

(2011) 04 P&H CK 0183

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 8458 of 2010 (O and M)

Raj Kumar

APPELLANT

Vs

Mukhtyar Singh and Others

RESPONDENT

Date of Decision: April 1, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227
- Haryana Panchayati Raj Act, 1994 - Section 176, 176(4)
- Punjab State Election Commission Act, 1994 - Section 76(1), 80, 80(1)
- Representation of the People Act, 1951 - Section 81, 81(1)

Citation: (2011) 163 PLR 44 : (2011) 3 RCR(Civil) 382

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 15.12.2010, Annexure P5, passed by learned Additional Civil Judge, Senior Division, Palwal, vide which election petition filed by the Petitioner u/s 176(4) of the Haryana Panchayati Raj Act, 1994 (hereinafter to be called as 'Haryana Act') to declare him as Sarpanch, Gram Panchayat, Gopalgarh, Tehsil Hodal, District Palwal in place of Respondent No. 1-Mukhtyar Singh, who has been illegally and arbitrarily declared as Sarpanch by Returning Officer by holding draw of lots, was dismissed on the ground of maintainability.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned Additional Civil Judge, Senior Division, Palwal.

3. Facts relevant for the decision of present revision petition are that election of Gram Panchayat, Gopalgarh, Tehsil Hodal, District Palwal was held on 6.6.2010 in pursuance of declaration by the Government of Haryana in the month of May 2010. Petitioner and Respondent No. 1 to 8 intend to contest the election for the post of Sarpanch of Gram Panchayat Gopalgarh. Respondent No. 1 was declared as elected Sarpanch of the Gram Panchayat. Petitioner filed CWP No. 10971 of 2010 before this Court challenging the election, which was disposed of with liberty to file election petition u/s 176(4) of the Haryana Act. Thereafter, the present petition was filed by the Petitioner, notice of which was given to Respondents, who filed an application, Annexure P3, for dismissal of petition on the plea that the same has not been filed by the Petitioner in person as required by the law. The application was contested by present Petitioner. Learned Additional Civil Judge, Senior Division, Palwal, allowed the said application filed by Respondent and dismissed the election petition filed by present Petitioner on the ground of maintainability by observing as under:

12. In the case in hand, present petition was filed on 23.6.10 before Vacation Judge, Palwal by Sh.R.K. Goel, Advocate for the Petitioner. Notice to the Respondents was ordered to be issued for 23.7.10 and the Petitioner was also directed to appear before learned Additional Civil Judge (Senior Division) Palwal for proper assignment of the case. On 23.7.10 the Petitioner did not appear personally in the court, rather Sh.R.K. Goel, Advocate, for Petitioner appeared and his presence was marked at the time of assigning the case to this Court and thereafter after assignment presence of Sh.R.K. Goel, Adocate was marked before this Court also on 23.7.10. Thus, from the zimni orders dated 23.6.10 and 23.7.10 it is very much clear that Petitioner was not present at the time of presentation of the present petition as well as at the time of assignment of the present petition to this Court. After examining the provisions of Haryana Panchayati Raj Act and representation of People Act and after going through the case laws relied upon by learned Counsel for the applicant/Respondent No. 3, this Court has come to the conclusion that present petition is not maintainable as the same has not been presented by the Petitioner personally. So the present petition must fail on this account alone. Accordingly, the petition is dismissed for non-compliance of provisions of the Haryana Panchayati Raj Act. There is no order as to cost. File be consigned to the record room after due compliance.

4. It has been vehemently contended by learned Counsel for the Petitioner that as per Section 176 of the Haryana Act, there is no requirement that the petition has to be presented in person and rather the same can be presented through counsel as well. It is further contended that even if it is taken that petition was to be presented in person, the Petitioner was present in person when the petition was presented and, however, his presence was not marked and the presence of his counsel alone was marked by learned Court. It is further contended that provision of Section 176 of the Haryana Act is not similar to Sections 76(1) and 80(1) of the Punjab State Election Commission Act, 1994 (hereinafter to be referred as the 'Punjab Act') and

that there is no provision like Section 80(1) of the Punjab Act in the Haryana Act, which provides for dismissal of the election petition if the same has been filed without complying with provision of Section 76 of the Punjab Act. Hence, it is contended that the petition should have been decided on merit by learned trial Court instead of dismissing the same on technical ground of maintainability.

5. On the other hand, it has been contended by learned Counsel for the Respondent that Section 176 of the Haryana Act is mandatory in nature and the same has to be strictly construed and that as per the said provision, petition has to be filed in person, failing which the same is liable to be dismissed.

