

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 13776 of 2016
Date of Decision: 15.1.2019

Rajesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Suneel Ranga, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Vikram Singh, Advocate
for respondent No. 9.

A.B. CHAUDHARI, J (ORAL)

The petitioner herein challenges the declaration of result dated 10.1.2016 (Annexure P-5), impugned order dated 10.1.2016 (Annexure P-6) and notification dated 10.2.2016 (Annexure P-12) in the matter of election for the post of Sarpanch of village Pathri, Block Israna, District Panipat.

The principle ground on which the present writ petition has been filed is that the procedure, required to be followed, when there are equal number of votes to the candidate winning the election and the rival petitioner, was not followed as laid down in the Act and the Rules. The averments of the petition itself indicates that the petitioner relied on the Full Bench judgment of this Court in the case of *Prithvi Raj versus State Election Commission, Punjab and others 2007 (3) PLR 453* and some

other judgments of this Court to buttress the contention that the writ petition would be maintainable rather than the election petition. According to the learned counsel for the petitioner, the High Court can bypass the self imposed rule not to entertain a writ petition in the extra ordinary writ jurisdiction when according to him, it is a glaring case that exists in favour of the petitioner as there is evidence in the form of videography and report of State Election Commissioner and District Election Officer.

Learned counsel for the petitioner further contended that taking note of this judgment referred by him, this Court issued notice of motion and, thus, entertained the present writ petition. He then went on to submit that this Court also ordered production of video recording as well as the original slips from BDPO and the same were ordered to be kept in the custody of learned Additional Advocate General, Haryana and that the petitioner will see the video recording as well as the original slips. He firmly states that he did not file the election petition and chose to pursue the present writ petition. He also argued that Section 176(4)(a)(iii) of the Haryana Panchayati Raj Election Act, 1994 does not enable the petitioner to raise the ground regarding amendment of provisions of Act and the Rules in the subject matter of the present petition and therefore, this petition is required to be decided by this Court.

Per contra, the learned counsel for the respondents opposed the writ petition and submitted that in the contents of the petition, the petitioner is projecting all the disputed question of facts which can be decided only on evidence, further in the test of cross-examination. The correctness of the video recording or the original slips etc. cannot be found out by this Court without recording of evidence. There is further submission by the learned

counsel for the respondents that Section 176 (4) (a) (iii) of the Haryana Panchayati Raj Election Act, as amended in 2001, provides for presentation of election petition and in the wake of the statutory remedy of election petition provided by law. The remedy of filing the writ petition in extra ordinary writ jurisdiction before this Court is not available and there is no reason why the writ petition should be entertained. According to the learned counsel for the private contesting respondent, after the amendment in 2001 in Haryana Panchayati Raj Election Act and Constitutional Panchayati Raj Amendment, the remedy by way of election petition is the only remedy that can be undertaken.

We have heard the learned counsel for the rival parties.

Article 243-O of the Constitution of India read thus:-

Bar to interference by courts in electoral matters.—

Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Clause (b) of Article 243-O of the Constitution of India clearly states that no election to any Panchayat shall be called in question except by an election petition presented to such authority provided by law. The amended provision in the Constitution in Panchayati Raj Amendment Act, 1973, is loud and clear and there is no reason why Constitutional Court exercising its extra ordinary writ jurisdiction should entertain a writ

elections to Municipal Council citing Article 243 (ZG) (b) of the Constitution, it was held that the election petition is the remedy. In this context, let us have a look at Section 176 (4) (a) of the of the Haryana Panchayati Raj Election Act, 1994 which reads thus:-

176. Determination of validity of election enquiry by judge and procedure

x x x x x

(4) (a) If on the holding 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 disqualified for the purpose of election and fresh election may be held.

[(aa) If on holding such enquiry 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, in so far 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.]

Perusal of the above 4(a)(iii) of Section 176 of the Act shows

that for violation of any provision of constitution, Act or the rules or the

orders made under the Act can be a ground for challenging the election of a

returned candidate by filing election petition. We, therefore, find that the submission of counsel for the petitioner is wrong, who states that this cannot be a ground which could be taken in the election petition.

The next contention of the learned counsel for the petitioner is that since this Court passed interim orders from time to time and entertained the writ petition after filing it, this Court ought not to refuse granting relief to the petitioner. In our opinion, making of interim orders in the present writ petition by this Court would not make any difference as those interim orders would merge in the present final judgment.

It is a well settled legal position particularly in the case of election matters that the elections are governed by the statute and not by common law considerations. An election petitioner is bound to follow the provisions of the statute. In that view of the matter, we are of the view that the remedy of filing of election petition before the appropriate Tribunal was available to the petitioner who has instead opted to file the present writ petition.

Learned counsel for the petitioner further submits that he had earlier filed two petitions in this Court after the result of elections was declared and this Court had issued certain directions to the Election Commissioner, State Election Commissioner and Deputy Election Commissioner. We are afraid such directions could be given after the declaration of the result of elections in the light of the bar under Article 243-O(b).

Learned counsel for the petitioner next contended that this Court should allow the petitioner to file election petition now because the present writ petition was filed *bona fide* and that too within one month of

the declaration of the result of elections. We do not agree with the submission made by the learned counsel for the petitioner since at the outset we do not find that there are any *bona fides* in filing the writ petition directly. The petitioner is deemed to know the aforesaid bar. He cannot say that he did not know the law. Secondly, we find that the legal rights have now been crystallized in favour of the elected person which cannot be disturbed in the manner suggested by the learned counsel for the petitioner. We are, therefore, not impressed with the submission made by learned counsel for the petitioner

In the result, we find that the present writ petition is bereft of any merit. Hence, we make the following order:-

ORDER

- (i) CWP No. 13776 of 2016 is dismissed.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

January 15, 2019

Gurpreet

Whether speaking/ reasoned: Yes
Whether Reportable: Yes