

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

CWP No. 20450 of 2016

DATE OF DECISION : 30.09.2016

Smt. Urmila Devi

.... PETITIONER

Versus

State of Haryana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

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

* * *

RAMENDRA JAIN, J.

1. The petitioner has filed this petition under Articles 226/227 of the Constitution of India for issuing a writ in the nature of certiorari to quash the order dated 09.08.2016 (Annexure P-1) passed by the Election Tribunal-cum-Civil Judge (Junior Division), Kurukshetra, whereby the election petition filed by her under Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act') challenging the declaration of Smt. Suman Devi (respondent No.3) as a winning candidate for the post of Panch from ward No.2, village Chanderbhanpur, Tehsil Thanesar, District Kurukshetra, on the basis of fake voting of respondent Nos. 4 to 6, was dismissed. Further prayer has been made for issuance of a writ in the nature of mandamus directing the concerned authorities to hold the present petitioner as a winner for the said post.

2. The facts giving rise to this petition are that the petitioner and

respondent No.3 contested election for the post of Panch from ward No.2 of Gram Panchayat of the aforesaid village, which was held on 10.01.2016. As per the petitioner, respondent No.3 was declared a winning candidate on the basis of three fake votes of respondent Nos. 4 to 6, against which the petitioner submitted a written complaint on the date of election itself before the Returning Officer. It was alleged that respondent No.4 being in Indian Army was on duty on the day of election, whereas respondent Nos. 5 and 6 being Government teacher and Bank employee, respectively, were on election duty on the day of election. Thus, these respondents did not cast their respective votes and some other persons polled their votes by impersonation in collusion and connivance with the election staff and the returned candidate. As a result thereof, respondent no.3 got 36 votes and the petitioner secured 35 votes. Out of total 73 votes polled, two were declared invalid. If the aforesaid three fake votes of respondent Nos. 4 to 6 would not have been considered by the Returning Officer, in that eventuality, the petitioner would have been declared as a winning candidate. On the basis of these allegations, the petitioner filed election petition (Annexure P-1A).

3. Respondent No.3 filed written statement (Annexure P-2) pleading the legality and validity of the election result in her favour and contested the election petition. She pleaded that no fake vote was polled in the elections, as alleged by the petitioner.

4. Respondent No.4 was given up being unnecessary by learned counsel for the petitioner before the Election Tribunal, whereas respondent Nos. 5 and 6 contested the election petition by filing their joint written statement (Annexure P-3), in which they pleaded that they did not

participate in the election as they never cast any vote in the general election of Panchayat. On these submissions, they also prayed for dismissal of the election petition.

5. After taking evidence and hearing both the sides, the Election Tribunal dismissed the election petition vide impugned order dated 09.08.2016 (Annexure P-1).

6. Learned counsel for the petitioner contended that total 73 votes were polled, out of which two were declared invalid. Thus, remaining 71 votes were taken into consideration, out of which three votes of respondent Nos. 4 to 6 were still fake. The learned Tribunal did not consider the fact that if three votes were further excluded from consideration, which were counted in favour of respondent No.3, then the petitioner would have been declared a winning candidate, having secured 35 votes in her favour. The learned Tribunal failed to appreciate that respondent Nos. 4 to 6 being in Government service were out of station on the day of election and the votes polled on their behalf being fake ought to have been excluded from the total polled votes.

7. After giving our thoughtful consideration to the contentions raised by learned counsel for the petitioner, we do not find any merit in the instant writ petition, because perusal of the impugned order shows that the petitioner has miserably failed to prove on record that any objection regarding the alleged casting of three fake votes by impersonation was ever raised by her or by her polling agent before the Returning Officer. Even the petitioner did not make any effort to examine her polling agent. Though she deposed before the Election Tribunal that she had made complaint on the

date of election itself regarding casting of fake votes, but her said deposition has been negated by the Election Tribunal with the specific observation that no such complaint was ever made by the petitioner. The learned Tribunal has also observed that respondent No.5 – Ishwar Singh cast his vote on 10.01.2016. With regard to the votes of respondent Nos. 4 and 6, it was held that there was nothing on the case file which could lead to the conclusion that two votes which were cancelled were not those votes which were allegedly cast on behalf of respondent Nos. 4 and 6. It has been further observed by the learned Tribunal that the petitioner could not establish before it that the alleged fake votes were counted in favour of respondent No.3. Hence, the petitioner has miserably failed to prove that the fake votes were cast in favour of respondent No.3. We do not find any illegality in the reasoning recorded by the learned Tribunal in the impugned order for dismissing the election petition of the petitioner.

8. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

September 30, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes