

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

**CWP-21302-2023 (O&M)
Reserved on: 25.11.2024
Pronounced on: 17.12.2024**

Amit Kumari

.....Petitioner

Versus

Election Tribunal cum Civil Judge (Sr. Div.), Karnal and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Govind Chauhan, Advocate
for the petitioner.

Mr. P.P. Chahar, Sr. DAG, Haryana.

Mr. Lekh Raj Sharma, Advocate and
Mr. Abhishek Sharma, Advocate
for respondent No.2.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for the quashing of the impugned order dated 16.08.2023 (Annexure P-16) passed by the learned Election Tribunal i.e. Civil Judge (Senior Division), Karnal, vide which the learned Election Tribunal, has dismissed the Election Petition filed by the petitioner, thus only on the ground of its maintainability, through the passing of an affirmative order on the filed application, to try the issue of maintainability, as a preliminary issue, despite the trial on the election petition progressing upto the stage of adduction of evidence at the instance of the petitioner. She has further prayed for the quashing of

the impugned order dated 06.07.2023 (Annexure P-12) whereby the Application for summoning the additional witness has been illegally rejected by the learned Election Tribunal.

Facts of the case

2. The brief facts of the present case are that the petitioner has filed an election petition under the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act of 1994') before the learned Tribunal under Haryana Panchayati Raj Act, 1973-cum-Civil Judge (Senior Division), Karnal on the ground, that the petitioner has contested the election for the post of Sarpanch, which was held on 12.11.2022, and, in that election, respondent No.2 was declared as the winning candidate by 175 votes.

3. The ground she averred in the said election petition are inter lia as under:-

I) During the elections, the Returning Officer set-up 11 booths for polling of votes and total 10857 voters were listed in the Voter List out of which, total 8010 votes have been shown to have been polled including 14 votes as "NOTA".

II) For the last one year, the petitioner's family is filing repeated representations for deleting the name of the dead persons as well as of those persons, who are having double votes, yet respondent No.2, openly proclaiming that he will contest the elections and will take the benefit of the abovesaid votes. In this regard, copies of some representations dated 26.05.2022 and 21.06.2022 respectively are Annexures P-2 and P-3.

III) However, after the makings of repeated representations by the petitioner's family, the votes of the dead persons as well as of

the persons who were having double votes were not deleted from the voter list of village Gonder.

IV) The said votes of dead voters were also polled by respondent No.2 and after contacting the election official, it has come to the notice of the petitioner, that 25 votes of dead persons have been polled by respondent No.2, details whereof are mentioned at page No.7 of the paper book.

V) In the same manner, the respondent No.2 being the earlier Sarpanch having knowledge of the double votes as well as qua the votes of the dead persons and after taking undue advantage of the same thus has manipulated and impersonated the dead persons by casting their votes in her favour.

VI) Immediately after the declaration of the election, the petitioner collected the relevant data and approached the learned Tribunal by filing an Election Petition against the respondent No.2, who by manipulating and impersonating the votes of dead persons had won the elections by casting their votes in her favour.

VII) Notice of election petition was issued for 23.02.2023 vide order dated 23.11.2022 (Annexure P-6). However, in the meantime, the Election Commission and Returning Officer were bent upon to hand over the charge of the post of Sarpanch of village Gonder to respondent No.2, whereas, in the present case, the petitioner has lost the election only by a margin of 175 votes and after searching the records, the petitioner found that votes of 25 voters have been polled, despite theirs' expiring and also 14 voters were not available at the time of polling, as they were on their official duty. Moreover 9 persons/voters were out of country

and one person was in jail at the time of polling and the said 82 persons yet cast their votes in favour of respondent No.2. In addition, more double votes than above become polled, and moreover at the time of evidence, there are many more votes, which are illegal and void.

