

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2252-2024 (O&M)
Date of Decision:-19.04.2024

SURESH

... Petitioner

Versus

DISTRICT ELECTION OFFICER, JIND AND OTHERS

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Anil Rathee, Advocate with
Mr. Nitin Rathee, Advocate
for the petitioner(s).

RITU TAGORE, J. (Oral)

1. This revision is directed against the order dated 02.04.2024 (Annexure P-6) passed by learned Civil Judge (Junior Division), Jind in election petition No.01-2022, dismissing the application (Annexure P-4) moved by petitioner (Respondent No.1 before the learned Trial Court) for not opening the summoned election record till an application is moved and is decided by the Court.

2. Learned counsel for the petitioner (Respondent No. 1 before Trial Court) contends that Respondent No.2-Sandeep Kumar, filed an election petition under Section 176 of The Haryana Panchayati Raj Act, 1994, titled Sandeep Kumar Vs Suresh and Others bearing E.P No.01/2022, challenging the election of the petitioner for the post of Sarpanch of village Brah Kalan, Tehsil and District Jind, held on 02.11.2022 and in alternate for

re-election, on various grounds. In the aforementioned election petition, the Respondent No.2-Sandeep Kumar put an appearance and filed an application (Annexure P-1) for preservation of the election record held on 02.12.2022, and the aforementioned application was allowed vide order dated 10.04.2023 (Annexure P-3).

3. Learned counsel for the present petitioner further contended that respondent No.2-Sandeep Kumar summoned the witnesses with complete record of election in question. By referring to Rule 73 (d) of The Haryana Panchayti Raj Election Rules 1994 (in short referred to as 'the Rules'), argued that record is sealed and cannot be opened until an application for this purpose is moved and order is passed by the learned Court to open the record. The petitioner moved an application (Annexure P-4) for not opening the record until the compliance of Rule (*ibid*) is made. It is stated that no such application has been moved in the petition by any of the parties much less by respondent No.2-Sandeep Kumar (petitioner before learned Trial Court). Rather, respondent No.2-Sandeep Kumar filed the reply (Annexure P-5) opposing application moved by present petitioner (Suresh). Learned Trial Court after hearing the parties, dismissed the aforesaid application vide impugned order dated 02.04.2024 (Annexure P-6). It is stated that learned Trial Court without adverting to the provisions of Rule 73(d) of the Rules, passed the order, which does not meet the requirement of the Rule (*abid*) and is not sustainable in the eyes of law, and should be set aside.

4. I have heard learned counsel for the petitioner and have gone through the paper-book with his valuable assistance.

5. It is matter of record that respondent No.2-Sandeep Kumar, filed an election petition under Section 176 of Haryana Panchayati Raj Act, 1994 for setting aside the election held dated 02.11.2022, whereby Suresh (respondent No. 1 before Trial Court), was elected as Sarpanch of village Brah Kalan, Tehsil and District Jind and to declare him (respondent No. 2) as elected Sarpanch of the village Brah Kalan, Tehsil and District Jind, and in alternate prayed for re-election for the post of the Sarpanch of Gram Panchayat of the village Brah Kalan, Tehsil and District Jind.

6. The petitioner (Suresh) has primarily assailed the impugned order (Annexure P-6), pleading that it does not meet the requirement of Rule 73 (d) of Haryana Panchayati Raj Election Rules, 1994. It would be apposite to refer to Rule 73 of Haryana Panchayati Raj Election Rule, 1994, which reads as under:-

73. Production and inspection of election papers-While in the custody of the District Election Officer (Panchayat)-

- (a) the packets of unused ballot papers
- (b) the packets of used ballot papers whether valid, tendered or rejected; and
- (c) the packets of marked copies of the voter list;
- (d) shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the order of a civil court or competent authority.**

7. The impugned order dated 02.04.2024 (Annexure P-6) is also extracted herein under for ready reference:-

“Arguments heard on the application moved by the respondent no. 1 for not opening the election record summoned by the court on request of petitioner.

2. The application has been moved with the averments that the application for preserving the record of election dated 02.11.2022 of Gram Panchayat Brah Kalan has been allowed by this Court. The petitioner on 06.12.2023 has summoned the witnesses with register of voters, Electoral role of village Brah Kalan and complete record pertaining to election dated 02.11.2022 from election office Jind. The record is sealed and could not be opened until the application for this purpose is moved by the petitioner. The respondent no. 1 has accrued that he has objection in opening the sealed record till the application is moved in this regard by the petitioner and the same is decided by this Court. It is averred that witness who has been summoned to prove the record is not competent to prove the same. It is prayed that the summoned election record be placed on case file in sealed condition and same may not be opened till the application of the petitioner in this regard is moved and the order by this court is passed in this regard. With these submissions a prayer to allow the application has been made.

