

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CR No. 5985 of 2016 (O&M)

Date of Decision: 27.09.2016

Rajbir Singh

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Mr. Abhilaksh Grover, Advocate,
for respondent No. 3-caveator.

AMOL RATTAN SINGH, J. (ORAL)

The controversy in this petition is as to whether the Deputy Commissioner, Hisar, is within his jurisdiction under Section 51 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the Act), to issue a notice to the petitioner as to why he should not be removed from the office of Sarpanch on account of alleged misconduct on his part. The alleged misconduct stems from a complaint made by respondent No.3 herein, Sanjay, to the effect that the middle school examination certificate possessed by the petitioner, is a forged certificate and as such, on grounds of misconduct, as also on not being basically not qualified to hold the post of Sarpanch, he should be removed.

2. After the complaint was filed with the Deputy Commissioner, it seems no action was taken, leading to respondent No. 3 filing Civil Writ Petition No. 15334 of 2016 before this Court, which was disposed of vide an

order dated 01.08.2016, directing as follows:-

“Having heard the learned counsel for the petitioner and without expressing any opinion on merits of the case, Deputy Commissioner, Hisar-respondent No. 2 is directed to look into the matter, consider the grievance raised by the petitioner vide his representation dated 29.01.2016 (Annexure P-1) and decide the same at an early date by passing an appropriate order thereon, strictly in accordance with law but in any case within a period of three months from the date of receipt of certificate copy of this order.

With the abovesaid observations made and directions issued, instant writ petition stands disposed of.”

3. Pursuant to the aforesaid directions of this Court, the Deputy Commissioner, Hisar (respondent No. 2), issued the impugned notice to the petitioner, against which the petitioner filed a civil suit seeking a decree of declaration and permanent injunction, against respondents No.1 and 2 herein, to the effect that the show cause notice dated 21.03.2016, and another one 26.04.2016, issued under Section 51 (3) (c) of the Act, are illegal, null and void and are liable to be set aside.

4. Along with the said suit, an application under Order 39 Rule 1 and 2 CPC was also filed by the petitioner, which was dismissed by the learned Additional Civil Judge (Sr. Divn.), Hisar, vide order dated 29.08.2016. Against that order, an appeal was filed by the present petitioner before the learned Additional District Judge, Hisar, which was also dismissed, vide the order dated 06.09.2016.

5. The petitioner has, consequently, challenged the said orders of the learned Courts, as his application for a direction to the Deputy Commissioner to stay the proceedings initiated against him, vide the notices issued to him,

has been dismissed.

6. Mr. Keshav Pratap Singh, learned counsel for the petitioner, has relied upon a judgment of the hon'ble Supreme Court in **State of H.P. and others** vs. **Surinder Singh Banolta** AIR 2007 SC 903, to submit that the Deputy Commissioner lacks jurisdiction to remove an elected Sarpanch, in view of the bar imposed under Article 243-O (b) of the Constitution, read with Section 176 of the Act.

7. Mr. Grover, learned counsel for respondent No. 3-caveator, has informed this Court, that, in fact, an FIR was also registered on 06.03.2016 against the petitioner in respect of the same offence, i.e. after his election. Hence, he contends that the disqualification, if proved, may also amount to a criminal offence involving moral turpitude, on account of the certificates being allegedly forged, in addition to being within the ambit of sub-clause (b) and (c) of sub-section (3) of Section 51.

8. Having considered the above, first of all the Constitutional and statutory provisions relied upon by learned counsel for the parties need to be reproduced.

Article 243-O reads as follows:-

Bar to interference by courts in electoral matters.-----*Notwithstanding anything in this Constitution---*

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

The relevant part of Section 176 aforesaid, of the Act, reads as follows:-

176. Determination of validity of election enquiry by judge and procedure.-- (1) *If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or 2 [* * *] 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 the declaration of results of the election, present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.*

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(4) (a) *If on the holding 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.*

1[(aa) If on holding such enquiry the Civil Court finds that-

(i) *on the date of his election a returned candidate was not qualified to be elected;*

(ii) *any nomination has been improperly rejected; or*

(iii) *the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the*

improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.;]

(b) If, in any case to which [clause (a) or clause (aa)] 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 candidate to be declared 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.

(5) xxxxx xxxxx xxxxx

9. Section 175 of the Act of 1994 would also be relevant, to the extent of the presently relevant disqualification stipulated therein, on incurring which no person would be entitled to become a Sarpanch or to continue as such.

