

HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-4532-2017

Date of Decision: August 22, 2017

Rajesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

- |    |                                                                       |         |
|----|-----------------------------------------------------------------------|---------|
| 1. | To be referred to the Reporters or not?                               | Yes/No  |
| 2. | Whether the judgment should be reported in the Digest?                | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No  |

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Present: Mr.Rakesh Dhiman, Advocate  
for the petitioner.

Mr.Kapil Bansal, DAG, Haryana.  
Mr.Sandeep Kotla, Advocate  
for respondent No.2.

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**SURYA KANT, J.**

The Election Tribunal consisting of Civil Judge (Junior Division), Gurgaon, vide the impugned order dated 19.01.2017 has dismissed the petitioner's election petition on the technical ground that the election petition was not maintainable as it was not presented by the petitioner 'personally'. In the said election petition, the petitioner laid challenge to the election of respondent No.2 as Sarpanch of village Dinokri, Tehsil Manesar, District Gurgaon.

[2] While rejecting the election petition as not maintainable on the above-stated technical ground, namely, that it was not presented by the

petitioner personally, the Election Tribunal has relied upon two decisions of this Court, i.e. (i) **Raj Kumar vs Mukhtyar Singh and others**, 2011(3) RCR (Civil) 382 (P&H), and (ii) **Gurmail Kaur, Sarpanch vs Presiding Officer and others** 2015(4) PLR 22 (P&H).

[3] It is the conceded position that the judgment of this Court in **Raj Kumar's** case (supra) has been set aside by the Hon'ble Supreme Court in **Raj Kumar vs Mukhtyar Singh and others** 2017(1) RCR (Civil) 392. The Supreme Court has unequivocally held in para 9 that the provision contained in Section 176 of the Haryana Act, 1994 is not followed by a consequential section entailing dismissal of the Election Petition, if it is not presented by the election petitioner in person. On the other hand, in both, Section 81 of the Representation of People Act and Section 80 of the Punjab Act, non-presentation of the Election Petition by the election petitioner by himself/herself would entail dismissal.

[4] The instant case is under Section 176 of the Haryana Act. Therefore, the reliance placed upon by the Election Tribunal on the decision of this Court in **Raj Kumar's** case (supra) is totally misplaced.

[5] The second judgment relied upon by the Election Tribunal in **Gurmail Kaur's** case (supra) pertains to Section 80 of the Punjab Act where the non-presentation of the Election Petition by the election petitioner in person warrants dismissal. That apart, the Election Tribunal did not care to take notice of the facts mentioned in para 5 of the judgment of this Court in **Gurmail Kaur's** case (supra) as that was a case where the Election Petition was presented without proper verification in accordance with the Order 6

(supra), thus, does not apply to the facts of the case in hand.

[6] For the reasons aforestated, the writ petition is allowed. The order dated 19.01.2017 is set aside and the matter is remitted to the Election Tribunal, Gurgaon, to decide the petitioner's Election Petition on merits. The Election Tribunal is directed to decide the same within a period of four months and if need be, the matter be heard on weekly basis.

**( SURYA KANT )  
JUDGE**

**August 22, 2017**  
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**( SUDHIR MITTAL )  
JUDGE**

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|---------------------------------------|---------------|
| <b>1. Whether speaking/reasoned ?</b> | <b>Yes/No</b> |
| <b>2. Whether reportable ?</b>        | <b>Yes/No</b> |