

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 20611 of 2016
Date of Decision: 3.10.2016

Mohmmad Iliyash

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. J.S. Hooda, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned order dated 3.8.2016 (Annexure P-7), passed by the Deputy Commissioner, Palwal-respondent No.3, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned order.

Heard learned counsel for the petitioner.

This is the second round of litigation. At an earlier point of time, petitioner approached this court by way of CWP No. 9195 of 2016, which was disposed of vide order dated 12.5.2016 (Annexure P-6), with a direction to the Deputy Commissioner, Palwal, to take a decision on the representation dated 11.1.2016, moved by the petitioner, within a period of three months. In compliance of the abovesaid order passed by this Court,

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I attest to the accuracy and
integrity of this document

Deputy Commissioner, Palwal, passed the impugned order dated 3.8.2016 (Annexure P-7), which is wrongly typed as dated 3.8.2014 at page 50 of the paper book.

Thrust of the arguments raised by learned counsel for the petitioner, on the basis of averments taken in the writ petition, is that respondent No.4 was not eligible to contest the election of Sarpanch, because of her age. Allegations have also been levelled against the election staff, including the Deputy Commissioner-cum-Returning Officer, that they failed to ensure fair conduct of election of the Gram Panchayat in the village of the petitioner, which was held on 10.1.2016.

A bare reading of the averments taken in the writ petition as well as arguments raised on behalf of the petitioner would make it crystal clear that it is the election of respondent No.4 which, as a matter of fact, is being challenged by the petitioner by way of present writ petition. It is not in dispute that when respondent No.4 filed her nomination paper, no such objection was raised, pointing out any ineligibility, including the one which is being alleged by way of present writ petition. It is also a matter of record that despite knowing fully well about his case, neither petitioner nor any other aggrieved party, challenged the election of respondent No.4, as per procedure provided under the Haryana Panchayati Raj Act, 1994 ('the Act of 1994' for short).

In fact, petitioner did not contest the election against respondent No.4 but his close relative contested the election of Sarpanch against respondent No.4. From this fact, it also becomes clear that petitioner was trying to settle his personal score with respondent No.4, at the instance of his close relative. Petitioner made his best possible efforts to ensure that

respondent No.4 may not work as Sarpanch, because he also sought a restraint order against respondent No.4, by moving a petition before the State Election Commission, Haryana, vide Annexure P-5.

In compliance of the abovesaid order dated 12.5.2016 (Annexure P-6) passed by this Court, Deputy Commissioner, Palwal, got an enquiry conducted on the complaint made by the petitioner, by the Block Development and Panchayat Officer. Earlier to that, another enquiry was conducted by Sub Divisional Officer (Civil), Palwal, on the complaint made by the petitioner. All these facts were duly considered by the Deputy Commissioner before passing the impugned order 3.8.2016 (Annexure P-7), which has not been found suffering from any patent illegality and the same deserves to be upheld.

The relevant observations made by the Deputy Commissioner in the impugned order dated 3.8.2016 (Annexure P-7), which deserve to be noticed here, read as under:-

“.....Before the above order of Hon’ble High Court a complaint of Mohammed Iliyash son of Shri Jamaluddin resident of village Softa was received through State Election Commissioner Haryana, Panchkula regarding date of birth certificate of Rukshar wife of Mohammed Rajak resident of village Softa. This complaint was got enquired by Sub Divisional Officer (civil), Palwal. In his enquiry report received vide memo No. 19739/RK dated 8.3.2016 Sub Divisional Officer (civil), Palwal had given conclusion that the complainant has not made any objection up to 30.12.2015 at the time of nomination, which the complainant has accepted in his statement. At the time of nomination the returning officer has quasi-judicial powers in which he is himself competent to take

decision. At the time of nomination the returning officer had accepted his nomination. After completion of election process the office has no power to hear such complaints. The complainant can file the case in the court under Section 176 of Haryana Panchayati Raj Act, 1994. On the basis of above facts the Sub Divisional Officer (civil), Palwal is recommended to file this complaint. On the basis of enquiry report of Sub Divisional Officer (civil), Palwal, this complaint was filed and same was sent to State Election Commission vide this officer letter no. 6468/Pts dated 28-03-2016. After receiving the orders of Hon'ble High Court the report of Block Development and Panchayat Officer Prithla was also obtained received vide letter no. 777 dated 14.7.2016 has reiterated the same report as given by Sub Divisional Officer (civil), Palwal. After the reports, comments have been taken from Legal Officer (P) Palwal.

As per Inquiry report of Sub Divisional Officer (civil), Palwal, Block Development and Panchayat Officer Prithala and legal opinion of Legal Officer (P) Palwal it is clear that the nomination could only be rejected by the Returning Officer, Panchayat concerned. The petitioner should have raised the objection at the time of scrutiny of nomination papers. Now the election process for the post of Sarpanch has been completed on 10.1.2016. The election of Sarpanch could be challenged in the civil court within prescribed time as mentioned in the Haryana Panchayat Raj Act, 1994. The petitioner is at liberty to approach to the competent authority for further action as per the provision of Haryana Panchayati Raj Act 1994.

During the course of hearing, when confronted with the abovesaid relevant part of the impugned order, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. When asked as to why the

aggrieved persons did not challenge the election of respondent No.4, as per the procedure provided under the Act of 1994, learned counsel for the petitioner had again no answer. Further, when a specific query was put to learned counsel for the petitioner about the locus standi of the petitioner to file and maintain the present writ petition, he had no answer, except to say that petitioner was the complainant and he was competent to file the present writ petition, which has been found totally misplaced, in the peculiar circumstances of the case.

Once the Act of 1994 has provided a remedy of election petition to the person aggrieved against the result of election and said remedy has not been availed by the petitioner against respondent No.4, instant writ petition at the hands of the petitioner, who did not even contest the election in question, because of which he has no locus standi to challenge the result of election of respondent No.4, this writ petition is nothing but a frivolous and vexatious litigation. In the circumstances of the case noticed hereinabove, petitioner has not been found to be a bonafide litigant who wants to settle his personal score by misusing the process of law. This kind of frivolous and vexatious litigation is liable to be curbed instead of encouraging it. Having said that, this Court feels no hesitation to conclude that since the petitioner wants to achieve his ulterior motive by way of present dishonest litigation, it is liable to be dismissed with costs.

The Hon'ble Supreme Court in catena of judgments has suggested the hike in the quantum of costs, on the persons indulging in filing frivolous and vexatious litigation which are clogging the justice delivery system in the country. On the issue of dismissal of a frivolous litigation like the present one with costs, the view taken by this Court also finds support

from the judgment the Hon'ble Allahabad High Court in **WRIT- C No. 32661 of 2014, (Smt. Poonam and Another vs. State Of U.P.)**, decided on 18.06.2014, referring to numerous judgments of the Hon'ble Supreme Court.

The relevant observations made by the Hon'ble Allahabad High Court in **Poonam' case** (supra), which aptly apply to the facts of present case, read as under:-

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“7. Both the aforesaid paras have been sworn on the basis of personal knowledge and interestingly, the affidavit is sworn by both the petitioners, therefore, it is clear case where petitioners have sworn a false affidavit.

8. However, when enquired as to why this writ petition has been filed, learned counsel for the petitioners could not give any effective reply and it appears to this Court that just to get a certificate to the alleged marriage, this writ petition has been filed on the pretext as if there is an apprehension of life and liberty to the petitioners from respondents no.6 to 9 but in respect of substantial aspect regarding apprehension of life and liberty, appropriate pleadings are almost absent, which shows that real objective is something else than what is attempted to be shown by way of arguments. I am clearly of the view that this writ petition is nothing but a totally vexatious and frivolous litigation. It is really unfortunate that such frivolous litigation is consuming a lot of time of this Court depriving other substantial matters to be conducted within reasonable time.

