

CWP No.16866 of 2016

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

**CWP No.16866 of 2016 (O&M)
Date of decision:06.12.2017**

Dharambir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: Hon'ble Mr. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Durga Dutt, Advocate,
for the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

Mr. Vinay Kumar Pandey, Advocate,
for respondent No. 3.

Rakesh Kumar Jain, J. (Oral)

The petitioner has challenged the order dated 10.05.2016 passed by the Deputy Commissioner, Hisar, by which he has been removed from the post of Sarpanch, in exercise of his powers under Section 51 (3) (c) of the Haryana Panchayti Raj Act, 1994 (for short, 'the Act') and the order dated 20.07.2016 passed by the Appellate Authority, by which his appeal filed under Section 51 (5) of the Act has been dismissed.

Learned counsel for the petitioner has submitted that the petitioner was involved in two criminal cases registered vide FIR No.279 dated 02.04.2010 under Sections 420, 467, 468, 471 and 34 of the IPC at Police Station Sadar Civil Lines, Hisar and FIR No.159 dated 11.04.2010 under Sections 420, 467, 468, 471 and 120 B of the IPC also at Sadar Civil Lines,

Hisar. In both the cases, the accused/petitioner was convicted on 26.08.2015 and sentenced for a period of three years.

The elections for the post of Sarpanch were held in January, 2016. The petitioner contested for the post of Sarpanch and at the time of submitting his nomination papers, he clearly mentioned that he has been convicted in the aforesaid cases but his appeals are pending. The petitioner was allowed to contest the election in which he became successful to become Sarpanch of the Gram Panchayat, Salem Garh, Tehsil and District Hisar.

Kuldeep Singh resident of village Salem Garh made a complaint to the Deputy Commissioner, Hisar that the petitioner is convicted and should not be continued as Sarpanch of the Gram Panchayat. On his complaint, the Deputy Commissioner, directed the D.D.P.O, Hisar to hold an enquiry in the complaint filed by Kuldeep Singh. A preliminary enquiry was, thus, held in which it transpired that the petitioner has actually been convicted and has been sentenced for three years in both the cases besides a fine of ₹30,000/- was also imposed.

The petitioner was given show cause notice to which he replied and ultimately the Deputy Commissioner found that the petitioner was not qualified to be elected as Sarpanch being a convicted person and passed the order of his removal from the post of Sarpanch on 10.05.2016 by exercising his powers under Section 51 (3) (b) of the Act.

Aggrieved against the said order, the petitioner filed the appeal before the Additional Chief Secretary to Government, Haryana Development and Panchayats Department but remained unsuccessful and has approached this Court by way of this Writ petition.

Learned counsel for the petitioner has argued that the proceedings under Section 51 of the Act are without jurisdiction because remedy lies with the complainant, who had contested the election against him to the post of Sarpanch, is by way of filing an election petition in terms of Section 176 of the Act and has also submitted that as per Article 243(O) of the Constitution of India, no election of the petitioner can be called into question except by way of filing an election petition. In support of his submission, learned counsel has further submitted that Section 51 (3) (a) is not applicable as it deals with the conviction after the election whereas the petitioner was already convicted when he had filed his nomination papers.

On the other hand, learned counsel for the respondents has submitted that Section 51 of the Act confers two types of powers to the Director or the Deputy Commissioner i.e. to suspend the Sarpanch in respect of any criminal offence and to remove him from the post of Sarpanch on the grounds mentioned therein. It is submitted that as per Section 51 (3) (b), the petitioner was already disqualified at the time of his election because he was convicted. He has referred to Section 175 (1) (a) of the Act.

I have heard learned counsel for the parties and perused the available record with their able assistance.

In order to appreciate the respective contention of learned counsel for the parties, it would be relevant to refer to Sections 175 and 176 of the Act and Article 243 (O) of the Constitution of India which are reproduced below:-

“175. Disqualification.- (1) No person shall be a Sarpanch or a Panch of Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-

(a) has, whether before or after the commencement of this Act, been convicted-

(i) of an offence under the Protection of Civil Rights Act,

- 1955 (Act 22 of 1955), unless a period of five years or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or
- (ii) of any other offence has been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release ; or

xxx xxx xxx xxx”

“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 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.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

- (a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;
- (b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(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.

(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 candidates 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 candidates 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) A person shall be deemed to have committed a corrupt practice-

- (a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any

candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.— A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.— The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.”

“243-O. 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 243-K, shall not be called in question in any court

(b) no election to any panchayats 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 argument of the learned counsel for the petitioner that since he was convicted and this fact was made part of the nomination papers,

therefore, only remedy available to the losing candidate is in terms of Section 176 to challenge his election is totally misconceived because Section 51 of the Act also confers powers upon the Director or the Deputy Commissioner to take action against the Sarpanch or the Panch on the grounds provided therein for putting the Sarpanch or the Panch under suspension for their removal on the grounds provided under Section 51 (3) (a).

