

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

CR No.2383 of 2017

Date of decision: 18.04.2017

Smt. Anita Mangla

..Petitioner

Versus

Smt. Kamla Devi and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Ashok K. Sharma, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 22.11.2016 (Annexure P-1) passed by the Additional District Judge, Jind as well as order dated 30.04.2013 (Annexure P-2) passed by the Additional Civil Judge (Senior Division), Jind.

Briefly, the facts of the case as made out in the present revision petition are that the petitioner and respondent No.1 contested the election of Municipal Council, Jind held on 20.05.2010 from ward No.16. The said ward was reserved for woman. The result was declared on the same day. Respondent No.1 was declared elected by a margin of 467 votes as petitioner got 1048 votes whereas respondent No.1 received 1515 votes. The petitioner challenged the election on the ground that there was no counting agent at Booth No.45 and the request of the petitioner for appointment of her counting agent was declined by the Presiding Officer. It

was also alleged in the election petition that the Presiding Officer in collusion with respondent No.1 declared the result without adopting the proper procedure by causing certain material irregularities. There were allegations of corrupt practice also stating therein that respondent No.1 adopted malpractice for winning the election. The election petition was contested by respondent No.1 and the same was dismissed by the Additional Civil Judge (Senior Division), Jind vide order dated 30.04.2013.

After dismissal of election petition, the petitioner filed appeal before the Additional District Judge, Jind to challenge order dated 30.04.2013, which was also dismissed on 22.11.2016.

After losing the case before both the Courts below, the petitioner has approached this Court by way of filing the present revision petition under Article 227 of the Constitution of India for setting aside both the order passed by the Additional Civil Judge (Senior Division), Jind as well as the Additional District Judge, Jind.

Learned counsel for the petitioner submits that the judgments passed by both the Courts below are not based on proper appreciation of evidence. Respondent No.1 was declared elected by violating all the election rules and procedure. The Presiding Officer was in collusion with respondent No.1. Hence, the election of respondent No.1 be declared as void and the petitioner be declared as the winning candidate. There was no counting agent of the petitioner in Booth No.45 at the time of counting of votes and the Presiding Officer of said booth pressed the appropriate button provided in the control to record the votes. The display panel displayed

votes secured by the petitioner as 556 and by respondent No.1 as 260 in Booth No.45. At that time, the petitioner was leading by margin of 296 votes in that booth. Learned counsel further submits that the result was already declared before reaching of the petitioner and her husband in the M.C. Office, Jind. It was brought to the notice of the Presiding Officer but the request of the petitioner or her husband was not heard. Learned counsel also submits that there were material irregularities in the procedure of election which had affected the election proceedings. At the end, learned counsel for the petitioner submits that the election proceedings were conducted by playing fraud and by adopting corrupt practice and as such, the result declaring respondent No.1 as the winning candidate is liable to be set-aside.

Heard arguments of learned counsel for the petitioner and have also perused the impugned orders as well as other documents available on the file.

The facts relating to contesting of election by the petitioner and respondent No.1, declaration of result, filing of election petition and its dismissal and thereafter, dismissal of appeal by the Additional District Judge, Jind are not disputed.

The election petition was filed by the petitioner under Rule 75 of the Haryana Municipal Rules, 1978 read with Section 265/270/272 of the Haryana Municipal Act for getting declared the election of respondent No.1 as member of Municipal Council, Jind from Ward No.16 as illegal, null and void on the grounds of material irregularities in procedure as well as

adoption of corrupt practice and for declaring the petitioner to be elected candidate in pursuance of election held on 20.05.2010.

The election petition was contested by respondent No.1 by way of filing written statement wherein preliminary objections like maintainability of election petition, not disclosing any material irregularity in conducting election procedure were raised. The petitioner was stopped by her own act and conduct as the counting was done in presence of all the candidates or their counting agent as well as polling staffs were raised. No such objection was raised till declaration of the election result. It was also mentioned in the written statement that no complaint was ever made for recounting of votes either to the polling officer or to the Returning Officer or even to the Election Commissioner.

The following issues were framed by the Additional Civil Judge (Senior Division), Jind: -

1. Whether election held on 20.5.2010 for the post of member of M.C. is wrong, illegal, null and void on the ground taken in the plaint and election is liable to be set aside? OPP
2. If issue No.1 is proved in affirmative whether applicant is entitled for decree of declaration declaring him being duly elected member of M.C. of ward No.16 in election held on 20.5.10? OPP
3. Whether the civil court has no jurisdiction to try and decide the present petition? OPD

4. Whether the petitioner has no cause of action and locus standi to file the present petition? OPD
5. Whether the petitioner is estopped to file the present petition from her act and conduct? OPD
6. Relief.

