



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3419-2021(O&M)

Date of Decision: May 31, 2024

Suresh Kumar Verma

...Petitioner

Versus

Aman Dutt Sharma and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Harsh Aggarwal, Advocate
for the petitioner.

Mr.Dinesh Kumar Jangra, Advocate
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 09.11.2021 passed by learned Election Tribunal, whereby, an application under Order 7 Rule 11 CPC read with Section 15 of the Haryana Municipal Corporation Act, filed at the instance of petitioner-respondent No.6-Suresh Kumar Verma, was dismissed.

The facts germane, to be noticed, are as follows:-

That, an Election Petition under Section 15 of the Haryana Municipal Corporation Act, 1994, was filed, at the instance of Aman Dutt Sharma (respondent No.1 herein) for declaring the candidature of petitioner-respondent No.6-Suresh Kumar Verma, as null and void, who was elected as



Councillor/Member of the Ward No.2, Municipal Corporation, Panchkula.

Further, he had also sought declaration to declare himself to be elected/returned member of Ward No.2, Municipal Corporation, Panchkula as he had secured higher votes to respondent No.6-returned candidate and respondent No.6 be declared to be disqualified from contesting the elections.

Therein, it was claimed that respondent No.6-petitioner Suresh Kumar Verma, as per provisions of the *ibid* Act, was unfit, disqualified and ineligible candidate. It was asserted that the various directions/guidelines laid down by the Hon'ble Supreme Court in ***WP(C) No.536 of 2011, vide judgment dated 25.09.2018, rendered in case titled as 'Public Interest Foundation & Ors. vs. Union of India & Anr.'*** were not complied with. Therein, it was also asserted that in the nomination papers, imperative information, which was required to be compulsorily disclosed, in the form of an affidavit, was not disclosed. Rather, the petitioner-respondent No.6, with malafide intention, concealed with the material information, vis-a-vis, detail of the pending criminal case against him and status of the same. Also, it was asserted that he had, though, only mentioned about involvement in the criminal case under Section 379 and 411 IPC, whereas, FIR No.73 dated 17.02.2013, was got registered under Sections 457, 380 and 411 IPC. In fact, there was no mention made of Section 379 IPC, in the FIR. Relating to the same, it was also further averred that the imposition of punishment, qua Sections under which the FIR was registered, were more grave, but however, such information was never disclosed.



Furthermore, in the petition, it was asserted that a request for cancellation of candidature of respondent No.6 was made to the Returning Officer-cum-Assistant Deputy Commissioner, Panchkula, but to no effect. Consequently, the election petition was filed.

During the pendency of the election petition, the petitioner (who is respondent No.6 before learned Election Tribunal) had filed an application under Order 7 Rule 11 CPC, thereby, seeking rejection of the election petition, on the assertions, *inter alia*, firstly that it does not disclose the cause of action, as enumerated in Section 15 of the *ibid* Act, as asserted in the petition; secondly, that the election petition is barred under the Haryana Municipal Corporation Election Act, 1994 and thirdly, that the Returning Officer vide order dated 17.12.2020 had held that the nomination papers of respondent No.6, were accepted being valid, after examination and accordingly, had attained finality. No objections were received and the order of the Returning Officer, was not challenged, in any Court of competent jurisdiction, within limitation. Thus, the election petition under Section 15 of the *ibid* Act is not maintainable.

In the application, while reproducing, in verbatim, the provisions of Sections 15, 18 to 22 of the Haryana Municipal Corporation Act, it was further asserted that the combined reading of all the Sections, establish the statement of fact that no corrupt practice was adopted by the returned candidate/respondent No.6, as provided under Section 22 of the Act. Further, the returned candidate had already been declared successful by obtaining 1813 votes, with excess of 598 votes, over the votes obtained



by the respondent No.1 and no ground of challenge is in existence/alleged, as per law.