The argument of the learned counsel for the petitioner that since he was already convicted and Section 51 would come into play after the election is not acceptable in view of Section 51(3)(b) because it is provided therein that “ if he was disqualified to be a member of the Gram Panchayat at the time of his election”. Although action has been taken against the petitioner in terms of Section 51 (3) (c) but the action should have been taken against the petitioner under Section 51 (3) (b) as under Section 175 of the Act, the grounds have been provided for disqualification of a Sarpanch or a Panch which includes the grounds under Section 175 (a) (ii) in which it is provided that “*of any other offence has been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow since his release*”.

The petitioner has been sentenced for a period of more than six months and the period of five years or the period fixed by the Government for the purpose of his contesting the election after his release had not expired because he was convicted in 2015 whereas the election took place in 2016. Therefore, the provisions of Section 175 (a)(ii) squarely apply to the case of the petitioner.

The argument of the learned counsel for the petitioner that the

election petition is the only remedy available to a person who does not want the petitioner to continue as Sarpanch after his conviction is neither here nor there and the provisions which are applicable to the case of the petitioner have rightly been applied by the Deputy Commissioner while passing the order of removal.

Article 243 (O) of the Constitution of India is also not applicable to the case of the petitioner at all.

This Court has dealt with the same issue in the case titled as **“Kavita vs. State of Haryana and another”**, CWP No.02.08.2017, decided on 02.08.2017, in which the following observations were made:-

“From perusal of the aforesaid various provisions of the law, it is crystal clear that there is fine distinction between the “disqualification of a candidate before the date of his/her election” and the “disqualification of a candidate after the date of his/her election”.

In **Surinder Singh Banolta's case (supra)**, the Supreme Court has dealt with the similar provisions of the Himachal Pradesh Panchayati Raj Act, 1994. In the said case, Surinder Singh Banolta was elected as a member of the Zila Parishad on 05.01.2001. An application was filed against him by one Daulat Ram before the Deputy Commissioner, Shimla, alleging that the elected candidate had already been declared as encroacher within the meaning of Sections 4 and 7 of the Himachal Pradesh Public Premises (Rent Recovery and Land Eviction) Act, 1971 and was disqualified to hold the elected post and, thus, he should not be allowed to continue on it. The Deputy Commissioner, while taking cognizance of the said complaint, declared Surinder Singh Banolta as disqualified for being chosen as a member of the Zila Parishad and his election was set aside. Against that order, the matter reached upto the Supreme Court where it was found from the facts that Surinder Singh Banolta was declared as encroacher in the year 1998 and was elected as a member of the Zila Parishad on 05.01.2001. In this background, the Supreme Court has held that

“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”.

In the aforesaid facts and circumstances, it was, thus, held by the Supreme Court that there cannot be two parallel proceedings of challenging the election, one by way of an election petition before the Tribunal and second by way of an application for seeking removal of the elected candidate before the prescribed authority under the Act.

On the contrary, if the disqualification of the returned candidate is discovered on an inquiry and was not within the knowledge of the complainant as an established fact, then a complaint can be filed to the authorities under the statute. Section 175 of the Act lays down the various disqualifications and provides that no person would continue as Sarpanch or a Panch or a member of the Zila Parishad or continue as such who would have earned anyone of the disqualifications mentioned therein but before declaring him disqualified and his removal, the procedure is prescribed to hold a regular inquiry during which the elected candidate can be put under suspension in terms of Section 51(5) of the Act if the competent authority is of the opinion that 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 and for any of the reasons he can be put under suspension and ask not to participate in any of the Panchayat proceedings and hand over the moveable or immovable property and record etc. in his possession or under his control to a Panch commanding majority in the Gram Panchayat but the period of suspension shall not exceed one year from the date of handing over the charge except in criminal cases, involving moral turpitude and he can be removed on the grounds mentioned in Section 51(5)(a) to (e) of the Act.

Thus, the argument of the petitioner that the authorities under the Act, who have exercised their powers under Section 51 of the Act, could not have placed the petitioner under suspension and only the election petition could have been the remedy available with the complainant before the Election Tribunal on account of disqualification, which has been unearthed after the election, is totally misconceived and cannot be accepted and, thus the judgment relied upon by the petitioner in **Surinder Singh Banolta's case (supra)** is not applicable in this case being totally distinguishable on its facts.”

In view of the afore-mentioned facts and circumstances, I do not find any reason to interfere in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

December 06, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No