

(2015) 03 P&H CK 0180

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7310 of 2013 (O and M)

Gurmail Kaur

APPELLANT

Vs

Presiding Officer, Election Tribunal-cum-Sub Divisional
Magistrate and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15
Punjab State Election Commission Act, 1994 — Section 100, 101, 76, 76(1), 78
Representation of the People Act, 1951 — Section 81

Citation : (2015) 03 P&H CK 0180

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : B.S. Sewak, for the Appellant

Final Decision : Allowed

Judgement

K. Kannan, J.

CM Nos. 5162-63-CII of 2015

Exemption granted. Annexures R2/1 to R2/7 are taken on record.

Applications stand disposed of.

Civil Revision No. 7310 of 2013

1. The election petition challenging the election to the post of a Sarpanch was brought at the instance of a defeated candidate Civil Revision No. 7310 of 2013 (OandM) - 2 - against the successful candidate on various grounds. On being served with notice from the Election Tribunal, the elected candidate, who is the petitioner before the court, took two preliminary objections: (i) the presentation of the petition was not as per the requirements of Section 76 of the Punjab State Election Commission Act, 1994 and (ii) the petition had not been verified in the manner required under Section 78 of the relevant rules. The contention was that

as per Rule 53 of the Election Rules of 1994, the petition would be dismissed for non-compliance with the rules and the provisions under the Act. The Election Tribunal rejected the objections taken by the candidate and held that the case would require to be considered on merits since there was no error in the presentation or the verification made. The objector, whose petition was dismissed, is the revision petitioner here.

2. The learned counsel would refer me to Section 76 of the Punjab State Election Commission Act, 1994 which reads as follows:-

"76. Presentation of Petition- (1) an election petition may be presented on one or more of the grounds specified in sub section (1) of Section 89 to the Election Tribunal by any candidate to such election or by any elector within a period of forty five days from the date of election of the returned candidate or if there are more than one returned candidates at the election and there are different dates of their election, then the later of these dates shall be taken into account for this purpose.

(2) Every election petition shall be accompanied by as many copies thereof, as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition."

The counsel would lay emphasis to clause (1) that states that the election petition is required to be presented before the Election Tribunal by any candidate to such election. The counsel would state that this section is in pari materia to the manner of presentation of petition mentioned under the Representation of Peoples Act of 1951. Section 81 of the said Act contains a similar provision that states as follows:-

"81. Presentation of petitions.-(1)An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation.-....."

3. The manner of whether presentation of the petitions through counsel was competent was considered by this court by a learned single Judge making particular reference to the judgment of the Supreme Court as well in this regard. In *Gurlal Singh Versus Presiding Officer, Election Tribunal, Block Lehra, District Sangrur and others*-2010(5) RCR (Civil) 474, the court raised the point for consideration as, "Whether an election petition presented through an Advocate is liable to be dismissed under Section 80 of the Act, being in violation of Section 76(1) of the Act?" The court held after making reference to the judgment of the

Supreme Court that the petition was not competent and there was no question of any waiver in the election petition of a mandatory and peremptory provision of law which has a consequence of dismissal of the election petition in case of violation. The Supreme Court's judgment referred to in the decision in Gurlal Singh(supra) is G.V. Sreerama Reddy and Another Vs. Returning Officer and Others, . That was a case relating to an objection taken on the validity of the election petition presented through counsel. We have already extracted the provisions of the Representation of Peoples Act that makes reference to presentation of the election petition. The Supreme Court was raising a question as to why the petition is required to be presented by the petitioner personally in para 16 and the court reasoned as follows:-

"16. 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." It can be seen that the Supreme Court was, therefore, considering that the election petition is always serious and if a result of a democratic process is sought to be scuttled, it has to be under an exceptional circumstance and there must be a punctilious observation of the statutory mandate. The Supreme Court held that the petition presented through advocate was not competent.

4. The learned counsel for the respondent takes me to the fact that the petition is received by the Election Presiding Officer with the following observations:-

"Present: Counsel for petitioner.

Case file is presented. File is complete. Notice be issued for 22/8/2013 for the service of respondents.

Dated:5-8-2013

Sd/- Election Presiding Officer Election Tribunal Sunam"

The counsel would want me to read the endorsement made by the Election Officer that the file was complete to mean that the presentation must have been only through the applicant and that is why the endorsement was so made. I am afraid, I cannot accept such an argument, for, it is not as if there is absence of reference to the person present. There is simply no scope for the Election Officer to register merely the presence of the counsel and not the petitioner. In the light of the view expressed by this court already in Gurlal Singh(supra) and the following decision of the Supreme Court in G.V. Sreerama Reddy(supra), the reception of a petition through counsel cannot be taken to be a valid institution at all.

5. The other objection taken is that Section 78 of the Act sets out in the petition what are required to be stated and under clause (c) it adds that it shall "be

signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 for the verification of the pleadings." The manner of how the verification shall be done is set out in Order 6 Rule 15 CPC. The verification shall contain by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. This ought to be contained in the petition. The petition presented on 22.07.2013 contains no verification but merely makes reference to the applicant's name and the name of the counsel who has presented the petition and signed. The copy of the petition presented before the court evidences the following details:-

"Dated:22-7-13

Applicant: Pal Kaur w/o Rama Singh r/o Village Gurne Khurd, Tehsil Lehra, District Sangrur. RTI Pal Kaur

..... Petitioner

Through Counsel Sd/- Ranjit Singh Adv. Bakshiwal B.A. LL.B. Advocate, Sunam"

The counsel for the respondent explains that the petitioner has suppressed the fact that along with the petition an affidavit had been filed and that the affidavit had declared that recitals in the petition are true to the knowledge and belief and the verification found in the affidavit must be taken as fully incorporated in the petition itself. The incorporation of the verification through an affidavit in a petition that is filed is a practice that obtains in several High Courts by virtue of specific High Court Rules that allow for presentation of the petition with an affidavit sworn by the party and accompanied along with the petition. What may be possible by incorporating verification in the affidavit to the petition through express rules cannot be supplanted to the requirement of the statute and the rules which set out a particular consequence of not complying with the terms and conditions. I must therefore observe that the petition was irregular.

6. We have already seen the relevant provision under Section 78 requiring the verification and the objections taken as that in terms of Rule 53, any petition filed for non-compliance with the provisions of Rules 51, 52 and 76 shall entail dismissal. I do not find that there is any reference to the non-compliance of the provisions of Section 78 as requiring a dismissal. I will not, therefore, find this to be of any serious consequence of dismissal but in view of the reasoning that I have adopted under the plank of objection that the case is required to be presented in person, the order passed by the Election Tribunal would require to be set aside.

7. The revision petition is allowed setting aside the order of Election Tribunal and dismissing the election petition. There shall be, however, no order as to costs.