

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

**CR No.3650 of 2016
Date of Decision-10.01.2017**

Radha

... Petitioner

Versus

ADC (General) cum Presiding Officer and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.S. Atwal, Advocate for the petitioner.

Mr. Manoj K. Sharma, Advocate for respondent No.2.

Mr. Mehar Singh Rai, Advocate for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 14.12.2015 passed by Presiding Officer, Election Tribunal, Hoshiapur whereby application under Section 76(2) read with Section 80(1) of the Punjab State Election Commission Act, 1994 was dismissed.

[2]. Respondent No.2 filed a petition under Section 89 of Punjab State Election Commission Act 1994 for declaring the election of petitioner as Municipal Councillor Reserve (Scheduled Caste Ladies Ward) category of ward No.7 to Municipal Council Urmar Tanda, Tehsil Dasuya, District Hoshiarpur to be void and also for declaring respondent No.2 as duly elected Municipal Councillor.

[3]. Election to the post of Municipal Councillor, Urmar Tanda took place on 25.02.2015 wherein petitioner and respondents No.2,

3 and 4 were contesting candidates from reserved ward No.7. Petitioner was declared to be elected in the election result. The election of the petitioner was assailed by respondent No.2 before the Election Tribunal.

[4]. Elected candidate i.e. petitioner filed an application under Section 76(2) read with Section 80(1) of Punjab State Election Commission Act, 1994 on the ground that the petitioner on inspection of the judicial file on 12.05.2015 found that the documents attached as Annexures to the election petition were not duly attested by the election petitioner/respondent No.2 under her signatures, nor the same were supplied to the petitioner along with election petition. Prayer was made for dismissal of the election petition under Section 80 for violation of mandatory provision of Section 76(2) of the Punjab State Election Commission Act, 1994. Para No.4 of the application reads as under:-

“4. That the applicant/respondent moved an application for seeking permission to inspect the judicial file and inspected the same on 12.05.2015. And it is pertinent to mention that the documents attached as annexures to the petition are not duly attested by the petitioner under her signatures nor they are supplied to the respondent along with the petition.”

[5]. The application was contested by respondent No.2. Para No.4 was replied in the following manner:-

“4. That para No.4 is a matter of record.”

Perusal of the reply reveals that para No.4 of the application was denied evasively and was not substantially denied with reference to any material on record. The reply filed by Returning Officer in para No.8 of the preliminary objection reads as under:-

“8. That the petitioner has not supplied her self attested copy of documents with notice to the answering respondent No.2 and the petition is liable to be dismissed in interest of justice.”

[6]. I have heard learned counsel for the parties.

[7]. Learned counsel for the petitioner relied upon **Randhir Singh Vs. Ravi Inder Singh, 1981 AIR (Punjab) 45, Jai Parkash and others Vs. Randeep Singh and others, 1991(1) CurLJ 146, Harvinder Kaur Vs. Presiding Officer Election Tribunal and others, 2015(4) PLR 13, Ranjit Kaur Vs. Harjinder Kaur and others, 2010(2) RCR (Civil) 406, Manjit Kaur Vs. Bhupinder Kaur etc., 2013(4) RCR (Civil) 344, Harsh Kumar Vs. Bhagwan Sahai Rawat, 2001(3) RCR (Civil) 464, Mukhtiar Singh Vs. Chief Election Officer and Dharam Dev Solanki, MLA, 1997 AIR (Delhi) 116, Dile Ram Vs. Tek Chand, 2002(2) SimLC 125, Madan Mohan Vs. Arun Shourie and others, 2010 AIR (Allahabad) 66** and contended that the documents attached with the election petition were the integral part of averments made in the election petition. Election petitioner was required to annex them with proper attestation and in the event of failure on the part of election

petitioner, he/she cannot escape from the consequences of the defect in the process of election petition. The documents were required to be supplied to returned candidate as the same were an integral part of the election petition. Non-supply of these documents would be fatal as the copy supplied to the returned candidate was not a true copy within the meaning of Section 81(3) of the Representation of People Act (The provisions which were analogous to the provisions in 1994 Act).