After framing the issues, both the parties were allowed to lead their evidence. To prove her case, the petitioner herself appeared as PW1 and examined Mahender Mangla as PW2, Anuj @ Bunty as PW3, Suresh Kumar Patwari as PW4 besides leading documentary evidence.

Similarly, respondents examined Udey Bhan as RW1, Amit Sharma as RW2 and Smt. Kamla Devi as RW3 besides leading documentary evidence.

The finding recorded by the Additional Civil Judge (Senior Division), Jind in para No.21 of the judgment is reproduced as under: -

“21. After having given a thoughtful consideration over the rival submissions of both sides as well as on appraisal of oral and documentary evidence, this court is of the considered view that the petitioner has challenged the election of Municipal Councilor held on 20.5.2010 vide which respondent no.1 was declared as winning candidate and the reason for such challenge is that the respondent no.1 had adopted the corrupt practice besides material irregularities committed by respondents No.2 to 4

and it was the specific allegation that in booth No.45 the petitioner had obtained 556 votes whereas respondent no.1 had secured only 260 votes but the Presiding Officer of booth No.45 in connivance with other respondents changed the result vide which 556 votes have been shown to secure by respondent no.1 and 260 votes by petitioner. On perusal of case file it has revealed the allegation of the petition that there was no counting agent on her behalf in booth No.45 is devoid of any merits because it is the specific case of the respondents that one Bunty @ Anuj had been deputed by the petitioner as her polling agent as well as counting agent. Document Ex.R3 on the subject is available in file which is form No.18 and it bears the signature of Bunty being polling agent on behalf of petitioner. However, during the course of arguments, learned counsel for petitioner had argued that due to haste this form was not completed by the respondents just to create a gain in favour of respondent No.1 but in the evidence of PW4 it has come that he had produced the entire record pertaining to election of ward No.16 and respondent No.4 while appearing as RW1 has categorically deposed that the complete form filled up by him

signed by Supervisor was sealed by him, in that envelop is available in other 18 sealed envelops but no request was made on behalf of petitioner for opening of other sealed envelops and it is the admitted fact that by petitioner herself that in booth No. 43 and 44 she had appointed Ganga Bishan and Subhash being polling agents as well as counting agents, therefore, it does not lie in the mouth of petitioner to say that she was having no counting agent in booth No.45. Furthermore, the case of the petitioner is self contradictory because at one hand, she says that none was present on her behalf at the time of recording the result of votes from machine panel and on the other hand, she says that her husband Mahender Singh was present who had recorded the received votes. Similarly, the stand of Mahender Singh is also self contradictory because he says that he had recorded the votes when the result was displayed in electronic machine panel on booth No.45 but petitioner says that neither she nor her husband was present at the time of recording the result of votes. If the petitioner was aggrieved of changing the result sheet showing 260 votes in her favour and 556 votes in favour of respondent no.1, in

*that eventuality she was at liberty to make any complaint in writing for recounting as prescribed in the rules either before pronouncement of result or afterwards but it is admitted fact by petitioner and her husband that they made no complaint to any authority either in writing or orally in respect of the fact that the result of booth No.45 has been changed by Presiding Officer for causing gain to respondent NO.1. Hon'ble Supreme Court of India in case titled **Chandrika Prasad Yadav Vs. State of Bihar and others (Supra)** on this point has been pleased to hold that if any application is made for recounting then it must disclose in the election petition as to on what ground the recounting was demanded and how it was decided by the Returning Officer. If the application is not placed on record, reasons must be disclosed as to why, failing which election petition would be liable to be rejected. Further, Hon'ble Punjab and Haryana High Court on this point in case titled **Rajesh Bhatia Vs. Chairman HN Municipalities Election Tribunal etc. (Supra)** has been pleased to hold that application for recounting of votes can be made before declaring of result by Returning Officer and not thereafter. In this case*

when respondent no.4 was appeared as RW1 then he has categorically deposed that neither petitioner nor her husband moved any complaint or request for recounting of votes and even the petitioner herself has admitted this fact, therefore, the application of the petitioner for recounting of votes is devoid of any merits and liable to be rejected.”

