

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6626 of 2016 (O&M)

Date of decision:10.01.2019

Suman

... Petitioner

Vs.

The Deputy Commissioner-cum-District
Election Officer (Panchayat) Bhiwani and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V.P.Sangwan, Advocate
for the petitioner.

Mr. Mani Ram Verma, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 12.02.2016 (Annexure P-1), whereby, an application under Order 7 Rule 11 CPC filed by the elected candidate for rejection of the plaint, has been accepted.

However, provisions of Section 176 of Haryana Panchayati Raj Act, 1994 do not envisage filing of election petition by the petitioner-in-person. The aforementioned view of mine has already been dealt by this Court in **Seema Devi Vs. Suman and others 2007(1) RCR (Civil) 349** after relying upon the judgment of the Hon'ble Supreme Court. For the sake of brevity, paragraph 8 of the aforementioned judgment reads thus:-

I am not in agreement with the submissions of Mr. Sahu as the language of Section 176 of 1994 Act is clear and ambiguous. If the Act is clear and ambiguous, there is no need to take the aid of other provisions and to interpret the same. The other Acts, i.e., 1994 Act and 1950 Act, envisaged the presentation of the petition by a defeated candidate in person but, whereas, Haryana Act does not envisage such mandatory requirement of law and in case, the election petition is filed without the presence of the petitioner therein, the defect is curable and it does not entail into dismissal of the election petition and this was the opinion expressed by the Hon'ble Supreme Court in un-reported judgment cited supra which reads thus:-

“Apart from the aforesaid observations, the High court has also relied on a judgment of the Punjab and Haryana High Court in Gurlal Singh versus Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others reported in 2010 (5) RCR (Civil) 474 which has been rendered under the Punjab State Election Commission Act, 1994. Before the High Court a submission was made on behalf of the appellant that no reliance can be placed on the provisions of the Representation of People Act, 1950 or on the provisions

contained in the Punjab State Election Commission Act, 1994 (hereinafter referred to as the 'Punjab Act') as the provisions contained under the Haryana Act are different. The High Court, has, however, negated the aforesaid arguments with the following observations :-

“So far as argument of learned counsel for the petitioner that there is no provision under Haryana Act like Section 80 of the Punjab Act that if petition is not presented in person, as required under Section 76 of the Punjab Act, the same shall be dismissed, is concerned, I am of the view that the said fact is not of any help to the case of present petitioner. Once, a provision is held to be mandatory in nature, non-compliance of the said provision would be having obvious effect, i.e., dismissal for non-compliance.”

On this basis, it has been held that since the provisions contained in Section 176 of the Haryana Act was mandatory, the non presentation of the petition in person by the Election Petitioner would entail dismissal of his petition.

Challenging the aforesaid conclusion, it is submitted by Mr. B.S.Mor that the aforesaid three Acts, i.e., the Representation of People Act, 1950, Haryana Act and the Punjab Act are independent acts and the provisions of each Act have to be interpreted independently. Therefore, the provisions of the Haryana Act have to be interpreted by making a

reference to that Act alone.

We find substance in the submission made by the learned counsel for the appellant. The provision contained in Section 176 of the Haryana Act, 1994 is not followed by a consequential section entailing dismissal of the Election Petition, if it is not presented by the Election Petitioner in person. On the other hand, in both Section 81 of the Representation of People Act and Section 80 of the Punjab Act, non presentation of the Election Petition by the Election Petitioner by himself/herself would entail dismissal. Clearly, therefore, the Haryana Legislature had intended to make the provision in Section 176 procedural. Thereby making the defect in non-presentation of the Election Petition by the Election Petitioner in person curable. A discretion has been vested in the Court to permit the Election Petitioner to cure the defect by appearing before the Court on a later date, if so directed by the Court.

In view of the above, we find that the judgments of the Courts below cannot be sustained and have to be set aside.”

Resultantly, the impugned order is set aside. The trial Court is directed to decide the controversy as expeditiously as possible preferably within a period of 10 months from the date of receipt of a certified copy of this order.

The parties are directed to appear before the trial Court on 30.01.2019.

The revision petition stands allowed.

January 10, 2019
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No