[8]. If there was no attestation of the election petitioner in the manner as required under Section 76(2) of the Punjab State Election Commission Act, 1994, the dismissal of the election petition in terms of Section 80 of the Act would be inescapable. The election petitioner neither signed, nor attested all the pages of the election petition and the election petition was not in conformity with the mandatory provisions of Section 76 of the Act and therefore, it was sought to be dismissed by learned counsel for the petitioner. The Annexures attached with the election petition were integral part of the averments contained in the election petition and therefore, these documents have to be treated as part and parcel of the election petition. The details of these documents were legally required to be supplied to the returned candidate. Simply because returned candidate had made an enforcement would not be enough to condone the lapse on the part of the election petitioner and the same cannot be accepted to be inconsequential in nature. The omission to comply with the aforesaid requirement would be a fatal

defect and the election petition was to be dismissed on this very threshold.

[9]. On the other hand, learned counsel for respondents No.2 and 3 have vehemently contended that in view of interlocutory order dated 19.05.2016, both the counsel were present in the Tribunal. Counsel for the election petitioner agreed to provide copy of Annexures to the counsel for respondent No.1 after directed by the Court to this effect. Counsel was asked by the Tribunal to provide copies of the documents annexed along with petition, thereafter, needful was done.

[10]. Learned counsel relied upon **C.P. Joshi Vs. Kalyan Singh Chouhan and another, 2010 AIR (Raj) 100** to contend that the election petition filed without supplying list of documents, particularly when the contents of documents already stood incorporated in the election petition, would not make the election petition liable for dismissal.

[11]. Learned counsel further relied upon the provisions of Representation of People Act in the light observations made by the Hon'ble Apex Court in **Chandrakant Uttam Chodankar VS. Shri Dayananad Rayu Mandrakar, 2005(1) RCR (Civil) 273** and contended that provisions in terms of Section 81(c) as to verification, are not mandatory in nature and the defective verification would not entail in dismissal of election petition as the same was not fatal to the maintainability of the election petition. The technical defects

were curable in nature. Similarly, learned counsel relied upon **Kamaljit Kaur Vs. Jasbir Kaur and others, 2010(1) RCR (Civil) 332** and contended that the defect in verification of pleadings was not fatal to the election petition. Perusal of the precedents cited on behalf of the respondents would reveal that the defect in verification of pleadings would not be fatal to the election petition as the same were curable in nature.

[12]. In the instant case, the Court was confronted with the situation where the documents attached with the election petition were not attested, verified and supplied to the returned candidate in the manner as prescribed under Section 76(2) of the Punjab State Election Commission Act, 1994. The consequences of Section 80 of the Act of dismissal of the election petition were inescapable. The mandatory requirement was for the attestation by the party and there would be consequence of dismissal of non-observance of such requirement. These expressions are found under Sections 76(2) and 80(1) of the Punjab State Election Commission Act which cannot be taken to be a mere formality without meaning and acuteness of purpose. Election petition forms a distinct genre where punctilious observance of very statutory provision shall be insisted. Filing of election petition without there being any proper verification and attestation of Annexures would render the election petition not in conformity with the mandatory requirement of law in terms of Section 76 of the Act.

[13]. In the light of aforesaid, order dated 19.05.2016 passed by the Tribunal at a stage would be wholly meaningless as the documents which were integral part of the election petition were not supplied in the form of attested copies to the returned candidate, therefore, there was non-compliance of mandatory provision and the consequence of Section 80 of the Act would be totally inescapable.

[14]. In the light of above observations, impugned order dated 14.12.2015 passed by Presiding Officer, Election Tribunal, Hoshiapur is set aside. This revision petition is accordingly accepted. Necessary consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

10.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No