9. Stressing upon the ways to discourage filing of vexatious and frivolous cases against all kinds of orders or at every stage of proceedings, irrespective of the fact whether petition like the present one would be permissible in law or not, Apex Court in the context of practice of filing SLPs against all kinds of orders of High Court or other

authorities, came heavily in Mathai @ Joby vs. George and Anr, 2010 (4) SCC 358 and said that if all such sundry kinds of cases are allowed, the Court will soon be flooded with a huge amount of backlog and it will not be able to deal with important questions relating to the Constitution or the law or where grave injustice has been done. The Court has limited time at its disposal and the Judges are struggling with unbearable burden with zeal to dispense justice to whom it is highly needed yet being obstructed by such frivolous and vexatious matters, a trend is developing to bring all kinds of trivial and flimsy matters to Court causing wastage of not only public money, but also precious time of the Court, which can be used for other substantial matters.

10. The Apex Court in Crl. M.P. No.25683 of 2013 in Special Leave Petition (Crl.) No. 2448 of 2014 (Phool Chandra & Anr. Vs. State of U.P.), decided on 10.3.2014, observed:

“..the time of the Court which is becoming acutely precious because of the piling arrears has to be wasted on hearing such matters. There is an urgent need to put a check on such frivolous litigation. Perhaps many such cases can be avoided if learned Counsel who are officers of the court and who are expected to assist the court tender proper advice to their clients. The Bar has to realise that the great burden upon the Bench of dispensing justice imposes a simultaneous duty upon them to share this burden and it is their duty to see that the burden should not needlessly be made unbearable. The Judges of this Nation are struggling bravely against the odds to tackle the problem of dispensing quick justice. But, without the cooperation of the gentlemen of the Bar, nothing can be done.”

11. The Court in Phool Chandra & Anr. (supra) referring to earlier decisions in Varinderpal Singh Vs.

Hon'ble Justice M.R. Sharma and Ors., 1986 Supp SCC 719; Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors., (2011) 8 SCC 249; and Gurgaon Gramin Bank Vs. Khazani and Anr., AIR 2012 SC 2881 has said: "It is high time that the Courts should come down heavily upon such frivolous litigation and unless we ensure that the wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigation. In order to curb such kind of litigation, the courts have to ensure that there is no incentive or motive which can be ensured by imposing exemplary costs upon the parties as well as on learned Counsel who act in an irresponsible manner."

12. I may also repeat here [the] observation made by the Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, JT 2005 (6) SC 486 stating that award of costs must be treated generally as mandatory. It is the liberal attitude of the Courts in not awarding costs which has led to frivolous points or litigation before the Courts. Costs should invariably follow the event and reasons must be assigned for not awarding costs.

13. In view of aforesaid, this petition has to be dismissed with costs."

Neither any contrary judgment was brought to the notice of this Court, nor any other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the present writ petition is a frivolous litigation at the hands of a dishonest litigant, who has no respect for the justice delivery system, it is bound to be dismissed with costs, which are assessed @ ₹30,000/-, because any lesser amount of costs would be wholly inadequate.

Petitioner is directed to deposit the costs of ₹30,000/- with

Secretary, District Legal Services Authority, Palwal, within a period of two months from the date of receipt of certified copy of this order, failing which, Deputy Commissioner-cum-Collector, Palwal, shall recover the same from the petitioner, as arrears of land revenue and deposit the same with Secretary, District Legal Services Authority, Palwal,

With the abovesaid observations made and direction issued, present writ petition stands dismissed with costs, as indicated above.

Office is directed to send a copy of this order to the Secretary, District Legal Services Authority, Palwal as well as to the Deputy Commissioner-cum-Collector, Palwal, for information and compliance thereof.

(RAMESHWAR SINGH MALIK)
JUDGE

3.10.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No