

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11198-2021

Date of decision: 01.07.2021

Raghubir Singh

....Petitioner

V/s.

The State of Punjab and others

.....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Avnish Mittal, Advocate for the petitioner.

Mr. S.P.S.Tinna, Additional Advocate General, Punjab.

Mr. Pankaj Jain, Senior Advocate, assisted by
Mr. Vivek Singla, Advocate for respondent No.5.

Ritu Bahri, J.

The petitioner is seeking quashing of order dated 04.05.2021 (Annexure P-6) whereby respondent No.2, while accepting application filed by private respondent-Harjinder Singh had impleaded Executive Officer, Municipal Council, Mandi Gobindgarh as necessary party in the Election Petition. The petitioner is also seeking writ of mandamus to transfer the Election Petition dated 23.03.2021 (Annexure P-3) to any other competent court of jurisdiction on the ground that the Returning Officer who is impleaded as respondent No.1 in the Election Petition, is the SDM who had conducted the election. He was the Presiding Officer and is a party in the litigation (Election Petition) and he cannot be a judge in his own cause.

Mr. Avneesh Mittal, learned counsel for the petitioner has argued that elections for Municipal Council, Mandi Gobindgarh, Amloh, District Fatehgarh Sahib were conducted on 14.02.2021 and as per the certificate dated 17.02.2021 (Annexure P-2), petitioner was elected from

ward No. 29 of Municipal Council, Mandi Gobindgarh. Respondent No. 5—Harjinder Singh filed an Election Petition (Annexure P-3) before the Election Tribunal and during the pendency of Election Petition, he filed an application dated 04.05.2021 (Annexure P-5) to implead the Executive Officer, Municipal Council, Mandi Gobindgarh.

The grievance of learned counsel for the petitioner is that without issuing notice to the petitioner, impleadment application has been allowed vide impugned order dated 04.05.2021 (Annexure P-6).

As far as ground for setting aside the order dated 04.05.2021 (Annexure P-6) is concerned, reference can be made at the outset to the provisions of Order 1 Rule 10(2) CPC which are reproduced as under:-

“Court may strike out or add parties:-The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

Further Section 81 of the Punjab State Election Commission Act 1994 (for short, Act 1994), is reproduced as under:-

81. Procedure before the Election Tribunal— (1) Subject to the provisions of this Act and of the rules made thereunder, every election petition shall be tried by the Election Tribunal, as nearly as may be, in accordance with the procedure contained in the Code of Civil Procedure, 1908, (Central Act 5 of 1908) to the trial of suits: Provided that the Election Tribunal shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is

of the opinion that the evidence of such witness or witnesses is not material for the decision of the election petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings of the election petition (2) The provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872) shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

As per Section 81 of the Act 1994, the Election Tribunal while entertaining Election Petition, has to follow the principles of Code of Civil Procedure. Hence as per Order 1 Rule 10(2) CPC, the Court on its own motion can also implead party necessary in a civil suit. Even if in the present case, notice was not given to the present petitioner, who was respondent No.2 in the Election Petition, application for impleading the Executive Officer, Municipal Council, Mandi Gobindgarh could have been allowed *suo moto* by Election Tribunal. Moreover, the Executive Officer, Municipal Council, Mandi Gobindgarh had assisted the Returning Officer in the entire election process since he was having custody of relevant record.

Hence, no ground to interfere in the impugned order dated 04.05.2021 (Annexure P-6) is made out.

Writ petition is dismissed.

(RITU BAHRI)
JUDGE

01.07.2021
Divyanshi

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No