

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

CWP No.4730 of 2019

Date of Decision: 10.05.2019

Tej Pal

....Petitioner

Versus

Rakesh and others

....Respondents

***CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL***

Present:- Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Petitioner-Tej Pal has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* to quash the impugned judgment/order dated 06.10.2017 (Annexure P-1) passed by the Election Tribunal-cum-Civil Judge (Junior Division), Pataudi, District Gurugram and judgment/order dated 24.09.2018 (Annexure P-2) passed by the Additional District Judge, Gurugram, whereby, the Election Petition filed by him has been dismissed and thereafter, the appeal has also been dismissed on the ground of maintainability.

Briefly, the facts of the case, as made out in the present petition, are the petitioner contested the election of Sarpanch of Gram Panchayat Village Tripari, Block Farrukhnagar, District Gurgram, which was held on 16.01.2016. He challenged the election of respondent No.1 by raising various grounds by way of filing Civil Suit No.1/2016, which was

dismissed by the learned Election Tribunal-cum-Civil Judge (Junior Division), Pataudi, District Gurugram vide judgment/order dated 06.10.2017. Thereafter, the said impugned order dated 06.10.2017 was challenged by the petitioner by filing Civil Appeal No.32 of 2017 before the Additional District Judge, Gurugram but the same was dismissed on 24.09.2018 being not maintainable.

Aggrieved by both the above said orders, the petitioner has filed the present petition by raising various grounds.

Learned counsel for the petitioner submits that the petitioner has proved all the allegations levelled in the Election Petition by producing oral as well as documentary evidence but those documents have not been taken into consideration. It was a case of casting of bogus votes in favour of returned candidate (respondent No.1). Learned counsel further submits that the votes of some persons, who had already expired and of those who were serving in the Army and not present at the time of election, were polled. It is also the argument of learned counsel for the petitioner that statement of Bhim Singh (PW-8), who had specifically stated in his examination-in-chief that his vote was polled by some other person in the election, has not been taken into consideration. Learned counsel further submits that there was a narrow margin of six votes and in case, had those votes were not polled, the petitioner would have won the election.

Heard arguments of learned counsel for the petitioner and have also perused the impugned orders as well as other documents available on the file.

Facts of the case are not disputed. The election of respondent No.1 was challenged by way of filing election petition by the petitioner by

raising various grounds and following issues were framed on 09.05.2016 by the learned Election Tribunal-cum-Civil Judge (Junior Division), Pataudi ;

- “1. Whether the Election of Sarpanch of the Gram Panchayat of village Tirpari is liable to be set-aside as prayed for ? OPR*
- 2. Whether the present election petition is not maintainable in the present form? OPR*
- 3. Whether the petitioner is estopped from filing the present petition by his own act, conduct and latches? OPR*
- 4. Whether the present petition has not been legally framed and presented as per prescribed rules of Haryana Gram Panchayat and Representation Act ? OPR*
- 5. Whether the present petition is false and bogus and has been purposely designed against the answering respondent just to extract illegal money from the answering respondent? OPR*
- 6. Whether the present petition is bade for want of necessary parties ? OPR*
- 7. Relief.”*

On consideration of all said issues and on appreciation of evidence, the Election Petition was dismissed by stating that no objection was raised by the petitioner at the time of casting of votes. Even two agents of the election, namely, Rajesh and Manoj were not examined by the petitioner. PW-8 Bhim Singh, father of one Surender Army personnel, had deposed that Manoj (agent of petitioner) being his real nephew and was not aware as to whether his son Surender had come on leave on 17.01.2016, which was date of election. It has further been stated by him that when he went to cast his vote at the booth, the agents were sitting in veranda and they could identify the voters. The election was completed in a fair and peaceful manner and no complaint or objection of malpractices was raised by the petitioner or his agent. A finding has also been recorded that from deposition of the witnesses, it could not be proved as to how much amount

was spent by the candidates in the election or any liquor was distributed. PW-3 has further stated that he did not see any person who polled the vote of deceased JalKaur. Even as per statement of PW-7, he did not prefer any application for deleting the names of voters, who were residing out of the village and persons who had died.

The election of respondent No.1 has been challenged on the ground that some bogus votes were polled of the persons, who had either expired or were not residing in the Village at the time of election and there is no evidence that those votes were polled in favour of respondent No.1.

As per case of the petitioner, the Election Petition was filed under Section 176 of the Haryana Panchayati Raj Act, 1994. The allegations are there of 'corrupt practices' having been committed by respondent No.1. The provisions of the said Act relating to corrupt practice are provided in sub-Sections (4) and (5) of Section 176 of the Haryana Panchayati Raj Act, 1994 which are reproduced as under :-

“(4)(a) If on the holding of 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 dis-qualified for the purpose of election and fresh election may be held. [(aa) If on holding such inquiry 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, insofar as 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 candidates 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 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 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.”

On perusal of above said provisions, it appears that the corrupt practice, as defined in sub-Section 5, is found to have been committed in case, the same is proved by way of evidence, the returned candidate can be declared disqualified and fresh election can be ordered. It is to be seen as to whether the result has been “materially affected” on account of improper reception of votes or rejection of votes.

As per case of the petitioner, there was a difference of six votes which were stated to be bogus but it has not been proved on record that those votes were cast in favour of respondent No.1. Learned counsel for the petitioner has not been able to make out his case as to how the election of the petitioner has materially been affected or as to how it is to be presumed that those votes were cast in favour of respondent No.1. The petitioner has failed to prove that those votes were prepared at the instance of returned candidate and were cast in his favour. Mere allegations cannot take place of proof/evidence.

Charge of corrupt practice is quasi-criminal in character. If

substantiated, it leads not only to the setting aside of the election of the successful candidate but also of his being disqualified to contest an election for a certain period. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Firstly, the allegations relating to commission of a corrupt practice is required to be sufficiently clear and is required to be proved by leading specific evidence. To prove charge of corrupt practice a mere preponderance of probabilities is not enough. There is a presumption of innocence available to the person charged but the charge has to be proved and the standard of proof being the same as in a criminal trial.

In the present case, the petitioner has lost the election by margin of six votes and respondent No.1 has won the election. No doubt, it is a narrow margin but the same does not give rise to a presumption that the alleged bogus votes were polled in favour of the petitioner. No positive evidence has been led by the petitioner to show as to whether it was a case of corrupt practice committed by respondent No.1 or the alleged bogus votes were polled in favour of the elected candidate. From casting of vote, it cannot be inferred as to in whose favour, the votes are casted. The right to cast a vote is secret and nobody can know as to in whose favour the vote is casted. Simply, it has been said that the bogus votes were got prepared by respondent No.1 and those votes were casted in his favour. For proving that bogus votes were prepared at the instance of respondent No.1 or by him or casted in his favour, the material evidence was required to be adduced by the petitioner. Even at the time of casting of vote, no objection was raised by the petitioner himself or by his agent. The appeal against the order of learned Tribunal has been dismissed being not maintainable as the remedy

was only to file writ petition before the High Court and not the appeal before the Additional District Judge, Gurugram (Haryana).

Accordingly, by considering the submissions made by learned counsel for the petitioner and on perusal of both above said judgments, no ground is made out to interfere and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

10.05.2019
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No