

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.290 of 2018
Date of Decision: 07.03.2018

Sanjay Kumar

....Petitioner (s)

Versus

Sher Pal Gujjar & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Akshay Kumar Jindal, Advocate
for the petitioner(s).

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the judgment dated 24.08.2017 (Annexure P-3) passed by Civil Judge (Sr. Division), Karnal, whereby in the election petition filed by the petitioner, the civil court has set aside the election of respondent no.1-Sher Pal Gujjar, being a disqualified person and fresh election is ordered instead of declaring the petitioner as an elected Sarpanch.

Briefly stated, petitioner had filed an election petition under Section 176(4)(a) and 4(aa)(iii) of the Haryana Panchayati Raj Act, 1994 (for short, “the Act”) with a prayer that election of respondent no.1 as Sarpanch of Vill. Kohand, District Karnal be set aside, on account of his

being a disqualified person on the date of filing the nomination papers. It has been averred that the nomination papers of respondent no.1 were wrongly accepted by the returning officer, as the respondent no.1 was convicted in FIR No.285 dated 08.09.1994 under Sections 307, 324, 323, 447, 148, 149 and 325 IPC, registered at Police Station Gharaunda and sentenced to undergo rigorous imprisonment for a maximum period of 5 years vide judgment dated 04.07.2008 and order of sentence dated 05.07.2008, respectively, passed by learned Additional Sessions Judge, Karnal. He being convicted in the criminal case was not eligible to contest the election of Sarpanch of Vill. Kohand, District Karnal.

However, vide judgment dated 24.08.2017, learned Civil Court while acting as Election Tribunal has allowed the election petition filed by the petitioner and had set aside the election of respondent no.1, being a disqualified person, as he was convicted in the criminal case and was sentenced for 5 years. The Civil Court has also directed the authorities to conduct fresh election to the post of Sarpanch.

Learned counsel for the petitioner has argued that once the election of respondent no.1 has been set aside, the petitioner should have been declared as elected, as he was next in line, having acquired second highest number of votes in the election.

At this stage, it will be relevant to reproduce the provisions of Section 176(4)(a) of the Act, which read as under:-

“176. Determination of validity of election enquiry by judge and procedure.

(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a

corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

[(aa) If on holding such enquiry the Civil Court finds that

(i) on the date of his election a returned candidate was not qualified to be elected;

(ii) any nomination has been improperly rejected; or

(iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.];

(b) If, in any case to which 2[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected:

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

Having heard learned counsel for the petitioner and perusing the very provisions of Section 176 of the Act, this Court finds that there is no illegality in the impugned judgment. The provisions of Section 176(4)(a) and 4(aa)(iii), which are relevant in the present controversy, reveal that if it is found that on account of improper acceptance of nomination papers or a corrupt practice being committed by a returned candidate or any other illegality, as referred to in these provisions, is committed, the election of such returned candidate is liable to be set aside and as a consequence thereof, fresh elections have to be conducted. Merely because the petitioner has received second highest number of votes, is no ground to *ipso facto* declare him elected. Unless there is any challenge to the aforesaid provisions, this Court does not find any illegality in the impugned judgment passed by the civil Court.

In view of the aforesaid, this Court does not find any ground to interfere with the impugned dated 24.08.2017 (Annexure P-3) passed by Civil Judge (Sr. Division), Karnal.

Accordingly, the present revision petition is dismissed.

March 07, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No