“175. Disqualifications:- (1) No person shall be a Sarpanch (Omitted by Haryana Act No. 10 of 1999) or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-

xxx xxx xxx xxx xxx xxx

(v) *has not passed matriculation examination or*

its equivalent examination from any recognized institution/board:

Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass:

Provided further that in a case of woman candidate belonging to Scheduled Caste contesting elections for the post or Panch, the minimum qualification shall be 5th pass.”

In the present case, the petitioner is stated to belong to a Scheduled Caste. Thus, if the middle class examination certificate possessed by him is a forged document, then, obviously, he was disqualified from being elected to the post of a Sarpanch, in terms of the proviso to clause (v) of sub-section (1) of Section 175 of the Act, the minimum qualification being education upto the middle class level.

Further, if the document is proved to be forged, he may also be liable to face criminal proceedings.

10. The question then is, as to whether respondent No. 3 could have only challenged the petitioners' continuance in office as a Sarpanch by way of an election petition under Section 176 of the Act, or whether he could have made a complaint to the Deputy Commissioner, pursuant to which the Deputy Commissioner could have proceeded against him under Section 51 of the Act.

The said provision reads as under:-

“51. Suspension and removal of a Sarpanch or Panch.-- (1) *The Director or the Deputy Commissioner concerned may, suspend any Sarpanch or Panch, as the case may be,--*

(a) where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director or Deputy Commissioners concerned

the charge made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves moral-turpitude or defect of character ;

(b) during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.

[(2) Any Sarpanch or Panch, as the case may be, suspended under sub-section (1), shall not take part in any act or proceeding of the Gram Panchayat during the period of his suspension and shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control --

(i) if he is a Sarpanch to a Panch commanding majority in the Gram Panchayat ;

(ii) if he is a Panch to Sarpanch :

Provided that the suspension period of a Panch or a Sarpanch, as the case may be, shall not exceed one year from the date of handing over the charge in pursuance of the suspension order except in criminal cases involving moral turpitude.]

(3) The Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or a Panch, as the case may be, ask him to show cause against the action proposed to be taken against him, and by order remove him from his office --

(a) if after his election he is convicted by a

criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months ;

(b) if he was disqualified to be a member of the Gram Panchayat at the time of his election ;

(c) if he incurs any of the disqualifications mentioned in section 175 after his election as member of the Gram Panchayat ;

(d) if he is absent from five consecutive meetings of the Gram Panchayat without prior permission or leave of Gram Panchayat ; and

(e) if he has been guilty of misconduct in the discharge of his duties and his continuance in the office is undesirable in the public interest .

(4) A person who has been removed under sub-section (3) may be disqualified for re-election for such period as may be mentioned in the order but not exceeding the period of six years .

(5) Any person aggrieved by an order passed under sub-sections (1) , (3) and (4), may within a period of thirty days from the communication of the order, prefer an appeal to the Government.

[(6) Any Sarpanch or Panch , as the case may be, removed under sub-section (3),shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control --

(i) if he is Sarpanch to a Panch commanding majority in the Gram Panchayat;

{(i-a) if he is Sarpanch belonging to reserve category, to a Panch of that reserve category commanding majority, and if no Panch in that category is available, to a Panch of general category commanding majority in the Gram Panchayat; and}

(ii) if he is a Panch to Sarpanch .]”

11. In **Banoltas'** case (supra), the question arose from the fact that the first respondent therein had been declared to be an encroacher on public land, in the year 1998. He, however, contested the election to be a member of the Zilla Parishad in the year 2000 and was declared elected on 05.01.2001. It was held by their Lordships, after considering the relevant provisions of the Himachal Pradesh Panchayati Raj Act, 1994, that the election of the said respondent could not have been set aside by the Deputy Commissioner, and only by the authorized authority as provided in the Act of 1994, for the reason that he had already been declared to be an encroacher much prior to the election but was still permitted to contest the election.

Specifically their Lordships observed as follows:-

“It is no doubt true that Section 122 contemplates both the situations, viz., where a person shall be disqualified for being chosen as also for being an office bearer of panchayat inter alia if he has encroached upon any land belonging to any authority mentioned therein. In view of the language of the said provision, we are of the view that whereas an issue falling under clause (1) of Sub-section (2) of Section 122 of the Act must be determined before the Authorised Officer, any order of encroachment passed after the election process is over would be determined by the Deputy Commissioner.

