

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

Sr. No.104

**CWP No.3363 of 2017 (O&M)
Date of decision : 20.09.2017**

Rajesh

..... Petitioner

VERSUS

The Civil Judge (Jr. Divn.), Hisar and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Fateh Saini, Advocate, for the petitioner.

SUDHIR MITTAL, J.

The State of Haryana notified Panchayat Elections in the month of December, 2015. The petitioner filed his nomination for contesting the election to the post of Surpanch of Gram Panchayat, village Kharak Punia, Tehsil Barwala, District Hisar. The election was held on 17.01.2016 and respondent No.6 was declared elected. The petitioner was the first runner up.

2. After the declaration of the result, the petitioner challenged the election of respondent No.6 on the ground of 'corrupt practices' vide CWP No.2011 of 2016. The said writ petition was disposed of by this Hon'ble Court relegating the petitioner to his remedy of election petition. The election petition filed by him, has been dismissed vide impugned order dated 17.10.2016. Hence, the present writ petition has been filed.

3. It is the case of the petitioner that the learned Election Tribunal, Hisar, has erred in rejecting his election petition only on the ground that the petitioner has failed to prove that the result of the election has been 'materially affected', even though, the said Tribunal has returned a finding

that five bogus votes had been cast (the difference between number of votes polled by the petitioner and respondent No.6 is 256). It is further the case of the petitioner that one Inspector, namely, Joginder Singh (alleged cousin of respondent No.6) threatened the voters of the village with dire consequences in case they did not cast votes in favour of respondent No.6. It is also averred that the voters were brought to the polling booths in various vehicles provided by the said respondent. Thus, 'corrupt practices' were committed by respondent No.6 and therefore, the election should be nullified.

4. We have heard learned counsel for the petitioner. The election petition was filed under Section 176 of the Haryana Panchayati Raj Act, 1994. Allegations made therein are regarding 'corrupt practices' having been committed by respondent No.6. The provisions of the said Act relating to corrupt practice are sub-Section (4) and sub-Section (5) of Section 176. The same are reproduced herein below:-

“(4) (a) If on the holding of such inquiry the Civil Court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-Section (5), he shall set aside the election and declare the candidate dis-qualified for the purpose of election and fresh election may be held.

[(aa) If on holding such inquiry the Civil Court finds that-

- (i) on the date of his election a returned candidate was not qualified to be elected;*
- (ii) any nomination has been improperly rejected; or*
- (iii) the result of the election, insofar as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or*

violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.]

(b) If, in any case to which [clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the Court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected:

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the presence of the Judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person; or

(b) who with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1- A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2- The expression “vehicle” means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.”

5. A bare perusal of the above provisions shows that in case a corrupt practice, as defined in sub-Section 5, is found to have been committed, the concerned candidate has to be dis-qualified and fresh election has to be ordered, otherwise, it has to be shown that the result has been ‘materially affected’ on account of improper reception of votes.

6. According to the petitioner, there is a finding by the learned Election Tribunal that “bogus votes were polled in the said election as per voter list Ex.P-20 to P-28 because as per jail warrants Ex.P-1 and P-2 of Ramphal, who was confined in jail at that time and some of the voters were found dead as per death certificates placed on file as Ex.P-3 to P-16” and therefore, a finding of corrupt practice should have been returned against the elected candidate resulting in voiding of the election. We are unable to appreciate the said contention of learned counsel for the petitioner for the reason that there is also a finding by the learned Election Tribunal that out of

the votes cast in favour of respondent No.6 only five have been proved to be bogus. Thus, it amounts to improper reception of votes and to succeed on this ground the petitioner was further required to show that the result of the election had been 'materially affected'. The petitioner has failed to prove this aspect of the matter because admittedly the difference between the elected candidate and the next candidate (the petitioner) is 256 votes, whereas only five bogus votes have been proved on the record. So far as, commission of corrupt practice is concerned, the petitioner has failed to prove that voters were threatened to cast votes in favour of the elected candidate. Mere allegations cannot take the place of proof. Moreover, the person against whom allegations of holding out threats was made (Inspector-Joginder Singh) was admittedly transferred on the complaint of the petitioner four days before the polling date. The other allegation of transporting voters through various vehicles has remained un-proved. Thus, the election petition has been rightly rejected by the learned Election Tribunal, Hisar.

7. In view of the above, there is no merit in this writ petition and the same is dismissed.

(SUDHIR MITTAL)
JUDGE

(SURYA KANT)
JUDGE

September 20, 2017

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No