



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

112

**CR No.6155 of 2025
Reserved on:05.09.2025
Pronounced on:08.09.2025**

Sukhpreet Kaur

...Petitioner

Versus

Parminder Kaur and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Gurmeet Singh Budhiraja, Advocate
Ms. Reema, Advocate and
Mr. Chandan Singh, Advocate
for the petitioner.

Mr. Arun Bansal, Advocate
Ms. Nisha, Advocate
for respondent No.1.

AMARINDER SINGH GREWAL, J.

1. The present petition has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the election petition (Annexure P-2) dated nil filed by respondent No.1 being not maintainable, as has been filed in contravention to provisions of Section 80 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as the Election Act, 1994) and Rule 53 of the Punjab Panchayat Election Rules, 1994 (hereinafter referred to as the Election Rules, 1994) which mandate that the Election Tribunal shall dismiss the election petition, which does not comply with provisions of Sections 76 & 77 of the Election Act, 1994 and Rule 50 of the



Election Rules, 1994 as well as setting aside of the order dated 18.08.2025 (Annexure P-1) passed by the learned Election Tribunal.

FACTS

2. Succinctly, the facts are that election for the post of Sarpanch of Village Bhokhra, District Bathinda was held on 15.10.2024 and the same was contested by six candidates, who, out of total valid polled votes of 2440, got votes as mentioned against their names:-

Sr. No.	Name of Candidate	Valid votes	Status
1.	Gogi	463	Not Elected
2.	Paramjit Kaur	136	Not Elected
3.	Parminder Kaur (respondent No.1 herein)	701	Not Elected
4.	Kulwinder Kaur	300	Not Elected
5.	Sarabjit Kaur	59	Not Elected
6.	Sukhpreet Kaur (petitioner herein)	702	Elected
7.	NOTA	09	
8.	Cancelled	70	

3. Being unsuccessful from one vote, respondent No.1-Parminder Kaur filed election petition before respondent No.2-Tribunal on 11.11.2024, which was registered on 02.12.2024 vide case No.26/EP. Notices of the said election petition were issued on respondents therein and the contesting parties filed their respective replies. Based on pleadings, following issues were framed by respondent No.2-Tribunal:-

- “1. Whether the respondent No.1-Sukhpreet Kaur has been wrongly elected as Sarpanch? OP
2. Whether there has been tampering in the counting or not? OP
3. If both the above issues are in favour of the petitioner, then whether a recounting should be conducted?
4. That the petition is not maintainable in the present form? OR-1



5. *That the necessary parties were not impleaded in the petition?*

OR-1

6. *That the election petition has been filed beyond limitation?*

OR-1

4. Vide impugned order dated 18.08.2025, the respondent No.2-Tribunal while observing that issue No.1 cannot be decided at this stage unless the votes are re-counted as per issues No.2 & 3 and thus, it kept pending issue No.1 for the time being and concluded that there are substantial deficiencies in counting and ordered for recounting of votes at 10:00 AM on 10.09.2025. Against this order dated 18.08.2025, the successful candidate namely Ms. Sukhpreet Kaur, whose election as Sarpanch has been challenged in the election petition, is the petitioner before this Court.

CONTENTIONS

5. Mr. Baltej Singh Sidhu, Senior Advocate assisted by Mr. Gurmeet Singh Budhiraja, Ms. Reema and Mr. Chandan Singh, Advocates challenged the impugned order dated 18.08.2025 ordering recounting of votes on the following grounds:-

“(i). Firstly, the election petition has not been presented by the respondent No.1/election petitioner herself before the Election Tribunal as mandated by Section 76 of the Election Act, 1994 and thus, liable to be dismissed under Section 80 of the Election Act, 1994 and Rule 53 of the Election Rules, 1994. In support, reliance is placed upon the judgment passed by the Hon’ble Supreme Court in *G.V. Sreerama Reddy and another Vs. Returning Officer and others (2009) 8 SCC 736* and the



judgment passed by a Coordinate Bench of this Court in C.R. No.7310 of 2023 titled as *Gurmail Kaur Vs. Presiding Officer, Election Tribunal-cum-Sub Divisional Magistrate, Sunam and others* decided on 20.03.2015.

(ii). Secondly, all six candidates, who contested the election in question, were not impleaded as parties in election petition except the petitioner herein, which is violative of Section 77 of the Act, 1994 and thus, the election petition is liable to be dismissed under Section 80 of the Election Act, 1994.

(iii) Thirdly, the election petition is barred by limitation, as the same is to be filed within 45 days from date of election of returned candidate as per the provisions of Section 76 of the Election Act, 1994. The election in question was held on 15.10.2024 and the election petition was registered on 02.12.2024, thus, there is delay in filing the election petition, which cannot be condoned at all.

(iv) Fourthly, recounting of votes has been ordered without there being any cogent evidence. The result sheet of the election was signed by the agent of respondent No.1 on 15.10.2024 without raising any objection on the day of counting of votes. The result was declared on 16.10.2024 at 1:20 AM after four rounds of recounting and every time, result remained the same.

(v) Fifthly, in the absence of any application or prayer made by respondent No.1 or consent by the petitioner to decide Issue Nos.2 & 3 as preliminary issues, the respondent No.2-Election Tribunal



circumvented the provisions of Order XIV Rule 2 CPC, as per which, the Court shall pronounce the judgment on all issues except where the Court is of the opinion that the case or any part whereof may be disposed of on an issue of law only and in that case, it may try issue, which relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force.

(vi) Sixthly, despite an application being filed seeking dismissal of the election petition under Section 80 of the Election Act, 1994 for non-compliance of Section 77 of the *ibid*, respondent No.2-Election Tribunal instead of deciding the same first, proceeded to decide the issue of recounting of votes without treating the same as a preliminary issue.

(vii) Seventhly, respondent No.2-Election Tribunal totally misdirected itself in recording evidence of respondent No.1 prior to framing of issues and even before recording evidence of respondent No.1, pleadings were not even complete as replies of Presiding Officer as Annexures P-7 and P-8 were not on the file.

(viii) Lastly, the calculation made by respondent No.2-Election Tribunal is totally contrary to votes mentioned in Form IX of all four booths i.e. booth Nos.65, 66, 67 and 68.

(ix) In support of aforesaid arguments, reliance is placed on judgments passed by the Hon'ble Supreme Court in ***Baldev Singh Vs. Shinder Pal Singh and another 2006(4) RCR (Civil) 891*** and ***Mehant Ram Prakash Dass Vs. Ramesh Chandra 2000(1) RCR (Civil) 314*** to contend that demand for recount should not



ordinary be acceded to, unless the election petitioner makes out a *prima facie* case with regard to error in counting of such magnitude that the result of the election of the returned candidate may be affected. The Court shall not direct re-counting by way of roving or fishing inquiry, as secrecy of ballot papers is paramount consideration.

6. Per contra, Mr. Arun Bansal and Ms. Nisha, learned counsel appearing for respondent No.1 submitted that respondent No.2-Election Tribunal after hearing the parties, recorded its satisfaction that there seems to be considerable discrepancy in the counting, because From No.9 of Booth No.66 was not prepared and after calculating votes of Appendix 9 of the rejected votes, it was found that number of rejected votes in total were 54; whereas in Appendix 9, which is combined result of all four booths i.e. booth Nos.65 to 68, total number of votes were shown as 70. Further, number of total votes polled on calculation came to 2417; whereas in Appendix 9, total number of polled votes, were shown as 2440. Furthermore, total votes polled to respondent No.1 were on calculation figured at 699; whereas in Appendix 9 of the combined result, it came to 701 votes. Thus, finding that a *prima facie* case is established for recounting of votes, respondent No.2-Election Tribunal has rightly ordered for the same. In support of his contention, he relied upon the judgment passed Coordinate Benches of this Court in C.R. No.6074 of 2007 titled as ***Om Parkash Vs. Ishwar Singh and others*** decided on 02.03.2009; ***Manjeet Kaur Vs. The Presiding Officer and others*** passed in C.R. No.535 of 2025 decided on 21.12.2015 as well as judgment passed by



the Hon'ble Supreme Court in *Sadhu Singh Vs. Darshan Singh and another 2006 (4) RCR (Civil) 55*.

OBSERVATIONS AND ANALYSIS

7. I have heard learned counsel for the parties and have perused the paper book with their able assistance as well as the case laws cited. The points emerge for consideration from the arguments raised by learned counsel for the parties are dealt with as under:-

I. Whether provisions of Section 76 of the Election Act, 1994 are mandatory or directory?

8. Section 76 of the Election Act, 1994 is *para materia* to Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the RPA) and provisions of aforesaid Sections of both the Acts, are reproduced as under:-

“RPA

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. In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) 4***

(3) *Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition*



*6*** and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.*

ELECTION ACT, 1994

76. Presentation of petition.- (1) *An election petition may be presented on 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.*

9. A conjoint reading of provisions of aforesaid Sections makes it apparent that an election petition calling in question any election may be presented by any candidate to such election or any election or by any elector within forty five days from the date of election of the returned candidate. The election petition was presented before the respondent No.2-Election Tribunal on 11.11.2024 and the order sheet dated 11.11.2024 passed by the respondent No.2-Election Tribunal is reproduced as under:-

“Present: Mr. Sukhmander Singh Sandhu, Advocate counsel for petitioner.

Today election petition presented in this Court by Mr. Sukhmander Singh Sandhu, Advocate. No notification has been issued by the Punjab Government regarding the hearing of election petitions to this Court yet. The file should be presented on receipt of the notification.

Sd/-



*Presiding Officer
Election Tribunal-cum-Sub-Divisional Magistrate,
Bathinda.”*

A perusal of aforesaid zimni order reveals that on 11.11.2024, notification regarding constitution of Election Tribunal was not even in existence, therefore, file was asked to be presented on receipt of the notification, meaning thereby, the petition was not accepted on the said date as duly presented. Thereafter, another zimni order was passed by the respondent No.2-Election Tribunal on 02.02.2024, which is reproduced as under:-

“Present: None.

Notification regarding election petition has been issued.

On issuance of notification, this file has been presented today. It be registered. On reading the file, it was found that the election petition fee of Rs.200/- has been deposited in the treasury and challan is included. Copies of petition are attached. The respondents mentioned in the petition should be summoned. The case be presented on 09.01.2025 for service.

On the next date of hearing i.e. 09.01.2025, presence of the petitioner (respondent No.1 before this Court) is recorded with her counsel but on that day, since the Presiding Officer was on leave, no proceedings could be done.

Now the question for consideration before this Court is whether the election petition not being presented by the respondent No.1/election petitioner personally would be fatal to her case and the same is liable to be dismissed, being not maintainable? The issue in question is no more *res*



integra, as the Hon'ble Supreme Court in **G.V. Sreerama Reddy's case** (supra) has held as under:-

“14.A close look at Section 81 reveals that the two remaining sub-sections after the amendment introduced by Act 47 of 1966 i.e. (1) and (3) deal with two distinct, but interrelated issues. Sub-section (1) deals with the necessary requirements of any petition challenging an election, and sub-section (3) deals with additional requirements as to the petition presented. Sub-section (1) has five components:

- (i) the qualification of the petitioner i.e. he/she must be either “a candidate at such election” or an “elector”;*
- (ii) the petition must be presented “by” the petitioner;*
- (iii) the petition must be based “on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101;*
- (iv) it must be presented in the High Court; and*
- (v) it must be presented within 45 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 dates of their election are different, the later of those two dates.*

Therefore, all these five requirements are extremely specific and clear. This inference is further strengthened by Section 86(1) which provides that the “High Court shall dismiss an election petition which does not comply with the provisions of Section 81”.

xxxx

xxxx

xxx

19. 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 ensures that the petition is neither frivolous nor vexatious.

xxxx

xxxx

xxx

22. Learned counsel appearing for the appellants relied on a decision of the High Court of Rajasthan (Jaipur Bench) in Bhanwar Singh v. Navrang Singh [AIR 1987 Raj 63] . 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 the election petition had been validly presented under Section 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 the election petition filed through an advocate without the presence of the candidate or elector is valid. We are unable to accept the said conclusion.

23. We have already pointed out that in spite of provisions in CPC and the 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.

24. 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 Chapters 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.

25. In view of the endorsement by the Registrar (Judicial) on 7-7-2008 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, an election petition is to be presented by any candidate or elector relating to the election personally to the authorised officer of the High Court and failure to adhere to 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.

26. 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.”

10. A similar issue came up for consideration before a Full Bench of the Allahabad High Court in ***Sumitra Devi Vs. Special Judge/Addl Distt & Sess. Judge E.C. Act Hardoi and others A IR 2020 All 153 (FB)*** and one of the questions framed was as under:-

“Whether presentation of an election petition by the election petitioner personally is a mandatory requirement in view of Sub-section 3 of Section 12 C(1) of the Act, 1947 and Rule 3(1) of the Rules, 1994 and whether it's non-compliance is fatal or it would merely be an improper presentation, a curable defect?”

It is worthwhile to reproduce here Section 12-C of the U.P.

Panchayat Raj Act, 1947, which is as under:-



“12-C. Application for questioning the elections - (1) The election of a person as Pradhan or as member of a Gram Panchayat including the election of a person appointed as the Panch of the Nyaya Panchayat under Section 43 shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that -

(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election, or

(b) that the result of the election has been materially affected -

i-by the improper acceptance or rejection of any nomination or;

ii-by gross failure to comply with the provisions of this Act or the rules framed thereunder.

(2) The following shall be deemed to be corrupt practices of bribery or undue influence for the purposes of this Act.

(A) Bribery, that is to say, any gift, offer or promise by a candidate or by any other person with the connivance of a candidate of any gratification of any person whomsoever, with the object, directly, or indirectly of including -

(a) a person to stand or not to stand as, or withdraw from being, a candidate at any election; or

(b) an elector to vote or refrain from voting at an election; or as a reward to -

i-a person for having so stood or not stood or having withdrawn his candidature; or

ii-an elector for having voted or refrained from voting.

(B) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or of any other person with the connivance of the candidate with the free exercise of any electoral right;



Provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who -

i-threatens any candidate, or any elector, or any person in whom a candidate or any elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

ii-induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause.

(3) This application under sub-section (1) may be presented by any candidate at the election or any elector and shall contain such particulars as may be prescribed.

(4) The authority to whom the application under sub-section (1) is made shall in the matter of -

i-hearing of the application and the procedure to be followed at such hearing;

ii-setting aside the election, or declaring the election to be void or declaring the applicant to be duly elected or any other relief that may be granted to the petitioner,

have such powers and authority as may be prescribed.

(5) Without prejudice to generality of the powers to be prescribed under subsection (4) the rules may provide for summary hearing and disposal of an application under sub-section (1).

(6) Any party aggrieved by an order of the prescribed authority upon an application under sub-section (1) may, within thirty days from the date of the order, apply to the District Judge for revision of such order on any one or more the following grounds, namely -



(a) that the prescribed authority has exercised a jurisdiction not vested in it by law;

(b) that the prescribed authority has failed to exercise a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercise of its jurisdiction illegally or with material irregularity.

(7) The District Judge may dispose of the application for revision himself or may assign it for disposal to any Additional District Judge, Civil Judge or Additional Civil Judge under his administrative control and may recall it from any such officer or transfer it to any other such officer.

(8) The revising authority mentioned in sub-section (7) shall follow such procedure as may be prescribed, and may confirm, vary or rescind the order of the prescribed authority or remand the case to the prescribed authority for re-hearing and pending its decision pass such interim orders as may appear to it to be just and convenient.

(9) The decision of the prescribed authority, subject to any order passed by the revising authority under this section, and every decision of the revising authority passed under this section, shall be final.”

While answering the question as to whether an application under Section 12-C(1) and (3) is to be presented by a candidate or an elector personally or it could also be presented through his Advocate or his agent, the Full Bench of the Allahabad High Court has held as under:-

“49. This contention is not acceptable for the reasons, firstly, the proviso to Rule 4(i) cannot be read in conflict and contradistinction to the provision of main Act, 1947 under which it had been made, Secondly, the act of presentation of an election petition and its hearing at the preliminary stage are two different



acts which may in a given situation be separated by time also. Even otherwise, as already discussed, the intent of Section 12-C(3) of the Act, 1947 is that the act of presenting the election petition before the Prescribed Authority should be by the candidate and no one else. The fact that the counsel is also present at that time and he may argue the case is an entirely different matter but this by itself does not persuade us to hold that presentation of the election petition can also be made by the counsel or by any other agent of the candidate in the absence of the election petitioner.

*50. We are also persuaded to take this view on account of the fact that it is not for us to read something into a statutory provision which is not specifically provided therein when the language used in the statute is plain and unambiguous and does not lead to absurd results, especially when, the intention of the legislature has to be found in the words used by the legislature itself as has been held in *G.V. Sri Rama Reddy (supra)*. Reference may also be made in this regard to the decision reported in (2003) 2 SCC 455; *Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation* If the statute prescribes the mode of doing a particular thing then it has to be done in the manner prescribed and not otherwise. In this regard we approve of the observation made by this Court in **Devendra Yadav's case** as noticed by us earlier. The words 'presented by any candidate' occurring in section 12-C(3) means the candidate has to himself give or deliver the petition to the Prescribed Authority, as already discussed. The Act 1947 or the Rules 1994 does not define the term 'candidate' to include his agent or Advocate.*

*51. Having held as above, we need to take note of the decision of the Supreme Court in *Sheo Sadan Singh's case (supra)* wherein presentation of Election Petition under Section 81 of the Act, 1951 by the Advocate or clerk, in the presence of the candidate/election petitioner was held to be substantial*



compliance of Section 81 of the Act, 1951 and this view has been approved by the Supreme Court in the case of G.V. Sri Rama Reddy (supra) also. In this view of the matter it needs to be clarified that even in matters of election petition under Section 12-C of the Act, 1947 if the election petition is presented by the agent or Advocate of the election petitioner/candidate in his presence before the Prescribed Authority, it would amount to substantial compliance of Section 12-C(3).

52. We are thus of the view that for these reasons an Election Petition has, necessarily and mandatorily, to be presented by the candidate/election petitioner himself, if it is in his name, however, presentation of such a petition by his Advocate or clerk before the Prescribed Authority, in his presence, would be sufficient compliance of Section 12-C(3) of the Act, 1947. Question no. 1 is answered accordingly.”

A Coordinate Bench of this Court in *Gurmail Kaur's case* (supra) has held that reception of a petition through counsel cannot be taken to be a valid institution at all.

11. Now coming to the *lis* in hand, a perusal of order sheet dated 11.11.2024 reveals that on the said date election petition was presented through counsel but the same could not be registered as the notification by the Punjab Government regarding hearing of election petition was not issued yet. However, order sheet dated 02.12.2024, on which date the election petition was presented and registered after notification regarding election petition was issued by the Punjab Government, as is evident from the impugned order dated 18.08.2025, neither the counsel for respondent No.1/election petitioner was present nor she herself was present. Therefore, in view of the aforesaid discussion, this Court is of the considered opinion that provisions of Section



76 of the Election Act, 1994, which are mandatory in nature, were not adhered to in *strict sensu* and, therefore, the election petition cannot be stated to be validly instituted, thus, liable to be dismissed under Section 80 of the Election Act, 1994.

II. Whether non-impleadment of all contesting candidates as provided under Section 77 of the Election Act, 1994 would prove fatal to the election petition filed by respondent No.1-election petitioner?

12. Section 77 of the Election Act, 1994 is again *para materia* to Section 82 of the Representation of the People Act, 1951 and this Court deems it fit to reproduce both the Sections as under:-

“82. Parties to the petition.— *A petitioner shall join as respondents to his petition—*

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegation of any corrupt practice is made in the petition.

77. Parties to the petition.— *A petitioner shall join as respondent to his petition—*

(a) where he, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates’ and



(b) any other candidate against whom allegation of any corrupt practice is made in the petition.”

It is also necessary to reproduce the prayer sought by respondent No.1-election petitioner in the election petition to understand the issue better, which is as under:-

“Election petition under Sections 76, 89 and 90 of the Punjab State Election Commission Act, 1994 read with Punjab Gram Panchayat Election Rules against the election of respondent No.1 as Sarpanch of Vill. Bhokhra, Tehsil and District Bathinda, which is wrong, illegal, void, against rules and regulations of Election Rules vide which respondent No.1 has been declared as elected Sarpanch of Vill. Bhokhra, Tehsil & District Bathinda wrongly, illegally and against the principles of natural justice.

Prayer: For setting aside the alleged election of respondent No.1, for passing the appropriate orders for the re-counting of the votes and for declaring the petitioner as elected Sarpanch of Vill. Bhokhra and also for staying the proceedings for handing over charge of Sarpanch to the respondent No.1, till the final decision of the election petition.”

13. A bare language of Section 77 of the Election Act, 1994 makes it apparent that where a petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates and where no such further declaration is claimed, all the returned candidates shall be arrayed as respondent(s) to the petition. Admittedly, in the present case, respondent No.1/election petitioner in addition to claiming declaration of election of petitioner herein as void, claims a further declaration of herself as elected Sarpanch of Vill. Bhokhra. The



Hon'ble Supreme Court in *Jyoti Basu and others vs. Debi Ghosal and others* (1982) 1 SCC 691 has held as under:-

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to



an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?

9. Section 81 prescribes who may present an election petition. It may be any candidate at such election; it may be any elector of the constituency; it may be none else. Section 82 is headed "Parties to the petition" and clause (a) provides that the petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of Section 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Section 86(4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with the question as to who may be joined as respondents. It is significant that while clause (b) of Section 82 obliges the petitioner to join as a respondent any candidate against whom allegations of any corrupt practice are made in the petition, it does not oblige the petitioner to join as a respondent any other person against whom allegations of any corrupt practice are made. It is equally significant that while any candidate not already a respondent may seek and, if he so seeks, is entitled to be joined as a respondent under Section 86(4), any other person cannot, under that provision seek to be joined as a respondent, even if allegations of any corrupt practice are made against him. It is



clear that the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of “proper parties” enter the picture at all? We think that the concept of “proper parties” is and must remain alien to an election dispute under the Representation of the People Act, 1951. Only those may be joined as respondents to an election petition who are mentioned in Section 82 and Section 86(4) and no others. However desirable and expedient it may appear to be, none else shall be joined as respondents.

Further the Hon’ble Apex Court in ***B. Sundara Rami Reddy v. Election Commission of India, 1991 Supp (2) SCC 624*** has held as under:-

“3. After hearing learned counsel for the petitioner we do not find any merit in the petition. Section 82 of the Representation of the People Act, 1951 specifies the persons who are required to be joined as respondents to an election petition. Under this provision the returned candidate is a necessary party as a respondent and where relief for a declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. No other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Act. The Election Commission of India is therefore not a necessary party to an election petition. (emphasis supplied).”

14. Further, the Hon’ble Supreme Court in ***V. Narayanaswamy Vs. C.P. Thirunavukkarasu (2002) SCC 294*** has held as under:-

“23. It will be thus seen that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the court



cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition.....”

15. The statutory scheme under Section 77 of the Election Act, 1994 which is *para materia* to Section 82 of the RPA is such that a validly filed election petition conforming to the provisions of Section 82 of the Act *ibid* must be presented within a period of 45 days. When petitioner seeks declaration of his own election, the affected parties are not just the returned candidate, but also the contesting candidates, as every contesting candidate has right under Section 97 of the Act of 1950 to file a recriminating petition for seeking a declaration that he himself be declared as elected instead of petitioner. Under these circumstances, this Court is of the considered opinion that since respondent No.1/election petitioner had sought a declaration that she be declared as elected having obtained maximum second highest number of votes but by not impleading all the contesting candidates, the election petition is liable to be dismissed under Section 80 of the Election Act, 1994, being not in conformity with its provisions.

III. Whether the election petition is time barred?

16. The learned Senior Counsel very fairly submitted that he does not want to press the said issue. Even otherwise, in the opinion of this Court, the



election petition was filed within time, as the election in question was held on 15.10.2024 and the election petition was not presented on 11.11.2024 but the same could not registered on the said date due to non-issuance of notification with respect to hearing of the election petition by the Punjab Government and thus, the election petition was filed within the statutory period of limitation.

IV. Whether the respondent No.2-Election Tribunal was justified in ordering recounting of votes without deciding the preliminary issue of maintainability of the election petition?

17. Clause (1) of Section 80 of the Election Act, 1994 provides that the Election Tribunal shall dismiss an election petition, which does not comply with the provisions of Section 76 or Section 77 or Section 103 and an explanation is also attached thereto that an order of the Election Tribunal dismissing an election petition under this sub-section, shall be deemed to be an order under clause (a) of Section 87. Section 87 of the Election Act, 1994 deals with decision of the Election Tribunal, which says '*at the conclusion of the trial of an election petition, the Election Tribunal may make an order for – (a) dismissing the election petition....*' A conjoint reading of provisions of Section 80 and 87 of the Election Act, 1994 makes is abundantly clear that an order passed dismissing an election petition for non-compliance of provisions of Section 76 or Section 77 or Section 103 will be deemed to be passed as though it was passed after conclusion of trial.

18. Though provisions of Code of Civil Procedure Code, 1908 are merely guiding in matters related to elections under the Election Act, 1994, as Section 81 of the Election Act, 1994 talks about procedure before the Election Tribunal, as per which, subject to the provisions of this Act and the Rules made thereunder, every election petition shall be tried by the Election



Tribunal, as nearly as may be, in accordance with the procedure contained in Code of Civil Procedure, 1908, it is necessary to discuss provisions of Order XIV Rule 2 CPC. As per said provisions, where issues both of fact and law arise in the same suit, and the Court is of the opinion that the case or any part whereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to; (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force and for that purpose may, if it thinks fit, postpone the settlement of the other issues until that issue has been determined and may deal with the suit in accordance with the decision on that issue. The respondent No.2-Election Tribunal has framed the issues with respect to the maintainability of the election petition in the present form and that the necessary parties were not impleaded in the present petition as Issues No.4 and 5 respectively and, therefore, the respondent No.2-Election Tribunal ought to have dealt with issues Nos.4 & 5 first as preliminary issues being related to maintainability of the election petition before ordering recounting of votes vide impugned order dated 18.08.2025, as the question of recounting arises only if the election petition survives the test of maintainability, which in the opinion of this Court, is not maintainable in the present form and liable to be dismissed, being an invalid institution.

19. The last argument remains to be dealt with is with respect to veracity of impugned order dated 18.08.2025 whereby respondent No.2-Election Tribunal has ordered recounting of votes. In view of the finding rendered by this Court, the election petition is liable to dismissed, being defective as filed in violation of Sections 76 and 77 of the Election Act, 1994 and said defects are incurable, thus, this Court refrains itself from going into



the question of veracity of impugned order dated 18.08.2025 on merit, as the same would be an academic exercise.

CONCLUSION:-

20. As an upshot of above discussion, the election petition is dismissed on the ground of invalid presentation, being violative of provisions of Section 76 of the Election Act, 1994 and for non-impleadment of necessary parties as enumerated under Section 77 of the Election Act, 1994. Since the election petition itself is dismissed, the impugned order dated 18.08.2025 as a consequence thereto, is also set aside.

21. The instant civil revision petition is allowed.

22. Misc. application(s) pending, if any, also stands disposed of.

(AMARINDER SINGH GREWAL)
JUDGE

September 08, 2025
Pankaj*

Whether speaking/reasoned : Yes

Whether reportable : Yes