

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

FAO No. 774 of 2016 (O&M)

Date of Decision: August 24, 2016

PARMINDER SINGH

-APPELLANT

VERSUS

JAGTAR SINGH AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kulbir Singh Sekhon, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

Appellant has assailed order dated 17.08.2015 passed by Election Tribunal (SDM), Sri Muktsar Sahib whereby election petition filed by the petitioner under Section 76 of Punjab State Election Act, 1994 read with Section 50 of the Panchayat Election Rules, 1994 was dismissed and the election to the post of Sarpanch of village Gurhi Sanghar was upheld.

Election to the post of Sarpanch of village Gurhi Sanghar

was held on 03.07.2013 in which respondent No.1 was declared elected as Sarpanch of the village.

Petitioner got 886 votes whereas respondent No.1 scored 939 votes. Petitioner alleged that the result of the election was against the provisions of the Punjab State Election Act and Rules of 1994 and the election was liable to be set aside on the grounds mentioned in the election petition.

Election petition was contested by respondent No.1 on number of counts thereby denying the allegations of the petitioner.

Both the parties led evidence and the Election Tribunal vide order dated 17.08.2015 dismissed the election petition and held the election to the post of Sarpanch in the village to be valid.

I have heard learned counsel for the appellant to some extent.

Learned counsel for the appellant has repeated the same grounds as were taken before the Election Tribunal. The main allegation of the petitioner was that at the time of counting of votes, he was kept away from the counting centre and his votes were

counted in favour of respondent No.1. This allegation could not be substantiated by any piece of evidence. The agents of the petitioner were present in the counting hall. No explanation can come on record as to how this allegation could be proved vis-a-vis statement of the petitioner wherein such allegation could not be established.

Secondly, learned counsel for the petitioner emphasized that respondent No.1 was not resident of the village Gurhi Sanghar, rather he was resident of village Mallan. Petitioner examined one Bhavdeep Garg, Inspector, Food and Supply as witness. The ration card placed on record as Ex.PW2/B was of the year 2004 and the election in question was held in 2013. No explanation could come on record in respect of intervening period of nine years wherein residence could have been changed. Balbir Singh, the witness of the petitioner admitted in his cross-examination that Jagtar Singh was born in village Gari Sanghar, his wife was from village Mallan. His wife was having no brother and Jagtar Singh lived in village Mallan in his in-laws house for sometime. In view of these facts, the place of birth and living in the paternal house by respondent No.1 cannot be

interfered merely because he was not having any brother in parental house of his wife and he lived in said village for sometime.

Thirdly, learned counsel for the petitioner argued that in the voter list of village Mallan i.e. of Ward No.8, the vote of respondent No.1 was at Serial No.219 and the vote of his wife Shhinderpal Kaur was at Serial No.220 and that fact itself proved that as per voter list Ex.PW4/A, he was resident of village Mallan.

Perusal of the record revealed that though Block Level Officer was examined as witness vis-a-vis voter list Ex.PW4/A but respondent No.1 submitted an application dated 30.04.2013 to Block Level Officer for deleting his name from the voters list prior to holding the election. In respect of deleting of votes, he produced voter list of the year 2014, according to which their names were deleted from village Mallan. If the names were not deleted despite moving application dated 30.04.2013, no fault can be attributed to respondent No.1. There was no substance on record that respondent No.1 and his wife had ever exercised right to vote in village Mallan as well.

At last, learned counsel for the petitioner submitted that there were instances of malpractice in conducting election. Balbir Singh witness examined by the petitioner could not dwell anything in respect of the persons involved in the malpractice at the spot. Moreover, the allegations raised by the petitioner were in uncertain terms.

According to Section 76 of the Act, petitioner has to sign each page of the election petition and he has to be present in person. As per observation of the Election Tribunal, nothing of this sort was done by the petitioner nor he was present during arguments.

According to Section 78 of the Act, the allegations should be specific and based on facts which were found to be contrary to the requirement. Respondent No.1 filed his nomination, showing his village to be Gurhi Sanghar which was place of birth of respondent No.1. The nomination was found in order as respondent No.1 had attached relevant proofs along with nomination papers. After acceptance of nomination of respondent No.1, the petitioner was not

entitled to raise up the issue as no objection was raised at the time of acceptance of nomination.

Having considered the controversy as projected hereinabove, this Court does not find it to be a case of interference. Resultantly, this appeal is dismissed.

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There is a delay of 67 days in filing the appeal. Since the appeal is being dismissed on merits, there is no necessity to pass any order in the aforesaid civil miscellaneous application and the same is accordingly disposed of.

August 24, 2016
 jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No