

(2002) 04 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: Election Petition No. 6 of 1999

Hans Raj

APPELLANT

Vs

Jora Singh and Others

RESPONDENT

Date of Decision: April 4, 2002

Acts Referred:

- Representation of the People Act, 1951 - Section 87

Citation: (2003) 133 PLR 40 : (2002) 3 RCR(Civil) 584

Hon'ble Judges: V.M. Jain, J

Bench: Single Bench

Advocate: C.M. Munjal, for the Appellant; Sukhbir Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.M. Jain, J.

In this petition, various issues were framed. Some of the issues were treated as preliminary issues and the case was fixed for arguments on these preliminary issues. Part arguments on these preliminary issues were heard. The case is at the stage of remaining arguments on the preliminary issues.

2. Learned Counsel for the election petitioner has submitted before me that he has no instructions from the petitioner. He has submitted that he had duly informed the petitioner about the date fixed in this petition but no one has turned up to instruct him in this case. He has submitted that even on the previous date, petitioner had not instructed him inspite of the fact that he knew about the date of hearing fixed in this case.

3. As referred to above, the case is at the stage of remaining arguments on the preliminary issues framed in this case. u/s 87 of the Representation of the People Act, 1951, an election petition is to be tried by this Court, as nearly as possible, in

accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In *Dr. P. Nalla Thampy Thera v. B.L. Shanker and Ors.* A.I.R.1984 S.C.135, it was held by the Hon"ble Supreme Court that an election petition is liable to be dismissed for default in situations covered by Order IX, or Order XVII of the Code and for its restoration an application under Rule 9, Order IX of the Code would be maintainable but such application for restoration can be filed only by the election petitioner and not by any respondent. The Hon"ble Supreme Court had placed reliance on the law laid down by the Apex court, in an earlier judgment in [Rajendra Kumari Bajpai Vs. Ram Adhar Yadav and Others,](#) . In the said authority, it was held by the Hon"ble Supreme Court that "dismissal of an election petition for default of appearance of the petitioner under the provisions of either Order IX or Order XVII of the Code would, therefore, be valid and would not be open to the challenge on the ground that these provisions providing for dismissal of the election petition for default do not apply."

4. In the present case, as referred to above, even though Shri C.M. Munjal, Advocate is present on behalf of the election petitioner, yet he has pleaded no instructions from the petitioner. Neither the petitioner has personally come present nor any other counsel has come present on behalf of the petitioner to represent him in this petition. Considering the facts and circumstances of the case, in my opinion, the election petition is liable to be dismissed for non-prosecution.

In view of the above, the election petition is dismissed for non-prosecution. No costs.