

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28765-2024 (O/M)

Date of decision : 23.10.2024

Aas Mohammad alias Aas Mohd.

..... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Munfaid Khan, Advocate
for the petitioner.
Ms. Upasana Dhawan, AAG Haryana.
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HARSH BUNGER, J. (ORAL)

1. Petitioner (Aas Mohammad alias Aas Mohd.) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the judgment/order dated 25.09.2024 (Annexure P-7), passed by learned Additional Civil Judge (Senior Division), Hathin; whereby the election petition filed by the petitioner under Section 176 of Haryana Panchayati Raj Act, 1994 (in short '1994 Act') challenging the election to the post of Sarpanch of village Chhainsa has been dismissed. A further prayer has been made for issuance of a writ of mandamus directing respondents No. 2 to 4 to re-count the votes polled in the election to the aforesaid post of Sarpanch of village Chhainsa.

2. Briefly, the elections to the post of Sarpanch of village Chhainsa, Tehsil Hathin, District Palwal were held on 25.11.2022. The petitioner, respondent No. 5 and respondent 6 contested for the post of Sarpanch by filing their nominations. The polling was held

on 25.11.2022 and the result was also declared on the same date wherein respondent No. 5 (Mohammad Islam) was declared elected as Sarpanch by margin of 57 votes.

2.1 The petitioner challenged the election to the post of Sarpanch by filing an election petition under Section 176 of 1994 Act, wherein it was prayed that the election result dated 25.11.2022, declaring respondent No. 5 as elected for Sarpanch, be set aside and to re-count votes in a fair manner and further declaring the candidate securing highest votes, as the Sarpanch.

2.2 The learned Additional Civil Judge (Senior Division), Hathin, vide its judgment/order dated 25.09.2024 (Annexure P-7), dismissed the election petition, filed by the petitioner.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioner submits that the polling to the post of Sarpanch was held on 25.11.2022, however, unfortunately, the grandson of the petitioner expired in the intervening night of 24/25.11.2022 and he/his agents were unable to look after the election process on the polling booths, consequently, respondent No. 5 was illegally declared as elected. It is submitted that at the time of declaring respondent No. 5 as the elected candidate, the petitioner alongwith other villagers had gathered on the polling booths and had requested for checking the record and to conduct re-count, however, no heed was paid to the said request of petitioner. Thereafter, the petitioner claims that he moved an application before the Block Development and Panchayat Officer, Hathin, requesting to conduct re-count of votes in Booths No. 46

to 48, however, the said request was also not considered nor any order was passed thereon.

4.1 Learned counsel for petitioner would contend that in two booths bearing No. 46 and 47, the total valid votes are 755 and 919 respectively, and in the said booths, all the votes have been shown to have been polled whereas total votes shown in the voter list cannot be polled in any election of India in any manner, therefore, there is some illegality done by the concerned officers, while preparing the result sheets. It is contended that the election has not been conducted in a fair manner. It is further contended that at the time of counting of votes, only respondent No. 5 and his agents were present and the result was declared in the absence of the petitioner. It is still further submitted that the election tribunal below has wrongly dismissed the election petition filed by the petitioner without considering the evidence available on record, which duly proves the unfair practices during election. Accordingly, it is prayed that the impugned judgment as well as election of respondent No. 5 be set aside and re-counting of votes be ordered, as prayed for.

5. I have heard learned counsel for respective parties and have also perused the paperbook with their able assistance.

6. In the present case, the election petition was filed by the petitioner and during the trial of same, the following issue No. 1 was framed :-

“1) Whether the election result dated 25.11.2022 declaring the respondent no. 1 as elected for sarpanch of village Chhainsa is illegal, void and liable to be set aside and the petitioner being highest votes scorer be declared as Sarpanch of village Chhainsa as prayed for ?

