

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR no.123 of 2019 (O&M)

Date of Decision: 27.03.2019

Ranbir Singh

...Petitioner

versus

Zile Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Munisha Gandhi, Senior Advocate, with
Ms. Divya Gurnay, Advocate,
for the petitioner.

Mr. G. P. Singh, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this petition, the petitioner has challenged the order of the learned Civil Judge (Senior Division), Gurugram, dated 06.12.2018, by which two applications filed by him, one seeking dismissal of the election petition filed by respondent no.1 herein and the other seeking rejection of the 'plaint' (in the said election petition), have both been dismissed by that court, in its capacity as an Election Tribunal.

2. The background of the matter is that the petitioner was declared elected as the Municipal Councillor for Ward no.34 of Municipal Corporation, Gurugram, such elections having been held in September, 2017, with the result declared on September 24, 2017.

His election was challenged by respondent no.1 herein by way of an election petition dated 11.10.2017, with the petitioner then having filed the aforesaid applications, dated 03.11.2017 and 08.11.2017 respectively, contending therein that the petition having been presented by two Advocates

for respondent no.1, i.e. by Shri Sudesh Kumar Yadav and Shri Mubin, it was not one filed in person, and therefore the election petition itself was not maintainable.

(This was stated in the application dated 03.11.2017, seeking dismissal of the election petition at the threshold).

3. In the application dated 08.11.2017, the petitioner stated that, firstly, each and every page of the plaint (election petition), was not signed by the plaintiff in terms of sub-section (3) of Section 81 of the Representation of the People Act, 1951 and secondly, the affidavit of the 'plaintiff' (respondent no.1 herein) was not valid for want of due attestation by an Oath Commissioner as per law, the affidavit having been verified on 04.10.2017 but attested by an unknown person on 11.10.2017, who simply marked his initials (over the said date), without any identification or proper seal of the Oath Commissioner.

4. Thus, on the aforesaid three grounds taken in the two applications, dismissal of the election petition/rejection of the 'plaint' (petition) was sought by the present petitioner.

5. Replies having been duly filed to the applications by respondent no.1, initially the petition was heard by Shri Ravish Kaushik, Civil Judge (Junior Division), Gurugram, who after noticing the provision contained in Section 15 of the Haryana Municipal Corporation Act, 1994 (hereinafter to be referred to as the Act), and citing various judgments, held that the petition was not maintainable as it was not filed by the petitioner in person, which is a mandatory provision.

However, holding that his court was not designated as an Election Tribunal, and therefore did not have jurisdiction to entertain the

petition, it was consequently dismissed on that ground.

An appeal under Section 21(3) of the Act having been filed by respondent no.1 herein, the learned Additional District Judge, Gurugram, came to the same finding as regards lack of jurisdiction with the Civil Judge before whom the petition had been listed, and therefore, while upholding that part of the order, it was also held that once the Civil Judge had come to the conclusion that he did not have jurisdiction to entertain the election petition, no finding on the merits thereof could have been given.

Consequently, the petition was ordered to be listed before the court as had been duly notified to hear election petitions, vide a notification issued by the Haryana Government on 05.07.2013.

Thus, the petition came to be listed before the designated court that has passed the impugned order.

6. A perusal of the said order shows that as regards the contention that every page of the election petition was not signed, that contention was held to be devoid of merit because the petitioner had signed the last page at the place assigned for the purpose and therefore, even if each page was not signed, it was not an illegality.

It was also observed that simply because the counsel for the petitioner did not get each page counter signed, “or the stamp of the Notary/Oath Commissioner was not properly inked, the same does not mean that the petitioner has lost all his rights to raise his claim before the Court of Law”.

This was held to be so with the Tribunal further stating that the intention of the statute is that election petitions be not filed in a casual manner but only by a person who seriously objects to the election process and

therefore, such intention was not that the rights of the parties may be defeated on account of some technical defect due to improper legal advice, or “shortage of ink and stationery with the Notary/Oath Commissioner” (but only for a substantive reason).

A judgment of the Supreme Court in Sardar Harcharan Singh Brar v. Sukh Darshan Singh & others 2004 (4) RCR (Civil) 749, as was cited before the Tribunal, was referred to, to hold that defects in an affidavit accompanying a petition may be cured by filing a proper affidavit.

Thus, holding that the two applications on the non-maintainability of the petition were only attempts to linger on the proceedings, by the elected person, who had actually failed to file his written statement right from 25.10.2017 uptill 07.08.2018, when his defence was struck off, the applications were dismissed vide the impugned order.

7. Before this court, Ms. Munisha Gandhi, learned senior counsel appearing for the petitioner, submitted that the provisions relating to elections, including any challenge thereto, are governed by specific Acts (in the present case, it being the Haryana Municipal Corporation Act, 1994) and any non-compliance of the mandatory provisions governing the presentation of an election petition, has to necessarily result in rejection of the petition itself.

