

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 231

CR-8270-2017

Date of decision : 30.04.2019

Seema @ Savita Devi

..... Petitioner

VERSUS

Surender Singh Chauhan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Aditya Jain, Advocate and
Mr. Junaid Singh, Advocate, for the petitioners.

Mr. Sumeet Goel, Advocate, and
Mr. Vivek Singla, Advocate, for respondents No. 1 and 2.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 11.10.2017, passed by the Additional District Judge, Gurugram (for short, the Appellate Court), allowing the appeal filed by respondents No. 1 and 2, filed by them against the order dated 06.04.2017, passed by the Civil Judge (Junior Division), Gurugram (for short, the Election Tribunal).

On 17.01.2016 the petitioner was elected as a Sarpanch of village Bass Hariya, Tehsil and District Gurugram (for short, the village). In July, 2016 respondent No. 1 challenged the petitioner's election through a writ petition filed before this Court being CWP-13159-2016 "*Surender Singh Chauhan vs. State Election Commissioner and others*". Such petition was dismissed by this Court on 08.07.2016 by passing of the following order: -

"The primary grievance raised in the present writ petition is regarding the eligibility of respondent No.5 – Savita @ Seema Devi, for the post of Sarpanch in the general elections, which were held on 17th January, 2016 in village Bass Hariya, Tehsil and District Gurgaon.

2. The petitioner has alternative remedy of election petition and the Civil Court has been notified as Election Tribunal.

3. In such a situation, we refrain to entertain the petition and relegate the petitioner to avail the aforesaid alternative remedy, in accordance with law.

4. Dismissed.”

Thereafter, on 21.07.2016 respondents No. 1 and 2 filed an election petition before the Election Tribunal. On being put to notice, the petitioner appeared before the Election Tribunal and filed an application under Order 7 Rule 11 CPC seeking rejection of respondents No. 1 and 2's petition on the ground of limitation as also for the reason that as required under Section 176(1) of the Haryana Panchayati Raj Act, 1994 (for short, the Act) such petition had not been personally presented by respondents No. 1 and 2. The petitioner's application was accepted by the Election Tribunal on the ground that respondents No. 1 and 2 had not personally presented their election petition. Respondents No. 1 and 2 preferred an appeal against the aforesaid order passed by the Election Tribunal which was allowed. It is in the background of these facts that the present petition has been filed.

Learned counsel for the petitioner submits that the petitioner was elected as a Sarpanch of the village on 17.01.2016. Such election was challenged for the first time by respondent No. 1 through a writ petition filed by him before this Court in the first week of July, 2016. That petition was dismissed on 08.07.2016 on the ground that to challenge the petitioner's election the remedy available to respondent No. 1 was to file an election petition. Thereafter, on 21.07.2016 respondents No. 1 and 2 filed an election petition to challenge therein the petitioner's election.

It is submitted that the period prescribed under Section 176(1) of the Act to file an election petition to challenge the election of a sarpanch like the petitioner was thirty days and since the election petition had been filed by respondents No. 1 and 2 after over six months, the same was liable to be rejected on that ground alone. A Division Bench judgment of this Court in "*Ramkishan vs. State of Haryana and others*", 2016(4) RCR (Civil) 633 was cited in support.

Learned counsel for the petitioner further submitted that since respondents No. 1 and 2 did not personally present the election petition before the

Election Tribunal which was a mandatory requirement under Section 176(1) of the Act, their petition was liable to be rejected on that ground also. To support this submissions a judgment of this Court in “*Manjit Kaur vs. Deputy Commissioner-cum-Election Tribunal, Fatehgarh Sahib and others*” 2010(4) RCR (Civil) 784 was cited.

On the other hand, learned counsel for respondents No. 1 and 2 submitted that the issue of limitation had not been pressed by the petitioner before the Election Tribunal and therefore, she was estopped from raising the same before this Court. It was further submitted that the issue of limitation was a mixed question of law and fact and therefore, on this ground the election petition preferred by respondents No. 1 and 2 could have not been rejected on an application filed by the petitioner under Order 7 Rule 11 CPC.

On the issue of presenting the election petition personally, it was submitted that Section 176(1) of the Act was procedural and therefore, even if such petition had not been personally presented, such defect was curable at a later stage as held by the Hon’ble Apex Court in “*Raj Kumar vs. Mukhtyar Singh and others*” 2017(1) RCR (Civil) 392 as also by this Court in “*Seema Devi vs. Suman and others*”, 2017(1) RCR (Civil) 349.