VIII) However, when the election petition progressed to the stage of adduction of evidence, on the formulated issues, then the present petitioner filed an application before the Election Tribunal for an interim stay against the functioning of respondent No.2, thus as a Sarpanch and also claimed relief for preponement of the election petition. However, on the said application a disaffirmative order was passed. The passing of the said disaffirmative order, led the present petitioner to access this Court by filing CR No.25 of 2023. The above revision came up for hearing before this Court on 06.01.2023 (Annexure P-7), whereons, this Court issued directions to the Election Tribunal, to decide the matter as expeditiously as possible and the prayer for granting interim stay was declared to become rendered infructuous, as at that time, the charge of Sarpanch was already handed over to respondent No.2. The said fact is stated to be averred in the election petition.

IX) Despite the abovesaid order being passed by this Court, the learned Tribunal did not expedite the trial and a longer date has been given for the filing of the written statement.

X) Against the impugned action(s) of the learned Tribunal, whereby(s) the petitioner repeatedly unsuccessfully filed applications for preponement, the petitioner again approached this

Court by way of filing a contempt petition bearing No.1214 of 2023, whereins, notice of motion was issued vide order dated 26.04.2023 (Annexure P-9), to the Presiding Officer of the Election Tribunal and he was further ordered to file compliance report on the next date of hearing before this Court.

XI) After communication of the abovesaid order, the learned Tribunal expedited the trial, and, on 08.05.2023, respondent No.2 filed her written statement by raising preliminary objection, that the petitioner has not raised any objection at the stage when the voter list was prepared and finally circulated, and further it was mentioned in the written statement, that the Presiding Officer of the elections, was not made as a party. Apart from the abovesaid legal issues raised in the written statement, it was mentioned by the respondent No.2, that owing to hers bearing a heavy loss in the elections, therebys the petitioner had filed the present election petition. The said facts as become echoed in the written statement thus do openly express that the respondent No.2 has indulged in the corrupt practices as mentioned in Section 176 of the Act of 1994.

4. The said grounds were controverted by the respondents by filing a detailed written statement theretos. Subsequently, through an order dated 08.05.2023 (Annexure P-11) as made by the learned Tribunal concerned, the hereinafter extracted issues were formulated.

i. Whether the election of respondent no.1 as Sarpanch of village Gonder is illegal, null and void as he was elected by using corrupt practices as detailed in the petition? OPP

ii. Whether petitioner is entitled to the declaration that respondent no.1 is disqualified person as per Haryana Panchayati Raj Act for using corrupt practices and whether the petitioner is entitled to be declared as winning candidate for the post of Sarpanch of village Gonder? OPP

iii. Whether in the alternative, respondent should be directed to conduct fresh election for the post of Sarpanch of village Gonder?

iv. Whether the election petition is not maintainable in its present form? OPR

v. Whether the petitioner has no locus-standi and cause of action to file the present petition? OPR

vi. Whether the petitioner is estopped by his own act and conduct to file and maintain the present petition? OPR

vii. Whether the petitioner has not come to the court with clean hands and has suppressed the true and material facts from the Court? OPR

viii. Relief.

5. When the learned trial Tribunal commenced receiving evidence on the said struck issues, then an application became instituted by the respondent, thus claiming that issue No.4, relating to the maintainability of the suit, be decided as a preliminary issue.

6. A contest was reared thereagainst at the instance of the present petitioner, whereons, ultimately an order was rendered on 16.08.2023, thus by the learned Tribunal concerned, whereby the said application became allowed.

7. The affirmative order as becomes passed by the learned Tribunal, on the apposite application filed by respondent No.2, thus seeking rendition of finding on the issue of maintainability, by construing the same to be a preliminary issue, rather evidently remained unchallenged, whereby the present petitioner becomes estopped to contend that the said passed order becomes ingrained with any vice relating to the same being made with a gross illegality or with a material impropriety.

8. The relevant provisions of the CPC which empower the learned Tribunal concerned, to pronounce a judgment on all issues becomes carried in Order XIV Rule 2 of the CPC, provisions whereof becomes extracted hereinafter.

