

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.11018 of 2017 (O&M)
Date of decision: February 27, 2018

Poonam ...Petitioner

Versus

The State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. M.S. Saini, Advocate for the petitioner.
Mr. Chetan Sharma, AAG, Haryana.
Mr. Lokesh Sinhal, Addl. Advocate General, Haryana.

Rajan Gupta, J. (oral)

Petitioner prays for a writ in the nature of certiorari for quashing of the order dated 25.04.2017, passed by Addl. Civil Judge (Sr. Division), Sohna, under Section 176 of the Haryana Panchayati Raj Act, 1994, whereby election of petitioner as Member of Zila Parishad, Sohna, District Gurgaon has been set-aside, by holding her disqualified for the said election.

Learned counsel for the petitioner submits that the civil court has wrongly held the petitioner to be disqualified for contesting the elections on the ground that she did not have requisite qualification. Respondent No.2 did not adduce any evidence to prove that documents of petitioner were false and bogus. Thus, order passed by the court below deserves to be set-aside.

Learned State counsel have opposed the plea. According to them, petitioner was not qualified for the said election, in view of provisions of section 175 (v) of the Haryana Panchayati Raj Act, 1994. It has duly been proved on record that petitioner had failed in 8th class exam twice and thus, she was rightly disqualified to contest the election by the court below.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Petitioner contested election of Member of Zila Parishad, Ward No.1, Sohna, District Gurgaon. Despite the fact that respondent No.2 had made a complaint regarding qualification of the petitioner, her nomination was accepted and elections were conducted. In the said election, petitioner was declared successful. Aggrieved, respondent No.2 filed election petition under Section 176 (4) (aa) (i) of the Panchayati Raj Act, 1994 in the civil court, challenging the election of the petitioner on the ground that she did not have requisite qualification to contest. The Addl. Civil Judge (Sr. Division), Sohna, vide order dated 25.04.2017 considered plea of respondent No.2 and set-aside the election by disqualifying the petitioner to contest the same. It observed that petitioner studied at Government School, Badshahpur, but she failed in the exam twice and thus, was disqualified to contest the elections. Aggrieved, petitioner has filed the instant petition.

I find no infirmity with the order passed. Before the civil court, petitioner miserably failed to prove her educational qualification. Stand of the petitioner is that initially she had been studying in

government school and thereafter she had taken admission in a private school at Delhi. It is inexplicable how petitioner was admitted in a private school at Delhi without any school leaving certificate from the previous government school. As per Section 176 (4) of the Haryana Panchayati Raj Act, 1994, if a candidate is found ineligible to contest on any of the criteria laid down in the said provision, the civil court after holding inquiry may set-aside the election and declare the candidate disqualified. Section 176 (4) of the Act reads as follows:-

“(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 as 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 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.”

Admittedly, the petitioner studied at Government Primary School, Ramgarh Dhani, Badshahpur, from where she passed 5th class in March, 1998. Then she had taken admission in Government Senior Secondary School for Girls, Badshahpur in August, 1998 but failed in 6th class. She was re-admitted in 6th standard during academic session 1999-2000, but was failed again. However, she claims, she was promoted to 7th and 8th class in the years 2001 and 2002. In the same year, she appeared in 8th class exam conducted by Haryana Board of School Education, vide Roll No.206268, but failed. She again appeared for 8th class in the year 2002-2003, vide Roll No.2254430 but was declared unsuccessful. In her evidence, petitioner examined Smt. Kiran as RW-2, claiming that she was her landlady at Delhi as well as Suresh Goud as RW-3, who claimed to be Chairman of a school, from where petitioner is stated to have passed her 8th class. RW-2 could not disclose about any other tenant and also could not produce any electricity or water bill. Further statement of RW-3 is not trustworthy, as he could not identify RW-2, whereas she claimed to be known to him. He could not even tell about date of registration of the school or names of members of the Society. He stated that school

building had been taken on rent, but could not tell name of the landlord or produce any lease deed or the rent agreement. He also failed to disclose name of any teacher or any other employee of his school.

In view of my aforesaid discussion and the provisions, no fault can be found with the order and conclusion arrived at by the Additional Civil Judge (Senior Division), Sohna. Under the circumstances, no ground to interfere in writ jurisdiction is made out.

Dismissed.

RA-419-2017 & CM-12493-2017:

Since the main writ petition has been dismissed on merits, these applications do not survive and same are also dismissed.

(RAJAN GUPTA)
JUDGE

February 27, 2018
'Rajpal'

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