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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-8323-2023****Date of Decision: April 21, 2023****Jakriya and another**

..... Petitioners

Versus**State of Haryana and others**

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Rajesh Lamba, Advocate for the petitioners.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside result dated 12.11.2022 of the election to the post of Sarpanch, Gram Panchayat, Rahaka, Tehsil Sohna, District Gurugram whereby respondent No. 4 has been declared to be elected candidate. There is a further prayer for a direction to respondent No. 2 to correct anomalies occurring in the voters list and to conduct re-election to the abovesaid post of Sarpanch.

2. It is submitted that petitioners are the contesting candidates, who lost election to respondent No. 4. Challenge has been raised to election of respondent No. 4 to the post of Sarpanch, Gram Panchayat, Rahaka, Tehsil Sohna, District Gurugram on the ground that bogus votes were cast in this election. It is contended that difference of votes polled in favour of respondent No. 4 and petitioner No. 1 is of seven votes only whereas

petitioners have given a list of nine votes, which have been erroneously cast and that too in favour of respondent No. 4. It is contended that allegations as are being raised are not covered under the provision of Section 176 of the Haryana Panchayati Raj Act, 1994 (for short – ‘1994 Act’), therefore, present writ petition is maintainable. It is submitted that bogus votes have been cast blatantly, therefore, election was far from free or fair, thus, the same should be set aside and re-election conducted for the post in question.

3. Heard, learned counsel for the petitioner and have gone through the file with his able assistance. However, we do not find any ground whatsoever to interfere in this matter in exercise of jurisdiction under Article 226 of the Constitution of India.

4. In a similar situation wherein election to the post of Sarpanch was challenged on the basis of casting of bogus votes, this Court in CWP-26255-2022 has dismissed the same. Similar arguments as have been raised before us, were raised in the said writ petition as well. There is a clear cut bar to interference by Courts in electoral matters as provided in Article 243-O of the Constitution of India. Section 170 of 1994 Act also provides a bar for interference in election matters. In a long line of cases, the Hon’ble Supreme has consistently held that though jurisdiction of the High Court under Article 226 of the Constitution of India is not ousted in matters related to elections, it is a rule of prudence whereby the High Court while exercising self-restraint would not interfere in the matter, especially if the petition presented before it ‘calls in question an Election’. Anything done towards completion or furtherance of the election proceedings, it has been held, cannot be described as questioning the election and these are the situations

case, petitioner is clearly calling in question the election at hand. Hon'ble Supreme Court in the case of **Election Commission of India through Secretary Vs. Ashok Kumar and others, 2000 AIR (Supreme Court) 2979** while referring to its earlier judgments in the case of **N.M. Ponnuswami Vs. Returning Officer, Namakkal Constituency and others, 1952 AIR 64** and **Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi, 1978 (1) SCC 405** held as under:-

“28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of over-enthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

29 xxx xxx xxx

30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution. The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill's case (supra). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies

are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the Courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. The founding fathers of the Constitution have consciously employed use of the words 'no election shall be called in question' in the body of Article 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court 'calls in question an election' the bar of Article 329(b) is attracted. Else it is not.”

5. Argument that the ground of bogus votes being cast cannot be a ground for setting aside an election in the Election Petition is devoid of any merits. Plain reading of Section 176 of the 1994 Act which provides for presentation of an election petition by the unsuccessful candidate or a qualified voter negates this plea. Section 176 (4) (aa)(iii) of 1994 Act reads as under:-

“S.176 Determination of validity of election enquiry by Judge and procedure.

(4) (aa) If on holding such enquiry the Civil Court finds that –

i) XXX XXX XXX

ii) XXX XXX XXX

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

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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.”

6. Hence, this argument is rejected being bereft of any merit.

7. In our considered opinion, learned counsel for the petitioner is unable to point out any ground whatsoever for exercise of jurisdiction under Article 226 of the Constitution of India for setting aside the election in question and ordering re-count of votes, which in any case would be matter of evidence before the appropriate Forum.

8. No other argument has been addressed.

9. Keeping in view the facts and circumstances as above, this writ petition is dismissed with no order as to costs. Needless to say there is no expression of opinion on the merits of the controversy sought to be raised.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

April 21, 2023
Rimpal/Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No