



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

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CR-2860-2024 (O&M)
Date of decision: 09.05.2024

Mohinder Singh

...Petitioner

Versus

Bhagwan Dass and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Rajat Sheokand, Advocate for the petitioner.

VIKAS SURI, J.

1. The present revision petition has been filed by petitioner-Mohinder Singh seeking quashing of impugned order dated 03.05.2024 (Annexure P-1), passed by the learned Appellate Authority under the Haryana Panchayati Raj Act, 1994 (for short 'the Act'), whereby the application for additional evidence was posted for arguments for being heard with the main appeal on merits.

2. Brief facts of the case, sans unnecessary details, are that the petitioner's election as Sarpanch of Gram Panchayat Ahar was challenged by respondent No.1 by way of election petition under Section 176 of the Act. The said election petition was partly allowed with costs vide judgment dated 07.10.2023 (Annexure P-2), whereby election of the petitioner as Sarpanch of Gram Panchayat, declared vide election result dated 02.11.2022, was set aside. The Collector was directed to conduct fresh elections as per the provisions of the Act and the official



respondents were restrained from giving charge to the petitioner as Sarpanch and also from handing over the record to him to act as Sarpanch of the village.

3. The petitioner, aggrieved by the judgment dated 07.10.2023 preferred an appeal thereagainst. During the pendency of the aforesaid appeal, respondent No.1-Bhagwan Dass approached this Court by way of CR-6878-2023, wherein a prayer was made seeking directions to the Appellate Authority to decide the appeal in a time bound manner. Vide order dated 15.02.2024 (Annexure P-5), this Court disposed of the aforesaid revision petition directing the Appellate Authority to decide the appeal expeditiously, preferably by the next date of hearing fixed before it. It is pointed out that there was a typographical mistake in the aforesaid order regarding the next date of hearing mentioned therein, which was corrected vide order dated 06.03.2024 (Annexure P-6). After passing of the aforesaid orders by this Court, the petitioner moved an application for permission to summon the official staff/Returning Officer/Polling Officer, who were responsible for conducting the election for the post of Sarpanch of Village Ahar as well as record keeper of the entire record of the said election held on 02.11.2022, by way of additional evidence. A copy of the said application has been appended with the revision petition as Annexure P-4. It is in context of this application for additional evidence that the petitioner made a request before the Appellate Authority for hearing the same first and after its decision, the arguments on merits of the appeal be heard. Not finding



favour with the request raised, the Appellate Authority posted the matter for arguments on the application for additional evidence as well as the main appeal on merits. Aggrieved by the aforesaid, the petitioner has approached this Court by way of the instant revision petition.

4. The sole grievance raised by the petitioner is that the application seeking additional evidence ought to have been independently considered first, by the Appellate Authority, before hearing the appeal on merits. He contends that the prayer for production of additional evidence before the Appellate Authority would fall within the parameters of Order 41 Rule 27 (1)(aa) CPC. Reliance has been placed upon the judgment in ***Brij Mohan Gupta (deceased) through LRs and others vs. Anshu Aggarwal and others***, 2021(4) PLR 457 as well as the Division Bench judgment of the Hon'ble Himachal Pradesh High Court in ***Himanshu vs. Bishnu Dutt and others***, 2006 (39) AIC 755, which has been considered and relied upon in the former judgment.

5. I have heard learned counsel for the petitioner and with his able assistance perused the material on record.

6. Admittedly, the election of the petitioner was set aside vide judgment dated 07.10.2023 (Annexure P-2) and the matter was carried in appeal before the Appellate Authority under the Act. During the pendency of the appeal, respondent No.1-election petitioner approached this Court invoking superintendence jurisdiction under Article 227 of the Constitution of India and the said petition was disposed of vide order dated 15.02.2024 (Annexure P-5), whereby the Appellate Authority was



directed to decide the appeal expeditiously and preferably on the next date fixed before it.

7. To appreciate the controversy arising in the present petition, it would be apposite to refer to the provisions of Order 41 Rule 27 CPC.

The same are reproduced hereunder for ready reference:-

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence such evidence was not within his knowledge, or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
- (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

8. In the present case, the petitioner filed an application for permission to summon the official staff/Returning Officer/Polling Officer, who were responsible for conducting of election for the post of



Sarpanch of Village Ahar as well as record keeper of the entire record of election held on 02.11.2022 of Sarpanch, by way of additional evidence (Annexure P-4).

9. A perusal of the above reproduced provision shows that the scope of Order 41 Rule 27 (1) CPC is very limited. It is also well settled that for exercise of jurisdiction under the aforesaid provision, the Court has to record a finding qua satisfaction of one of the three conditions as a reason for admission of additional evidence.

10. In the case at hand, however, a perusal of the application (Annexure P-4), filed by the petitioner purportedly under Order 41 Rule 27 CPC, shows that the only averment made therein necessitating the said application, is to bring on record evidence to counter the evidence available on record and relied upon by the trial Court to return the findings of fact resulting in allowing the election petition and resultantly, setting aside the election of the petitioner as Sarpanch.

11. Learned counsel for the petitioner has emphatically argued that the petitioner's prayer for leading additional evidence should have been considered under clause (aa) of sub-rule (1) of Rule 27 of Order 41 CPC. The said argument, to my mind, is farfetched.

12. A perusal of the application for leading additional evidence shows that there is no averment whatsoever regarding 'due diligence' or 'knowledge' as required under Rule 27 (1)(aa). In fact, the application makes no averment or ground as to why the evidence sought to be adduced as additional evidence was not adduced earlier. In the aforesaid



backdrop, reference to the heading of the application along with the prayer made therein would be necessary, which reads as thus:-

“Application for permission to summon official staff/Returning Officer/Polling Officer, who were present during conducting of election for the post of Sarpanch of Village Ahar as well as record keeper of the entire election record of Sarpanch of Village Ahar, election held on 02.11.2022 by way of additional evidence.”

