

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.215

CWP No.17025 of 2018 (O&M)

Date of decision : 16.5.2019

Ajay Kumar

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

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

Present: Mr. Sunny Bhardwaj, Advocate, for the petitioner.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

Mr. Amit Jhanji, Advocate, for respondent No.3.

Mr. Jagdish Manchanda, Advocate, for respondent No.4.

SUDHIR MITTAL, J.

The petitioner is aggrieved by the election of respondent No.3 as the President of Municipal Committee, Biwani Khera.

In the year 2018, election was held for electing members of Municipal Committee, Biwani Khera and total of 15 members were elected including the petitioner. On 22.6.2018, the Sub Divisional Magistrate convened a meeting for election of President and Vice President. The election was held and the petitioner and respondent No.3 received 08 votes each. 16 votes were cast as the local MLA (respondent

No.5) was also present and was entitled to vote. Thereafter, respondent No.3 was declared elected by draw of lots.

Learned counsel for the petitioner submits that procedure prescribed under Rule 72 of the Haryana Municipal Election Rules, 1978 (for short “the Rules, 1978”), was not followed inasmuch as, the slips for draw of lots were not got signed by the petitioner or respondent No.3 nor shown to the members present there. It is further stated that the petitioner was not present at the time of draw of lots (although no such plea has been taken in the writ petition) and thus, the election of respondent No.3 is void.

Replies have been filed on behalf of respondent Nos.3 and 4. In the reply filed on behalf of respondent No.3, it is urged that writ petition is not maintainable in view of Article 243 ZG of the Constitution of India as well as Rule 74 of the Rules, 1978. Further, it is stated that Rule 72 of the Rules, 1978 has been strictly complied with. The petitioner was present in the meeting as is evident from Annexure R3/1 and thus, it cannot be said that there was any illegality committed by the Returning Officer. No objection was raised by the petitioner at the time of the election thus, the petition has been obviously filed on the basis of afterthought. The writ petition is liable to be dismissed on the ground of maintainability as well as on merits.

Article 243 ZG of the Constitution and the provisions of the Rules, 1978 have been interpreted by a larger Bench of this Court in **‘Prithvi Raj Vs. State Election Commission, Punjab and others, 2007**

(3) RCR (Civil) 817' and it has been held that a dispute arising out of an election process must be challenged through an election petition.

The judgment of **'K. Vankatachalam Vs. A. Swamickan, 1994 (3) RCR (Civil) 110'**, relied upon by the petitioner is distinguishable as it does not make any exposition to the contrary. It only states that a candidate who is patently disqualified from holding legislative office cannot be permitted to hold the office by holding that a writ petition is not maintainable in view of Sections 191 and 193 of the Representation of The People Act, 1950.

The question regarding the absence of the petitioner at the time of draw of lots has to be answered against him because he raised this issue only at the time of arguments without relevant pleadings. Also, the record of the meeting records his presence and it cannot be believed that he left the meeting when lots were being drawn. He has also failed to show that objections were raised against the alleged illegalities committed at the time of draw of lots because the representation relied upon by him is dated 29.6.2018. The argument that he raised objections against the procedure adopted at the time of conducting draw of lots is in any case misplaced and liable to be rejected because it is diametrically opposed to his first argument that he was not present when the lots were drawn. Moreover, this fact has also not been pleaded in the writ petition.

The issue whether the slips used for draw of lots were shown to the concerned candidates and got signed by them or not is a matter of evidence and an election petition would be the appropriate remedy in such situations.

In view of the above, the writ petition is dismissed on the ground on maintainability as well as on merits

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

16.5.2019
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No