8. She reiterated that the election petition contained the following three defects:-

- (i) that it was not presented by respondent no.1 himself to the Tribunal but through two Advocates and therefore was necessarily to be rejected.
- (ii) that the affidavit accompanying the petition was defective as it did not even give the correct names of the parties to

- the petition, and further, it was not verified properly;
- (iii) that it was not signed on every page by respondent no.1, i.e. the petitioner before the Tribunal;

9. In support of her contentions, Ms. Gandhi relied upon three judgments of co-ordinate Benches of this court, and one of the Supreme Court in **G. V. Sreerama Reddy v. Returning Officer** 2009 (8) SCC 736.

In *Reddys'* case, election of a candidate to the Karnataka Legislative Assembly was challenged, with the election petition having been dismissed by a learned single Judge of the Karnataka High Court, upon a report having been put up to him by the Registry, with a statement also made by the Registrar (Judicial), that the petition had been presented through an Advocate and not in person, and consequently, there was violation of Section 81 of the Representation of the People Act, 1951.

10. After considering the provisions of that Act, the Supreme Court came to the conclusion that as per sub-section (1) of Section 81, an election petition is necessarily required to be presented by any candidate or elector personally, to the authorised officer of the High Court, and failure to adhere to such procedure would be contrary to the said provision, with the petition liable to be dismissed; and therefore the judgment of the High Court was not required to be interfered with.

11. Ms. Gandhi next referred to a judgment of a co-ordinate Bench of this court in **Gurlal Singh v. Presiding Officer, Election Tribunal, Block Lehra, District Sangrur** 2010 (5) RCR (Civil) 474, wherein the election of a Sarpanch of a Gram Panchayat was challenged, with the election petition in that case also not having been presented by the challenger himself.

This court (co-ordinate Bench) framed the following two

questions for adjudication:-

- “(i) Whether an election petition presented through an Advocate is liable to be dismissed under Section 80 of the Act, being in violation of Section 76 (1) of the Act?
- (ii) Whether non-compliance of mandatory provisions of Section 76 (1) of the Act and its resultant effect as per Section 80 of the Act, could be raised for the first time in appeal or if not raised, whether the said right/issue is deemed to have been waived by the appellant on the ground of acquiescence?”

12. Thereafter, noticing the provisions of the Punjab State Election Commission Act, 1994 (specifically Sections 74, 76 and 80 thereof), and citing the judgment in *Reddys'* case, it was held that with the election petition not presented in person but through an Advocate, there was a violation of Section 76(1) of the aforesaid Act, also offending the provisions of Section 80 thereof, and consequently, the Election Tribunal was necessarily required to dismiss the election petition.

13. On the issue of whether non-compliance of mandatory provisions of the Act could be raised for the first time in appeal or would be deemed to have been waived if not raised earlier, it was held that there would be no question of any waiver of a mandatory provision of law which had the consequence of dismissal of an election petition for violation of such provision.

14. To similar effect, Ms. Gandhi cited a judgment of another co-ordinate Bench in **Rohtash through LRs v. State Election Commission and others** (CR No.5641 of 2016 (O&M), decided on 09.09.2016), in which again election of a Sarpanch of a Gram Panchayat, but in the State of Haryana, was challenged, with again this court having held, in view of the ratio of the

judgment in *Reddys'* case (supra), that an election petition was required to be presented by the petitioner in person and not through his agent or pleader, except if expressly provided in the statute governing such election.

As regards the Haryana Panchayati Raj Act, 1994, it was held that Section 176 therein stipulated that any person contesting the election could challenge the validity of the election of another candidate, with the terms “any person” and “such person” having been used in such a manner that it was apparent that the petition must be presented by the challenger himself.

The provisions of Order 3 Rule 1 of the CPC, pertaining to appearance through recognised agents and pleaders, were also referred to by this court, to hold that appearances through such a person could only be permitted if it was not otherwise expressly provided to the contrary.

15. To similar effect, learned senior counsel also cited the case of **Gurmit Singh v. Raj Kumar and others** (CR No.215 of 2016, decided on 10.08.2018), wherein election of a Municipal Councillor to the Nagar Panchayat in a Municipality of the State of Punjab, was challenged.

Again the relevant provision of the Punjab State Election Commission Act, 1994, was considered by this court, with it eventually held that it was a mandatory requirement and that if an election petition was not attested, verified and supplied to the returned candidate in the manner prescribed therein, such petition could not be entertained.

16. Thus, Ms. Gandhi submitted that the learned Tribunal wholly erred in dismissing the applications of the petitioner simply by relying upon the judgment in *Sardar Harcharan Singh Brars'* case (supra), without considering the subsequent judgments on the issue.