“Order XIV

Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed upon

Rule 1: Framing of issues— xxx

Rule 2: Court to pronounce judgment on all issues—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

9. A reading of the above extracted provisions empower the Court to, on a profound objective application of mind being made, thus qua the lis being amenable to be disposed of, through the recording of findings on the apposite preliminary issue, to thereupon dispense with the rendition of any finding on the other issues. If so, thereby the learned Tribunal concerned, is not required to be returning any finding on the other issues which become struck on the contentious pleadings of the parties.

10. However, there are severe fetters and trammels vis-a-vis the (supra) invested competent jurisdiction in the learned Tribunal/Court concerned, to dispose of the lis, on a preliminary issue, and that too without recording findings on the other struck issues. The said limitations are encapsulated in clause (a) and (b) of Rule 2 of Order XIV of the CPC, inasmuch as, the necessity of returning of finding on the preliminary issue, but becomes aroused as thereby if the (supra) necessity becomes objectively construed to be ultimately impinging upon the apposite jurisdictional competence of learned Court, as may become sparked from ultimately thereby there being a statutory bar against the entertainment of the suit. Therefore, thereby renditions of any findings on the other issues would be devoid of any valid adjudicatory jurisdictional competence becoming vested in the learned trial Judge concerned.

11. In the light of the above, it has to be determined whether the affirmative order passed on the application filed by respondent No.2 to decide the issue of maintainability, as a preliminary issue, but irrespective of the same acquiring binding and conclusive effect, thus

illegality or the same being imbued with a vice of gross illegality. In the said regard, an allusion to the discussion made on the preliminary issue is relevant.

12. The election petition was stated to be not filed in accordance with with provisions of Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act of 1994'). Furthermore, it was also therein alleged, that the votes of several dead persons have been polled, but since Section 170 of the Act of 1994, bars the jurisdiction of the Civil Court to entertain and adjudicate, upon, any question relating to whether any person is or is not entitled to have his name included in the list of voters. Resultantly, therebys the said question was declared to be required to be not adjudicated, upon in a lis, laid before the learned Civil Judge concerned, as thereovers there was vestment of competent adjudicatory jurisdiction only in the State Election Commission.

13. In sequel, it was inferred that when the jurisdiction to try the said issue became solitarily vested in the State Election Commission, therebys the rendition of findings on the incidental thereto issues, thus was also concomitantly barred. Necessarily, therebys thus no findings within the ambit of Rule 2 of Order XIV of the CPC, but were said to be renderable, thus by the learned Civil Court concerned, thus on the issue appertaining to the untenable inclusion of votes in the voters list, and who also did allegedly cast their votes in the election wherebys the election results purportedly become materially affected. The paramount reason for stating so arose from the (supra) provisions creating a bar against the trial of a civil suit covering the (supra) subject,

the learned Civil Judge proceeding to return findings on (supra) issue, thus was required to declare that no competent adjudicatory jurisdiction became invested in it, thus to render finding thereons. As such, in case findings on (supra) issues, became rendered, thereupon, the findings returned thereons would be completely vitiated. Resultantly, when the well purpose of the engraftment of sub rule (2) of Rule 2 of Order XIV of the CPC, is to preclude the makings of a procrastinated trial upon a suit, which though may ultimately terminate in the pronouncement of a judgment, whereby findings become returned on all the struck issues, despite there being lack of competent adjudicatory jurisdiction in the Court, which makes the said judgment. Reiteratedly, the said purpose has to be revered, as thereby there would be an effective curtailment in the makings of an otherwise vitiated procrastinated trial over a civil suit laid before an incompetent adjudicatory jurisdictional forum.

14. However, for the reasons to be assigned hereinafter, the (supra) inferences, as occur in the impugned judgment and which become alluded to in paragraphs 12 and 13 are completely antithetical both to the facts covering the subject matter, besides are against the apposite statutory provisions, as become embodied in sub-rule (2) of Rule 2 of Order XIV of the CPC.

