

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT  
CHANDIGARH**

**CWP No.21099 of 2016  
Date of decision:18.10.2016**

Babu Ram

...Petitioner

**Versus**

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)**

Petitioner, by way of instant writ petition under Articles 226/227 of the Constitution of India, seeks setting aside the election of respondent No.3 as Sarpanch on the ground that she was not qualified to contest the election, because of her age.

Heard learned counsel for the petitioner.

Learned counsel for the petitioner, while placing reliance on a judgment of the Hon'ble Supreme Court in **K.Venkatachalam Vs. A. Swamickan and another, (1999) 4 SCC 526**, submits that petitioner is entitled to file and maintain the present writ petition, invoking the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India, for declaring the election of respondent No.3 as illegal, because respondent No.3 was not qualified to contest the election.

However, when confronted with the later judgment of the Hon'ble Supreme Court in **Harsh Kumar Vs. Bhagwan Sahai Rawat, 2003(7) SCC 709** and also the order dated 3.10.2016 passed by this Court in

**CWP No.20611 of 2016 (Mohammad Iliyash Vs. State of Haryana and**

**others**), learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It is also not in dispute that petitioner did not file any objection to the nomination paper, filed by respondent No.3 for contesting the election to the post of Sarpanch. It is again not in dispute that petitioner did not file any election petition, before the appropriate forum, with a view to challenge the election result of respondent No.3. At the most, it can be said to be a case of improper acceptance of nomination paper, which would have been a ground for challenging the result of election of respondent No.3.

No reason is forthcoming on behalf of the petitioner as to why he could not file the objection to the nomination paper, filed by respondent No.3, at the time of its scrutiny and also for not filing any election petition. In this view of the undisputed fact situation, obtaining on the record of the present case, petitioner has not been found entitled to file and maintain the instant writ petition, seeking a writ in the nature of *quo warranto*, under the garb of which, petitioner, as a matter of fact, seeks setting aside of election of respondent No.3.

Coming to the judgment of the Hon'ble Supreme Court in **K.Venkatachalam's** case (supra), relied upon by the learned counsel for the petitioner, there is no dispute about the law laid down therein. However, a close perusal of the cited judgment makes it clear that it is of no help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in

**Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002****(3) SCC 533.**

On the other hand, later judgment of the Hon'ble Supreme Court in **Harsh Kumar's** case (supra), clearly goes against the petitioner. It is so said because in **Harsh Kumar's** case (supra), the election result of returned candidate was being sought to be challenged on account of age of returned candidate, exactly as in the present case. Further, under identical circumstances, a similar issue fell for consideration before this Court in **Mohammad Iliyash's** case (supra), wherein Mohammad Iliyash was seeking setting aside of election of Sarpanch by way of writ petition, alleging that the returned candidate was not competent to contest the election because of age, as in the present case.

The relevant part of the order dated 3.10.2016 passed by this Court in **Mohammad Iliyash's** case (supra) reads as under:-

*“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.”*

In view of what has been discussed hereinabove, this Court feels no hesitation to conclude that petitioner is trying to misuse the process of law, by invoking the writ jurisdiction of this Court, for which he has not been found entitled in law. If the petitioner was having any genuine cause of action against the election result of respondent No.3, he was at liberty to challenge the same before the appropriate forum, in accordance with law. However, he did not do so for the reasons best known to him. Under these circumstances, present writ petition has not been found to be a fit case, warranting interference, at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No 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 no interference is warranted. Instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

**18.10.2016**  
**mks**

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No