

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

CR No.215 of 2016

Date of Decision: 10.08.2018

Gurmit Singh

..... Petitioner

Versus

Raj Kumar and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Baltej Singh Sidhu, Advocate
for the petitioner.

Mr. Jasmer Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 16.10.2015 passed by Election Tribunal (DC), Mansa vide which the preliminary arguments raised on behalf of the petitioner in respect of non-maintainability of the petition were rejected and the case was kept for evidence of the petitioner.

[2]. Election for the post of Municipal Councillor of Ward No.6 of Nagar Panchayat, Joga, District Mansa took place on 25.02.2015. Petitioner was successful in the said election.

Respondents No.1 and 3 remained unsuccessful. Respondent No.1 filed an election petition before the Election Tribunal-cum-Deputy Commissioner, Mansa. Petitioner and other respondents filed replies to the election petition by taking preliminary objections with regard to non-maintainability of the election petition being violative of mandatory provisions of Sections 76, 77, 78 and 80(1) of the Punjab State Election Commission Act, 1994.

[3]. The objections raised by the petitioner in respect of non-maintainability of election petition were in respect of non-compliance of conditions of Sections 76, 77 and 78 of the Punjab State Election Commission Act, 1994. Each and every page of the election petition and the documents attached thereto were required to be signed by the election petitioner. The copy of the petition supplied to the returned candidates was not endorsed with a certificate of 'attested to be true copy' on each and every page as required under Section 78(2) of the Punjab State Election Commission Act, 1994. All the Electoral Officials were not impleaded as party to the election petition. Lastly, respondents No.3 and 4 were impleaded as party by showing Presiding Officer as Returning Officer and Returning Officer as Presiding Officer. On the basis of aforesaid mandatory requirement, objections were filed on behalf of the

petitioner to show that the election petition was not maintainable for want of mandatory requirement of law. The objections have been rejected by the Election Tribunal solely on the ground that the objections shall be decided after collecting evidence.

[4]. Learned counsel for the petitioner vehemently submitted that as per requirement of Section 76 of the Act, 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. The requirement of Section 76(2) of the Act is mandatory. Similarly, as per Section 77(2) of the Act, the schedule of Annexures to the petition shall also be signed by the petitioner and verified in the same manner as the petition is required to be filed. Under Section 80 of the Act, it is the duty of the Election Tribunal to dismiss the election petition which has been filed without mandatory compliance of Sections 76 and 77 of the Act. The verification done by the election petitioner was not in consonance with Order 6 Rule 15 CPC. As per requirement of law, every election petition shall be accompanied by as many copies thereof as there are respondents. Every such copy shall be attested by the petitioner under his own signatures with an endorsement of true copy of the petition. Petitioner shall join all

the necessary parties to the election petition as respondents against whom allegation of any corrupt practice is made. The election petition shall be signed and verified by the petitioner in the manner as laid down in Order 6 Rule 15 CPC. Any schedule of Annexure attached to the petition shall also be signed by the petitioner and verified in the same manner as is required for presentation of the election petition. Section 80 of the Act casts an obligation on the Court to dismiss the election petition which does not comply with mandatory requirement of Sections 76, 77 and 103 of the Act.

[5]. Learned counsel relied upon **CR No.7310 of 2013 decided on 20.03.2015 titled Gurmail Kaur, Sarpanch, Vs. Presiding Officer, Election Tribunal-cum-Sub Divisional Magistrate, Sunam, and others, CR No.3650 of 2016 decided on 10.01.2017 titled Radha Vs. ADC (General) cum Presiding Officer and others, Gurlal Singh Vs. Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others, 2010(5) RCR (Civil),475, Randhir Singh Vs. Ravi Inder Singh, 1981 AIR (Punjab) 45, Jai Parkash and others Vs. Randeep Singh and others, 1991(1) CurLJ 146, Harvinder Kaur Vs. Presiding Officer, Election Tribunal and others, 2015(4) PLR 13, Ranjit Kaur Vs. Harjinder Kaur and others, 2010(2) RCR (Civil) 406, Manjit Kaur Vs. Bhupinder**

Kaur etc., 2013(4) RCR (Civil) 344, Harsh Kumar Vs. Bhagwan Sahai Rawat, 2001(3) RCR (Civil) 464, Mukhtiar Singh Vs. Chief Election Officer and Dharam Dev Solanki, MLA, 1997 AIR(Delhi) 116, Dile Ram Vs. Tek Chand, 2002(2) SimLC 125, Madan Mohan Vs. Arun Shourie and others, 2010 AIR (Allahabad) 66 and G.V. Sreerama Reddy and another Vs. Returning Officer and others, 2009(3) RCR (Civil) 937 and contended that the documents attached with the election petition were integral part of the averments made in the election petition. The election petitioner was required to annex all the documents with proper attestation in terms of Sections 76, 77 and 78 of the Act. Failure on the part of the election petitioner would be fatal and in such eventuality, the election petitioner would not be in a position to escape from the consequences of defect in the process of election petition. The documents were required to be supplied to the returned candidates as the same were integral part of the election petition. Non-supply of these documents with proper attestation and verification would invite consequences of Section 80 of the Act. Non-supply of these documents would be fatal as the copies supplied to the returned candidates were not a true copy within the meaning of Section 81(3) of the Representation of People Act whose provisions are analogous to the provisions in