Furthermore, it was asserted that the petition is hit by principle of estoppel, as schedule of timing, with regard to the conducting the process of election was duly followed and no objection was raised, at any earlier stage. In the light of the same, it was averred that nomination papers, so filed, were considered as valid. Further, relating to the criminal case also, it was stated that due disclosure was made and directions as given by the Hon'ble Supreme Court in WP(C) 536 of 2011, were duly followed. As such, a prayer was made, for rejection of the election petition.

In reply, respondent No.1-Aman Dutt Sharma, had reiterated the averments made in the election petition and further also, took the plea that the candidature of respondent No.6-petitioner, as such, could be challenged by way of election petition only and that too, after the publication of the result of election under Section 14 of the ibid Act and therefore, the cause of action accrued, in favour of respondent No.1-Aman Dutt Sharma and election petition was filed, within time.

After hearing learned counsel for the parties, vide impugned order dated 09.11.2021, the aforesaid application was dismissed.

Being aggrieved by the dismissal of an application, the petitioner-respondent No.6-Suresh Kumar Verma, had filed the present revision petition.

Learned counsel for the parties heard.

At the very outset, it should be noted that for the consideration



of the application under Order 7 Rule 11 CPC, the averments made in the plaint/petition, ought to be taken into consideration. No facts/assertions, coming forth, in the written statement or other material, coming forth, at the instance of petitioner-respondent No.6, as such, could be taken into consideration. Rather, the pleaded grounds for rejection of the plaint, are to be appraised, in the light of the contents of the plaint only.

Section 15 of the Haryana Municipal Corporation Act, reads as herein given:-

15. Election petitions.--(1) *[No election of a Mayor or member] [Substituted 'No election of a member' by Haryana Act No. 28 of 2018, dated 4.10.2018.] shall be called in question except by an election petition presented to the authority as may be prescribed within thirty days from the date of the publication of the result of the election under section 14.*

(2) An election petition calling in question any such election, may be presented on one or more of the grounds specified in sections 18, 19, 20, 21 and 22 by any candidate at such election or by any elector of the ward concerned.

(3) A petitioner shall join as respondent to his petition all the candidates at the election.

(4) An election petition -

(a) shall, contain a concise statement of the material facts on which the petitioner relies;

(b) shall, with sufficient Particulars, set forth the ground or grounds on which the election is called in question; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

As per aforesaid provision of law and the requisite dates, as coming forth, it is evident that the result of election for the Mayor and



Members of the Corporation, was finally declared on 01.01.2021. Also, as culled out from the paperbook, the election petition was filed on 12.01.2021, meaning thereby, it was filed within a period of 30 days, as provided under Section 15 of the ibid Act. Considering the same, the election petition in hand, was filed, within given time frame. Although, it is claimed that at earlier time, the candidature of the petitioner-respondent No.6, could be challenged, when the nomination papers were filed, but however, at that time, no such steps were initiated. However, the aforesaid submission is not tenable.

As per the Schedule, the nomination papers were to be presented and posted under Rule 21(2)(i) & (ii), within 11.12.2020 to 16.12.2020. However, at that time, the nomination papers, as such, were not published or made open by the Returning Officer and therefore, it cannot be said that the cause of action, accrued at earlier stage.

In fact, it is claimed that there was adoption of corrupt practice as defined under Section 22 of the ibid Act, by the petitioner-respondent No.6, while withholding the material information, in the form of affidavit, filled along with the nomination papers.

However, in the application under Order 7 Rule 11 CPC, it has been submitted by the petitioner-respondent No.6, that no such, corrupt practice has been followed. In fact, complete information was given, in consonance with the provisions of the Act as well as following the guidelines/directions given by the Hon'ble Supreme Court in WP(C) No.536 of 2011.



At this stage, beneficial reference is made to Section 22 of the Haryana Municipal Corporation Act, which reads, as herein given:-

“22. Corrupt practices.-- The following shall be deemed to be corrupt practices for the purposes of this Act -

(1) Bribery as defined in sub-section (1) of section 123 of the Representation of the People Act, 1951.

