
(2003) 03 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5725 of 2002

Nanha Ram

APPELLANT

Vs

Election Tribunal-Cum-Civil Judge (Junior Div.)

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 176

Citation : (2004) 138 PLR 186 : (2004) 3 RCR(Civil) 443

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : R.S. Longia, for the Appellant; Arvind Singh, for the Respondent

Final Decision : Dismissed

Judgement

Nirmal Singh, J.—The question for consideration in this civil revision is whether a person who has filed a petition u/s 176 of the Haryana

Panchayati Raj Act, 1957 (hereinafter called the "Act") is entitled to withdraw the petition under Order 23 Rule 1 C.P.C.?

2. The facts for the disposal of this civil revision are that Mohinder Pal respondent No. 2 filed a petition challenging the election of respondent No.

3 on various grounds. Petitioner along with Krishan Chand, respondent No. 3 appeared before the Civil Judge and filed written statement. After

filing the written statement, Mohinder Pal moved an application under Order 23(1) CPC for withdrawal of the petition. After hearing Mohinder

Pal, learned Civil Judge (Jr. Division) Kurukshetra allowed the application. Petitioner moved an application for restoration of the election petition

filed by Mohinder Pal and to transpose the petitioner from arrying the respondents as election petitioner. Notice of the application was given to

Mohinder Pal. After hearing the parties, application was dismissed vide the

impugned order. Aggrieved by which present petition has been preferred.

3. Mr. R.S. Longia, learned counsel for the petitioner submitted that learned Tribunal has erroneously dismissed that application of the petitioner.

He contended that before allowing the application for withdrawing the petition, no notice was served upon the petitioner. He further contended that

there is no provision in the Act or under the rules framed thereunder to withdraw the petition. He also contended that provisions of Representation

of People Act, 1951 (hereinafter called "the People Act") are paramateria to the provisions of the Act. He submitted that under the Peoples Act,

no petition can be withdrawn without giving notice to the interested party and in this case, petitioner being the interested party, was entitled to be

heard before allowing the petition to be withdrawn. He submitted that by allowing the application for withdrawing the petition, the Tribunal had

exceeded its jurisdiction. He contended that election petition is not a petition in personam but the petition filed in an action in rent as all the electoral

of the constituency are to be affected. He further contended that once the Tribunal has taken the cognizance, then there is no provision in the Act

to withdraw the petition. He further submitted that the Tribunal can grant or refuse the leave to withdraw the petition only after hearing all the

parties. If any of the party want to continue the petition, the Election Tribunal cannot dismiss the application for withdrawal of the petition or

abandonment of part of claim. On the asking of any party, the Tribunal is to adjudicate the controversy. He also submitted that the learned Tribunal

has erroneously applied the provision of Order 23 Rule 1 CPC while deciding the application. He submitted that the said provisions are not

applicable to the petition. In support of his arguments, he placed reliance in Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa and Others,

, Jugal Kishore Vs. Doctor Baldev Parkash, , Bijayananda Patnaik Vs. Satrughna Sahu and Others, .

4. Mr. Arvind Singh, learned counsel appearing for the respondents submitted that Mohinder Pal, respondent was competent to withdraw the

petition under Order 23 Rule 1 C.P.C. He submitted that the provisions of CPC are applicable to the petition filed under the Act. He further

submitted that after filing the petition, respondent can withdraw the suit or

abandon a part of claim. He contended that if the respondent after filing the petition wanted to withdraw the suit to file a fresh one on the same cause of action, then permission is necessary. The Court in its discretion may allow or reject the prayer made by a person. He further submitted that the judicial precedents cited by learned counsel for the petitioner are not applicable to the facts of the present case. He pointed out that all those cases are covered under the provisions of the People Act. He contended that u/s 109, 110 of the 1951 Act, an election petition can only be withdrawn by the leave of the High Court and notice is required to be issued to all the parties. He further contended that the High Court shall direct the notice of withdrawal to be published in the official gazette within 14 days of such publication and any of the party can apply to be substituted as a petitioner in place of the party withdrawing the petition. He contended that there is no such provision under the Haryana Panchayati Raj Act.

5. Before appreciating the rival contention of the parties, it would be appropriate to notice the relevant provisions of Section 109 and 110 of the 1951 Act and Section 176 of the Haryana Panchayati Raj Act, which are as under:-

109.(1) An election petition may be withdrawn only by leave of the High Court.
(2) Where an application for withdrawal is made under Sub-

section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the official gazette.

110.(1) If there are more petitioner than one, no application to withdraw an election petition be made except with the consent of all the petitioners.

(2) No application for withdrawal shall be granted, if in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted-

(a) the petitioner shall be ordered to pay the costs of the respondents thereof incurred or such portion thereof as the High Court may think fit.

(b) the High Court shall direct that the notice of withdrawal shall be published in the official gazette and in such other manner as it may specify and

thereupon the notice shall be published accordingly.

(c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of

the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the

proceedings upon such terms as the High Court may deem fit.

176(1) Determination of validity of election enquiry by judge and procedure,- 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 declaration of results of the election, present an election

(petition) to the Civil Court having ordinary jurisdiction in the area which the election has been or should have been held, for the determination of

such question.

A perusal of Section 109 of the People Act shows that election petition can only be withdrawn with the leave of the High Court where an

application for withdrawal is made under Sub-section (1) to the said Section, notice of the application is to be given to all the parties to the petition

and shall be published in official gazette. Sub-section (2) further makes it clear that no application for withdrawal shall be granted if in the opinion

of the High Court such application has been induced by any bargain or consideration which ought not to be allowed. In case the petition is to be

allowed, the petitioner is to pay costs to the respondent. After allowing, the petition for its withdrawal, it has to be published in the official gazette

and in such other manner as it may specify and there upon the notice shall be published accordingly and further under Sub-clause (c) to Section

109 a person who might himself have a respondent may, within fourteen days of such publication, apply to be substituted as petitioner in place of

the party withdrawing and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the

proceedings upon such terms as the High Court may deem fit.

6. There are no provisions, in the Haryana Panchayati Raj Act, paramateria to Section 109 and 110 of the People Act.

7. The judicial precedents cited by learned counsel for the petitioner are also under the Representation of People Act. Their Lordships of the Apex

Court, after taking into consideration Section 109 and 110 of the 1951 Act have held that petition cannot be withdrawn under Order 23 Rule 1

CPC.

8. In the case in hand, on a due consideration of the provisions of Sections 109 and 110 of the Representation of People Act and u/s 176 of the

Haryana Panchayati Raj Act, I am of the considered opinion that the provisions of Order 23 Rule 1 C.P.C. do apply to the election petition filed

under the Haryana Panchayati Raj Act. It is open to the petitioner to abandon his claim or abandon a part of his claim. There is no provision under

the Haryana Panchayati Raj Act to take leave of the Court for withdrawal of the petition or abandonment of part of claim. The permission is

required if a party wants to withdraw the petition and to file a fresh petition on the same cause of action, but in the instant case, the respondent

Mohinder Pal is seeking leave of the Court to file a fresh petition on the same cause of action. In the Haryana Panchayati Raj Act, there is no

provision for substitution in place of petitioner, who is withdrawing the petition.

For the reasons recorded above, there is no merit in the civil revision. The same is dismissed.