6.1 The learned Election Tribunal vide impugned judgment/order dated 25.09.2024 (Annexure P-7), after considering the pleadings as well as the evidence available on record, returned the following finding on issue No. 1 :-

“24. The exhaustive reading of petitioner's evidence shows that petitioner has not examined any election agent of any election candidate to substantiate his allegations of unfair practice as alleged during the election and involvement of respondents. There is no documentary evidence or photographs or any other documents to substantiate the allegation of petitioner of corrupt practice.

25. Learned Counsel for the petitioner has contended that the election result was prepared in hurried manner and there is irregularity in preparing the result of Sarpanch. He submitted that in document Mark A (form no. 19) total votes of petitioner Aas Mohammad from ward no. 46 is shown to be 662. But in form no. 15 the total votes of petitioner Aas Mohammad is shown to be 652. So there is disparity in both the documents. But in the opinion of this Court, this contention of the counsel for the petitioner is not maintainable as document Mark A (Form No. 19) produced by the petitioner is only a marked document and this document is not proved by the petitioner. He has not called the original record from the concerned Department to prove this document. Petitioner also failed to produce the final result of votes before the Court.

26. Ld. Counsel for the petitioner also argued that petitioner gave the application Mark C and Mark B to respondent no. 5 for recounting of votes. But no heed was given to his request. Perusal of document mark A and mark B shows that these documents are also marked

documents and they are not proved in accordance with law. Petitioner has not produced/summoned the original record of the application.

27. Further it has been held in Ravinder Versus Rattan Singh and others 2004 LAR 674 P and H that the onus is heavy on the election petitioners to prove that elected candidate is a defaulter, it is not a matter of inference, which can be drawn on the basis of oral evidence.

28. Thus on the basis of above discussion issue no. 1 is decided against the petitioner.”

6.2 A perusal of the above extracted finding would show that the petitioner has failed to lead cogent evidence in support of his pleaded case before the election tribunal. The petitioner has failed to examine any election agent of any candidate to substantiate the allegations of unfair practices, as alleged by him. That apart, no documentary evidence in the form of photographs or otherwise has been led on record. The documents, on which the petitioner sought to rely, were only marked documents. The petitioner not only failed to summon the original record from the concerned department to prove the marked documents, but also failed to produce the final result of the votes before the election tribunal.

6.3 Learned counsel for petitioner has failed to dislodge the findings returned by the election tribunal.

6.4 Under the Law of Evidence, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. It is well settled that contents of the document cannot be proved by merely filing in a court.

6.5 Further, while dealing with an election petition alleging corrupt practice, it is required to be borne in mind that a charge of corrupt

practice is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of corrupt practice is the same as is applicable to a criminal charge. This implies that a charge of corrupt practice is taken as proved only if there is clear cut evidence which is entirely credible by the standards of appreciation applicable to such cases. (See, ***D. Vankata Reddy v. R. Sultan and Ors. (1976) 2 SCC 455 and Ramji Prasad Singh v. Ram Bilas Jha and Ors. (1977) 1 SCC 260.***)

6.6 Still further, in an election dispute, it is unsafe to accept oral evidence at its face value unless the same is backed by unimpeachable and incontrovertible documentary evidence. The danger underlying acceptance of such oral evidence in support of a charge of corrupt practice was lucidly stated by Hon'ble Supreme Court in ***Rahim Khan v. Khurshid Ahmed and Ors. (1974) 2 SCC 660***, in the following words :

"We must emphasise the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half-a-dozen witnesses apparently respectable and dis-interested, to speak to short and simple episodes such as that a small village meeting took place where the candidate accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kilkenny-cat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to

a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life."

7. In the aforementioned facts and circumstances, once the petitioner has failed to lead legally admissible evidence in support of his pleaded case, especially as regards the corrupt practices alleged by petitioner against respondent No. 5/his agents; no fault can be found with the findings returned by the election tribunal.

8. Considering the aforementioned facts and circumstances, I do not find any merit in the present writ petition and same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

23.10.2024
sjks

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