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

CWP-17661-2024

Reserved on: 09.01.2025

Pronounced on: 29.01.2025

MOHINDER SINGH

.....Petitioner

Versus

BHAGWAN DASS AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. R.K.Doon, Advocate for
Mr. Gagandeep Rana, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate
for respondent No. 1.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana
for respondent No. 3.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein, prays for the quashing of the judgment dated 07.10.2023 (Annexure P-10), as passed by the learned Civil Judge (Jr. Divn.), Panipat-Election Tribunal under the Haryana Panchyati Raj Act, 1994 (hereinafter for short called as the Act of 1994) whereby, the election of the petitioner to the office of Sarpanch, Gram Panchayat Ahar, District Panipat has been set aside by accepting the election petition filed by respondent

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(Annexure P-12), as passed by the learned Addl. District Judge, Panipat-Appellate Authority under the Act of 1994, whereby, the judgment rendered by the election Tribunal has been upheld. Resultantly, fresh elections were directed to be conducted to the seat of Gram Panchayat Ahar, District Panipat.

Factual Background.

2. The petitioner contested the election for the Office of Sarpanch, Gram Panchayat Ahar, District Panipat alongwith seven other candidates. After counting of votes the petitioner was declared elected by a margin of 34 votes, having polled 1339 votes, whereas, his nearest rival i.e. respondent No. 1, thus polled 1305 votes. The petitioner was on 02.11.2022, thus issued the certificate qua having been elected as a Sarpanch of Gram Panchayat Ahar, rather by the Election Officer/Returning Officer.

3. Respondent No. 1 filed an election petition under Section 176 of the Act of 1994, for setting aside the election of the petitioner to the office of Sarpanch, Gram Panchayat Ahar, District Panipat. The said petition became allowed by the Election Tribunal vide judgment dated 07.10.2023. The operative part of the said judgment is extracted hereinafter.

ISSUE NO.6: Relief:

45. In view of the discussion of the aforesaid issues, the present election petition stands partly allowed with cost in favour of the petitioner to the effect that election of respondent no. 1 as Sarpanch of Gram Panchayat Ahar vide election result dated 2.11.2022 is ordered to be set aside being illegal, null and void. Respondent no 9/Collector is directed to conduct

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fresh elections as per the provisions of the Act. Respondents no. 8 & 9 are also restrained from giving charge to respondent no. 1 as Sarpanch of Gram Panchayat Ahar and also restrained from handing over record to respondent no. 1 and from restraining respondent no. 1 to act as Sarpanch of the village. Memo of cost be prepared. File be consigned to record-room after due compliance...”

4. The said verdict became challenged by the aggrieved-petitioner herein before the Appellate Authority under the Act of 1994. The Appellate Authority finding no infirmity in the judgment dated 07.10.2023 passed by the Election Tribunal concerned vide order dated 28.05.2024 thus thereby upheld the same. The operative part of the verdict made by the Appellate Authority is extracted hereinafter.

19. In this regard, the most important and material witness is none other than the witness of respondents i.e. RW2 Mahesh Kumar Saini, who was the Returning Officer during the election in question. His cross examination has supported the case of the petitioner and has rightly been relied upon by learned trial court, while basing its findings on the deposition of this witness. During cross-examination, this witness has categorically admitted that sometime there is difference between the votes of EVM and the manual register maintained and further fact regarding the double votes having been polled while admitting that in Ex.P5 at page no. 81 at S.No.29, vote no.117/2 was polled and the same vote has been polled at page no.95 at S.No.277. He further admitted that at page no.83 at S.No.80, vote no.92/3 was polled which was again polled at page no.89 at S.No.157. His further admission is that at page no.89 at S.No.83, vote no.93/3 was polled which was again polled at page no.117 at S.No.622. Similarly, at page no.93, at S.No.248 and at page no.111, vote no.266/4 was twice polled. He also admitted that the votes which were polled double were bogus votes and the vote of dead person is also bogus like that of one Naresh Kumar was also bogus. He also admitted regarding the discrepancies of booth no.84 as in voter sign register, at page no.275, S.No.526 to 542 had been mentioned but again the same had been over-written as 557 to 541. From Ex.P5, the voter sign register/Tide register,

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it is apparent that record of booth no.84 shows that total 571 votes were shown to be polled as reflected in result of election i.e. Ex.P3. However, at page no.275 of Ex.P5, it was shown that voters at serial no.526 to 542 had polled their votes. However, by way of overwriting, the said serial number had been mentioned as 541 to 557 by mentioning the same just before serial no.526 to 542. 15 votes were missing in the election voting register. However, the same had been shown in the record of EVM, though there is no manual record by way of election register. 15 votes had not been shown to be polled by which of the voters and without disclosing the identity of the voters. Learned trial court has rightly observed that illegalities at the time of the counting of the election and at the time of polling are evident as the above said double votes have been shown to be polled in record Ex.P5 and it has been shown that there is no manual record of 15 votes i.e. of booth no 84 and in Ex.P5 at page no.275, the cutting over the serial numbers is evident. The entire record had been summoned by learned trial court, in which the said 15 voters had not been shown and on counting, the total voters had been shown to be 556 instead of 571.