6. It is pertinent to reproduce Section 176 of the Haryana Act, which reads as under:

Section 176 - Determination of validity of election enquiry by judge and procedure

(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 as 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 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 candidates, declare the candidates 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 entitled any of the candidates 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.

Explanation 1.- A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2- 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.

7. Section 176 in Part V, Chapter XX of the Haryana Act, deals with determination of validity of election in enquiry by judge and a complete procedure has been provided as to who will present the election petition, who will be the parties to the election petition, what would be the contents of election petition, how the election petition would be tried and what would be the procedure, to what extent Election Tribunal can decide and what are the grounds to declare the election void etc. It provides that any election petition may be presented by any candidate to such election, or by any person qualified to vote to any such election, to which such question arises, within a period of 30 days from the date of declaration of the result of the election. Language of Section 176 of the Haryana Act is similar to Sections 76 of the Punjab Act and 81 of the Representation of the People Act, 1951(hereinafter to be referred as 'the Act 1951').

8. The question arose before Hon"ble Apex Court as to whether election petition is required to be presented in person u/s 81 of the Act 1951 and as to whether the said provision is mandatory or directory in [G.V. Sreerama Reddy and Another Vs. Returning Officer and Others](#), . Hon"ble Apex Court observed that Representation of the People Act, 1951 is a complete and self-contained Code and that petition is required to be presented by the Petitioner personally and that requirement is mandatory in nature and non-compliance of the same results in dismissal of the election petition. Relevant paragraphs of the same read as under:

This Court, on previous occasions, had the chance to interpret Section 81(1). It must be noted that the Representation of the People Act is a special statute, and a self-contained regime. In [K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others](#), , a question arose whether 45 days period provided u/s 81(1) could be condoned through the application of the Limitation Act? After examining the relevant provisions of the Act, this Court held:

...the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.

14. This has been reiterated in [Hukumdev Narain Yadav Vs. Lalit Narain Mishra](#), , wherein this Court has again read the requirements u/s 81 strictly, while stating that the Act is a self- contained special statute.

15. While interpreting a special statute, which is a self contained code, the Court must consider the intention of the Legislature. The reason for this fidelity towards the Legislative intent is that the statute has been enacted with a specific purpose which must be measured from the wording of the statute strictly construed. The preamble of the Representation of the People Act makes it clear that for the conduct of elections of the Houses of Parliament or the Legislature of each State, the qualification and disqualification for membership of those Houses, the corrupt

practice and other offences in connection with such allegations the Act was enacted by the Parliament. In spite of existence of adequate provisions in the Code of CPC relating to institution of a suit, the present Act contains elaborate provisions as to disputes regarding elections. It not only prescribes how election petitions are to be presented but it also mandates what are the materials to be accompanied with the election petition, details regarding parties, contents of the same, relief that may be claimed in the petition. How trial of election petitions are to be conducted has been specifically provided in Chapter III of Part VI. In such circumstances, we are of the view that the provisions have to be interpreted as mentioned by the Legislature.

16. One can discern the reason why the petition is required to be presented by the Petitioner personally. An election petition is a serious matter with a variety of consequences.

Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented "by" the Petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.

17. In this context, earlier decisions of this Court regarding the interpretation of Section 81(1) must be understood. In [Sheo Sadan Singh Vs. Mohan Lal Gautam](#), in paragraph 4, this Court held that:

The High Court has found as a fact that the election petition was presented to the registry by an advocate's clerk in the immediate presence of the Petitioner.

Therefore, in substance though not in form, it was presented by the Petitioner himself.

Hence the requirement of the law was fully satisfied.

Learned Counsel for the Appellant submitted that even though the "form" of the provision was not followed, i.e. the petition was not presented "by" the Petitioner "personally", in "substance", it was followed. It is to be noted that in Sadan Singh's case, it is not in dispute that the petition was presented to the Registry in the immediate presence of the Petitioner. In other words, the officer authorized by the High Court had an opportunity to verify him but in the case in hand, admittedly, it was presented only by the advocate and the Petitioners were not present before the Registrar (Judicial). In view of the same, the said decision is not helpful to the Appellant's case. This is because the Petitioner therein had, in substance, complied with the provision as strictly construed.

