

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

CR-173-2017

Date of decision: 13.1.2017

Anju Kalra

...Petitioner

Versus

Kanchan Rani and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.MK Singla, Advocate for the petitioner

SNEH PRASHAR, J.

The present revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 9.12.2016 passed by learned Civil Judge (Junior Division), Gohana vide which the application filed under Order 1 Rule 10 and Order VI Rule 17 of the Code of Civil Procedure (for short ' the Code') filed by Kanchan Rani (respondent No.1) was allowed.

An election petition filed by Kanchan Rani -respondent No.1 challenging the election of Anju Kalra petitioner (respondent No.1) from Ward No.11, Gohana is pending before learned Civil Judge,

Junior Division, Gohana. Among other respondents impleaded in the petition, one was Bali Sharma Presiding Officer Ward No.11, Booth No.20, who at the relevant time was posted as Headmaster, Government High School, Halal Pur, Sonapat, Block Rai. After the petitioner appeared and filed reply to the petition, Kanchan Rani -respondent No.1 filed an application invoking the provisions of Order X Rule 1 and Order VI Rule 17 of the Code pleading that while drafting the petition, an error occurred in naming one of the respondents due to supply of wrong name of the Polling officer/ Returning Officer to her under the Right to Information Act. Instead of Bali Sharma, one Satish, posted as PGT Government Senior Secondary School Gharwal was the Presiding Officer on Booth No.22 of Ward No.11 and he was the appropriate and necessary party to be impleaded as respondent.

Petitioner –Anju Kalra contested the application but finding that no new claim was made by Kanchan Rani-respondent No.1 by way of amendment sought, the application was allowed by learned trial Court vide impugned order 9.12.2016 subject to payment of Rs.500/- as costs.

Learned counsel for the petitioner argued with vehemence that in written reply filed by the petitioner to the main petition, she had taken an objection that the petition was bad for want of non-joinder and mis –joinder of the necessary parties, particularly for the reasons that the Presiding Officer of Booth No.20 had no concern with the election of ward No.11. Learned counsel argued that now by way of amendment sought, Kanchan Rani -respondent No.1 now intends to change the entire

nature of the petition by impleading the Presiding Officer of Booth No.22 of Ward No.11, who was not arrayed as respondent to the election petition earlier. The application was filed after expiry of limitation period for filing such election petition and therefore, it could not be allowed. Also the election petition deserved ought right dismissal for non-joinder and misjoinder of the necessary parties when the allegation of corrupt practices had been levelled. To support his argument, he relied upon **K.D.Deshmukh vs. Amrit Lal Jayaswal AIR 1992 Supreme Court 164** and **Satbir Singh vs. Executive Magistrate, Sangrur 1998(1) RCR (Civil) 612**.

The arguments of learned counsel for the petitioner do not appear to be meritorious. No doubt Bali Sharma, the Presiding Officer of Booth No.20 was impleaded as respondent No.5 in the election petition but it was the case of Kanchan Rani -respondent No.1 that said presiding officer was arrayed as respondent due to wrong supply of name of polling officer / returning officer in the information given to her under the Right to Information Act. Admittedly, the votes pertaining to Ward No.11 were casted at Booth No.22 and were not casted at Booth No.20. Kanchan Rani -respondent No.1 by way of amendment had only sought to implead the presiding officer/ returning officer of Booth No.22, where the votes pertaining to Ward No.11 were casted. No change/ amendment was sought in the pleadings or in the grounds / claim raised by Kanchan Rani- respondent No.1, on which she had challenged the election of Anju Kalra- petitioner. All figures and facts stated in the petition

remained the same and no change therein was sought.

Neither Kanchan Rani by way of amendment had sought to raise a new ground to challenge the election of the petitioner nor had sought to add a new claim or a new relief after expiry of the period of limitation.

In **K.D.Deshmukh's case (supra)**, the original petition was filed on the ground of improper rejection of nomination of three candidates under Section 100(1)(c) of the Representation of the People Act, 1951 and the ground sought to be raised by way of amendment was improper acceptance of nomination paper of the appellant himself under Section 100(1)(d) of the Act. It was held by Hon'ble the Supreme Court that no amendment could be allowed by which totally a new ground was sought to be taken and the application for amendment was clearly barred by limitation because it was filed beyond limitation i.e. after 45 days of the result of election.

In **Satbir Singh's case (supra)**, the amendment of election petition was sought to the extent that in case election of respondent is set aside, the petitioner be declared elected. The application was filed after expiry of the limitation period, therefore, it was held that prayer to add a new claim or a new relief beyond the period of limitation could not be permitted.

In the instant case, only the name of the polling officer/ returning officer of the relevant Booth relating to Ward No.11 from where Kanchan Rani -respondent No.1 had contested the election, was

sought to be amended, which amounted to only a clerical amendment. Therefore, the application of respondent No.1 was rightly allowed by learned trial Court. Finding no adversity or perversity in the impugned order dated 9.12.2016 passed by learned Civil Judge (Junior Division), Gohana the present revision petition being devoid of merit is dismissed.

13.1.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No