The provisions of the Act, as noticed hereinbefore, have been enacted pursuant to or in furtherance of the constitutional mandate contained in Part IX of the Constitution of India. The provisions of the Act, therefore, are required to be construed strictly in terms thereof. Clause (b) of [Article 243O](#) of the Constitution of India mandates that no election shall be set aside save and except by an order passed by the Authorised Officer. In our considered opinion, Section 122 of the Act must be read in the light thereof. Section 162 of the Act expressly provides for the exclusive jurisdiction of the Authorised Officer to determine the existence or otherwise of any ground enumerated in Section 175 of the Act.

Once, thus, a person is declared to be an encroacher prior to the date on which he has been declared as elector and if the said order has attained finality, the question as to whether he stood disqualified in terms of the provisions of Section 122 of the Act, in our opinion, must be raised by way of an election petition alone. If the submission of Mr. Attri is to be accepted, the same may result in an anomalous position.

If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of Section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, it is well settled, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a situation, therefore, must be avoided. It will also lead to an absurdity if two different Tribunals are allowed to come to contradictory decisions.”

(Emphasis applied by this Court).

12. It would also be necessary to reproduce the relevant part of Section 122 Himachal Pradesh Panchayati Raj Act, 1994, in view of the fact that their Lordships, in the aforesaid case, drew a distinction between the first

and second part of sub-section (2) of Section 122 of that Act. Section 122(2) reads as under:-

“(2) The question whether a person is or has become subject to any of the disqualifications under sub-section (1), shall after giving an opportunity to the person concerned of being heard, be decided-

(i) if such question arises during the process of an election, by an officer as may be authorized in this behalf by the State Government, in consultation with the State Election commission; and

(ii) if such question arises after the election process is over, by the Deputy Commissioner.”

Thus, the near equivalent provision in the Haryana Act, would be Section 51(1).

13. Thus, it is seen that a specific distinction was carved out between a situation where a disqualification had been incurred prior to the election and after the election. In the Himachal Pradesh Panchayati Raj Act, 1994, within Section 122 itself, by which the disqualifications for contesting the election of Sarpanch have been laid down, a differentiation has been made with regard to the competent authority that would take action, on the one hand if the disqualification is incurred before election, and on the other hand, if it is incurred after the election.

As per clause (i) of Section 122(2), if the question of disqualification arises during the process of an election, then it would be decided by an authorised officer, in consultation with the State Election Commission. However, if the question on disqualification arises after the election process is over, then the issue would be decided by the concerned Deputy Commissioner, in terms of clause (ii) thereof.

14. On the other hand, Section 176 of the Haryana Act, stipulates that

if the election of a Sarpanch of a Gram Panchayat is brought in question by any person contesting the election, or a person qualified to vote in such election, the election petition must be presented to the civil Court having jurisdiction in the area.

Section 51(1)(b) of the Act provides that a Sarpanch may be suspended during the course of an enquiry conducted for any of the reasons for which he can be removed, after giving him an adequate opportunity “to explain”.

Sub-section (3) of Section 51 further provides that after such enquiry and after giving a Sarpanch an opportunity of being heard, a show cause notice may be given to him, as to why he be not removed from his office, (a) if he has been convicted by a criminal Court after his election, for an offence involving moral turpitude, (b) if he was disqualified to be a member of the Gram Panchayat and (c) if he incurs any of the disqualifications mentioned in Section 175 of the Act after his election as a member of the Gram Panchayat.

15. On a specific query put to learned counsel for the petitioner, as to whether any complaint was made against the petitioner prior to the election, on the same issue, i.e. that he was disqualified from contesting the election, not being qualified to do so as his middle class examination certificate is allegedly forged, the answer has, very fairly, been given in the negative, i.e. no such complaint/representation was made prior to election.

Thus, if the ratio of *Banoltas'* case (supra) is to be applied, in the opinion of this Court, an essential circumstance would be that an alleged disqualification had been made subject matter of a complaint against a candidate, before or during the election process, despite which the candidate

had been allowed to contest the election, with the authority concerned not finding sufficient material in the complaint, to debar the candidates' candidature. In such a situation, the remedy against the candidates' election, despite such alleged disqualification, would only be by way of filing an election petition before the civil Court (under the Haryana Act), the complaint already having been scrutinised by the Election Commission or an authority duly authorised by it to look into such complaints.