17. In response thereto, Mr. G.P.Singh, learned counsel appearing

for respondent no.1, i.e. the election petitioner before the Tribunal, referred to a judgment of the Supreme Court in **Raj Kumar v. Mukhtyar Singh and others** 2017 (1) RCR (Civil) 392, which was again a case arising from an election of a Sarpanch of a Gram Panchayat in Haryana. It was noticed by their Lordships that Section 176 of the Haryana Panchayati Raj Act, 1994, did not stipulate any consequential action if an election petition is not presented in person, whereas Section 81 of the Representation of the People Act, 1951 and Section 80 of the Punjab State Election Commission Act, 1994, provided for such consequences, and therefore it was obvious that the legislature in Haryana had made a conscious decision to make the provision only procedural (and not mandatory) and consequently, such a defect in an election petition would be a curable defect, in the case of elections to Panchayats of Haryana.

18. Mr. G.P.Singh also, naturally, relied upon the judgment in *Sardar Harcharan Singh Brars'* case and further also another judgment of the Supreme Court in **Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors.** 2006 (1) RCR (Civil) 727, in the latter of which, while referring to the provisions of Order 6 and Order 7 of the Code of Civil Procedure, it was held that any omission in respect of such provisions, would not render a plaint invalid and that any such defect or omission would be curable, with such 'cure' relating back to the date of presentation of the plaint.

19. Thus, Mr. G.P. Singh submitted that once it has been held by the Supreme Court that the legislature of Haryana had made the conditions of presentation of an election petition to be only procedural and not mandatory, reliance upon judgments either of this court or of the Supreme Court in relation to cases of Panchayats in Punjab or in the context of the

Representation of the People Act, is misplaced.

As regards the judgment of this court in *Rohtashs'* case, he submitted that such judgment having been issued at a time prior to the judgment in *Raj Kumars'* case (supra), naturally, it would be the Supreme Court judgment the ratio of which would hold the field.

20. Learned counsel then referred to Rule 78 of the Haryana Municipal Corporation Election Rules, 1994 (reproduced in paragraph 22 *infra*, in this judgment).

He submitted that with the said rule also not providing for any penal consequences if an election petition is not accompanied by any proper affidavit etc. (which in any case is not a requirement under the rule), or for non-presentation by the person challenging the election, it would be *pari-materia* to Section 176 of the Haryana Panchayati Raj Act, as has been interpreted in *Raj Kumars'* case by the Supreme Court.

Mr. Singh therefore submitted that the impugned order does not require to be interfered with.

21. Having considered the arguments on both sides, as also the reasoning given in the impugned order, of course it is to be noticed that the order is not very detailed as regards the reasoning given by the Tribunal, except to rely upon the judgment of the Supreme Court in *Sardar Harcharan Singh Brars'* case (supra); however, the question eventually would now be, when the Supreme Court has already adjudicated upon an election petition arising from Haryana, though in a case pertaining to Panchayat elections and not municipal elections, whether the provisions governing elections to these two kinds of bodies, in Haryana, are *pari-materia* to each other or not, to determine whether the ratio of the judgment in *Raj Kumars'* case would be

applicable to the present petition also or not.

However, the provisions being referred to hereinbelow, as also the judgment immediately therein after, in **Sardar Harcharan Singh Brars'** case (supra), are not just in the context of whether a petition challenging an election to a municipality in Haryana must be filed by the petitioner himself, but also in the context of the other two questions raised by learned Senior Counsel appearing for the petitioner, on the effect of any defect in the pleadings or the affidavit accompanying them being rectifiable defects or those which would necessarily entail dismissal of the election petition.

22. The relevant provision, i.e. sub-sections (1) to (3) of Section 176 of the Haryana Panchayati Raj Act, 1994, as was referred to (though not by reproduction thereof) by the Supreme Court in *Raj Kumars'* case, reads as follows:-

“176. Determination of validity of election enquiry by judge and procedure.-- (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 the 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.”

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The provisions contained in the Haryana Municipal Corporation Act, 1994, that deal with an election petition, as are relevant to the controversy at hand, are Sections 15, 16 and 32, which are reproduced as follows (with only the relevant part of Section 32 being so reproduced).

The relevant provisions of the Code of Civil Procedure, are also reproduced thereafter.

The Act of 1994:-

“15. Election petition.-- (1) No election of a member shall be called in question except by an election petition presented to the authority as may be prescribed within thirty days from the date of the publication of the result of the election under section 14.

(2) An election petition calling in question any such election, may be presented on one or more of the grounds specified in sections 18, 19, 20, 21 and 22 by any candidate at such election or by any elector of the ward concerned.

(3) A petitioner shall join as respondent to his petition all the candidates at the election.

(4) An election petition-

(a) shall, contain a concise statement of the material facts on which the petitioner relies.

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

(b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected.

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(2) Any person who contravenes the provisions of any rule framed under this section shall be punishable with a fine which may extend to one thousand rupees.”

The Code of Civil Procedure 1908**Order 3, Rule 1:-**

“1. Appearance, etc., may be in person, by recognised agent or by pleader:- Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader [appearing, applying or acting, as the case may be,] on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.”

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Order 6, Rule 15:-

15. Verification of pleadings.-(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

[(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.]”

