

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

FAO No.6792 of 2015(O&M)

Date of Decision:-30.10.2017

Amarjit Singh.

.....Appellant.

Versus

Joginder Singh & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Dinesh Kumar, Advocate for the Appellant.

JASWANT SINGH, J. (ORAL)

1. Appellant-Amarjit Singh was the defeated candidate for the office of Sarpanch of Gram Panchayat, Badbar, Tehsil and District Barnala in the election conducted on 03.07.2013.

The appellant instituted an election petition on 19.08.2013 before the Election Tribunal, Barnala, Challenging the election of Joginder Singh, who was declared elected as Sarpanch. The challenge was primarily on the ground that Joginder Singh was not in possession of qualifications required for the election to the post of Sarpanch. However, his election petition was dismissed on the ground that firstly, the Election Petition was not filed by him personally by appearing in the Court; secondly on the ground that the copies supplied to the elected candidate along with the official respondents was not attested by him by signing each and every page of the petition.

2. Learned Counsel for the appellant has argued that the Tribunal has taken a hypertechnical approach to dismiss the election petition and has not taken into consideration the fact that the elected candidate has numerous FIRs registered against him under various serious offences.

After hearing learned Counsel for the appellant and perusing the paper book, 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 short the 'Act'). 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, the election petition has to be presented in person by the election petitioner and has to be signed himself and copies supplied to respondents before the Tribunal are also to be signed and attested by the Election petitioner under his own signatures failing which the election petition has to be dismissed in view of

provisions of Sub Section (1) of Section 80.

4. Admittedly, neither the election petition has been presented by the Election petitioner himself nor the copies supplied to elected candidate was attested by the election petitioner under his own signatures. 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 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

October 30, 2017
Vinay

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