

**2023 STPL(WEB) 12 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE. AND HON'BLE MR. JUSTICE SATYEN
VAIDYA, JJ.)

RANGILA RAM

Petitioner

VERSUS

STATE OF H.P. AND OTHERS

Respondents

CWP No. 573 of 2023-Decided on 12.7.2023.

Election Petition

Election Petition – Non signing of Schedule and Annexure – Petitioner was elected as the President of Gram Panchayat – Election petition against him allowed - Writ against - The only contention raised by the petitioner is that since the election petition did not comply with the mandate of Section 164(2) of the Act inasmuch as the schedule and the annexure accompanying the petition has not been signed by the petitioner and verified in the same manner as the petition, the same ought to have been dismissed. Plea rejected - Held: If a schedule or annexure is an integral part of an election petition, it must be signed by the petitioner and verified since it forms a part of the election petition. The subject matter of sub-section (2) is thus a schedule or annexure forming part of the election petition but in case a document is produced as an evidence of the averments of the election petition, there is no requirement, whatsoever, of these documents being signed and verified. Petition dismissed.

(Para 2, 7)

Advocate(s): For the petitioner : Mr. Gurmeet Bhardwaj, Advocate.

For the respondents : Mr. Anup Rattan, Advocate General with Mr. Ramakant Sharma, Ms. Sharmila Patial, Additional Advocates General, Ms. Priyanka Chauhan, Deputy Advocate General and Mr. Rajat Chauhan, Law Officer, for respondents No. 1 to 6. Mr. Devender K. Sharma, Advocate, for respondent No.7.

JUDGMENT

Tarlok Singh Chauhan, Judge-Whether an election petition is liable to be dismissed on the ground for the contravention of Section 164 of the H.P. Panchayati Raj Act, 1994 (for short 'the Act'), is the moot question that is required to be decided in the instant petition.

2. The elections to the Gram Panchayat, Thona were held in the year 2001, wherein the petitioner was elected as the President. The said election came to be challenged by respondent No.7 by filing an Election Petition under Section 163 of the Act and election petition was allowed by the Authorized Officer, vide order dated 29.4.2022. The petitioner assailed the said decision by filing an appeal before the Deputy Commissioner and the said appeal too was dismissed, vide order dated 16.1.2023 constraining the petitioner to file the instant petition. The only contention raised by the petitioner is that since the election petition did not comply with the mandate of Section 164(2) of the Act inasmuch as the schedule and the annexure accompanying the petition has not been signed by the petitioner and verified in the same manner as the petition, the same ought to have been dismissed.

3. We have heard learned counsel for the parties and gone through the material placed on record carefully.

4. At the outset, it shall be appropriate to refer to Sections 164 and 165 of the Act, which read thus:

“164. Contents of Petition.-

(1) An election petition-

(a) shall contain concise statement of the material facts on which the petitioner relies,

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice, and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleading: Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

165. Procedure on receiving election petition.- If the election petition is not furnished in the prescribed manner, or the petition is not presented within the period specified in section 163 the authorized officer shall dismiss the petition: Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard.”

5. It would be noticed that the provisions, as contained in Section 164 of the Act is pari materia with Section 83 of the Representation of People Act, 1951 (for short ‘the Representation Act’), which reads as under:

“83. Contents of petition.—

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.] (Emphasis supplied)”

6. What would be noticed from a perusal of sub section 2 of Section 83 of the Representation Act that it does not refer to a document, which is produced as evidence of the averments of the election petition but to the averments of the election petition, which are put not in the election petition but in the accompanying schedules or annexures. This is precisely what was concluded by the Hon’ble Supreme Court while interpreting Section 83(2) of the Representation Act in case titled as Sahodrabai Rai v. Ram Singh Aharwar (AIR 1968 SC 1079). It shall be apt to reproduce the relevant observations, which reads thus:

“We are quite clear that sub-section (2) of Section 83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples from which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. For example, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof.”

It would, therefore, be seen that if a schedule or annexure is an integral part of the election petition, it must be signed by the petitioner and verified, since it forms part of the election petition. The subject-matter of sub-section (2) is thus a schedule or annexure forming part of the election petition and hence it is placed in Section 83 which deals with contents of an election petition. ...” (Emphasis supplied)”

7. What can be deduced from the aforesaid judgment is that if a schedule or annexure is an integral part of an election petition, it must be signed by the petitioner and verified since it forms a part of the election petition. The subject matter of sub-section (2) is thus a schedule or annexure forming part of the election petition but in case a document is produced as an evidence of the averments of the election petition, there is no requirement, whatsoever, of these documents being signed and verified. Since, the provisions of Section 83(2) of the Representation Act are *pari materia* to Section 164 of the Act, the judgment of the Hon’ble Supreme Court in Sahodrabai Rai v. Ram Singh Aharwar (AIR 1968 SC 1079), is fully attracted and applicable to the facts of the instant case.

8. Similar reiteration of law can be found in a Division Bench decision of this Court in case titled as Tula Ram Vs. State of H.P., being CWP No. 2029 of 2013, decided on 12.06.2013.

9. In view of the aforesaid discussion, we find no merit in the instant petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending miscellaneous applications, if any, also stand disposed of.
