

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6985 of 2014

Date of Decision: 18.03.2016

Santokh Ram

... Petitioner(s)

Versus

Ram Asra and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Amit Dhawan, Advocate
for the petitioner(s).

Ms. Amandeep Kaur, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 26.8.2014, whereby application for amendment of election petition was allowed.

Relevant facts of the case that an election petition was filed before the Election Tribunal, Shahkot whereby respondent No.1-Ram Asra challenged the election of the present petitioner as Sarpanch of Gram Panchayat. On appearance, petitioner contested the election petition by filing detailed reply and taking preliminary objection that

petition is not verified as per law. Subsequently, respondent moved an application dated 11.7.2014 for seeking amendment of the petition, thereby *inter alia* taking the plea that because of typographical mistake, verification of the petition could not be done and he be allowed to amend the petition. Present petitioner contested the said application and the Court below, after hearing both the parties, allowed the said application vide impugned order.

Learned counsel for the petitioner, while challenging the impugned order, submitted that election petition was neither signed nor verified and as per provisions of Sections 76 to 78 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as "the Act"), in case petition is not signed or verified, petition is not maintainable. Learned counsel for the petitioner, while placing reliance upon the judgment rendered by the coordinate Bench of this Court in ***Ranjit Kaur v. Harjinder Kaur and Others 2010(2) RCR (Civil) 406***, submitted that if the election petition is not in conformity with the mandatory provisions of Section 76 of the Act, the same is not maintainable and amendment cannot be allowed.

Learned counsel for the respondent submitted that plea was taken before the Court below that election petition was not verified and the Court below has also decided the controversy on that point. However, as per Section 80 *ibid*, election petition is liable to be dismissed in case of non compliance of the provisions of Sections 76 of Section 77 or Section 103 of the Act and not Section 78 of the Act. On this point, learned counsel for the respondent has placed reliance upon

the judgment rendered by Hon'ble the Apex Court in case ***H.D.Revanna v. G. Puttaswamy Gowda and Others 1999(2) SCC 217.***

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that as per application dated 11.7.2014, permission was sought to amend the petition because verification could not be typed due to typographical mistake and the said mistake was neither willful nor intentional. In the reply, having been filed by the present petitioner, no such plea was taken that petition was not signed, rather the application was contested that applicant is estopped by his own act and conduct from filing the application for amendment of the petition.

For ready reference, Section 76, 78 & 80 of the Act are reproduced hereunder:-

“76. Presentation of petition.-

- (1) An election petition may be presented on one or more of the grounds specified in sub section (1) of Section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of 45 days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.
- (2) Every Election petition shall be accompanied by as

many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

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78. Contents of petition.-

- (1) As election petition shall
 - (a) Contain a concise statement of the material facts on which the petitioner relies;
 - (b) set forth full particulars of any corrupt practice that the petitioner alleges, including a statement as possible, of the names of the parties alleged to have committed such corrupt practice or practices and the date and place of the commission of such practice; and
 - (c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, (Central Act 5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the relevant particulars thereof.
- (2) Any schedule or annexure to the petition shall also be

signed by the petitioner and verified in the same manner as the petition.

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80. Trial of Election petition.-

- (1) The Election Tribunal shall dismiss an election petition which does not comply with the provisions of section 76 or section 77 or section 103.
- (2) Where more than one election petitions are presented to the election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal, may, in his discretion, try them separately or in one or more groups.
- (3) Any candidate not already a respondent shall, upon application made by him to the election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent.
- (4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow

any amendment of the petition which will have the fact of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

- (5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from day to day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for a reasons to be recorded in writing.
- (6) Every election petition shall be tried as expeditiously as possible and every endeavor shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the election Tribunal for trial”.

The above referred provisions make it clear that Section 76 of the Act requires that petition must be under the signatures of the petitioner. As per Section 78(1)(c) of the Act, petition is required to be verified as provided under the Code of Civil Procedure, 1908 and as per Section 80 *ibid*, election petition is liable to be dismissed in case of non compliance of the provisions of Section 76 or Section 77 or Section 103 *ibid*. That way, present case was not covered under Section 76 or Section 77 or Section 103 of the Act, rather it was the case of non-compliance regarding verification of the petition under Section 78 of the Act. While dealing with such controversy Hon’ble the Apex Court in ***H.D.Revanna’s case*** (*supra*) observed that that defect in verification

of the election petition or in the affidavit accompanying election petition has been held to be curable and not fatal.

In light of the above, the Court below has rightly allowed the application for amendment of the petition. Present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

March 18, 2016

"DK"