“In view of these peculiar facts and circumstance, it is prayed that by way of additional evidence, following officials with election record as well as RW2 Mukesh Kumar be permitted to be summoned and he be permitted to be cross-examined. It is further prayed as under:-

- i. A record keeper from the District Election Office, Panipat pertaining to the election of Sarpanch of Village Ahar Tehsil Israna District Panipat be summoned alongwith all records.
- ii. That RW2 Mahesh Kumar be permitted to be summoned and cross-examine by applicant/ appellant as no opportunity by the Id. Lower court was afforded to cross examine this witness on material points.
- iii. That the election staff be also summoned and be ordered to produce the chits which are given by the election staff who are outside the polling booths and those chits are retained by the election staff, who are working within the polling booth.”

13. In my considered view, the averments made in the application seeking additional evidence does not satisfy the requirement of the provision, so as to bring it within the ambit of Rule 27 (1)(aa) (supra). There is no averment in the application, let alone even a remote



reference to due diligence or knowledge and hence, the ingredient necessary for invoking jurisdiction under the said clause is not made out from the pleadings and the record.

14. The next question, in the aforesaid factual backdrop that needs to be addressed is that at what stage of the appeal, the application moved by the petitioner for additional evidence is to be considered.

15. The Hon'ble Supreme Court of India in ***State of Rajasthan vs. T.N. Sahani and others, (2001) 10 SCC 619***, while considering the provisions of Order 41 Rule 27 (1)(b) CPC laid down that the application for additional evidence should be decided along with the appeal considering the necessity of the documents, sought to be adduced as additional evidence, for pronouncing the judgment more judiciously. The relevant portion from the said judgment reads as thus:-

“It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy, AIR 1963 Supreme Court 1526, pointed out the scope of unamended provision of Order 41, Rule 27(c) that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of the record as it was, and so, it could not be required additional evidence to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the Court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to be Court to look into the documents and for that purpose amended



provision of Order 41, Rule 27(b), C.P.C. can be invoked. So the application under Order 41, Rule 27 should have been decided along with the appeal. Had the court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view would be inappropriate.”

16. The aforesaid view was approved and followed by the Apex Court in ***Union of India vs. Ibrahim Uddin and another***, (2012) 8 SCC 148. While considering the aforesaid provisions, it was laid down that the true test for admissibility of additional evidence would be whether the Appellate Court is able to pronounce judgment on the material before it without taking into consideration the additional evidence sought to be adduced. It is further held that such an occasion would arise only if on examining the evidence as it stands, the Court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court. In the light of aforesaid discussion, it was concluded as under:-

“Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total



and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.”

17. In *K.R. Mohan Reddy vs. Net Work Inc. represented through MD*, (2007) 14 SCC 257, the Apex Court while considering the power of the appellate Court to pass an order thereunder with reference to clauses (a), (aa) and (b) of sub-rule (1) of Rule 27 of Order 41 CPC, which refer to three different situations, held that for exercising its jurisdiction thereunder, the appellate Court must arrive at a finding that one or the other conditions enumerated thereunder is satisfied. It was further held that a good reason must also be shown as to why the evidence was not produced before the trial Court. It was further held that the conditions precedent for application of clause (aa) is different from that of clause (b) of the aforesaid Rule. In a case falling under clause (aa), it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand, if recourse is to be taken to clause (b), the appellate Court is bound to consider the entire evidence on record and come to an independent finding for arriving at a just decision, adducing additional evidence as prayed by the applicant was necessary.

17.1 A similar view has been taken by a coordinate Bench of this Court in *Municipal Committee, Ellenabad vs. Shanti Devi*, 2003(1) PLR 456.



18. It has also been settled by the Hon'ble Supreme Court of India in *N. Kamalam (dead) and another vs. Ayyasamy and another*, (2001) 7 SCC 503, that the provisions of Order 41 Rule 27 CPC are not designed to help parties to make up for omissions earlier made. The jurisdiction of the appellate Court is thus restricted. It has been further held therein that the aforesaid provisions have not been engrafted in the Code, so as to patch up the weak points in the case and to fill up the omission before the Court of Appeal. In other words, it does not authorize any lacunae or gaps in evidence to be filled up.

19. Learned counsel for the petitioner has also very fairly brought to the notice of this Court that the petitioner had filed an application seeking recall of the order dated 15.02.2024 (Annexure P-5) on the apprehension that as the appellate authority has been requested to expedite the hearing, his application for additional evidence would not be considered in accordance with law. The aforesaid application, after noticing the factual position, was dismissed by this Court vide order dated 29.04.2024, by observing the apprehension of the petitioner noticed above as wholly misplaced.

20. As a corollary to the above discussion, I am of the considered view that the petitioner's application for adducing additional evidence does not fall within clause (aa) of Order 41 Rule 27 (1) CPC as such, and at best, would be an application under clause (b) thereof. In the light of the ratio of *T.N. Sahani's case* (supra), *K.R. Mohan Reddy's case* (supra) and *Ibrahim Uddin's case* (supra), this Court does not find



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any infirmity or illegality in the impugned order, in posting the hearing of the application for additional evidence with the arguments in the main appeal. There is no jurisdictional error nor any has been pointed out. Thus, no case is made out to warrant interference under the superintending jurisdiction of this Court.

21. Accordingly, finding no merit in the present revision petition, the same is dismissed *in limine*.

22. Pending applications, if any, also stand disposed of.

May 09, 2024
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No