

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

Civil Revision No.3742 of 2017 (O&M)
Decided on:-February 23, 2018.

Kimati.

.....Petitioner.

Versus

Smt. Krishna and others

.....Respondents.

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

Present:- Mr. Arun Yadav, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition under Article 227 of the Constitution of India impugning the order dated 17.04.2017 (Annexure P-5) passed by learned Civil Judge (Junior Division), Rewari, whereby the application under Order VII Rule 11 CPC for rejection of the plaint filed by the applicant-defendant No.4 Smt. Kimati (petitioner herein), was dismissed.

Briefly stated, plaintiff Smt. Krishna (respondent No.1 herein) had filed an election petition titled as "Krishna Versus District Panchayat Election Officer-cum-Deputy Commissioner, Rewari and others challenging the election of petitioner Smt. Kimati to the office of Panch of Gram Panchayat, Ambarpur, Block Rewari. The election to the office of the Gram Panchayat was held on 10.01.2016 for which nominations were filed between December 23, 2015 to December 29, 2015. As per the election petition,

defendant No.4 Smt. Kimati (petitioner herein), who was elected as a Panch, was disqualified as she had furnished wrong facts in the nomination form. During pendency of the petition, defendant No.4 Smt. Kimati (petitioner herein) had filed an application under Order VII Rule 11 CPC for rejection of the plaint taking various grounds including the fact that no cause of action has accrued to plaintiff Smt. Krishna (respondent No.1 herein) to file the election petition as an election petition can be filed on the two grounds i.e. (i) returned candidate committed a corrupt practice within the meaning of sub-section(5) of Section 176 of the Haryana Panchayati Raj Act, 1994; and (ii) some irregularities or illegalities were committed during the course of counting. However, no such allegation has been levelled by the plaintiff in the election petition and, therefore, the plaint was liable to be rejected.

The plaintiff (respondent No.1 herein) filed reply to the said application controverting the averments made in the application.

Vide impugned order dated 17.04.2017 passed by learned civil Court, the application under Order VII Rule 11 CPC for rejection of the plaint, was dismissed.

It is in the aforesaid circumstances, the petitioner-defendant No.4 has filed present civil revision impugning the order dated 17.04.2017 passed by learned civil Court.

Learned counsel for the petitioner has reiterated the stand of the petitioner as made in paragraph No.4 of the application under Order VII Rule 11 CPC. He has argued that the election petition can be filed only on two grounds i.e. (i) returned candidate committed a corrupt practice within the

meaning of sub-section(5) of Section 176 of the Haryana Panchayati Raj Act, 1994; and (ii) some irregularities or illegalities were committed during the course of counting. He has further argued that even if the father-in-law of the petitioner is a defaulter, it does not have any bearing upon the candidature of the petitioner.

I have heard learned counsel for the petitioner.

Section 176 of the Haryana Panchayati Raj Act, 1994 empowers the civil Court to determine the validity of election inquiry and the procedure thereof and the same is reproduced hereunder:

“176. (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election , present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting

candidates other than the petitioner and where no such further relief is claimed, all the returned candidates;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(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 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.

(5) A person shall be deemed to have committed a corrupt practice:-

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.— A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.— The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise."

The primary argument as raised by learned counsel for the petitioner that the election petition can be filed against a returned candidate on the basis of corrupt practice, but as there is no such allegation in the election petition, the plaint should have been rejected. However, this Court finds that in the election petition so filed by the respondent No.1-plaintiff, there are other allegations which have been referred in paragraph No.6 of the election petition. No doubt, one of the allegations in the plaint is that Ishwar Singh i.e. father-in-law of petitioner Smt. Kimati is a defaulter as there was one joint ration card in the name of Ishwar Singh and he had encroached upon the land of Gram Panchayat. But in paragraph No.7 of the election petition, there is a reference that the returning officer had not considered the application for rejection of nomination form of the petitioner. The petitioner was not eligible to contest the election, but still her nomination form was not rejected.

While deciding the application under Order VII Rule 11 CPC, prima-facie, the allegations made in the plaint are required to be considered. Whether the nomination was rightly accepted or was liable to be rejected, is still a matter of trial. Therefore, this Court does not find any reason to interfere in the impugned order dated 17.04.2017 passed by learned civil Court.

Accordingly, the impugned order dated 17.04.2017 (Annexure P-5) passed by learned Civil Judge (Junior Division), Rewari is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

February 23, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No