However, when a complaint with regard to an allegedly forged certificate of educational qualification of an elected Sarpanch/Panch, is made after the election of the candidate, then, such complaint, even if it falls within the category of disqualifications prescribed under Section 175 of the Haryana Act, would need to be brought before the Deputy Commissioner, for action by him, as per Section 51(1) and thereafter, if necessary under Section 51(3)(b) & (c) of the Act, that being the mandate of Section 51(1)(b) and Section 51(3)(b) & (c) itself.

Of course, if the complaint is of a nature which would also result in criminal proceedings in respect of an offence involving moral turpitude of the elected Sarpanch, then it would also fall within the ambit of Section 51 (1) (a) and Section 51(3)(a) of the Act.

To repeat, a complaint under Section 51 would lie only if there was no such complaint made during the election process, in respect of the same offence.

16. Undoubtedly, in *Banoltas'* case, their Lordships also held that a situation may arise if two parallel proceedings are allowed to continue before the authorised authority and before the Deputy Commissioner simultaneously.

Presently, it has been admitted by learned counsel for the

respondent that an election petition was filed but was withdrawn by the respondent.

Thus, in the opinion of this Court, the complaint having been filed against the petitioner after the election, and there being no duplicity of proceedings, the complaint to the Deputy Commissioner would not be barred, even in terms of the ratio of *Banoltas'* case.

Therefore, after the election of the petitioner, the Deputy Commissioner is very much authorised to enquire into the complaint and take action in terms of Section 51, if warranted.

17. Learned counsel for the petitioner has further relied upon a judgment of the Supreme Court in N.P. Ponnuswami vs. The Returning Officer, Namakhal Constituency, Namakkal, Salem Distt. and others AIR 1952 SC 64 (1), to submit that election does not simply comprise of the election of a candidate, or the declaration of the result of the election, but the entire election process.

Whereas there can be no quarrel with that proposition, I do not see how the said principle applies to the present case, inasmuch as, the alleged misconduct of the petitioner not having been brought to the notice of the competent authority during the election process itself, right up-to the declaration of the election result and notification of the petitioner as a Sarpanch, a subsequent complaint on his alleged misconduct, obviously, is after the entire election process was over. As such, as already said, in the opinion of this Court, a complaint to the Deputy Commissioner would lie and his action under Section 51 would be valid, provided of course the procedure provided under Section 51 is duly followed.

18. In view of the above, keeping in mind the distinction carved out

by their Lordships in Banoltas' case (supra), it would be the exception carved out in the judgment which would cover the present case, rather than the ratio of the judgment in respect of the Deputy Commissioner being barred to proceed against an elected member of a Panchayat/Zila Parishad etc., the disqualification in the present case having been brought to the notice of the authority concerned only after the election.

Further, in the opinion of this Court, if the contention of learned counsel for the petitioner is accepted, that a complaint with regard to an alleged disqualification of a candidate, which otherwise also amounts to a misconduct, and possibly a criminal offence, can only be challenged by way of an election petition, then Section 51 itself would be rendered otiose, as the Deputy Commissioner would be rendered absolutely without power to look into any misconduct by a Sarpanch/Panch etc., simply because such person holds an elected office and therefore the misconduct would only be challengeable by way of an election petition.

Such a construction, rendering a statutory provision completely meaningless, would not be the intention of the legislature, while incorporating two separate provisions to govern two different situations, within the same Act.

Hence, the distinction between a pre-election and a post-election complaint.

19. Thus, as regards the controversy before the civil Court, the orders of that Court, as also of the appellate Court, refusing to stay the process under Section 51, thereby upholding the jurisdiction of the Deputy Commissioner to issue a notice under Section 51 of the Act, by dismissing the application of the petitioner under Order 39 Rules 1 and 2 CPC, are upheld.

However, it is made clear that nothing said hereinabove, will be construed by either the learned Civil Judge, or the Deputy Commissioner, to have been said with regard to the merits of the controversy before that Court/authority.

The civil Court would now proceed to examine whether the notices is otherwise issued as per due procedure provided under Section 51 of the Act, or not and adjudicate upon the suit of the petitioner (plaintiff) on its merit, accepting that as regards jurisdiction, the Deputy Commissioner has such jurisdiction under Section 51, provided it is exercised as per law.

20. With the above observations, finding no merit in the petition, it is dismissed in *limine*, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

September 27, 2016
nitin/dinesh

Whether speaking/reasoned	Yes
Whether Reportable	Yes