts of the case are that the respondents filed an election petition in respect of the election held on 24.01.2016 for the post of Sarpanch of the Gram Panchayat Sukhmanpur, Tehsil Ratia, District Fatehabad. The election petition has been filed by invoking the provisions of Section 176 4(b) of 1994 Act, whereby, the respondents had sought re-counting of the votes. The aforementioned election petition was objected to by the petitioner on the premise that the same was not filed by the defeated candidate in person but by his advocate.

Mr. S.S.Sahu, learned counsel appearing on behalf of the petitioner submits that while going through the provisions of Peoples Representation Act, 1950 and Punjab State Election Commission Act, 1994 as applicable to State of Haryana also, the provisions of Section 176 of 1994 Act have been interpreted, wherein, it has been held that if the election petition has not been presented by a defeated candidate in person, the same would entail into dismissal/rejection and since the present election petition was not filed as indicated above, an application for rejection of the election

petition was filed but the same has erroneously been dismissed by the trial Court.

In support of his contention, relies upon the judgments rendered by this Court in ***Gurlal Singh vs. Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others 2010 (5) RCR (Civil) 474***, whereby, the election petition filed under the provisions of 1994 Act, was dismissed and in ***Raj Kumar vs. Mukhtyar Singh and others 2011(3) RCR (Civil) 382***, in essence, non-compliance of the provisions of Section 176 are mandatory in nature and incurable which entail into dismissal of the petition being not maintainable.

Per contra, Mr. Amit Rana, learned counsel appearing on behalf of the defeated candidates/respondents submits that in case the election petition is filed with a prayer for seeking re-counting of the votes, the election petition need not be filed by the defeated candidates. He has referred to the prayer clause of the election petition which reads thus:-

“Under the aforesaid circumstances, it is prayed that this election petition of the petitioner may kindly be accepted by order of recounting of Booth No.221 and declaration of result as post of Sarpanch in favour of respondent no.1 may kindly be set aside and the petitioner may be declared as a elected Sarpanch of village Sukhmanpur, Tehsil Ratia, District Fatehabad and the cost of the petition may kindly be also awarded to the petitioner against the respondent no.1.”

In support of his contention, he relies upon a Hon'ble Full Bench judgment of this Court rendered in ***Radha Kishan vs. Election***

Tribunal-cum-Sub-Judge, Hissar 1999 (4) RCR (Civil) 79, whereby, a question regarding interpretation *vis-a-vis* scope of Section 176 of 1994 Act came to be debated upon and it was held that the aforementioned provisions of 1994 Act do not prevent the Court for ordering scrutiny and computation of votes without asking the applicant to lead evidence for detailed enquiry. The judgment relied upon by the learned counsel for the petitioner was assailed in the Hon'ble Supreme Court, vide Special Leave to Appeal (Civil) No.17041 of 2011 decided on 22.04.2014. The finding given by this Court by taking the aid of provisions of 1994 Act and Representation of Peoples Act 1950, the mandatory requirement of presentation of the petition by defeated candidate had been held to be mandatory in nature but the question arose before the Hon'ble Supreme Court was all three are independent Acts and the Haryana Panchayati Raj Act cannot be interpreted by taking the aid of provisions of other Act, once there is no anomaly in the Act alone and the Hon'ble Supreme Court had held that Haryana Legislature had intended to make the provision in Section 176 procedural. Thereby making the defect in non-presentation of the election petition by the election petitioner-in-person curable.

I have heard learned counsel for the parties and appraised the paper book.

I am not in agreement with the submissions of Mr. Sahu as the language of Section 176 of 1994 Act is clear and ambiguous. If the Act is clear and ambiguous, there is no need to take the aid of other provisions and to interpret the same. The other Acts, i.e., 1994 Act and 1950 Act, envisaged the presentation of the petition by a defeated candidate in person

but, whereas, Haryana Act does not envisage such mandatory requirement of law and in case, the election petition is filed without the presence of the petitioner therein, the defect is curable and it does not entail into dismissal of the election petition and this was the opinion expressed by the Hon'ble Supreme Court in un-reported judgment cited supra which reads thus:-

“Apart from the aforesaid observations, the High court has also relied on a judgment of the Punjab and Haryana High Court in Gurlal Singh versus Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others reported in 2010 (5) RCR (Civil) 474 which has been rendered under the Punjab State Election Commission Act, 1994. Before the High Court a submission was made on behalf of the appellant that no reliance can be placed on the provisions of the Representation of People Act, 1950 or on the provisions contained in the Punjab State Election Commission Act, 1994 (hereinafter referred to as the 'Punjab Act') as the provisions contained under the Haryana Act are different. The High Court, has, however, negated the aforesaid arguments with the following observations :-

“So far as argument of learned counsel for the petitioner that there is no provision under Haryana Act like Section 80 of the Punjab Act that if petition is not presented in person, as required under Section 76 of the Punjab Act, the same shall be dismissed, is concerned, I am of the view that the said fact is not of any help to the

case of present petitioner. Once, a provision is held to be mandatory in nature, non-compliance of the said provision would be having obvious effect, i.e., dismissal for non-compliance.”

