

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

126

Civil Writ Petition No.15567 of 2018

Date of Decision: July 13th, 2018

Malkiat Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Dr. Naresh Kaushik, Advocate
for the petitioner.

Mr. Varinder Singh Rana, Advocate
for the caveator.

AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court challenging the order dated 26.10.2017 (Annexure P-1) passed by the Deputy Commissioner, Kaithal, dismissing the petitioner from the post of Sarpanch and the order dated 08.05.2018 (Annexure P-2) passed by the Principal Secretary to Government of Haryana, Development and Panchayats Department, dismissing the statutory appeal preferred by the petitioner.

2. It is the contention of learned counsel for the petitioner that the petitioner was elected Sarpanch, Gram Panchayat Village Gaggarpur, District Kaithal, in the election held on 17.01.2016. Jagga Ram, rival candidate, who was defeated, filed an election petition, which is pending consideration. Petitioner had obtained matriculation certificate from the Delhi Board of Senior Secondary Education. Complaint dated 21.06.2016 was filed by Jagga Ram on the ground that Delhi Board of Senior Secondary Education, from where the petitioner had obtained 10th pass certificate under Roll No.100511051, which was enclosed by the petitioner along with his nomination papers, is not a recognised Board nor does it exist. It was further

stated that the certificate is a bogus and invalid document and, therefore, the petitioner did not possess the requisite qualifications for election to the post of Sarpanch.

3. On the basis of the complaint, where request was made for investigation, on directions of the State Election Commission, Haryana, matter was taken up by the Deputy Commissioner, Kaithal-respondent No.2. Directions were issued to the District Education Officer, Kaithal, to submit his report by letter dated 18.07.2016 after conducting inquiry with regard to the validity of the educational certificate attached along with the nomination paper by the petitioner. An inquiry was held where merely on the basis of a letter No.COBSE/C.99/2016 dated 21.10.2016 of the Indian Institute of Education Board, it was opined that the certificate issued by the Delhi Board of Senior Secondary Education being not entered in the list of board members, is invalid. Show cause notice was served upon the petitioner along with the report of the District Education Officer, Kaithal, as well as the complaint. Various opportunities were granted to the petitioner and even personal hearing was granted but he could not produce any evidence and, therefore, the Deputy Commissioner, Kaithal, has passed an order removing him from the post of Sarpanch.

4. Counsel further contends that the Appellate Authority has also not considered the fact that prior to the elections, Delhi Board of Senior Secondary Education was a recognised Board and in the year 2005, when he had passed his matriculation examination, it was duly recognised and the petitioner had enquired about the same. If subsequently the said Board has been derecognised or does not find mention in the list of the Council of Boards of School Education in India, the petitioner cannot be faulted with.

Another assertion which has been made by the counsel for the petitioner is that the matriculation certificate, which has been obtained by the petitioner in the year 2005, is prior to the insertion of the education clause in Section 175 of The Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the '1994 Act'), which requires the minimum qualification of matriculation from a recognised Board. That apart, counsel contends that the powers exercised by the Deputy Commissioner, Kaithal, are under Section 177 of the 1994 Act which are within the domain of the Director, Panchayati Raj Act and, therefore, the Deputy Commissioner, Kaithal, without any delegation of powers has exercised the powers of the Director for removing the petitioner from the post of Sarpanch, Gram Panchayat Village Gaggarpur, Block Guhla, District Kaithal. He, therefore, contends that the impugned orders dated 26.10.2017 and 08.05.2018 (Annexures P-1 and P-2 respectively) cannot sustain and deserve to be set aside.

5. Counsel for the caveator, on the other hand, asserts that the powers which are being exercised by the Deputy Commissioner, Kaithal, are under Section 51(3) of the 1994 Act and not under Section 177 of the 1994 Act. Apart from that, mentioning of the wrong provisions would not render the exercise of powers by a competent authority illegal. In support of this contention, counsel has placed reliance upon the Division Bench judgment of this Court in *Jagdish Versus The State of Haryana and others* 2008(2) L.A.R. 306. That apart, he contends that various opportunities were granted to the petitioner to place evidence on record showing that the Board, from which the petitioner had passed his matriculation examination, was duly recognised but no evidence has been produced. The Delhi Board of Senior Secondary Education, from where the petitioner has obtained

his matriculation certificate, is neither recognised by the Government of Haryana for any purposes nor has it been recognised by the State Election Commission, Haryana. He thus contends that the orders as passed by the competent authority are in accordance with law and do not call for any interference.

