

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.8063 of 2016 (O&M)
Date of decision:13.12.2016

Radha Raman

... Petitioner

Vs.

Mahender Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shiv Kumar, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner in election petition bearing No.2 of 2016 filed under Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as “1994 Act”) challenged the election of the respondents for the post of Sarpanch of Gram Panchayat Fatehpur Billoch, Tehsil Ballabgarh, District Faridabad held on 10.01.2016.

Mr. Shiv Kumar, learned counsel for the petitioner submits that the election petition was filed on various grounds including the ground of corruption and against illegal casting of votes, in essence, there was impersonation of votes as certain persons were dead and some were confined to jail. The votes casted in favour of petitioner were 1451 and in favour of respondent No.1 were 1452. However, the authorities had elected respondent No.1 as Sarpanch of Gram Panchayat owing to margin of one vote. The case before the Court below is listed for petitioner's evidence. Even the provisions of Rule 73 of 1994 Act were invoked but the

application for opening the sealed packet of marked copy has erroneously been dismissed on the premise that the petitioner has not cited any reasons. He further submits that the aforementioned findings could not have been arrived at as basis of election petition was on the grounds taken therein. Until and unless the sealed packet are not opened, the observations are not sustainable in the eyes of law.

Notice of motion was issued on 30.11.2016.

As per the previous order dated 08.12.2016, service upon respondent No.1 has been effected through the counsel representing him before the Court below. This fact has been noticed by this Court. However, there is no representation on his behalf.

Accordingly, I proceed further to decide the matter.

For adjudication of the lis, it would be apt to reproduce the provisions of Rule 73 of 1994 Act:-

“73. Production and inspection of election papers – while in the custody of the District Election Officer (Panchayat)-

- a) the packet of unused ballot papers;*
 - b) the packets of used ballot papers whether valid, tendered or rejected; and*
 - c) the packets of marked copies of the voter list;*
- shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the order of a civil court or competent authority.”*

On perusal of the Rules, it is evident that ballot sealed paper

could not have been opened without the permission of the Court. Since there is an averment in the election petition regarding erroneously declaring respondent No.1 as Sarpanch of Gram Panchayat owing to margin of one vote, whereas, the petitioner has secured 1451 votes and non-declaration of valid votes as invalid was not called for. The said fact can only be ascertained on examination of the votes by the Tribunal itself and not by any other authority. The petitioner has taken all the steps for proving his case by taking the aid of aforementioned provisions of law.

I am of the view that the order under challenge is not sustainable in the eyes of law. The permission as sought for ought to have been granted by the Court below for opening the seal packet. Accordingly, the impugned order is set aside. Application Annexure P-3 is allowed.

At this stage, Mr.Shiv Kumar, learned counsel for the petitioner submits that there is already a direction by this Court in CWP No.9896 of 2016 to decide the election petition within a period of six months from the date of receipt of certified copy of the order and submits that a copy of this order may be given under the signatures of Reader attached to this order.

Ordered accordingly.

Revision Petition stands allowed.

(AMIT RAWAL)
JUDGE

December 13, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No