Under the power conferred by Section 32 of the Act (supra), the Haryana Municipal Corporation Election Rules, 1994, have been promulgated, with Rule 78 thereof, as has been referred to by Mr. G.P.Singh, reading as follows:-

“78. Election petition.-- (1) No election of a member shall be called in question except by an election petition presented to the Tribunal.

(2) An election petition against the return of a candidate to an election or against the return of Mayor or Senior Deputy Mayor or Deputy Mayor or against unsuccessful candidate with a view to his disqualification on the ground of a corrupt practice or material irregularity in the procedure shall be in writing signed by a person who was a candidate at such election or an elector.”

23. A perusal of the aforesaid provisions shows that though Mr. G.P.Singh is obviously right in saying that the rule itself does not stipulate any consequences for the non-adherence to the procedure given in the rules, however, sub-section (2) of Section 32 does very clearly stipulate that contravention of the provisions of any rule framed under the said section, shall be punishable with a fine of upto Rs.1000/-.

It is also to be specifically noticed that Rule 78 itself does not stipulate that an election petition must be presented by the petitioner herself/himself; however, sub-section (2) of Section 15 of the Act does state that an election petition be presented by any candidate or by any elector (on any of the grounds specified in Sections 18 to 22).

Thus, that provision would actually seem to be *pari materia* to Section 81 of the Representation of the People Act, 1951, though Section 80 of that Act stipulates that no election shall be called for in question except by an election petition “presented in accordance with the provisions of this Part”. Sub-section (1) of Section 15 of the Haryana Act on the other hand, does not appear to be as stringent, in view of the fact that it states that no election of a member would be called in question except by way of an election petition

presented to the authority concerned within a particular time frame. And that possibly would be the reason why their Lordships, in *Raj Kumars'* case (supra), held that Section 81 of the Act of 1951 provides for a penal consequence, whereas the Haryana Panchayati Raj Act does not, even though sub-section (1) of Section 176 of that Act stipulates that if the validity of any election of a member of a Gram Panchayat etc. is brought in question by any person contesting the election or by any person qualified to vote and the election, such person may present an election petition.

The question that still may arise in the context of the Haryana Municipal Corporation Act, however is, that whether imposition of a fine of Rs.1000/- (as per Section 32 (2) thereof), for contravention of any of the rules framed thereunder, would be the only penal consequence for non-adherence to procedure, or whether, if sub-section (2) of Section 15 is contravened, with the election petition not being presented by the petitioner but by another person on his behalf, the election petition itself must be rejected.

To consider that, the judgments that hold that an election petition must be rejected if it does not adhere to the procedure prescribed, need to be looked at, alongside the judgment in *Sardar Harcharan Singh Brars'* and *Raj Kumars'* cases.

24. In *Sardar Harcharan Singh Brars'* case, the election of one Sukh Darshan Singh, from the Muktsar constituency, to the Punjab Legislative assembly, was challenged by Sardar Harcharan Singh Brar, by way of an election petition filed under Sections 80, 80-A, 81, 83 and 84 of the Representation of the People Act, 1951, which read as follows:-

“80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose:

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.]

Sub-section (2) omitted XXXXX

82. XXXXX XXXXX XXXXX

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

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1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]

(All emphasis applied in this judgment only).

84. **Relief that may be claimed by the petitioner.**-A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.”

25. One of the main grounds of challenge in *Brars'* case was that the nomination of one of the candidates was improperly accepted, as a result of which the election result itself was materially affected, it being further alleged that Sukh Darshan Singh (respondent no.1 before the Supreme Court) was also guilty of having committed a corrupt practice by obtaining the assistance of a police officer, thereby contravening sub-section (7) of Section 123 of the 1951 Act, which aspect need not be gone into in the present case, any alleged corrupt not being in issue in the present petition at least.

The election petition in that case was dismissed at the threshold by a learned Single Judge of this court on two grounds, the first being that no commission of corrupt practice could be disclosed in terms of Section 83 of the Act and second, that the election petition was not supported by an affidavit as was required by the proviso to sub-section (1) of Section 83, read with Rule 94A of the Conduct of Election Rules, 1961.

26. The Supreme Court, after noticing earlier judgments of that court in Samant N. Balakrishna and another v. George Fernandez and others (1969) 3 SCC 238 and Raj Narain v. Smt. Indira Nehru Gandhi and another (1972) 3 SCC 850 (and subsequent judgments), eventually held as follows:-

“9. Having gone through the contents of the election petition, we are satisfied that the High Court has not been right in directing the petition to be dismissed at the threshold by forming an opinion that the averments made in the election petition were deficient in material facts. It is not necessary to burden this judgment with reproduction of the several averments made in the election petition. The High Court has already done it. The test laid down in the several authorities referred to hereinabove and in particular in the case of *Raj Narain* (supra) is fully satisfied. The grounds of corrupt practice and the facts necessary to formulate a complete cause of action have been stated. Even the particulars have been given. However, if the Court feels that the particulars as given in the petition are deficient in any manner the petitioner can be directed to supply the particulars and make the deficiency good. In any case, deficiency in particulars could not have been a ground for dismissing the petition at the threshold. It is only the non-supply of particulars though ordered by the Court which could have led to either striking off of the pleadings or refusal to try the related instances of alleged corrupt practice. We cannot countenance the view taken by the High Court.