15. However, before proceeding to assign reasons for making the (supra) conclusion, it is necessary to extract the provisions of Section 170, besides of Section 176 of the Act of the Act of 1994.

“170. No Civil Court shall have jurisdiction—

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to have his name included in a list of voters; or

(b) to question the legality of any action taken or decision given by or under the authority of the State Election Commission in connection with the preparation, maintenance or revision of any such list.

171. xxx

176. *(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.*

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he

shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

[(aa) If on holding such enquiry the Civil Court finds that-

(i) on the date of his election a returned candidate was not qualified to be elected;

(ii) any nomination has been improperly rejected;
or

(iii) the result of the election, in so far 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 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.;]

(b) If, in any case to which 2[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected:

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may

be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.”

16. The preliminary issue No.4 became answered in favour of respondent No.2, thus on anvil of (supra) provisions as become respectively carried in Section 170 and Section 176 of the Act of 1994. The learned Election Tribunal while analyzing the import of Section 176, as carried in the Act of 1994, wherein, there occurs a bar against the exercise of jurisdiction by a Civil Court, to entertain or adjudicate upon any question, especially when in respect whereof, he is statutorily barred to return any finding, especially when the issue appertains to the legality of any action taken or decision given by or under the authority of the State Election Commission in connection with the preparation, maintenance or revision of any such list.

17. However, the said assigned reason is based upon a complete mis-reading and concomitant mis-application of the provisions, as carried in Section 170 of the Act of 1994, as therein, there is a bar against the exercising of jurisdiction in respect of the (supra) matters, thus by the Civil Court. However, the said bar, but obviously effectively operate only against the Civil Court, but naturally does not operate against the Election Tribunal, which was seized with the instant lis, as such, the said bar is not applicable in the present situation.

18. The further reasons for so concluding arises, from the fact that in the instant election petition, thus corrupt practices became alleged to become indulged into by the respondent No.2, in the writ petition, the said corrupt practices related to the manipulation(s) of votes of dead voters, besides related to dual casting(s) of votes. As such initially, the said dispute did not cover misenlistment or non enlistment of the voters nor therebys the said dispute was required to be determined in terms of Section 170 of the Act of 1994 by the Election Commission concerned. Contrarily, the said alleged corrupt practices, whereons, an issue was struck but obviously required that evidence be permitted to be adduced thereons. The reason being that the said polled votes of ineligible voters but prima facie materially affected the election result, wherebys the declared election result was espoused to be nullified. Moreover, despite the necessity of renditions of findings thereons, though did arise, but only after evidence becoming permitted to be adduced thereovers, but yet the said procedure becoming untenably stalled, through the erection of a bar (supra), as becomes created against the exercise of jurisdiction by a Civil Court, in respect of the subject

the said bar is confined to exercising thereovers of competent adjudicatory jurisdiction by the Civil Court, but does not cover the instant situation, wherein, there are purported indulgences of corrupt practices in the averred manners by the respondent No.2 in the petition. Reiteratedly, the foisting of the said bar rather to oust the jurisdiction of the Election Tribunal, to try the election petition, thus with the averment(s) (supra), thus on the premise that the exercisings of jurisdiction thereovers, by the Civil Court, thus is barred, but obviously is a mis-grooved premise.

19. Be that as it may, the further reason as becomes made by the learned Election Tribunal concerned, to refuse to entertain the election petition became banked upon the provisions as carried in Section 176 of the Act of 1994.

