

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

FAO No.4333 of 2015(O&M)

Date of Decision:-08.08.2017

Renu Mehta.

.....Appellant.

Versus

Election Tribunal-cum-SDM Zira, District Ferozepur & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Jagjit Singh, Advocate for the Appellant.

Respondent nos.1 & 2 ex-parte.

Mr. Amit Mehta, Senior Deputy Advocate General, Punjab.

None for respondent no.3 & 4.

JASWANT SINGH, J.

1. Appellant-Renu Mehta was the defeated candidate for the office of Sarpanch of Gram Panchayat, Village Khunder Hithar, Block Mamdot, Tehsil Guruharsahai, District Ferozepur in the election conducted on 03.07.2013.

The appellant instituted an election petition on 30.07.2013 before the Election Tribunal, Zira, challenging the election of Zail Singh, who was declared elected as Sarpanch. The challenge was primarily on the ground that more votes were wrongly shown to be polled to Zail Singh-elected candidate, than the election petitioner-appellant and, therefore, recounting was required to be done. However, on an application moved by

the elected candidate-Zail Singh, filed under Section 76 and 80 of The Punjab State Election Commission Act, 1994 (for short the 'Act') the election petition of the appellant has been dismissed vide impugned order dated 27.05.2015, on the ground that at the time of presentation of the petition, each and every page of the election petition was not signed and attested by her.

2. Learned Counsel for the appellant has argued that her election petition has been wrongly dismissed on the ground that the appellant had not signed each and every page of the petition especially when a similar application filed by the elected candidate-Zail Singh was dismissed vide order dated 21.07.2014.

After hearing learned Counsel for the parties and perusing the paper book as well as the record, this Court is of the considered view that the present appeal is devoid of any merit and deserves to be dismissed.

3. The issue for consideration before this Court is as to whether the election petition filed by appellant could be entertained in view of violations of Sections 76 and 80 of The Punjab State Election Commission Act, 1994. For ready reference, Section 76 & 80 of the Act are reproduced as under:-

“ Sec 76. Presentation of petition :-

(1) An election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of 45 days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every Election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition.

Section 80 Trial of Election petition.-

(1) The Election Tribunal shall dismiss an election petition which does not comply with the provisions of section 76 or section 77 or section 103.

(2) Where more than one election petitions are presented to the Election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal, may, in his discretion, try them separately or in one or more groups.

(3) Any candidate not already a respondent shall, upon application made by him to the Election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent.

(4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the fact of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from day to day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for a reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavor shall be made to conclude the trial within a period of six months from the date on which the

election petition is presented to the Election Tribunal for trial.”

“ *Emphasis supplied* ”

As per Sub Sections 1 & 2 of Section 76 of the Act, election petition has to be presented in person by the election petitioner and has to be signed herself and copies supplied to respondents impleaded before the Tribunal are also to be signed and attested by the Election petitioner under her own signatures failing which the election petition has to be dismissed in view of provisions of Sub Section (1) of Section 80.

4. Admittedly, the Tribunal vide its order dated 21.07.2014 had directed the Election petitioner to sign the pages of the election petition submitted by her as all the pages of the election petition were not signed and attested by her. It is not in dispute that the said order, whereby it was observed by the Tribunal that all the pages are not signed by the election petitioner was not challenged before any Court. Meaning thereby, it is an admitted position that election petitioner had not signed each and every page of the election petition submitted to the Election Tribunal and thus, had breached the mandatory provisions of Section 76 of the Act.

It is also not in dispute that during her cross examination the appellant admitted that on eight pages of the election petition submitted by her to the Tribunal, the signatures have not been appended by her. In fact, she states that no signatures were ever appended by her, despite the direction of the Tribunal on 21.07.2014. Meaning thereby, that the election petitioner-appellant has disowned even those signatures which were appended by her later on. Thus, it can be safely concluded that the election petition was not in conformity with Sections 76 & 80 of the Act. Even

to append her signatures after presentation of the election petition was beyond jurisdiction in view of the aforesaid Sections 76 & 80 of the Act.

Merely because previously application moved on the same cause of action by the elected candidate was dismissed, does not mean that he is precluded from filing a fresh application, especially in view of the subsequent development whereby, the appellant in her cross examination had disowned her signatures on eight pages of election petition. Even otherwise, a perusal of the order dated 21.07.2014 passed by the Tribunal would show that the Tribunal had not applied its mind on the objections raised by the elected candidate Zail Singh in his application for dismissal of election petition.

5. Under these circumstances, there is violation of mandatory provisions of Section 76 of the Act and as a necessary corollary the election petition has to be dismissed in view of Section 80 (1) of the Act.

The said issue is even otherwise covered by judgments passed by this Court in **2011(2) RCR (Civil) 136 Smt. Nasib Kaur & Ors. Vs. Deputy Commissioner-cum-Election Tribunal, Hoshiarpur & Ors.; Ranjit Kaur Vs. Harjinder Kaur & Ors. 2010(2) RCR (Civil) 406 and Manjit Kaur Vs. Bhupinder Kaur etc. 2013(4) RCR (Civil) 344.**

In view of the above, finding no merit in the present first appeal the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

August 08, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>