10. So is the case with the defect pointed out by the High Court in the affidavit filed in support of the election petition alleging corrupt practice by the winning candidate. The proviso enacted to sub-section (1) of Section 83 of the Act is couched in a mandatory form inasmuch as it provides that a petition alleging corrupt practice shall be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. The form is prescribed by

Rule 94-A. But at the same time, it cannot be lost sight of that failure to comply with the requirement as to filing of an affidavit cannot be a ground for dismissal of an election petition *in limine* under sub-section (1) of Section 86 of the Act. The point is no more *res integra* and is covered by several decisions of this Court. Suffice it to refer to two recent decisions namely ***G. Mallikarjunappa and anr. v. Shamanur Shivashankarappa and ors., 2001 (3) RCR (Civil) 643 (SC): (2001) 4 SCC 428*** and ***Dr. Vijay Laxmi Sadho v. Jagdish, (2001) 2 SCC 247*** both three-Judge Bench decisions, wherein the learned Chief Justice has spoken for the Benches. It has been held that an election petition is liable to be dismissed *in limine* under Section 86(1) of the Act if the election petition does not comply with either the provisions of “Section 81 or Section 82 or Section 117 of the RP Act”. The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed *in limine* under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly “defective” affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

11. Having formed an opinion that there was any defect in the affidavit, the election petitioner should have been allowed an opportunity of removing the defect by filing a proper affidavit. Else the effect of such failure should have been left to be determined and adjudicated upon at the trial, as held in *G. Mallikarjunappa and anr.'s case (supra)*.

For the foregoing reasons, the appeal is allowed with costs. The judgment of the High Court is set aside. The election petition

shall stand restored on the file of the High Court for hearing and decision consistently with what has been stated hereinabove.”

(All emphasis applied in the present judgment only)

Hence, at least as far as one of the objections raised before this court in the present petition, as regards an improper affidavit having been filed by the respondent herein (election petitioner), with it not giving even the correct names of the parties and it not having been verified properly, at least as per the ratio of the judgment in *Sardar Harcharan Singh Brars'* case, that contention would seem to be unsustainable.

27. However, in *Sreerama Reddys'* case, as pointed out by Ms. Gandhi, learned senior counsel for the petitioner (elected candidate), what was held by their Lordships in the context of non-compliance of the mandate contained in Section 81 of the Act of 1951, was as follows:-

“Sub-section (1) makes it clear that any challenge or dispute relating to an election may be presented in the form of an election petition highlighting the grounds specified in sub-section (1) of Sections 100 and 101. It further mandates that the election petition is to be filed only before the High Court having jurisdiction either by any candidate or any elector within the prescribed time. As per sub-section (1), an election is to be filed within 45 days from the date of election of the returned candidate.”

Thereafter, their Lordships held as follows:-

“14. A close look at Section 81 reveals that the two remaining sub-sections after the amendment introduced by Act 47 of 1966 i.e. (1) and (3) deal with two distinct, but interrelated issues. Sub-section (1) deals with the necessary requirements of any petition challenging an election, and sub-section (3) deals with additional requirements as to the petition presented. Sub-section (1) has five

components:

(i) the qualification of the petitioner i.e. he/she must be either “a candidate at such election” or an “elector”;

(ii) the petition must be presented “by” the petitioner;

(iii) the petition must be based “on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101;

(iv) it must be presented in the High Court; and (v) it must be presented within 45 days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Therefore, all these five requirements are extremely specific and clear. This inference is further strengthened by Section 86 (1) which provides that the “High Court shall dismiss an election petition which does not comply with the provisions of Section 81”.

Having held as above, earlier judgments of the Supreme Court in K. Venkateswara Rao v. Bekkam Narasimha Reddi AIR 1969 SC 872 and Hukumdev Narain Yadav v. Lalit Narain Mishra (1974) 2 SCC 133 were also referred to and it was further held that:-

16. While interpreting a special statute, which is a self-contained code, the court must consider the intention of the legislature. The reason for this fidelity towards the legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed.

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“19. One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a

petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the legislature has provided that the petition must be presented “by” the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensures that the petition is neither frivolous nor vexatious.

20. In this context, earlier decisions of this Court regarding the interpretation of Section 81(1) must be understood. In *Sheo Sadan Singh v. Mohan Lal Gautam* in para 4, this Court held that: (SCC p. 409)

“4. The High Court has found as a fact that the election petition was presented to the registry by an advocate’s clerk in the immediate presence of the petitioner. Therefore, in substance though not in form, it was presented by the petitioner himself. Hence the requirement of the law was fully satisfied.”

