

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

FAO 795/2016

Date of decision: 19.12.2017

Parminder Pal Singh

.....Appellant.

v.

Shivraj Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice Jaswant Singh

Present:- Mr. Jaswinder Singh Grewal, Advocate for the appellant.

Mr. Baltej Singh Sidhu, Advocate for the respondents.

Jaswant Singh, J. (Oral).

Appellant was declared as elected Sarpanch of Gram Panchayat Village Burj Hanumangarh, Tehsil and District Fazilka in the general elections held on 3.7.2013 having secured 900 votes out of total 1790 votes polled.

Respondent no.1-Shivraj Singh was the nearest defeated candidate having secured 830 votes. He challenged election of the petitioner inter alia on the ground of corrupt practices.

The Election Tribunal, Abohar in the light of evidence led by the election petitioner that some of the voters were registered at two places i.e. in the constituency and at another place in Rajasthan and Punjab, allowed the petition and ordered re-counting of votes. Hence the present appeal.

It is asserted that the Election Tribunal had fixed the next date of hearing as 4.1.2016, however, with an ulterior motive and without notice to the petitioner, preponed the date of hearing for 31.12.2015 and proceeded to pass the impugned order. It is further submitted that the recounting has been ordered without any basis and on the mere whims and fancies of the Tribunal.

At the time of hearing, it is pointed out that as per provisions of sub section(1) of Section 76 of the Punjab State Election Act,1994, election petition has to be presented by the election petitioner within a period of 45 days from the date of declaration of returned candidate and concededly the present election petition was filed on 6.11.2013 i.e. much beyond the period prescribed for institution of election petition, therefore, the petition was barred by law of limitation.

Counsel for the respondent does not dispute the provision of the Act and settled law on the subject, however, has argued that the said issue was never raised either in the written statement or in the grounds of appeal filed before this Court. He, however, concedes that question of limitation can be raised at any stage and in the light of date of institution of election petition recorded as 6.11.2013 in the impugned order (P-3), is unable to seriously contest the issue.

After hearing the counsel for the parties, this Court has no option but to accept the date of institution of election petition recorded as 6.11.2013 to be correct and, therefore, barred by limitation and hence set aside the impugned order as also reject the election petition.

In view of the above, instant appeal stands allowed and the impugned order dated 31.12.2015 (P-3) is set aside. However, liberty is granted to the respondent-election petitioner to seek revival of the present appeal in case the date of institution of election petition is wrongly recorded as 6.11.2013 and also if the same was filed within the prescribed limitation.

19.12.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No