

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

(1) F.A.O. No.6738 of 2015 (O&M)

Manjit Singh

..... Appellant

Versus

Angrej Singh and others

..... Respondents

(2) F.A.O. No.6739 of 2015 (O&M)

Manjit Singh

..... Appellant

Versus

Sandeep Kaur and others

..... Respondents

Date of Decision: 28.09.2017

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Manish Kumar Singla, Advocate for the appellant
(in both the appeals).

Mr. Gurvinder Singh Sidhu, Advocate for private respondents
(in both the appeals).

Mr. Amit Mehta, Senior Deputy Advocate General, Punjab
for official respondent No.2/Returning Officer (in both the appeals)
assisted by Dr. Sheena Aggarwal, Addl. Deputy Commissioner (D),
Bathinda and Sh. Darshan Singh, Senior Assistant.

JASWANT SINGH, J. (ORAL)

This common order shall dispose of both the aforesaid first appeals filed by appellant-Manjit Singh, challenging two separate orders of even date i.e. 17.09.2015, passed by the Election Tribunal, Bathinda, whereby his election to the Office of Sarpanch of Village Maur Charat Singh, Tehsil Maur, District Bathinda has been set aside on account of corrupt practices in two separate election petitions filed by defeated candidates-Angrej Singh and Sandeep Kaur.

Learned Counsel for the appellant/elected Sarpanch has raised the sole argument, which has been noticed by this Court in both the present appeals on 05.10.2015, while issuing notice of motion and staying the impugned order dated 17.09.2015, which reads as under:-

*“ Counsel for the appellant inter alia contends that the election petition which has been presented under Section 76 of the Punjab State Election Commission Act, 1994 (for short 'the 1994 Act') was required to be presented in person by the election petitioner-respondent No.1. He has referred to the order dated 19.07.2013 (Annexure A-3) passed by the Presiding Officer, Election Tribunal-cum-Sub Divisional Magistrate, Bathinda, wherein, it has been mentioned that the election petition has been presented through counsel which he contends, is in violation of Section 76 (1) of the 1994 Act and, therefore, the election petition was required to be dismissed under Section 80 of the 1994 Act. In support of this contention, he places reliance upon various judgments passed by this Court of which the leading one is **Gurlal Singh versus Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others, 2010 (5) R.C.R. (Civil) 474.***

Notice of motion for 02.02.2016.

Records of the Tribunal be summoned before the next date of hearing.

Operation of the impugned order dated 17.09.2015 shall remain stayed till the next date of hearing. ”

Dr. Sheena Aggarwal, Addl. Deputy Commissioner (D), Bathinda has come present along with the complete record in original.

In the presence of the parties, the record relating to the presentation of the election petitions by both the candidates i.e. Angrej Singh and Sandeep Kaur has been examined. Both the election petitioners have been found to have presented their election petitions on 19.07.2013 through their Counsel. Therefore, it is a conceded position that the presentation of the plaint is not in accordance with the provisions of sub Section 1 of Section 76 of the Punjab State Election Commission Act, 1994 (for short “the Act”), which ordains that the election petition has to be mandatorily presented by the candidate/election petitioner within a period of 45 days from the

date of election. The consequence of violation of such provisions is provided under Section 80 (1) of the Act, whereby the Election Tribunal is required to dismiss the election petition for violation of the provisions of Section 76 of the Act. The issue is no longer *res integra*. A Co-ordinate Bench of this Court in **Gurlal Singh Versus Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others, 2010 (5) RCR (Civil) 474**, after relying on a decision of the Hon'ble Supreme Court, passed in **G.V. Sreerama Reddy and another Versus Returning Officer and others, 2009 (3) RCR (Civil) 937**, has categorically held that the provisions of Section 76 of the Act mandatorily prescribe that a election petition has to be presented by the election petitioner himself and any presentation through the Counsel cannot be considered to be a valid presentation of the election petition inviting outright dismissal.

In the present cases, on examination of the record, it is evident that both the election petitions were presented through their Counsel and not by the election petitioners themselves. Hence, in view of the settled position of law, both the election petitions were required to be dismissed at the outset. Thus, the impugned order(s) dated 17.09.2015, passed by the Election Tribunal, Bathinda, ignoring the said aspect of the matter, are liable to be set aside.

In view of the above, both the aforesaid appeals are allowed and the impugned order(s) dated 17.09.2015, passed by the Election Tribunal, Bathinda in favour of Angrej Singh and Sandeep Kaur are hereby set aside.

September 28, 2017
Gagan

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No