Learned counsel for the appellant submitted that even though the “form” of the provision was not followed i.e. the petition was not presented “by” the petitioner “personally”, in “substance”, it was followed.”

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“24. The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider sub-section (1) along with the other provisions in Chapters II and III, the object and intent of the legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

25. In view of the endorsement by the Registrar (Judicial) on 7-7-2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per sub-section (1) of Section 81, an election petition is to be presented by any candidate or elector relating to the election personally to the authorised officer of the

High Court and failure to adhere to such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation.”

28. Hence, very obviously what was held in *Reddys'* case was that there being a mandate contained in Section 81 of the Act of 1951 that an election petition is to be presented by any candidate or an elector, such presentation by any other person, including his Advocate, would necessarily have to result in dismissal of the petition on the ground of improper presentation thereof.

29. Having seen the ratio of those two judgments it needs notice that like Section 81 of the Representation of the People Act, 1951, sub-section (2) of Section 15 of the Haryana Municipal Corporation Act, 1994, (already reproduced in paragraphs 24 & 22 respectively of this judgment), also postulates that an election petition may be presented on any of the grounds specified, “by any candidate at such election or by any elector of the ward concerned”.

What was considered by the Supreme Court in *Raj Kumars'* case (supra), in the context of an election of a Sarpanch in Haryana, was Section 176 of the Haryana Panchayati Raj Act, 1994 (and not the Municipal Corporation Act). That provision also stipulates that election to bodies as are subject matter of that Act shall be “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”.

Yet, in that case, the Supreme Court having referred to the aforesaid provision (though as already said not by reproduction thereof), it was observed that the provision was not followed by a consequential provision entailing dismissal of an election petition, if it is not presented by the election petitioner in person, whereas in both, Section 81 of Representation of the People Act, 1951 and Section 80 of the Punjab State Election Commission Act, 1994, the consequence of non-presentation of an election petition by the petitioner herself/himself, would entail dismissal of the petition itself. Hence, that consequence not having been incorporated by the Haryana Legislature in the Haryana Act, the intention was obviously that the manner of presentation was only procedural.

Consequently, it was held that a defect in the manner of presentation of an election petition under the Haryana Panchayati Raj Act, was a curable defect, with discretion vested in the court to permit the election petitioner to cure it.

30. Of course, as already said earlier, the aforesaid observations are in the context of the Haryana Panchayati Raj and not the Haryana Municipal Corporation Act. As seen earlier, sub-section (2) of Section 32 of the Haryana Municipal Corporation Act postulates a fine of upto Rs.1000/- for contravention of any of the rules framed pursuant to the power conferred in Section 32 itself.

Having said that, it is also to be seen that the condition of an election petition being presented to the appropriate authority, is in terms of what is stipulated in Section 15 of the Act itself (as opposed to the rules), and as per that provision, it has to be presented by any candidate to such election

or by any elector of the ward concerned, though with no penal consequence provided thereafter, for non-presentation of an election petition by the petitioner in person, as is also the case in Section 176 of the Panchayati Raj Act which was considered in *Raj Kumars'* case.

31. It further needs to be noticed at this stage that though, in *Raj Kumars'* case, their Lordships have observed in the penultimate paragraph of the judgment, that Section 81 of the Representation of the People Act, 1951 provides for the consequence of dismissal of an election petition not presented by the petitioner himself, Section 81 does not actually stipulate so, with their Lordships obviously having therefore observed to the aforesaid effect, because of the ratio what is contained in *Sreerama Reddys'* case, that judgment having been noticed in extenso in *Raj Kumars'* case.

However, what has also been observed by their Lordships in same paragraph in *Raj Kumars'* case, is that Section 80 of the Punjab Act (the reference being to the Punjab State Election Commission Act) provides for dismissal of an election petition for non-compliance with the provisions of Sections 76, 77 or Section 103 of that Act. That observation of course is as per what is contained in Section 80 of that Act, which is reproduced as follows, prior to which Sections 76, 77 and 103 are also being reproduced (of the Punjab State Election Commission Act, 1994):-

“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.

77. Parties to the petition.- A petitioner shall join as respondent to his petition--

- (a) where he, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegation of any corrupt practice is made in the petition.

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103. Security for costs.-- (1) At the time of presenting an election petition, the petitioner shall deposit in the Election Tribunal such sum, as may be prescribed as security for the costs of the petition.

(2) During the course of the trial of an election petition, the Election Tribunal may, at any time, call upon the petitioner to give such further security for costs, as it may direct.”

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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.”

Hence, Section 80 of the Punjab Act specifically postulates dismissal of an election petition for non-compliance of Section 76 of that Act, by which an election petition is to be presented by a candidate or an elector, whereas that is not so in the Haryana Act.

32. Coming therefore again to the question of whether then it should be the ratio of the judgment in *Sreerama Reddy's* case, or the ratio in *Raj Kumars'* case, that has to be followed by this court on the consequence of non-presentation of an election petition by a person other than the election petitioner himself.