20. *PW3 Naresh Kumar is father of one voter namely Sushil and vide his duly sworn affidavit Ex.PW3/A, he has specifically deposed that his son had been living at Spain from March, 2021 till the date of his deposition before learned trial court i.e. on 26.04.2023. Apparently, the election in question was held on 02.11.2022, which means that on the date of election, said Sushil was not present in India. In the voters list placed on record, the name of said Sushil is mentioned at S.No.161 pertaining to Ward No.18 and vote of said Sushil is shown to have been cast, which is obviously bogus one. Further, testimony of PW4 Shree Pal Warden, District Jail, Panipat, proves that one voter namely Sawan son of Naresh was confined in District Jail, Panipat since 28.07.2022 in FIR No.286 dated 22.07.2022 under Sections 302, 201, 120-B read with Section 34 IPC, Police Station Matlauda, Panipat. However, despite that, his vote was shown to be polled. Further, as has been rightly observed by learned trial court, death certificates Ex.P6 to P9 prove the death of various voters prior to the date of election in question. However, despite that, their votes have been shown to be cast vide Ex.P5. Not only this, as per testimony of PW6 Charan Singh, Ex-Sarpanch, ten persons cited at*

Serial no.1 to 10 in his duly sworn affidavit Ex.PW6/A had already shifted to

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various foreign countries prior to holding of election in question and they were not residing in Village Ahar. All the aforesaid witnesses were duly cross-examined by learned counsel for the respondents, but despite that, nothing fishy could be brought on record to suspect their version, which is otherwise duly supported with the documentary evidence available on record. A perusal of Ex.P5, coupled with testimony of RW2 Mahesh Kumar Saini, shows that various double votes, dead votes etc. have been got cast in various booths, which render the same to be bogus ones and have rightly been held by learned trial court as void. In such circumstances, it is apparent that the election in question has not been held fairly and suffers from various anomalies, as observed hereinabove.

21. *No other point or material was raised by either of the parties before me.*

22. *Thus, as a consequence of the above discussion, this court is of the considered opinion that there is no illegality, irregularity or infirmity in the findings arrived at by learned Trial Court pertaining to all the issues and the same are hereby affirmed. The judgment dated 7.10.2023 passed by the learned Trial Court is well reasoned and justified and the learned Trial Court has applied judicious mind while deciding all the issues...”*

5. Feeling dis-satisfied from the concurrent orders of dismissal, the petitioner has filed thereagainst the instant writ petition.

Reasons for dismissing the instant writ petition.

6. The margin wherebys the present petitioner secured victory on co-respondent No. 1 is comprised in 34 votes.

7. The declaration of the results wherebys the present petitioner became elected became averred by respondent No. 1 to become materially affected on account of :

a) double votes becoming polled in favour of the present petitioner ;

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b) bogus as well as the votes of dead persons becoming polled ;

c) votes of those voters, who were not available in India becoming also polled.

d) the fact of one Sawan son of Naresh, who was at the relevant time confined in District Jail Panipat becoming also added onto the tally of the present petitioner.

e) votes of ten persons who had shifted to the foreign country prior to the elections and who were not residing in the panchayat concerned also becoming polled and their votes becoming added onto the tally of the present petitioner.

8. Though the learned counsel for the petitioner has vehemently argued that the supra averred facts rather remained only in the realm of pleadings, whereas, the supra averments were required to be cogently established. Therefore, he submits that the supra averments without adduction of cogent evidence to substantiate the same rather could not lead to the formation of an inference that thereupons, the results of the elections favourably pronounced vis-a-vis the present petitioner, thus became materially affected.

9. The supra made submission before this Court by the learned counsel for the petitioner, is completely outweighed, in the face of a detailed discussion becoming made by both the learned courts below. Since the said made discussion is based upon a well appraisal of the adduced cogent documentary evidence. Resultantly therebys when

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the said adduced cogent documentary evidence remains unrebutted, through any contra evidence becoming adduced by the present petitioner. In sequel, immense credit is to be assigned to the appraisal as made by both the courts below vis-a-vis the said adduced documentary evidence. Resultantly this Court is led to declare, as aptly done by both the learned Courts below, that as such it became proven by co-respondent No. 1, that the results of the elections became materially affected.

Final Order of this Court.

10. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.
11. The impugned orders, as passed by both the learned Courts below, are maintained and affirmed.
12. Since the main case itself has been decided, thus, all the pending application(s), if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

29.01.2025
kavneet singh

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