

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

CR No.1196 of 2017(O&M)

Date of decision: 9.10.2017

Sandeep

.....Petitioner

VERSUS

Shamsher Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. P.S. Dhaliwal, Advocate for the petitioner.

Mr. Gautam Kaile, Advocate for respondent No.1.

Mr. Vishal Kashyap, AAG, Haryana.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 13.01.2017 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Fatehabad whereby application (Annexure P-4) filed by respondent No.1 for dismissal of the election petition filed under Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter to be referred as 'the Act') has been allowed and the election petition has been dismissed.

Counsel for the petitioner has submitted that Shamsher Singh – respondent No.1 was elected as Sarpanch of Gram Panchayat Baijalpur, Sub Tehsil Bhuna, District Fatehabad in the election held on 17.01.2016. The petitioner filed election petition under Section 176 of the Act seeking to set aside election of Shamsher Singh on the grounds set up in the petition.

Respondent No.1 filed application (Annexure P-4) for dismissal of the election petition on the premise that election petition has

not been presented by the petitioner himself and the same has been filed through a counsel, constituting violation of mandatory provisions of Section 176 of the Act, therefore, the election petition is liable to be dismissed. It is argued with vehemence that the election petition was filed by the petitioner in person and his presence has been recorded in the order dated 16.02.2016 (Annexure P-7) by the Court to which the election petition was assigned by the Civil Judge (Senior Division), Fatehabad. Counsel would urge that any questions qua the petition to be put to the petitioner would be addressed by the Court to which the election petition has been assigned, therefore, there is no violation of the provisions of Section 176 of the Act. Further submitted that any such defect with regard to personal appearance of the election petitioner can well be cured and the same stands rectified with personal appearance of the petitioner before the Court to which the election petition was assigned. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Raj Kumar Vs. Mukhtyar Singh and others, 2017(1) RCR (Civil) 392.**

Counsel for respondent No.1 (contesting), in the light of enunciation laid down in **Raj Kumar's case** (supra), is not in a position to refute contentions of the petitioner or support the impugned order.

I have heard counsel for the parties, perused the paper-book particularly the annexures appended with the petition.

Be that as it may, controversy raised in the present petition is squarely covered by judgment of Hon'ble the Supreme Court in **Raj Kumar's case** (supra) in favour of the petitioner, therefore, the impugned order cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed. Impugned order dated 13.01.2017 is set aside and the election petition is restored on

the board of the trial Court for proceeding with the matter in accordance with law. Parties through their counsel are directed to appear before the Court concerned on 02.11.2017.

OCTOBER 9, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no