As a matter of fact, the contention of Ms. Munisha Gandhi that the ratio of the former judgment is to the effect that an election petition not presented by a petitioner must always necessarily be rejected at the threshold, does not seem to be correct upon a perusal of the judgment in detail, because in paragraph 16 thereof (SCC edition), it is stated as follows:-

“16. While interpreting a special statute, which is a self-contained code, the court must consider the intention of the legislature. The reason for this fidelity towards the legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed.”

Thus, what was held by their Lordships as regards the rejection of an election petition on that count, was specifically in the context of the wording contained in Sections 80 and 81 of the Representation of the People Act, 1951, and consequently, it cannot be interpreted to mean that an election petition presented under the provisions of any other Act also must necessarily be rejected if not presented by a petitioner himself, as it is the statute concerned, the wordings of which have to be looked at carefully, to determine whether such consequence follows or not (by presentation of the petition by a person other than the petitioner).

Further, it is not as if the judgment in *Sreerama Reddy* had not been brought to the notice of the Supreme Court subsequently in the *Raj Kumars'* case. Hence, the previous judgment having been duly noticed and

quoted in the subsequent one, then even by the law of judicial precedent, this court would be bound to follow the ratio of the subsequent judgment, i.e. in *Raj Kumar*, delivered by a bench of equal strength (a two Judge Division Bench in each case).

Thus, with the judgment in *Raj Kumar* duly having referred to *Sreerama Reddy* and it even having been quoted in the later judgment, and the Supreme Court eventually having held that since the Haryana legislature did not provide for the dismissal of an election petition on the ground that it was not presented by the petitioner himself (as per Section 176 of the Haryana Panchayati Raj Act) and this court having seen that no provision of the Haryana Municipal Corporation Act also has been shown to provide for such a consequence, it would have to be the ratio of the subsequent judgment (in *Raj Kumars'* case) that this court would be bound to follow.

It also needs to be noticed that a judgment of a co-ordinate Bench of this court in *Gurlal Singhs'* case (supra) has also been duly noticed by the Supreme Court in *Raj Kumars'* case.

It therefore has to be held that non-presentation of the election petition by the respondent-election petitioner personally, in the competent court, does not entail the consequence of dismissal of the petition at the threshold on that count.

33. Coming to the next argument of Ms. Munisha Gandhi that the affidavit accompanying the petition being defective by reason of both, not giving the correct names of the respondents and further, it not being verified properly, and therefore the petition deserves to be rejected on that ground alone (as per learned senior counsel).

Having already seen that non-compliance of the procedure laid down in the act or the rules framed thereunder, does not necessarily entail the immediate rejection of an election petition, with there being no such provision to that effect either in the Act or the rules, with the judgment of the Supreme Court in the judgment of the Supreme Court in *Sardar Harcharan Singh Brars'* case (supra) laying down that failure to comply with the requirement of filing an affidavit (in the context of the Representation of the People Act, 1951 and the rules framed thereunder), cannot be held to be a ground for dismissal of an election petition *in limine*; that ground taken by learned senior counsel appearing for the petitioner, to challenge the impugned order passed by the learned designated Civil Judge (Election Tribunal), also cannot be accepted as a sustainable argument.

34. As regards the issue of an affidavit (or the election petition) not having been verified properly, it needs to be noticed again that clause (c) of sub-section (4) of Section 15 of the Haryana Municipal Corporation Act lays down that the petition would be signed by the petitioner and verified in the manner laid down for the verification of the pleadings as provided in the Code of Civil Procedure. The said provision (as already reproduced earlier), is Rule 15 of Order 6 of that Code, sub-rule (2) of which states that the person verifying shall specify, by reference to the numbered paragraphs of the pleading, that what he verifies is either by way his of own knowledge or upon information received and believed to be true. Sub-rule (3) states that the verification shall be signed by the person making it and shall state the date and the place at which it was signed. Sub-rule (4) stipulates that the person verifying the pleadings shall also furnish an affidavit in support thereof.

In the election petition filed by respondent no.1 herein, it is seen

that the verification at the end of the election petition (copy Annexure P-2 with the present petition) is follows:-

“VERIFICATION:

Verified by the petitioner that the content of para No.1 to 11 of the above plaint are true and correct to the best of my knowledge and rest to my belief.

VERIFIED BY THE PETITIONER AT GURGAON ON THIS
11th DAY OF OCTOBER 2017”

Thus as regards what is stipulated in sub-rules (2) and (3) of Rule 15 of Order 6 of the Code of Civil Procedure, the aforesaid verification at the end of the election petition filed by respondent no.1, would not seem to be contrary thereto, unless it had been shown that all the contents of the petition were actually not to the personal knowledge of the said respondent and therefore he should specify which paragraphs were to his own knowledge and which were as per information received by him.

