

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 148 of 2014 (O&M)

Date of decision : February 14, 2018

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Ajaib Singh

.....Appellant

Versus

Presiding Officer, Election Tribunal, Samana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. M.K Singh, Advocate for the appellants.

Mr. Animesh Sharma, Advocate for respondent no.1.

Mr. Rakesh Gupta, Advocate for respondent no.2.

Mr. Gurmeet Singh, Advocate for respondent no.5.

Mr. Devki Anand Sullar, AAG, Punjab.

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RITU BAHRI, J.

Present appeal has been filed against the order dated 11.12.2013 passed by respondent no.1, vide which the election of the appellant as Sarpanch of Gram Panchayat Hariau Kalan has been set aside and re-election for the post of Sarpanch at Village Hariau Kalan, Tehsil Patran, Distt. Patiala has been ordered.

The elections of Gram Panchayat Hariau Kalan were held on 03.07.2013 and as per form IX dated 03.07.2013 (Annexure A-1), the

appellant and respondent no.2 got 329 and 305 votes respectively and the appellant was declared winner. Kiranpal Kaur, respondent no.2, who had secured 305 votes presented the election petition (Annexure A-2) through her counsel.

After going through evidence and statements and hearing the arguments addressed by the counsel for the parties, it was observed by the Presiding Officer, Election Tribunal Samana, Distt. Patiala that after declaration of the result, when one party was not present, it was said that 31 more ballot have been found. Recounting of the same was done in the absence of the earlier declared party. This act makes the entire process suspicious. Even if the polling party had found more 31 ballot papers then permission should have been taken from the higher authorities for recounting which has not been done. Thus, the election petition was allowed vide impugned order dated 11.12.2013 and election of appellant, Ajaib Singh to the post of Sarpanch (SC) at village Hariau Kalan Tehsil Patran was cancelled. Re-election for the post of Sarpanch was ordered

Aggrieved with the impugned order, appellant filed appeal before this Court. On 9.01.2014, Mr. Manish Kumar Singla, counsel for the appellant inter alia contented that the reason for reaching the conclusion that the entire process of election was suspicious is based on an incorrect assumption with respect to 31 ballot papers. The appellant won the election by 24 votes. FIR No.196 dated 27.7.2013 under Sections 353, 186, 332, 342, 148, 149 IPC (Annexure A-7) was registered at Police Station Patran against the opposite parties for snatching the election material. Mr. Singla produced 8 judgments in support of his case. After issuing notice of motion for 21.4.2014, operation of the impugned order dated 11.12.2013

was ordered to remain suspended till further orders.

The question for consideration in the present appeal is whether as per Sections 76 (1) and Section 80 of Punjab State Election Commission Act, 1994 (hereinafter referred to as 'the Act') the election petition has to be presented by the candidate or by a counsel. Section 76 and 80 of the Act are reproduced as under:

76. Presentation of petition. - (1) *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 within a period of forty-five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.*

(2) 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.

80. Trial of election petitions. - (1) *The Election Tribunal shall dismiss an election petition which*

does not comply with the provisions of Section 76 or section 77 or section 103.

Explanation.- An order of the Election Tribunal dismissing an election petition under this sub-section, shall be deemed to be an order made under clause (a) of section 87.

(2) Where more than one election petitions are presented to the Election Tribunal in respect of the same matter, the Presiding Officer of the Election Tribunal may, in his discretion, try them separately or in one or more groups.

(3) Any candidate not already a respondent shall, upon application made by him to the Election Tribunal within fourteen days from the date of commencement of the trial of the election petition and subject to any order as to security for costs which may be made by the Election Tribunal, be entitled to be joined as a respondent.

Explanation. - For the purposes of this sub-section and of section 86, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Election Tribunal and to answer the claim or claims, as the case may be, made in the petition.

(4) The Election Tribunal may, upon such terms as to costs and otherwise, as it may deem fit, allow

the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice which has not been previously alleged in the petition.

(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial be continued from day to day until the conclusion, unless the Election Tribunal finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(6) Every election petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial within a period of six months from the date on which the election petition is presented to the Election Tribunal for trial.

The above question came up for consideration before this Court in the case of **Gurlal Singh vs. Presiding Officer, Election Tribunal, Block Lehra, Distgrict Sangrur and others 2010 (5) RCR (Civil) 474** and it was held that as per Section 76(1) of the Act, the election petition could not be presented through an Advocate and it has only to be presented by a

candidate. Therefore the election petition having been presented by the Advocate was held to be in violation of Section 76(1) of the Act, and the same was dismissed in view of Section 80 of the Act. In this case in paragraphs 19 and 23 , it has been observed as under:

19. In the present case, admittedly, the election petition has been presented through an Advocate and not by the candidate (respondent No.2.). Therefore, it is in violation of Section 76 (1) of the Act which offends Section 80 of the Act wherein it is provided that in case of non-compliance of the provisions of Sections 76,77 and 103 of the Act, election Tribunal has to dismiss the election petition. Thus, the first question is decided in favour of the appellant and it is held that the election petition having been presented by the Advocate is in violation of Section 76 (1) of the Act and the election petition deserves to be dismissed in view of Section 80 of the Act.

*23. Learned counsel for the appellant has also relied upon a decision of the Apex Court in the case of **Vijay Narain Thatte (Supra)** in support of his arguments that Section 80 is couched in negative language which provides consequences of non-compliance of the provisions of Sections 76, 77 and 103 of the Act. In the aforesaid case, Notification under*

Section 4 of the Land Acquisition Act, 1894 was issued, followed by a notification issued under Section 6 which was beyond a period of one year. The said notification under Section 6 was challenged and the writ petition was allowed quashing the said notification. Consequently a notification under Section 6 of the said Act was issued and the question raised before the Court was as to whether notification subsequently issued under Section 6 is valid. The Supreme Court held that notification under Section 6 was bad being barred under Section 6 of the Land Acquisition Act, 1894 and Section 115 of the Evidence Act, 1872. It principally observed that when a statute is couched in negative language, it is ordinary regarded as peremptory and mandatory in nature and not directory. In the present case, Section 80 of the Act is couched in negative language which is basically a consequence of non compliance of Section 76 of the Act.

In the present case also the election petition was presented through an Advocate and not by the candidate. Thus in view of the ratio of the judgment in **Gurlal Singh's case (supra)**, the election petition having been presented by the Advocate is in violation of Section 76(1) of the Act and the same deserves to be dismissed in view of Section 80 of the Act.

Consequently, in the facts and circumstances of the case, the present appeal is allowed and the impugned order dated 11.12.2013, is thus, set aside.

14.02.2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes