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(14) For these reasons, both the civil writ petitions being without merit must fail and are accordingly dismissed.

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*J.S.T.*

*Before N.K. Sodhi, J.*

MAHLA,—Petitioner

*versus*

ROOP RAM AND OTHERS,—Respondents

C.R. No. 1938 of 1997

The 3rd September, 1998

*Haryana Panchayati Raj Act, 1994—S. 176(4)—Haryana Panchayati Raj Election Rules, 1994—Constitution of India, 1950—Art. 227—Whether elections to Gram Panchayat can be set aside on the ground that the electoral authorities committed irregularities during the course of elections—Held, elections can be challenged only on two grounds mentioned in S. 176, that returned candidate committed a corrupt practice or irregularities and illegalities were committed during the course of counting—Merely because the electoral authorities committed some irregularities during the course of the election does not furnish ground u/s 176 to set aside the election—Order of Election Tribunal quashed in exercise of revisional jurisdiction.*

*Held*, that a perusal of Section 176 of the Haryana Panchayati Raj Act, 1994 would show that the only two grounds on which an election can be challenged are : (a) that the returned candidate committed a corrupt practice within the meaning of sub-section (5); (b) that some irregularities and illegalities were committed during the course of counting on which pleading the court may order scrutiny and recounting of votes and declare the candidate who is found to have largest number of valid votes in his favour to be duly elected. In the present case, the Tribunal has found that the returned candidate did not commit any corrupt practice. Therefore, the election petitioner could succeed only if he had proved that some irregularities were committed during the course of the counting and on a recount the returned candidate was found having polled lesser number of votes than any other candidate. This has not happened. The votes have not been recounted. Merely because the electoral

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authorities committed some irregularities during the course of the election is not ground to set aside the election of the returned candidate. Whatever irregularities, if at all, committed during the course of the election do not furnish a ground to the election petitioner to challenge the election of the returned candidate. In this view of the matter, the impugned order cannot be sustained *qua* the returned candidate.

(Paras 7 & 8)

Arun Jain, Advocate, for the *petitioner*.

Atul Lakhanpal, Advocate for *respondent 1*.

### JUDGMENT

*N.K. Sodhi, J.*

(1) This order will dispose of two Revision Petitions 1938 and 3003 of 1997 filed under Article 227 of the Constitution, both of which arise out of the order dated 17th April, 1997 passed by the Additional Civil Judge (Sr. Division), Fatehabad whereby he has set aside the election of Mehla son of Fauja Singh as sarpanch of Gram Panchayat, Hizrawan Kalan with a direction to the State of Haryana to hold fresh elections. While allowing the election petition, the Tribunal found that Nafe Singh and Suresh Kumar Kaswan who were the Presiding Officers of two polling booths were negligent in the performance of their duties and has directed them to pay a sum of Rs. 2500 each from their salaries to the State Government as expenses for holding fresh election. Mehla has filed Civil Revision 1938 of 1997 challenging that part of the order whereby his election has been set aside whereas Nafe Singh and Suresh Kumar have filed the other petition challenging the direction given by the Election Tribunal against them.

(2) Election to the Gram Panchayat of village Hizrawan Kalan, Tehsil Fatehabad, District Hisar were held on 11th December, 1994. Petitioner along with Roop Ram and some others were candidates for the post of Sarpanch. Petitioner was declared elected by a margin of 12 votes. Roop Ram respondent filed an election petition challenging the election of the petitioner before the Additional Civil Judge (Sr. Division), Fatehabad. The election was challenged on various grounds. It was alleged that there was double registration of votes inasmuch some of the persons who were

registered as voters in Ward no. 1 were also registered as such in Ward No. 8 and some other from Ward No. 1 were registered in Ward No. 2 while some of the voters registered in Ward No. 3 were also registered in Ward No. 8. It was further alleged that the Presiding Officers of polling booths and the Returning Officer in connivance with and under the political influence of the returned candidate committed various illegalities and irregularities in the conduct of the election. It is stated that the votes at booths 107, 109 and 110 were counted and the result given to the Returning Officer, but the Presiding Officer of booths at Khan Mohammad and Daulatpur (booths 105, 106 and 108) did not count the votes there and took the ballot boxes without seals to Hizrawan Kalan where those were counted in the absence of the election petitioner or his representatives and that the counting staff in connivance with the returned candidate committed various irregularities. The violation of various provisions of the Haryana Panchayati Raj Election Rules (for short the Rules) was also alleged. The petition was contested by the petitioner and one Daulat Ram son of Ram Kumar who filed their written statements controverting the allegations made in the election petition. It was averred that the election was held in accordance with the statutory provisions and that no illegality or irregularity as alleged was committed at any stage throughout the elections. It was also pleaded that the election petition did not disclose any cause of action and that the same was liable to be dismissed. Respondent 1 who was the election petitioner filed a rejoinder controverting the pleas taken in the written statement and reiterated those in the election petition.

(3) When the election petition came up for hearing before the court on 13th September, 1995 the election petitioner and the returned candidate agreed that the votes be recounted and the result declared accordingly. The election petitioner gave up all other grounds of challenge to the election of the returned candidate. The election petitioner deposited a sum of Rs. 5,000 which was payable to the returned candidate as costs in the eventuality of the petition being dismissed. By a separate order passed on that date the court ordered the recounting of votes and directed the authorities to produce the election record. Shri R.K. Chhabra, government pleader was appointed court nominee/local commissioner for scrutiny and

computation of votes. The election record was produced in court on 17th November, 1995 but the same was not complete. Since the complete record was not produced despite repeated opportunities the court by an order dated 6th June, 1996 framed the following two issues :—

“(1) Whether the election of respondent 1 as Sarpanch of Gram Panchayat of Village Hizrawan Kalan Tehsil Fatehabad, District Hisar is liable to be set aside on the ground of non-production of complete election record ?  
OPP

(2) Relief.”

(4) The petitioner filed Civil Revision 2692 of 1996 in this court challenging the order dated 6th June, 1996 framing the aforesaid issue. That petition was allowed on 2nd September, 1996 and the impugned order therein set aside. It was, however, left open to the election petitioner-respondent to raise all issues that may arise before the Tribunal. After the decision of the civil revision the Tribunal framed the following 11 issues :—

- “(1) Whether the election of respondent as Sarpanch of Gram Panchayat of Hizrawan Kalan Tehsil Fatehabad District Hisar is liable to be set aside on the ground of adoption of corrupt practices by respondent ? OPP
- (2) Whether the election of respondent as Sarpanch of Gram Panchayat of village Hizrawan Kalan Tehsil Fatehabad District Hisar is liable to be set aside on the ground of commission of illegalities and irregularities in the conduct of election by electoral authorities as alleged ? OPP
- (3) Whether the petitioner is estopped by his own act and conduct from filing the present petition ? OPP
- (4) Whether the petitioner has no cause of action to file the present petition ? OPR
- (5) Whether this court has no jurisdiction to entertain and try the present petition ? OPR
- (6) Whether the petition is not in accordance with provisions of law and rules ? If so to what effect ? OPR

- (7) Whether the petition has not been properly signed and verified ? If so to what effect ? OPR
- (8) Whether the petition is vague ? If so to what effect ? OPR
- (9) What is the effect of statement dated 13th September, 1995 made by petitioner ? OPR
- (10) Whether the respondent is entitled to special costs ? OPR
- (11) Relief.”

(5) After recording evidence of the parties and on a consideration thereof, Issue No. 1 was decided against the election petitioner and in favour of the returned candidate holding that no corrupt practice had been committed by the latter. Issue No. 2 was decided in favour of the election petitioner. It was held that the ballot boxes of booths at Khan Mohammad and Daultapur were transported without proper seals and that counting was not continuous and the same was carried out in the absence of the election petitioner and his election agents and that they were denied opportunity to inspect the seals and rejected ballot papers. It was also held that a bundle of ballot papers was thrown out of the window by the returned candidate and that the ballot papers were not properly counted. Issue No. 3 to 6 and 8 to 10 were also decided in favour of the election petitioner and against the returned candidate. Issue No. 7 was partly decided in favour of the election petitioner and partly in favour of the returned candidate. In view of the findings on Issue No. 2 the election of the returned candidate (petitioner herein) was set aside and the State of Haryana directed to hold fresh elections. The Tribunal found that the Presiding Officers of the booths at Khan Mohammad and Daultapur were negligent in the performance of their duties. These two officers were directed to pay a sum of Rs. 2500 each out of their salaries to the State Government. Hence, these revision petitions.

(6) I have heard counsel for the parties who have taken me through the impugned order passed by the election Tribunal. The election of the returned candidate has been set aside by the Tribunal by recording a finding against him on issue no. 2. This issue pertains to the commission of illegalities and irregularities in the conduct of the election by the electoral authorities as alleged by the election petitioner (respondent 1 herein). Without going into the merits of the findings recorded by the election Tribunal on this issue and

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taking those findings on their face value I am of the opinion that civil revision 1938 of 1997 deserves to succeed. What has been held by the Tribunal is that various illegalities and irregularities were committed by the electoral authorities during the conduct of the election but the commission of such illegalities or irregularities as found by the Tribunal do not constitute a ground for the setting aside of the election of the returned candidate under Section 176(4) of the Haryana Panchayati Raj Act, 1994 (referred to hereinafter as the Act). Section 176 of the Act provides for challenging the validity of any election amongst others of a Sarpanch of a gram panchayat by any person contesting the election or by any person qualified to vote at the election. Sub-section (4) of this section enumerates the grounds on which the election of a returned candidate can be challenged. This provision reads as under :—

“(4) (a) If on the holding of 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.

(b) If, in any case to which clause (a) 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 candidate, declare the candidate 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 entitle any of the candidates to be declare 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.”

(7) A perusal of the aforesaid provision would show that the only two grounds on which an election can be challenged are : (a) that the returned candidate committed a corrupt practice within the meaning of sub-section (5); (b) that some irregularities or illegalities were committed during the course of counting on which

pleading the court may order scrutiny and recounting of votes and declare the candidate who is found to have largest number of valid votes in his favour to be duly elected. In the present case, the Tribunal has found that the returned candidate did not commit any corrupt practice. Therefore, the election petitioner could succeed only if he had proved that some irregularities were committed during the course of the counting and on a recount the returned candidate was found having polled lesser number of votes than any other candidate. This has not happened. The votes have not been recounted. Merely because the electoral authorities committed some irregularities during the course of the election is no ground to set aside the election of the returned candidate. From a reading of the impugned order it is clear that it was contended before the Tribunal that the allegations as levelled in the petition do not disclose a cause of action and that the illegalities or irregularities referred to therein do not justify the setting aside of the election. The Tribunal did not accept this contention and instead relied on the observations made by a Division Bench of this court in *Smt. Gudi Devi v. State Election Commissioner Haryana and Others* (1) in which it was held that even though sub-section (4) of Section 176 of the Act furnished limited grounds for challenging an election the same could be challenged on the ground of other mistakes, irregularities or illegalities committed during the election process and that the affected party could approach the competent authority by way of an election petition. Correctness of the judgment in *Gudi Devi's* case was doubted in *Anju v. Additional Civil Judge and others* and the matter was referred to a Full Bench. The judgment in *Gudi Devi's* case was over-ruled holding that it did not lay down correct law and it was observed by the Full Bench in *Anju's* case (2) as under :—

“..... a right to contest an election or a right to vote therein is neither a fundamental right nor a constitutional right. It is not even a common law right. It is just a statutory right—a right created by the statute providing for such an election. One can contest the election or exercise the right of franchise therein only subject to the conditions imposed by that statute. Similar is the position in regard to the right to dispute an election. Since these are statutory rights, they can be exercised only in conformity with the statute and not otherwise. If the statute provides

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(1) 1995 P.L.J. 285

(2) A.I.R. 1998 P & H 140

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the grounds on which an election can be challenged then it can be challenged only on those grounds and no other. An Election Tribunal is not a Court of plenary jurisdiction and the exercise of its jurisdiction is controlled and limited by the statute creating it and it can entertain an election petition only on the grounds as specified in the statutes.”

(8) Whatever irregularities, if at all, committed during the course of the election do not furnish a ground to the election petitioner to challenge the election of the returned candidate. In this view of the matter, the impugned order cannot be sustained qua the returned candidate.

(9) In the result, Civil Revision 1938 of 1997 filed by Mehla the returned candidate is allowed and the impugned order set aside qua him.

(10) As regards the other revision petition the Tribunal has on a consideration of the evidence led by the parties found that the petitioners therein who were the presiding Officers at booths in villages Khan Mohammad and Daulatpur, transported the ballot boxes without proper seals which was in flagrant violation of the Rules. This court in the exercise of its jurisdiction under Article 227 of the Constitution does not sit in appeal over those findings. Since no jurisdictional error has been pointed out by the petitioners, I find no ground to interfere with the direction given by the Tribunal in regard to these petitioners. Consequently, Civil Revision 3003 of 1997 is dismissed. There is no order as to costs.

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**R.N.R.**

*Before R.S. Mongia & V.S. Aggarwal, JJ*

JACOB & ANOTHER,—*Petitioners*

*versus*

STATE OF PUNJAB & OTHERS,—*Respondents*

*CWP No. 14829 of 1998*

7th October, 1998

*Constitution of India, 1950—Arts. 226/227—Punjab Government National Emergency (Concession) Rules, 1965—Rl. 2—*