

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

CR No. 4816 of 2017(O&M)

Date of decision: 18.8.2017

Pooja Devi

....Petitioner

VERSUS

Kuldeep and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vikram Singh, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 03.07.2017 passed by the Civil Judge (Junior Division), Karnal whereby application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') filed by the petitioner for rejection of election petition filed under Section 176 of the Haryana Panchayati Raj Act, 1994 (in short 'the Act') by respondent- Kuldeep has been dismissed.

The petitioner – Pooja Devi was elected as Sarpanch of village Shahpur, Post Office Sirsi, District Karnal in the elections held on 17.01.2016. Kuldeep- respondent, one of the voters enlisted at Sr. No.185, Ward No.7 of village Shahpur filed the election petition to challenge election of the petitioner to the post of Sarpanch of village Shahpur. The petitioner filed an application (Annexure P-2) for rejection of the election petition by invoking Order 7 Rule 11 CPC. After filing of reply by the respondent and having heard counsel for the parties, application filed by the petitioner came to be dismissed by the trial Court.

Counsel for the petitioner in support of contentions raised in the application for rejection of election petition and to assail the impugned order has three-fold submissions to make. The first submission made by counsel is that the election petition has to be presented by the petitioner in person but in the case at hand, the respondent/petitioner was not present before the Court to which the petition was assigned by Civil Judge (Senior Division), Karnal. The second submission made by counsel is that the election petition is bad for non-joinder of necessary parties as one Sanjay Kumar son of Darshan who was also one of the candidates for the post of Sarpanch of village Shahpur has not been impleaded as respondent in the case. For this purpose, he has made reference to the provisions of Section 176(2)(a) of the Act. The last submission made by counsel is that the respondent/petitioner was legally bound to attach all the documents (self attested) in support of his allegations, basis of challenging the election but the respondent neither mentioned in the petition as to how the qualification certificate is not valid and genuine nor filed any document in support of his allegation. In addition, copies of documents filed with the petition are not self-attested by the respondent and it amounts to violation of mandatory provisions rendering the petition legally incompetent.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Counsel for the petitioner, in response to a query raised by the Court, has fairly conceded that the respondent/petitioner was present in person at the time of presentation of the petition, otherwise apparent from the seal affixed by the office of Civil Judge (Senior Division), Karnal containing various particulars including the person present on behalf of the petitioner. Under the circumstances, contention raised by the petitioner that

the respondent was not present at the time of presentation of the petition is misconceived and liable to be rejected. This apart, non-appearance of the respondent/petitioner either at the time of presentation of the petition or before the Court to whom the case has been assigned is held to be a curable defect by Hon'ble the Supreme Court in **Raj Kumar Vs. Mukhtyar Singh, Special Leave to Appeal (Civil) No.17041 of 2011, decided on 22.04.2014.**

So far as the plea that the respondent/petitioner has failed to comply with the provisions of Section 176(2) (a) of the Act, admittedly, the application for rejection of the election petition was filed by invoking Order 7 Rule 11 CPC. It is none of the grounds envisaged under Rule 11 CPC that in case a necessary party has not been impleaded that becomes a ground for rejection of plaint/petition. That being so, I find myself unable to accept contention of the petitioner that the election petition is liable to be rejected for non-compliance of the provisions of Section 176(2)(a) of the Act.

This brings the Court to the submission with regard to failure of the respondent/petitioner to attach self-attested copies of documents in support of the allegations raised in the election petition. When counsel for the petitioner was asked to refer to the relevant provision of the Act, he has fairly informed that there is no such requirement in law under the Act but such a requirement is envisaged under Section 81 of the Representation of the People Act, 1951. In absence of any such requirement under the Act, it is difficult to accept contention of the petitioner that the election petition is liable to be rejected on this score. This apart, non-filing of documents as mandated by law is also not a ground for rejection of plaint contemplated under Order 7 Rule 11 CPC.

No other point has been raised.

For the foregoing reasons, finding no merit, the petition fails
and is accordingly dismissed in limine.

AUGUST 18, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no