On this basis, it has been held that since the provisions contained in Section 176 of the Haryana Act was mandatory, the non presentation of the petition in person by the Election Petitioner would entail dismissal of his petition.

Challenging the aforesaid conclusion, it is submitted by Mr. B.S.Mor that the aforesaid three Acts, i.e., the Representation of People Act, 1950, Haryana Act and the Punjab Act are independent acts and the provisions of each Act have to be interpreted independently. Therefore, the provisions of the Haryana Act have to be interpreted by making a reference to that Act alone.

We find substance in the submission made by the learned counsel for the appellant. The provision contained in Section 176 of the Haryana Act, 1994 is not followed by a consequential section entailing dismissal of the Election Petition, if it is not presented by the Election Petitioner in person. On the other hand, in both Section 81 of the Representation of People Act and Section 80 of the Punjab Act, non presentation of the Election Petition by the Election Petitioner by himself/herself would entail dismissal. Clearly, therefore, the Haryana Legislature had intended to make the

provision in Section 176 procedural. Thereby making the defect in non-presentation of the Election Petition by the Election Petitioner in person curable. A discretion has been vested in the Court to permit the Election Petitioner to cure the defect by appearing before the Court on a later date, if so directed by the Court.

In view of the above, we find that the judgments of the Courts below cannot be sustained and have to be set aside.”

There is another aspect of the matter. While dismissing the application, the Court below had given the following observations, vide order dated 3.8.2016 which read thus:-

“The present is the application for dismissal of present election petition being not maintainable as the has not been presented by the petitioner personally.

2. The applicant/respondent's case is that as per the provisions of Section 176 of the Haryana Panchayati Raj Act, 1994 and Section 81 of the Peoples Representation Act, every election petition has to be presented by the petitioner personally and that the provisions of said Acts are mandatory in nature. Accordingly, the present petition is liable to be dismissed, being not maintainable.

3. The respondent/petitioner's case is that the law nowhere requires that every election petition has to be filed personally and that the provisions of Section 176 of the Haryana

Panchayat Raj Act, 1994 and Section 81 of the Peoples Representation Act are directory in nature and not mandatory. In these circumstances, present application is liable to be dismissed.

Heard. Record perused.

4. *The respondent has sought dismissal of present petition being not filed by the petitioner personally. To support her contentions, the respondent has relied upon **Raj Kumar vs. Mukhtyar Singh and others 2011 (3) PLR 45 (P&H)** wherein the Hon'ble Punjab and Haryana High Court has held that the provisions of Section 176 of the Haryana Panchayati Raj Act, 1994 are mandatory in nature and that every petition under the said Act is required to be presented by the petitioner personally and in case of non-compliance of said mandatory provisions, the petition is to be dismissed being not maintainable. However, the said judgment is of no help to the respondent as the Hon'ble Supreme Court in **Raj Kumar vs. Mukhtyar Singh and others, Special Leave to Appeal (Civil) No.17041 of 2011 on 22.04.2014** has held that the provisions of Section 176 of the Haryana Panchayati Raj Act, 1994 are directory being procedural and that the said defect, if any, is curable if so directed by the election tribunal and has set aside the judgment of Hon'ble Court passed in Raj Kumar's case (supra). The perusal of the case record reflects that the petitioner has appeared, in person, on several occasions,*

e.g.26.02.2016.

5. *In view of aforesaid, the application under consideration is dismissed being devoid of merits.”*

In my view, the defect as pointed by the petitioner stands cured. Even in the election petition, the Court below had not framed issues and acceded to the election petition for recounting only, vide order dated 01.09.2016 which reads thus:-

“Today the case is fixed for petitioner evidence. Perusal of order dated 03.08.2016 reflects that numbers of issues were framed on that date and, thereafter, the case was fixed for petitioner evidence. However, the perusal of election petition reflects that the petitioner has challenged the counting of booth no.221 and not otherwise. Further, as the petitioner has sought for re-counting only, there is no need to frame issues and to adjourn the petition for evidence. Accordingly, the order dated 03.08.2016 is corrected.

Now to come up on 13.09.2016 for re-counting of votes and the respondent nos.4 to 6 are directed to bring the E.V.M machine of booth no.221 along with the requisite equipments, if any, and technician (s).”

For the aforementioned reasons, I am of the view that the question raised in the present petition is answered against the petitioner and in favour of the respondents. At the time of presentation of the election petition by a defeated candidate, his non-appearance would not be fatal, much less, not mandatory in nature, but curable.

In view of the aforementioned observations, the order under challenge is affirmed and the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

October 03, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No