20. Now coming to the legitimacy of the conclusions drawn in the impugned order, relating to the attraction of the (supra) provisions, vis-a-vis the election petition. Initially it has to be stated that the said reason become premised on the ground, that despite expressions of corrupt practices, becoming made in the election petition, rather against respondent No.2. Resultantly, there arose a necessity qua the arrayings of all the just and necessary parties, thus in the array of respondents rather in the instant election petition. However, with all the just and necessary parties becoming not impleaded in the instant election petition. Consequently, on the above premise, through the making of the impugned order, a declaration was made, that thereby the election election petition is defective, besides a further declaration became made, that as such, the election petition was not maintainable and was

21. Even the said reason as become anchored upon the fact, that the Act of 1994 thus is a complete Code, thereby there being impermissibility for the filing of an application cast under Order 1 Rule 10 CPC, rather for thereby an espousal being made, thus for making impleadments of all just and proper parties in the election petition. However, even, the said made reason is purely flimsy and arises from a gross mis-application of mind to the provisions as embodied in the Act, of 1994. The reason being that though it has been stated in the impugned order that it is a complete Code in itself and is also a self regulatory procedural mechanism, thus for all the requisite purposes. Nonetheless, the said reason would assume tenacity only if it was so openly declared in the special statute (supra) and also therein occurred a further declaration that the procedural mechanism as envisaged in the CPC rather becoming completely excluded.

22. Since the expression(s) (supra) do not occur in the Act of 1994. Reiteratedly imperatively when qua the making of a trial of an election petition, as laid under the Act of 1994, there occurs no self regulatory procedural mechanism, thereby the provisions of CPC, thus were to be resorted in the makings of trial of the election petition. The reason for so stating becomes embedded in the factum that there is no ouster of provisions of the CPC, upon, the makings of trial of an election petition, as become laid before the Election Tribunal concerned, in terms of the Act of 1994. In sequel, the above omission appertaining to non impleadments of just and necessary parties in the election, thus was a curable defect, through the present petitioner availing the curative remedy of his filing an application under Order 1 Rule 10 CPC.

23. Though, the said assigned reason becomes further hinged upon a case titled as **Mohan Raj V. Surendra Kumar Taparia, 1969(1) SCR 630**, rendered in Hon'ble Apex Court, wherein, in respect of the said question, it has been declared that since the regulatory procedural mechanism for the trying of an election petition as filed under Section 80 of the Act of 1994, when thus becomes enclosed in the Representation of People Act, thereupon therebys there cannot be any adoption of the procedural mechanisms as become delineated in the CPC. Therefore, it was concluded that even in respect of makings of trial of the instant election petition, the same premise is to be working against the present petitioner whereby within the ambit of sub-rule (2) of Rule 2 of Order XIV of the CPC, the election petition was declared to be not maintainable.

24. However even the said judgment is not applicable to the instant factual situation, as the Representation of People Act, is a self regulatory complete Code, which regulates also the procedure, relating to the trial of an election petition as becomes cast under the Act of 1994. Contrarily, when for reasons (supra), rather the Act of 1994, is not a complete Code nor when it, creates any independent procedural mechanism rather for regulating the trial of an election petition, besides when it also does not specifically exclude the operation of CPC, rather for the (supra) purpose. Resultantly, therebys there was to be an endowment of an opportunity to the petitioner to seek impleadment of all just and proper parties in the election petition, through hers casting an application under Order 1 Rule 10 CPC, rather than on the (supra) mis premise, the petition becoming declared to be mis-constituted or the

same being declared to be not maintainable, given the said defect being incurable for (supra) flimsy reasons.

Final Order of this Court

25. In aftermath, there is merit in the writ petition, and, with the above observations, the same is allowed.

26. In consequence, the instant lis is remanded to the learned Tribunal concerned, and the same is ordered to be registered to its original number. Since the learned Tribunal concerned, proceeded to record a finding on the preliminary issue, whereas, it was not required to do so, as such, the said finding is reversed quashed and set aside. As a natural sequel thereto the learned Tribunal concerned, is directed to after asking for adduction of evidence on all the issues, to thus proceed to render findings thereons.

27. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 17, 2024
Ithlesh

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