On perusal of statements of the petitioner witnesses, it appears that not only serious contradictions and discrepancies are there but the allegations made in the election petition were not proved. The statement of PW3-Bunty @ Anuj himself is contradictory as he himself has written his name as Anuj @ Bunty in his affidavit Ex.PW3/A but in cross-examination, he denied that he was known as Bunty.

As per allegations in the election petition, her election agent was not present at the time of counting. Document Ex.R3 is form No.18, which bears signatures of Bunty being polling agent on behalf of the petitioner.

Respondent No.4 while appearing as RW1 has categorically deposed that the complete form was filled up by him, which was signed by Supervisor and sealed by him. The statement of the petitioner is also self contradictory as at one hand she has stated that none was present on her behalf at the time of recording the result of votes from machine panel whereas on the other hand, she has stated that her husband Mahender Singh was present, who recorded the received votes. Similarly the statement of

Mahender Singh is also contradictory as he has stated that he had recorded the votes when the result was displayed in electronic machine panel on Booth No.45 but the petitioner has stated that neither she nor her husband was present at the time of recording the result of votes. The alleged irregularity could have been brought to the notice of the Presiding Officer or to any higher authority by making complaint but no such complaint was made. The Appellate Court has specifically recorded a finding that the term of the municipal council was of five years and said term had already come to an end and as such, the appeal had become infructuous.

Same issue was there before Hon'ble the Apex Court in ***Mundrika Singh Yadav vs. Shiv Bachan Yadav and others, 2005(12) SCC 211*** wherein recounting of ballot papers was sought, however, the term came to an end during pendency of the petition and fresh elections were declared. It was held that since no relief could be given in an election petition and it was rendered as infructuous.

Similarly in ***Suresh Seth vs. Commissioner, Indore Municipal Corporation and others, 2006 AIR (SC) 767*** Hon'ble the Apex Court while dealing with an election petition relating to M.P. Municipal Corporation held that the term of Mayor came to an end and no relief was granted in the appeal and appeal rendered infructuous with passage of time and was dismissed.

Moreover, the allegation of the petitioner that she was getting more votes, there is no reason for direction to recount the votes when the term has come to an end.

Section 15(1) of the Haryana Municipal Act provides that no election of a member shall be called in question except by an election petition presented to the authority as may be prescribed within 30 days from the date of publication of the result of the election. Sub-section (2) provides that an election petition can be presented on one or more grounds specified in Sections 18, 19, 20, 21 and 22 of the Act by any candidate at such an election or by an elector of the ward concerned. Section 17 of the Act provides the grounds for declaring an election to be void and the same are reproduced as under: -

“17. Grounds for declaring election to be void. -

(1) Subject to the provisions of sub-section (2), if the authority as may be prescribed, is of the opinion -

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member; or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent: or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election in so far as it concerns a returned candidate has been materially affected -

(i) by the improper acceptance of any nomination; or
(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than the candidate or his agent or a person acting with the consent of such candidate or agent; or
(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or
(iv) by the non-compliance with the provisions of this Act, or any rules or orders made thereunder, such authority shall declare the election of the returned candidate to be void.”

Rule 62 of the Haryana Municipal Corporation Election Rules, 1994 provides that as soon as the counting of all the ballot papers is complete and the Presiding Officer signs the result of the counting in Form-7, a candidate or his agent may apply in writing to the Presiding Officer/Returning Officer to recount the votes by specifying the grounds on which such demand is made. In case, such application is moved by a candidate or his agent, the Presiding Officer/Returning Officer is obligated to decide the same by passing a written and reasoned order. Once the result of a candidate has been declared under Rule 63, no application for recounting is maintainable.

In the present case, neither any complaint nor any request was made. The petitioner had failed to prove from the evidence on record that the corrupt practice was adopted by the elected candidate or any illegality or

irregularity was committed, which affected the result. Both the Courts below have appreciated the evidence and gave specific findings that there was no illegality in the election of respondent No.1. It was not proved on record from the evidence available on record that any malpractice was adopted by the elected candidate. The allegations made in the election petition could not be proved by the petitioner and as such, the election petition was dismissed by the Additional Civil Judge (Senior Division), Jind and the appeal was also dismissed by the Additional District Judge, Jind.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the revision petition being devoid of any merit is, hereby, dismissed.

18.04.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No