If of course that is pointed out before the learned Tribunal on behalf of the petitioner, the Tribunal would accordingly be required to determine and pass an order with regard to the verification being correct or incorrect, and if incorrect, whether the first respondent should be given a chance to amend it appropriately or not. This would be so even as regards any other technical defect in either the pleadings or the affidavit accompanying them, if the ratio of *Sardar Harcharan Singh Brars'* case is to be followed, which naturally it has to be.

35. It needs to be specifically noticed again that Ms. Munisha Gandhi had also stated that the title of the election petition, in the affidavit shown to be sworn by the respondent herein, in support of his petition, is seen to be “Zile Singh versus Sheetal Bagri and others”, whereas obviously the

petitioner/ elected candidate is Ranbir Singh Rathi, and the election petition itself duly reflects his name at Sr. no.1 in the array of respondents and consequently, a wrongly titled affidavit would show the non-seriousness of the respondent in filing the election petition.

Whereas one cannot disagree with her at all that the election petitioner has obviously been very careless in not even bothering to check whether the correct particulars are given in the affidavit accompanying his pleadings, yet seeing that the substantive pleadings themselves implead the correct persons, a wrongly titled affidavit again would not be an incurable defect in my opinion, on the same principle, i.e. the ratio of the judgment in *Sardar Harcharan Singh Brars'* case.

36. Further, as contended by her, even the verification in the affidavit is not as per law, because the affidavit is not attested properly, with even the seal of the attesting authority not fully visible.

In this context, it is to be firstly stated that the original election petition has not been called for by this court and though the photocopy of the affidavit in support of the election petition does not show the seal properly, however, it is definitely seen to be signed by the attesting authority on 11.10.2017, whereas the verification of the affidavit by respondent no.1 gives the date of its execution to be October 04, 2017.

37. In this context, the rules and orders of this court need to be referred to.

Rule 15 contained in Part-B of Chapter-12 in Volume 4 of those rules & orders court stipulates that every affidavit shall be signed or marked and verified at its foot by the deponent (executing it) and attested by either a court, Magistrate, or other officer administering the oath or affirmation, with

every page of the affidavit to be signed by the deponent and initialed by the attesting officer. The form of verification of oath or affirmation is also given thereunder, which reads as follows:-

“Oath

I solemnly swear that this my declaration is true, that it
conceals nothing, and that no part of it is false- so help me God!”

XXXXX

XXXXX

XXXXX

“Affirmation

I solemnly affirm that this my declaration is true, that it
conceals nothing, and that no part of it is false.”

The verification made by respondent no.1 at the end of his affidavit in support of the election petition, however reads as follows:-

“VERIFICATION:

Verified by the deponent named above that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therein.

VERIFIED AT GURUGRAM ON THIS 4th DAY OF OCTOBER
2017

DEPONENT”

Obviously the aforesaid verification is not exactly the same as what is contained in the rules and orders of this court.

Of course, no certificate as is provided in Part-B of Chapter-12 of Volume-4 of this courts' Rules and Orders, as is required to be given by the person attesting the affidavit, is seen on the affidavit, with what is provided in the prescribed form being much more elaborate than what is ever seen to be actually contained in any affidavit presented even before this court, such actual attestations being in the form of a seal of the Magistrate/Notary Public/Oath Commissioner, with her/his signatures contained at the relevant

part above or within the seal. That being so, with this Court constantly accepting that form of affidavit in every case before it, to single out the respondents' case for a different form of affidavit, would be highly unjust, just on that count.

38. In any case, as already seen, an improper affidavit not having been held by the Supreme Court in *Sardar Harcharan Singh Brars'* case to be a reason for dismissal of an election petition at the threshold, nothing further needs to be stated by this court other than what has already held hereinabove, to the effect that the election petition filed by the 1st respondent herein could not have been dismissed on that ground, as has been rightly held by the designated Judge/Tribunal.

39. The last ground given by learned senior counsel for rejection of the election petition, is that it was not actually signed on every page by the election petitioner.

No specific provision either in the Act, or the Rules framed thereunder, has been brought to the notice of this court, to the effect that every single page of the election petition must be signed by the petitioner, but even if that is accepted to be so simply by way of good measure, once it has been held that even a defect in the affidavit would not be a ground for rejection of the election petition at the threshold, it has to be held, again in the opinion of this court, that non-signing of each page of the election petition is also a wholly curable defect, with the court seized of the proceedings having the authority to direct the petitioner to sign every page if it finds it necessary to do so.

40. Consequently, keeping in view the detailed discussion hereinabove, I would find no ground to allow this petition.

Therefore, it is dismissed, with the learned trial court directed to ensure that any technical defects in the election petition, as regards signatures at proper places/lack of signatures on each page, as also any defects in the affidavit, would be got corrected by it at the outset before proceeding with the petition further, which after that would be decided wholly on its own merits, in terms of the statutory provisions and the evidence led by the parties.

No order as to costs.

March 27, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

- | | |
|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |