

FAO No.826 of 2021 (O&M)

2024:PHHC:155663



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

FAO No.826 of 2021 (O&M)

Date of Reserve: 20.11.2024

Date of Decision: 26.11.2024

RAGHUVIR SINGH**.....Appellant(s)****Vs**

**RETURNING OFFICER, MUNICIPAL COUNCIL, MANDI
GOBINDGARH AND OTHERS**

....Respondent(s)**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. R.S. Dhiman, Advocate
for the appellant.

Mr. Vishnav Gandhi, D.A.G., Punjab.

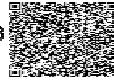
Mr. Vivek Singla, Advocate with
Mr. Rahul Verma, Advocate and
Ms. Urvashi Singh, Advocate for respondent No.2.

Mr. D.S. Randhawa, Advocate for respondent No.3.

HARKESH MANUJA, J.

[1]. By way of present appeal, challenge has been laid to an order dated 09.07.2021 passed by the Election Tribunal-cum-Sub-Divisional Magistrate, Amloh, whereby the appellant though declared elected as Municipal Councillor from Ward No.29, Mandi Gobindgarh, vide result dated 17.02.2021, but was held disqualified on account of he being a defaulter in arrears towards water and sewage charges of the Municipal Council, Mandi Gobindgarh.

[2]. Briefly stating, in the present case election for the Municipal Council, Mandi Gobindgarh, Punjab was held on 14.02.2021 and its result was declared on 17.02.2021, whereby the petitioner was declared elected from Ward No.29, Mandi Gobindgarh, Punjab.



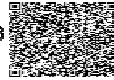
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[3]. Being aggrieved, respondent No.2 herein filed election petition having invoked Sections 74 and 75 of the Punjab State Election Commission Act, 1994 while alleging that no dues certificate submitted by the appellant was frivolous as in terms of notice issued by Municipal Council, Mandi Gobindgarh on 08.09.2020, Rs.15,220/- were outstanding against him towards water and sewage charges. Said Election Petition, came to be adjudicated upon vide order dated 09.07.2021 passed by the Election Tribunal-cum-Sub-Divisional Magistrate, Amloh, while holding the appellant being disqualified and consequently setting aside his election. Aggrieved of the said order, the present appeal has been preferred by the appellant.

[4]. Based on the pleadings of the parties, the following issues were framed by the Election Tribunal:-

- “1. Would the Election Petition be barred on the grounds of non following of filing procedure?
2. Did the respondent have outstanding dues on the last date on nomination/scrutiny which he willfully defaulted?
3. Did the respondent get a frivolous No-dues certificate issued from Municipal Council Mandi Gobindgarh?
4. Did the respondent file wrong information in the affidavit/nomination papers?
5. Is the respondent disqualified under Punjab State Election Commission Act, 1994 read with Punjab Municipal Election Rules?”

[5]. Learned counsel for the appellant submitted that the allegations levelled in the election petition with respect to the appellant being in arrears of water charges or sewage charges were never established on record by way of any substantive evidence and, thus, the impugned order was unsustainable. He further submitted that even no opportunity was afforded to the appellant to rebut the case set up by respondent No.2 in his election petition either by way of cross-examining respondent No.2 or even granting any opportunity of leading evidence in affirmative and, thus, the impugned order was liable to be set-aside.



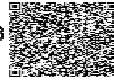
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[6]. On the other hand, learned counsel representing respondent No.2 submitted that a categoric reply was filed on behalf of respondent No.3 before the Election Tribunal while specifically stating therein that there were arrears towards water and sewage charges to the extent of Rs.15,220/- payable qua House No.44 Sector 10-B Mandi Gobindgarh which were not paid by the appellant and as such being a defaulter, he was not entitled to contest the elections. He further submitted that no replication to the written statement filed on behalf of the Municipal Council, Mandi Gobindgarh was ever filed by the appellant to rebut the aforementioned averments made therein. Learned counsel also submits that now once the process of fresh election stood initiated vide notification issued by the State Election Commission, the present appeal could not be dealt with on merits and, thus, prayed for its dismissal.

[7]. In addition, learned counsel representing respondent No.3 submitted that all the documents relied upon by the Municipal Council, Mandi Gobindgarh were made part of the record along with written statement and the same were duly appreciated by the Election Tribunal, as such the impugned decision warrants no interference.

[8]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the appellant.

[9]. In the present case, the election of the Municipal Committee, Mandi Gobindgarh was held on 14.02.2021 and the appellant was declared elected from Ward No.29 on 17.02.2021. The election was assailed on behalf of respondent No.2 on the ground that no dues certificate submitted by the appellant was a frivolous document. It was further submitted that as per information obtained under Right to Information Act, 2005, a sum of Rs.15,220/- was due towards water



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and sewage charges qua House No.44 Sector 10-B and notice in this regard was issued on 08.09.2020. Contrarily, in his written statement before the Election Tribunal the appellant pleaded that neither the aforesaid property was owned by him, nor any water connection was running in his name.

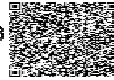
[10]. Admittedly, the trial of the Election Petition needs to be carried out in terms of Section 81 of the Punjab State Election Commission Act, 1994. The said provision is reproduced hereinbelow:-

“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.”

[11]. A close perusal of the aforementioned provision reflects that every election petition has to be tried by the Election Tribunal as nearly as may be, in accordance with the procedure contained in the Code of Civil Procedure to the trial of suits which, thus, enjoins the Election Tribunal to grant an opportunity to both the parties for leading their oral as well as documentary evidence upon framing of issues; after completion of pleadings. Similar view earlier been expressed by this



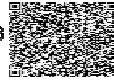
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Court in the case of 'Satpal Singh vs. Daljit Karu and others' reported as "2010(2) PLR 585". The relevant paragraph No.8 thereof is extracted hereunder:-

"8. In the aforesaid provisions, it is clearly provided that subject to provisions of this Act and the rules made thereunder, every election petition shall be tried by the Election Tribunal, in accordance with the procedure in the C.P.C. for the trial of the suits. The procedure contained in the C.P.C. is that after filing of the plaint, opportunity is given to the defendant for filing his written statement and if a new averment is made therein, then opportunity is granted to the plaintiff for the purpose of filing replication. On the pleadings of the parties, issues are framed and opportunity is granted to both the parties for leading their oral as well as documentary evidence. The aforesaid procedure admittedly has not been followed by the Election Tribunal in this case as after the appearance of the defendant, no opportunity was granted to him to file written statement and the case was fixed for arguments for 17.6.2008 and then to 19.6.2008 and thereafter it was adjourned to 25.6.2008 for framing of issues and after framing of issues, no opportunity was granted to the parties to lis allowing them to lead evidence. Thereafter on 1.7.2008, the case was listed for arguments and order was announced on 2.7.2008."

Thus, I am satisfied that the learned Tribunal was remiss in its order, which has caused manifest injustice to the parties to the lis as they could not prove their case by leading cogent evidence. Hence, the order dated 2.7.2008 is set aside and the case is remanded back to the Election Tribunal, to decide it afresh, in accordance with law much-less Section 81 of the Act by giving adequate opportunities to both the sides for leading their oral as well as documentary evidence."

However, in the present case, a perusal of records shows that upon framing of issues, no opportunity was ever afforded to either of the parties to lead their evidence. Thus, the decision dated 09.07.2021 passed by the Election Tribunal about setting aside of appellant's election being in violation of Section 81 of the Act is unsustainable.



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[12]. In the present facts, the procedure adopted by the Election Tribunal while setting aside the elections merely on the basis of pleadings of the parties was wholly unknown to law. The findings with regard that the appellant being in dues of Municipal Committee, Mandi Gobindgarh were liable to set aside as having been recorded merely on the basis of written statement filed by the Executive Officer without there being any proof on record of the relevant and material facts that the property/H. No.44 Section 10-B Mandi Gobindgarh was owned by the appellant; water connection No.5178 and sewage connection No.2888 were in the name of appellant or the notice dated 08.09.2020 against liability of Rs.15,220/- was ever issued or served upon the appellant.

[13]. Furthermore, mere fact that the appellant did not choose to file any counter to the written statement filed on behalf of the Executive Officer, Municipal Committee, Mandi Gobindgarh, the averments made therein were not to be treated as admitted by the appellant. In view of the settled principles of law, the initial burden always lied upon the election petitioner to prove and establish that the no dues certificate issued by the Municipal Committee, Mandi Gobindgarh in favour of the appellant was not based on correct facts. In the given facts, the said burden was never discharged by respondent No.2. Lastly, mere fact that a notification for carrying out fresh elections in terms of the impugned order passed by the Election Tribunal has now been issued, would not render the present appeal as infructuous.

[14]. Accordingly, in view of the discussion made hereinabove, the impugned order dated 09.07.2021, passed by the Election Tribunal-cum-Sub Divisional Magistrate, Amloh is set aside, including all subsequent consequences. Resultantly, the present appeal is allowed and the matter is remanded back to the Election Tribunal-cum-Sub Divisional Magistrate Amloh for deciding the election

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petition afresh from the stage post framing of issues by granting opportunity to both the parties for leading their evidence and resultantly, the status of appellant as elected municipal counselor from Ward No.29 Mandi Gobindgarh is hereby restored with further direction to the Election Commission, Punjab to take immediate steps in this regard with immediate effect.

[15]. All pending application(s), if any, shall stand disposed of.

November 26, 2024	(HARKESH MANUJA)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No