1994 Act.

[6]. If there was no attestation of the election petition by the election petitioner in the manner as required under Section 76 (2) of the Punjab State Election Commission Act, 1994, the dismissal of the election petition in terms of Section 80 of the Act would be inescapable. If the election petitioner did not sign the election petition nor attest all the pages of the same, then the election petition would not be considered to be in conformity with the mandatory provisions of Section 76 of the Act. The Annexures attached with the election petition were integral part of the averments made in the election petition, therefore, these documents have to be treated as part and parcel of the election petition. The details of these documents were legally required to be supplied to the returned candidates.

[7]. Learned counsel also referred to the documents attached with the election petition viz. voter list of Ward No.6, supplementary voter list of Ward No.6, affidavit of Gurpreet Singh, copy of result Part II and Form No.33. Documents were not signed and verified by the election petitioner as required under Section 78(2) of the Act. The copy of affidavit filed by Gurpreet Singh dated 30.03.2015 would show that the same was not signed and verified by the election petitioner. Other documents were also not signed and verified in the manner as

required under the statute.

[8]. On the other hand, learned counsel for respondent No.1 vehemently submitted that no such objections can be entertained at this premature stage. The defect, if any, in the election petition can be cured and the same was not fatal to the election petition. Learned counsel relied upon **Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and another, 1964 AIR (SC) 1545, H.D. Revanna Vs. G. Puttaswamy Gowda and others, 1999 AIR (SC) 768, Sukhwinder Singh Vs. Presiding Officer, Election Tribunal-cum-Sub Divisional Magistrate, Sangrur and others, 2015(4) PLR 836** and **Kamaljit Kaur Vs. Jasbir Kaur and others, 2010(1) RCR (Civil) 332.**

[9]. Perusal of the aforesaid precedents would show that the same would be applicable as per facts involved in those cases. In **Murarka Radhey Shyam Ram Kumar's case (supra)**, the Hon'ble Apex Court has considered the joinder of parties and impleading of unnecessary party in terms of non-compliance of Section 82 of the Representation of People Act. While concurring with the proposition, the Hon'ble Apex Court held that every copy shall be attested and every page of copy served upon the respondent must be signed and attested to be true copy under the signatures of the election petitioner. Though

fresh signatures below the word petitioner were not required. The facts of the aforesaid case are somewhat different than the controversy involved herein. Similarly, in **H.D. Revanna's case (supra)**, the Hon'ble Apex Court has considered the conduct of Election Rules, 1961 and dismissal of election petition in *limine* on the ground of defective verification of affidavit. In the instant case, no such ground for dismissal of the election petition on account of defective verification of affidavit was raked up by the returned candidates.

[10]. The ratio laid down in **Sukhwinder Singh' case (supra)** was based on the analogy that the application should have been decided after recording entire evidence of the parties regarding maintainability of the election petition. The entire facts were disputed in the said case and in view of facts involved therein, it was held that the objections regarding maintainability of the election petition should have been decided as preliminary issue. The question of fact has to be proved during the proceedings by leading evidence. In the instant case, no such controversy is involved as the documents attached with the election petition lack mandatory compliance in terms of Sections 76(2) and 77 of the Act. Indefeasible powers in terms of Section 80 of the Act have been given to the Election Tribunal to dismiss the election petition, which is not in consonance with the

mandatory requirement of Sections 76, 77 and 103 of the Act. The facts involved in **Kamaljit Kaur's case (supra)** were altogether different. Defect in the verification of pleadings was held to be not fatal to the election petition. The judgment did not answer non-compliance in terms of documents attached with the election petition.

[11]. In the instant case, the Court was confronted with the situation where the documents attached with the election petition were not attested, verified and supplied to the returned candidates in the manner as prescribed under Section 76(2) of the Act. The consequence of Section 80 of the Act was inescapable. The mandatory requirement was for the attestation by the party and there would be consequence of dismissal on non-observance of such requirement. These expressions are found under Sections 76(2) and 80(1) of the Act, which cannot be taken to be a mere formality without meaning and acuteness of purpose. Election petition forms a distinct genre where punctilious observance of every statutory provision shall be insisted. Filing of election petition without there being any proper verification and attestation of Annexures would render the election petition not in conformity with the mandatory requirement of law in terms of Sections 76 and 77 of the Act.

[12]. For the reasons recorded hereinabove, the present

revision petition is allowed. Impugned order dated 16.10.2015 passed by Election Tribunal-cum-Deputy Commissioner, Mansa is hereby set aside. Normal consequences to follow.

August 10, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No