

CWP No.15908 of 2017

[1]

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

**CWP No.15908 of 2017
Date of decision:02.08.2017**

Kavita

...Petitioner

Versus

State of Haryana and another

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vikram Singh, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner was elected as Sarpanch of the Gram Panchayat Kalal Majri, Tehsil Naraingarh, District Ambala in the year 2015. One Raj Kumar S/o Kushvir made a complaint against her on 28.11.2016 that the educational qualification certificate submitted by the petitioner at the time of her election was not genuine. The Deputy Commissioner, Ambala, vide his letter dated 09.12.2016, asked the Block Development and Panchayat Officer, Shehjadpur, for his comments on the complaint. The Block Development and Panchayat Officer, Shehjadpur wrote a letter dated 16.12.2016 to the District School Inspector, Saharanpur regarding genuineness of educational qualification certificate (8th class) of the petitioner. On 17.12.2016, the District School Inspector, Saharanpur informed the Block Development and Panchayat Officer, Shehjadpur that there were several cuttings found in the record of the petitioner and hence, the transfer certificate issued to the petitioner was fake. On the basis of the report of the Block Development and Panchayat Officer,

Shehjadpur, the Deputy Commissioner, Ambala, issued a show cause notice to the petitioner on 03.12.2016 as to why she should not be put under suspension in terms of Section 51 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the “Act”) for not possessing the mandatory qualification of having passed 8th class being a woman candidate. The petitioner submitted her reply on 10.01.2017 and denied the allegations but vide order dated 24.03.2017, the Deputy Commissioner put the petitioner under suspension observing that the orders of the regular inquiry have been given separately restricting the petitioner from participating in any proceedings or meeting of the Panchayat and hand over movable-immovable property or record etc. of the Gram Panchayat to the majority Panch.

Aggrieved against the said order, the petitioner filed the statutory appeal under Section 51(5) of the Act before the Appellate Authority. Her appeal, however, was dismissed on 30.06.2017. It was observed that the proviso to Section 175(v) of the Act says that in case of a women candidate or a candidate belonging to a scheduled caste, the minimum qualification is 8th class pass and the certificate attached by the petitioner of her education has not been found to be genuine.

Counsel for the petitioner has submitted that the proceedings under Section 51 of the Act could not have been initiated in view of Article 243-O of the Constitution of India as according to him, the disqualification of the petitioner being not a 8th class pass goes to the root of the matter, for which the only remedy was to file the election petition. In this regard, he has relied upon a decision of the Supreme Court rendered in the case of **State of Himachal Pradesh and others vs. Surinder Singh Banolta**, 2007(1) R.C.R.

(Civil) 254.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

According to the petitioner, as per Article 243-F(1)(b) of the Constitution of India, a person shall be disqualified for being chosen as, and for being, a member of a Panchayat if he is so disqualified by or under any law made by the Legislature of the State and in that eventuality, the election petition is the only remedy as it would be determined by the Election Tribunal and not by the authorities under the statute. According to him, even if the petitioner was lacking qualification at the time of her election because she was not possessing the genuine certificate of 8th class pass, which was the mandatory requirement under proviso to Section 175(v) of the Act, the proceedings under Section 51 of the Act could not have been initiated against her and the same are *per-se* illegal.

In order to appreciate the argument raised by learned counsel for the petitioner, it would be relevant to refer to certain provisions of the Constitution of India and the Act, which are reproduced as under:-

“243F. (1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat,-

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications

mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.”

“243-O. 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.”

“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 who 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 ; and
- (ii) if he is a Panch to Sarpanch.”

“175. Disqualifications.-- No person shall be a Sarpanch, or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-

(a) to (u) 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 case of a woman candidate belonging to Scheduled Caste contesting election for the post of Panch, the minimum qualification shall be 5th pass; 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 2[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.”

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.

No other point has been raised.

In view of the above, the present writ petition is hereby dismissed being denuded of any merit, though without any order as to costs.

August 02, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No