18. Learned Counsel appearing for the Appellants relied on a decision of the High Court of Rajasthan (Jaipur Bench) in [Bhanwar Singh Vs. Navrang Singh](#). In the case before the learned Single Judge, the election petition had been presented by one Rajendra Prasad, Advocate and not by the Petitioner himself. It was argued by

learned Counsel for the Petitioner therein that election petition had been validly presented u/s 81(1) of the Act because Section 81(1) of the Act only makes a provision as to who can file an election petition and does not deal with as to who should actually present it before the Registry. It is further submitted that Section 81 of the Act nowhere provides that the Petitioner should be physically present at the time of presentation of the election petition. The learned Single Judge, after adverting to the words - "by", "presented" concluded that these words used in Section 81(1) of the Act have to be given wide meaning and found that election petition filed through an advocate without the presence of candidate or elector is valid. We are unable to accept the said conclusion.

19. We have already pointed out that in spite of provisions in Code of CPC and Evidence Act relating to institution of suit and recording of evidence etc. this Act provides all the details starting from the presentation of the election petition ending with the decision of the High Court. In such circumstances, it is but proper to interpret the language used by the Legislature and implement the same accordingly. The challenge to an election is a serious matter. The object of presenting an election petition by a candidate or elector is to ensure genuineness and to curtail vexatious litigations. If we consider Sub-section (1) along with the other provisions in Chapter II and III, the object and intent of the Legislature is that this provision i.e. Section 81(1) is to be strictly adhered to and complied with.

20. In view of the endorsement by the Registrar (Judicial) on 07.07.2008 that the election petition was presented only by an advocate and not by the election Petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per Sub-section (1) of Section 81, election petition is to be presented by any candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation. Since, the High Court has correctly dismissed the election petition, the civil appeal fails and the same is dismissed with no order as to costs.

9. A Coordinate Bench of this Court while dealing with a petition under Punjab State Election Commission Act, 1994 in *Gurlal Singh v. Presiding Officer, Election Tribunal, Block Lehra, District Sangrur* and Ors. 2010(5) RCR 474 has also come to the conclusion that an election petition u/s 76(1) of the Punjab Act has to be filed in person by a candidate and filing of same through an Advocate is not a proper filing and the election petition has to be dismissed on that ground itself, in view of Section 80 of the Punjab Act.

10. Hence, in view of this legal proposition this Court is to see as to whether impugned order passed by learned Additional Civil Judge, Senior Division, Palwal, suffers from any illegality or material irregularity warranting interference by this Court.

11. It has been specifically mentioned by learned trial Court that petition was filed on 23.6.2010 before Vacation Judge, Palwal, by Shri R.K. Goel, Advocate, for the Petitioner, notice was ordered to be issued for 23.7.2010 and the Petitioner was also directed to appear before learned Additional Civil Judge, Senior Division, Palwal, for proper assignment of the case. On 23.7.2010 as well, the Petitioner did not appear in person in the Court and rather his counsel, Shri R.K. Goel appeared and only his presence was marked at the time of assigning the case to the Court. Thereafter even after assigning of the case only Shri R.K. Goel, appeared for the Petitioner, hence, it has been observed that from zimni orders, it is clear that Petitioner did not appear in person for presenting the petition as required in Section 176 of the Haryana Act. Argument of learned Counsel for the Petitioner that Petitioner was present and, however, his presence was not marked by the Court cannot be accepted, as the same is without any basis and against the judicial orders passed by learned trial Court. There is also no force in the argument of learned Counsel for the Petitioner that there was no requirement u/s 176 of the Haryana Act that the petition has to be presented in person. Rather a careful perusal of the aforementioned provision of law, i.e., Section 176 of the Haryana Act, shows that the petition has to be presented in person. The provision is similar to Section 76 of the Punjab Act and Section 81 of the 1951 Act, which have been held to be mandatory in nature, according to which election petition has to be presented in person.

12. So far as argument of learned Counsel for the Petitioner that there is no provision under Haryana Act like Section 80 of the Punjab Act that if petition is not presented in person, as required u/s 76 of the Punjab Act, the same shall be dismissed, is concerned, I am of the view that the said fact is not of any help to the case of present Petitioner. Once, a provision is held to be mandatory in nature, non-compliance of the said provision would be having obvious effect, i.e., dismissal for noncompliance.

13. As a consequence to above discussion, I am of the view that no illegality or material irregularity has been committed by learned trial Court in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

14. Moreover, law has been well settled in *Surya Dev Rai v. Ram Chander Rai* and *Ors.* 2004(1) RCR 147 by Hon"ble Apex Court that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

15. Hence, the present revision petition is, hereby, dismissed being devoid of any merit.