

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 111

Case No. : C.W.P. No. 5605 of 2020

Date of Decision : March 02, 2020

Geeta Rani

.... Petitioner

vs.

State of Haryana and others

.... Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. Ranjit Saini, Advocate
for the petitioner.

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MEENAKSHI I. MEHTA, J. :

Aggrieved by the order, passed by the Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri on 10.10.2019, whereby the Election Petition preferred by the writ petitioner had been dismissed being not maintainable on the ground of limitation, she has chosen to file the present writ petition.

2. Bereft of unnecessary details, the factual matrix as set-forth by the petitioner in the petition in hand, is that she, alongwith respondent no. 7 Rajni Devi, contested the election for the post of *Panch* from Ward No.2, Village Bukhari, Tehsil Jagadhri, District Yamuna Nagar which was held on 10.01.2016. Total 106 votes were polled from the said ward, out of which she secured 60 votes whereas respondent no.7 got 46 votes and accordingly,

she was declared elected. She took oath as a *Panch* and attended the *Panchayat* meetings during the period from 28.02.2016 to 15.07.2016. However, on 24.10.2016, she came to know through the *Gram Sachiv* that her name did not figure in the list of *Panches* whose bank account numbers were to be submitted for disbursing their salary.

3. Petitioner moved an application to the Block Development and Panchayat Officer (BDPO) on 25.10.2016 and thereafter, to respondent no.3 on 28.10.2016 seeking correction in the result of the said election but in vain. Thereafter, she filed **CWP No. 4890 of 2017** which was disposed of by this Court on 10.03.2017 while directing respondents no.3 and 6 to consider both her above-mentioned representations and to pass speaking order thereon, in accordance with law. Thereafter, an inquiry was got conducted through respondent no.6 and in view of the report thereof, respondent no.3 passed an order on 05.05.2017 to the effect that as per the record, election of Rajni Devi was correct and in case, the petitioner wanted re-counting of votes, she had to approach the Court of law. Accordingly, the petitioner preferred **CWP No.14426 of 2017** for seeking re-counting of votes as polled in the afore-mentioned election, which was decided by this Court vide order dated 07.07.2017 wherein liberty was granted to the petitioner to file an Election Petition, if so maintainable, at that stage. In pursuance of the said order, she preferred Election Petition under Section 176 of the Haryana Panchayati Raj Act, 1994 (for short 'the Act of 1994') for seeking direction to respondents no.1 to 4 for re-counting of the votes.

However, respondent no.5 moved an application therein under Order 7 Rule

11 CPC for rejection of the plaint on the ground of limitation and the same has been decided vide the impugned order which is not legally sustainable because the Election Petition should have been decided on merits.

4. We have heard learned counsel for the petitioner in the petition in hand and have also perused the file thoroughly.

5. Learned counsel for the petitioner contends that the Election Petition should have been decided on merits instead of dismissing it on the sole ground of limitation. Moreover, the petitioner had been participating in the meetings of *Panchayat* and had been signing the resolutions. She came to know regarding the factum of respondent no.7 having been elected as *Panch* on 24.10.2016 only and then, she moved representations to respondent no.3 and the BDPO concerned which were decided on 05.05.2017 in pursuance of the directions, as given by this Court in **CWP No.4890 of 2017** on 10.03.2017. Thereafter, the petitioner was constrained to file **CWP No.14426 of 2017**, wherein she was granted the liberty to file the Election Petition, which was filed on 31.07.2017 and hence, while computing the period of limitation, the time spent in the above-mentioned proceedings is required to be excluded.

6. However, we do not find any merit in the afore-discussed contentions raised by the learned counsel for the petitioner. Admittedly, the said election was held on 10.01.2016. Though the petitioner has placed on record Annexures P-1 to P-9, i.e. the copies of the proceeding book pertaining to the proceedings carried out by the *Gram Panchayat* of Village Bukhari on several occasions during the period from 28.02.2016 to

15.07.2016 wherein the petitioner had been shown to be one of the signatories and even if her version regarding her having come to know about the factum of respondent no.7 having been declared as the *Panch* is presumed to be true, even then the fact remains that the representations, as moved by her to the BDPO and respondent no.3 were decided on 05.05.2017 in pursuance of the directions of this Court as given vide the aforesaid order dated 10.03.2017 (Annexure P-13). Though subsequent thereto, she moved another writ petition which was decided by this Court on 07.07.2017 (Ex.P-16) but while dismissing the same, it has been specifically observed therein that in case of any factual dispute regarding total cancelled votes, the petitioner would be at liberty to file Election Petition, if so maintainable, at that stage.

7. In **Suman Devi vs. Manisha Devi and others** reported in **2018 AIR (SC) 3912**, the Hon'ble Apex Court has made following observations :-

“9. The Haryana Panchayati Raj Act 1994 is a complete code for the presentation of election petitions. The statute has mandated that an election petition must be filed within a period of 30 days of the date of the declaration of results. This period cannot be extended. The provision of [Section 14](#) of the Limitation Act 1963 would clearly stand excluded. The legislature having made a specific provision, any election petition which fails to comply with the statute is liable to be dismissed. ...”

8. It has also been held by this Court in **Deepak Mangla vs.**

Nanakchand and others reported in **2015 (24) RCR (Civil) 806** that

“Election Petition is just like a suit and the provisions of the Limitation Act, 1963 are not applicable to it for the purpose of condonation of delay. The Election Tribunal was erroneous in condoning the delay only on the ground that the respondents were pursuing the remedy of Writ Petition and had filed the Election Petition immediately after withdrawing the same and hence, it was within the period of 30 days though the High Court had directed the Election Tribunal to consider the application for condonation of delay, if permissible pursuant to law.”

9. In view of the afore-discussed observations, it becomes crystal clear that the Election Petition, as dismissed vide the impugned order, was time barred in view of the provisions as contained in Section 176 of the Act of 1994 and since the question of the maintainability of the Election Petition on the ground of limitation goes to the roots of the entire matter, therefore, the Election Tribunal cannot be held to have erred in deciding the same vide the impugned order.

10. Resultantly, this petition being sans merit, is dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

March 02, 2020
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.