Before proceedings with the matter, it would be appropriate to refer to Section 176(1) of the Act. The same reads as under: -

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.”

As per the afore-quoted provision, 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 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 the 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.

It is not disputed that at the time of presentation of the election petition respondents No. 1 and 2 were not present before the Election Tribunal. However, in view of the law laid down by the Hon'ble Apex Court in *Raj Kumar's* case (supra), such omission on their part would not entail outright rejection of their petition.

In *Raj Kumar's* case (supra) the Hon'ble Apex Court, while interpreting Section 176(1) of the Act, held the same to be procedural. It was further held that the defect in non-presentation of the election petition by the election petitioner was curable and that a discretion had been vested in the Court to permit the election petitioner to cure such defect by appearing before the Court on a later date. Para 9 of the judgment in *Raj Kumar's* case (supra), which is relevant, is reproduced below: -

“9. We find substance in the submissions 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.”

The above view was followed by this Court in *Seema Devi's* case (supra)

wherein it was held as under: -

“8. 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, the election petition preferred by respondents No.1 and 2 cannot be outrightly rejected on the ground that the same was not personally presented by them before the Election Tribunal especially at the stage of consideration of an application filed by the petitioner under Order 7 Rule 11 CPC.

The submission of learned counsel for respondents No. 1 and 2 that the issue of limitation is a mixed question of law and fact and therefore, cannot be gone into at the stage of filing of an application under Order 7 Rule 11 CPC, in the facts of the present case, needs to be rejected. Learned counsel for respondents No. 1 and 2 neither disputes the date of the petitioner's election nor the date of filing of the election petition by respondents No. 1 and 2 which is after six months of such election. Even the writ petition, filed by respondents No. 1 and 2 before this Court, to challenge the petitioner's election, which was not entertained for want of an effective alternative remedy, was filed by them after over five months of the petitioner's election. As per the afore quoted Section 176(1) of the Act an election petition is required to be filed within thirty days of the election. There is no provision under Section 176(1) of the Act to condone the delay of filing of the election petition beyond the prescribed period of thirty days. The law is well settled that the power to condone delay can be exercised by the Court/authority only if there exists a provision to do so. Even otherwise, there is no worthwhile explanation given by respondents No. 1 and 2 for the delay in filing of their election petition.

With regard to condonation of delay in the filing of respondents No.1 and 2's election petition by taking recourse to Section 5 of the Limitation Act, 1963 (for short, the 1963 Act), a Division Bench of this Court in *Ramkishan's* case (supra) has authoritatively held that the provisions of Section 5 of the 1963 Act would not apply to the filing of an election petition under Section 176(1) of the Act. Paragraphs 7 to 10 of the said judgment read as under: -

“7. We proceed to examine relevant statutory provisions concerning the issue. Section 176(1) of the Haryana Panchayati Raj Act, 1994 (in short

“the 1994 Act”) provides that if the validity of any election of a member of Gram Panchayat, Panch, Samiti or Zila Parishad or Sarpanch etc. 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 30 days after the declaration of the results of the election may file an election petition in the civil court of competent jurisdiction. Section 176(1) of the 1994 Act reads thus: -

“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.”

8. Section 5 of the Limitation Act, 1963 (hereinafter referred to as “the Act”) is reproduced as under: -

5. Extension of prescribed period in certain cases.-Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-The fact that the appellant or the applicant may misled by any order, practise or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.”

9. A plain reading of Section 5 of the Act shows that it has applicability only to appeals or applications, other than the applications made under any of the provisions of Order 21 of the Code of Civil Procedure, 1908. It nowhere provides for condonation of delay in the filing of the suits.

10 The similar question came up before this Court in **2013(1) R.C.R. (Civil) 93; Civil Revision No. 6086 of 2011 (Parkasho v. Bholi Devi) decided on 28.5.2012** and this Court held that the election petition filed under the 1994 Act after the lapse of the statutory period of 30 days from the date of declaration of the result shall be beyond limitation and liable to be dismissed.”

In view of the above, though respondents No. 1 and 2 succeed on the issue with regard to the non presentation of the election petition personally before the Election Tribunal, it is found that such election petition was liable to be rejected on the ground of the same having been filed beyond the period of limitation so prescribed under Section 176(1) of the Act.

Consequently, after setting aside the impugned order, the present petition is allowed in the above terms.

No costs.

30.04.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No