3. The reply has been filed by petitioner stating that the application is not maintainable and the application has been filed to cause the delay in the decision of the petition. Until the summoned record is opened, no purpose would be served by placing the same on record. The adjudication of the application would not be possible without opening the record. The relevant election record is to be produced before the court under Section 62 and 63 of the Indian Evidence Act and the same is to be opened as proof of relevant facts and is required to be inspected by the court for adjudication of the case. The respondent no. 1 is having fear in his mind against the opening of summoned election record. The summoned record

is public document and is being produced from the custody of official in whose possession the custody record is kept. The official summoned to produce the record is competent to prove the same being public official having custody of summoned record. Remaining averment of the application have been denied and the prayer for dismissal of the application has been made.

4. I have heard the learned counsel for the both the parties and have perused the case file carefully.

5. Present is the election petition vide which the petitioner has challenged the election dated 02.11.2022 held for the post of Sarpanch of village Brah Kalan. The petitioner has claimed that the respondent no. 1 has wrongly been elected as Sarpanch of Village Brah Kalan as many persons mentioned in para 4 of the petition have not casted their vote. It is pleaded by petitioner that persons mentioned in table A from serial no. 1 to 24 had expired. Persons mentioned in table B from 25 to 28 were living out side village/abroad and persons mentioned in table C of para 4 of petition were serving in different organizations including Army.

6. At this stage, the petitioner has summoned the record related to the register of voters, electoral role of village and the record of Panchayat election held on 02.11.2022. This record has been preserved by the order of this court.

7. The petitioner has challenged the election vide present petition on ground of corrupt practices in the election. The petitioner wants to produce the election record to prove that some fake votes have been casted in the elections. The record that which voter has casted vote in favour of which candidate is not intended to be proved on record by the petitioner. Same can also not be permitted as it will violate the provision of secret ballot. The petitioner at this stage is also not praying for the recounting of votes. The petitioner just intends to place on record the data to show that which

person was enrolled in the electoral role of village as voter and that which voter has casted the vote in the elections. The petitioner is also not praying for bringing on record the fact that which candidate has casted vote in favour of which candidate.

8. As far as the evidence to prove the names of enrolled voters and names of persons who have casted the votes is concerned, the same is not against the secrecy of ballot in the elections. No right of any party is going to be prejudiced by bringing this material on record. No purpose will be served by preserving the record of the election if the same is not permitted to be opened in the court.

9. As far as the version of the respondent no. 1 that the election record cannot be opened until and unless the prayer is made in this regard in writing by the petitioner is concerned, the case is at this stage of petitioner evidence. The petitioner has moved the application for depositing the process fee to summon the witnesses to produce the record of the election office. The application has been allowed. PF/DM of witnesses have been deposited. The witness has come present in the court alongwith record.

10. In my considered opinion the application of the petitioner moved initially for preservation of the record of the election and his application for depositing the expenses of the witnesses of the election office and prayer to summon the witness of the election, office is sufficient to show that he is very much interested in getting this witness examined. These applicants have already been allowed. Therefore no separate formal application on his behalf was/is required to prove the record in question. It is therefore, held that the objections raised by the respondent no. 1 in this regard is meritless. Therefore, the application moved by the respondent no. 1 is hereby dismissed.

11. The petitioner is permitted to get the witness from the election office examined in support of his case whose PF/DM he has already

deposited. However the admissibility and the evidentiary value of this record will be decided at the appropriate stage. It is clarified that petitioner would be entitled to summon the record which has been expressly permitted in the present application. If the petitioner wants to place on record any other material from the election office he would be required to seek the permission of the court in writing in this regard.

12. The application moved on behalf of respondent no. 1 is accordingly dismissed. However, nothing observed herein shall have any bearing on the merits of the case.

13. Now to come upon 19.04.2024 for evidence of the petitioner.”

8. The perusal of the impugned order read in the light of the Rule (*ibid*), it is explicit that objections raised by the petitioner-Suresh by moving an application for ‘not allowing the sealed record to be opened and its decision by the learned Trial Court thereon’ (Annexure P-4) has been dealt with, in detail. The learned Trial Court after delving upon the rival contentions of the parties, dismissed the application of the petitioner and allowed Sandeep Kumar (petitioner before the learned Trial Court) to summon the record as permitted by the learned Trial Court, and further allowed to place on record any other material from the election office by seeking prior permission of the Court by moving an application in said regard. Thus, to construe that the learned Court has not passed any specific order in compliance of Rule 73(d) is untenable. Though Rule (*ibid*) provides that record of election shall not be opened, inspected or produced before any authority except under the Orders of Civil Court or Competent Authority, however, in the impugned order it is categorically observed by the learned Trial Court that applications moved by respondent No.2-Sandeep Kumar, to

preserve and produce the record, and summon the witnesses have already been allowed. The learned trial Court also observed that no separate application in aforesaid context was required. So, the contention of learned counsel for the present petitioner that there was no such request made is factually wrong. Further, learned trial Court also observed that Sandeep Kumar (petitioner before Trial Court) wants to prove the data of enrolled voters and the names of persons who had casted their votes, same does not impinged upon secrecy of ballots in the election. The conclusion drawn by the learned trial Court are fairly in consonance with the requirement of the Rule in question. The impugned order (Annexure P-6) appears legally tenable and requires no interference in this petition.

9. In view of the above-said discussion, the revision-petition lacks merits and is hereby dismissed.
10. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

19.04.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No