(2) Undue influence as defined in sub-section (2) of the said section.

(3) An appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting on grounds of caste, race, community or religion or the use of or appeal to, religious symbols or, the use of or appeal to national symbols such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

(4) The publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal from contest of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person with the consent of the candidate or his election agent for conveyance of any elector (other than the candidate himself, and the members of his family or his agent) to or from any polling station provided in accordance with the rules made under this Act:

Provided that the hiring of a vehicle or vessel by an



elector or by several electors at their joint costs for the purpose of conveying him or them to or from any such polling station shall not be deemed to be a corrupt practice under this clause, if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any railway carriage by an elector at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be a corrupt practice under this clause.

Explanation.- In this sub-section the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The holding of any meeting in which intoxicating liquors are served.

(7) The issuing of any circular, placard or poster having a reference to the election which does not bear the name and address of the printer and publisher thereof.

(8) Any other practice which the Government may by rules specify to be corrupt practice.”

Considering the same, also it is pertinent to mention that in the judgment dated 25.09.2018, the Hon’ble Supreme Court, while dealing with the election matter, had also laid down certain guidelines, which are reproduced, as herein given:-

“(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.



(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.”

In the light of the aforesaid provision of law and the guidelines laid down, during the course of arguments, learned counsel for respondent No.1(Aman Dutt Sharma), had drawn the attention of the Court to Annexure P-3, which is the copy of nomination paper, filled at the instance of Suresh Kumar Verma. In the same, it is submitted that in the table form, existing at page 3, it was incumbent upon Suresh Kumar Verma to disclose about the information, relating to the criminal case, bearing FIR No.73 dated 17.02.2013, Police Station Sector-5, Panchkula, to be pending against him. However, it is the submitted that in the aforesaid table, he had not given the complete disclosure.

In this regard, he had mentioned that even though, the FIR was got registered under Sections 380, 457, 411 IPC, but however, in none of the



columns, such information, relating to the registration of the FIR under Sections 380 and 457 IPC, which carried graver punishment and could have bearing, on the cancellation of the candidature, has been disclosed. He has mentioned in column (c) about the FIR under Sections 379 and 411 IPC, though, nowhere, the FIR was registered under Section 379 IPC. Thus, it is submitted that there was concealment of the imperative information. This was particularly pin pointed, in view of the note '5', given on the subsequent page of the nomination papers, where it was specifically stated that the **candidate is responsible for supplying all information, in compliance of Hon'ble Supreme Court's judgment in WP(C) No.536 of 2011.**

In the light of the same, it is submitted that the cause of action did accrue to file the election petition.

On the contrary, learned counsel for the petitioner-respondent No.6 submitted that entire information was disclosed, as required under provision of law as well as directions given by the Hon'ble Supreme Court. He submits that as per directions of the Hon'ble Supreme Court, it was only required to state in 'bold' letters, with regard to the criminal cases, pending against the candidate and this information, as such, has been given by the petitioner-respondent No.6.

Rather, it is submitted that in the criminal case, relating to FIR No.73 dated 17.02.2013, the petitioner-respondent No.6 has been acquitted vide judgment dated 16.01.2024. May it be so. However, the said judgment, as such, cannot be taken into consideration, since the contents of the plaint,



are only required to be taken into consideration. But anyhow, it is not disputed that the FIR was under Sections 380, 457 and 411 IPC. If it be so, whether, there was concealment of the imperative information, in the affidavit, furnished by the petitioner-respondent No.6 or not, is a matter, which can be adjudicated, only at a later stage, when the Election Tribunal appraises the material, coming forth.

Thus, in the light of the aforesaid discussion, the impugned order brooks no interference. The revision petition sans merit and the same is hereby dismissed.

May 31, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No