

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

CWP No.7401 of 2018

Date of Decision: 03.07.2020

Jitender Singh

....Petitioner

Versus

Harvinder Singh and others

....Respondents

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

Present:- Mr. Samrat Malik, Advocate
for the petitioner.

Mr. Chetan Salathia, Advocate
for respondent No.1.

DAYA CHAUDHARY, J.

Petitioner-Jitender Singh has approached this Court by way of filing the present petition under Articles 226/227 of Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of impugned order dated 19.02.2018 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Samalkha. A further prayer has also been made for setting aside the election of respondent No.1 (Harvinder Singh) who was declared elected as *Sarpanch* of Village Dhansoli in the election held on 24.01.2016 and to declare the petitioner as *Sarpanch*.

Briefly, the facts of the case as made out in the petition, are that the election for *Sarpanch* of Village Dhansoli, Block Sanoli Khurd, Tehsil Bapoli, District Panipat (Haryana) was held on 24.01.2016. Two persons, namely, Jitender Singh (the present petitioner) and Harvinder Singh (respondent No.1) filed their nomination papers for contesting said election.

The result was declared on the same date. The petitioner got 958 votes, whereas, respondent No.1 got 963 votes. There was a difference of five votes. Meaning thereby, respondent No.1, namely, Harvinder Singh was declared elected by a margin of five votes.

The election of respondent No.1 was challenged by the petitioner by way of filing the Election Petition before the Additional Civil Judge (Senior Division)-cum-Election Tribunal, Samalkha by raising various grounds.

The Election Petition filed by the petitioner was dismissed vide impugned order dated 19.02.2018, which is the subject matter of challenge before this Court.

Learned counsel for the petitioner submits that some bogus and illegal votes were casted by some persons and some of the persons also casted their votes in two different wards. In some of the cases, some persons casted their votes of those persons who were not present even on the date of election. The details of the persons whose votes were casted and were not present were mentioned in the election petition. Learned counsel also submits that since the difference was of five votes and in case, those votes were not allowed to be casted, the petitioner would have won the election. Learned counsel also submits that it was a case of corrupt practice which has materially and adversely affected the result of the election. Learned Magistrate has failed to appreciate the evidence produced by the petitioner. He further submits that while dismissing the election petition, the learned Magistrate has given a finding that the votes were casted by the persons, who were not registered as voters against particular serial numbers but the arguments raised in that context were not considered. Learned counsel also

submits that bogus votes were permitted to be casted by two different voters by showing the same I.D in the same booth whereas those votes should have been declared invalid. Such act of corrupt practice has materially and adversely affected the result of the election against the petitioner.

Learned counsel for the petitioner has relied upon the judgments of this Court in cases ***Badlu Ram vs Ram Niwas and others 1997(2) RCR (Civil) 439*** and ***Inderjit vs Jai Tirath and others (Election Petition No.9 of 2014, decided on 25.09.2019)*** in support of his arguments.

Learned counsel for respondent No.1 has opposed the submissions made by learned counsel for the petitioner and submits that there was no evidence before the learned Magistrate to prove that the alleged invalid votes were casted at the instance of elected candidate. No evidence was produced on record to show that the fraud was played by the elected candidate. Even no objection was raised at the time of voting or counting of votes. Even it was not proved on record as to how the result of the election has materially been affected.

Learned counsel has also opposed the submissions made by learned counsel for the petitioner on the ground that it was not a case of corrupt practices adopted by the elected candidate. The petitioner has not been able to prove any fraud or any role to show that the votes of those persons, who casted vote in favour of elected candidate, were prepared at the instance of elected candidate. The election petitioner has failed to bring on record some evidence to prove irregularity or illegality at the instance of elected candidate in preparing voter list or during counting the votes. The election petitioner was present at the time of casting as well as counting of votes and no such complaint was made either against the elected candidate

or against the Returning Officer.

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

The facts relating to date of election, filing of nominations and declaration of result as well as filing election petition and dismissal thereof are not disputed. The Election Petition of the elected candidate (respondent No.1) has been challenged on the ground that there was a difference of five votes and bogus votes were casted by some persons in different booths and some of the votes were casted of those persons whereas they were not present on that date. It was also the ground that some votes were wrongly rejected. The allegation of corrupt practice has been alleged against the elected candidate as well as the Returning Officer but it has not been proved on record by way of evidence. The fraud or collusion in casting votes have not been proved on record. Nothing has been proved on record as to how the elected person adopted corrupt practice and bogus votes were prepared and casted at the instance of elected candidate.

On perusal of findings recorded by the learned trial Court, nothing has come on record that the voter list was prepared at the instance of elected candidate and how and what corrupt practice was adopted by him at the time of preparation or casting of votes. It has not been proved on record that such alleged votes which were bogus and illegal were casted in favour of the elected candidate. Moreover, no objection was ever raised during election or counting of votes. The election was held through secret ballot and it could not be proved on record as to who were the persons who casted votes of some of the dead persons and absentees and in whose favour

those votes were casted. The allegations of fraud and collusion were not proved by the election petitioner.

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 required to be proved by way of evidence and the returned candidate can be declared disqualified and fresh election can be ordered without any such evidence. 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 five votes which was stated to be because of casting of bogus votes but it has not been proved on record that those votes were cast in favour of respondent No.1 at the instance of elected candidate. 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 are 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 a margin of five votes and respondent No.1 had 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 his favour. 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 the casting of votes, it cannot be inferred as to in whose favour, those votes are casted. The right to cast a vote is by secret ballot and nobody can know as to in whose favour the vote was 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 judgments cited by learned counsel for the petitioner are not applicable keeping in view the facts and circumstances of the present case.

Accordingly, by considering the submissions made by learned counsel for the petitioner and on perusal of order dated 19.02.2018 (Annexure P-6) passed by the Additional Civil Judge (Senior Division),

Samalkha, we find that the findings and conclusions recorded by the learned Election Tribunal are based on material evidence on record. No illegality or perversity has been pointed out by learned counsel for the petitioner. The findings are well reasoned and are not perverse in any manner which requires any interference by this Court in exercise of the writ jurisdiction under Articles 226/227 of the Consitution of India and no ground is made out to interfere and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

03.07.2020
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No