

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

FAO No. 74 of 2017 (O & M)
Date of decision: 30.01.2017

Resham Lal

....Appellant(s)

Versus

Sabeel Ram and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Kawaljyot Singh, Advocate,
for the appellant.

Mr. Ankur Bansal, Advocate,
for the respondents-Caveator.

G.S.SANDHAWALIA, J. (Oral)

In the present appeal, the election petitioner challenges the order dated 12.10.2016 whereby, the Sub Divisional Judicial Magistrate, Jalandhar-cum-Election Tribunal has dismissed the election petition on the ground that it was beyond the period of limitation of 45 days which is the period prescribed under Section 76 of the Punjab State Election Commission Act, 1994 (in short 'the Act'). The Tribunal came to the conclusion that the matter was taken up before it on 02.09.2013 and, therefore, since the result had been declared on 03.07.2013, the petition filed as such was beyond the period of limitation and was accordingly dismissed. The contention of the counsel for the election petitioner that the petition was filed on 16.08.2013 and, therefore, within limitation accordingly was not accepted.

The case has a background to the extent that on the filing of the

election petition, which according to the appellant was 16.08.2013, and the same was entered in the records of the register of the Tribunal at Sr. No. 24 (Annexure A-7), which also has been noticed by the Tribunal. The respondent-elected candidate while filing his written statement, had taken a plea that the petition was barred by time. Thereafter on 29.07.2015 (Annexure A-2), when the matter was taken up, counsel for the respondent was not present and in view of the fact that the appellant had earlier filed a CWP No. 16444 of 2013 which had been dismissed as withdrawn with liberty to file the election petition, the case was fixed for evidence of the appellant while rejecting the plea of the respondent regarding the limitation. The matter was challenged by the respondent by filing C.R. No. 6267 of 2015 before this Court wherein, in view of the fact that he was absent on that date, the said order was set aside and the matter was remitted to the Election Tribunal for deciding the issue of limitation afresh after hearing the parties in accordance with law. Resultantly, the impugned order has been passed.

Section 76 of the Act provides that 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 or within a period of 45 days from the date of election of the returned candidate. As noticed, it is the case of the appellant that the filing was done before the Tribunal on 16.08.2013 and, therefore, it would be within limitation from the date of declaration of result i.e. 03.07.2013. Whereas, in contrast, the stand of the respondent is that the matter was presented on 02.09.2013 (Annexure A-10), which would go on to show that the Tribunal noticed that the election petition had been presented on the said

day and the counsel for the applicant was present and resultantly notice was sent to the respondents through registered cover and the case was adjourned to 14.09.2013 for appearance. It is on this account the Tribunal had rejected the case of the appellant on the ground that it is barred by limitation. Section 80 of the Act provides that an Election Tribunal shall dismiss the election petition which does not comply with the provisions of Section 76, 77 or 103 of the Act. As noticed, the period of limitation is 45 days. Resultantly, the Act itself provides that the Tribunal will dismiss the petition if it is beyond the period of limitation.

However, the core question which the Tribunal has failed to address is whether it was filed on 16.08.2013, which is the case of the appellant. As noticed, Section 76 of the Act provides that the petition is to be presented by any candidate to such election. This Court in ***Major Singh vs. Presiding Officer, Election Tribunal (A.D.C.) Sangrur and others, 2010 (5) RCR (Civil) 934***, while taking into account the said provisions, has noticed the mandatory provisions as such that the election petition is to be presented by a candidate and not the Advocate. The relevant part reads thus:-

“Taking up the first argument with regard to limitation, it is now well settled that the election petition has to be filed within 45 days from the date of election of the returned candidate and there is no scope for any extension of time. If the election petition is not filed within period of limitation, then there is no alternative with the Election Tribunal but to dismiss the election petition in view of Section 80 of the Act. Similarly, the election petition has to be presented by a candidate, namely the election petitioner and not the Advocate and

*if the election petition is not presented by the election petitioner, then it is violation of Section 76 read with Section 80 of the Act which disentitles the election petitioner as it goes to the root of the case as held in the case of **Ashok Shankar Gholap (Supra)**. In the said case, the petition was filed on the last day of limitation without requisite number of copies, which were kept in Board Department and were handed over to the designated officer of the Court and objection in that regard was removed. It was held that there was non compliance with Section 81 (3) of Representation of the People Act, 1951. Similarly, in the case of **Ajit Singh (Supra)**, election petition could not be filed being Saturday. It was held that if the Court is closed on the day when limitation expired, it could be filed on the next working day of the Court, but as on Saturday, High Court Registry was open, the petition should have been filed on that day.”*

This aspect of the filing on 16.08.2013 by the appellant with the office of the Tribunal has never been considered in the proper perspective. Merely because the Tribunal itself took up the petition on 02.09.2013 and noticed that the counsel was present and issued notice to the other side, it would not be correct on its part to accept that the petition was presented on the said date. The argument that it had been filed on 16.08.2013 and, thus, was within limitation and whether it was by the competent person as per the provisions of the Act has not even been considered and just rejected on the ground that notice was issued on 02.09.2013.

In such circumstances, the impugned order dated 12.10.2016 is not sustainable and is accordingly set aside. The Election Tribunal will re-

decide the issue as to whether the election petition was filed, as contended on 16.08.2013 and the effect of the same in view of the provisions of the Act. Accordingly, the matter is remanded to the Election Tribunal to decide the issue afresh. It is further to be noticed that on an earlier occasion on 09.05.2016 when the matter was remanded in C.R. No. 6267 of 2015, the matter had to be decided within 15 days but the appellant was constrained to file COCP No. 2368 of 2016, which eventually led to the passing of the order dated 12.10.2016 after five months. Resultantly, the matter will be decided afresh positively within a period of 4 weeks from today firstly on the issue of limitation.

30.01.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No