6. I have considered the submissions made by learned counsel for the parties and with their able assistance, have gone through the impugned orders as also the records.

7. The admitted position is that the petitioner, on the basis of a matriculation certificate obtained by him in the year 2005 from the Delhi Board of Senior Secondary Education, filed his nomination along with the proof of his matriculation qualification. He was elected as Sarpanch of the Gram Panchayat Village Gaggarpur, Block Guhla, District Kaithal. On the complaint dated 21.06.2016 of Jagga Ram to the State Election Commission, Haryana, directions were issued to the District Education Officer, Kaithal, to submit an inquiry report with regard to the validity of the educational certificate of the petitioner, which was appended along with the nomination paper. On inquiry, the District Education Officer, Kaithal, submitted his report bearing No.209 dated 25.10.2016 holding therein that the certificate, which has been issued to the petitioner by the Delhi Board of Senior Secondary Education, was not valid as the said Board was not entered in the list of Board Members of the Indian Institute of Education Board and, therefore, was not recognised.

8. Show cause notice was issued to the petitioner on receipt of report of the District Education Officer, Kaithal, along with the copies of the complaint and the inquiry report for reply. Time was sought by the

petitioner to file reply. Personal hearing was given on various occasions but on every date, time was sought by the petitioner to produce evidence and reply to the show cause notice. Despite providing various opportunities, when no reply was received, the Deputy Commissioner, Kaithal, proceeded to pass order dated 26.10.2017 removing the petitioner from the post of Sarpanch. Against this order, petitioner filed an appeal which was allowed on 01.06.2017 and the case was remanded back with direction to decide the case within a period of one month by granting opportunity of personal hearing to the petitioner. Various summons were issued to the petitioner to come present on 14.07.2017, 24.08.2017, 07.09.2017, 14.09.2017, 28.09.2017, 12.10.2017 and 26.10.2017 not only to produce his evidence/proof with regard to the institute/board from where he had obtained his matriculation certificate. Petitioner was unable to produce any evidence in support of the validity of his educational qualification. Faced with this situation, the Deputy Commissioner, Kaithal-respondent No.2 proceeded to remove the petitioner by exercising powers under Section 51(3) of the 1994 Act declaring him to be ineligible under Section 175 of the 1994 Act for the post of Sarpanch. Appeal against this order stands dismissed by order dated 08.05.2018.

9. The contention of the counsel for the petitioner that the Deputy Commissioner has exercised powers of the Director, Panchayati Raj Act, as vested under Section 177 of the 1994 Act, which powers were not conferred upon the Deputy Commissioner and, therefore, order dated 26.10.2017 (Annexure P-1) is not acceptable in the light of the fact that the powers of removal of the petitioner has been exercised by the Deputy Commissioner under Section 51(3) of the 1994 Act as the petitioner

was found to be disqualified to be the member of the Gram Panchayat at the time of his election as provided under Section 51(3)(b).

Section 51(3) of the 1994 Act reads as under:-

“51 (3) The Director or the Deputy Commissioner concerned may, after such inquiry 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) XXX XXX XXX

(b) if he was disqualified to be a member of the Gram Panchayat at the time of his election.”

10. Further as per Section 175 which provides for the disqualifications, no person or a Panch of a Gram Panchayat or a member of the Panchayat Samiti or Zila Parishad or continue as such, shall be a Sarpanch, who as per clause (v) has not passed matriculation examination or its equivalent examination from any recognised institution/board.

11. A Division Bench of this Court in Jagdish's case (supra) after reproducing Section 51(3)(b) of the 1994 Act in para 14, stated in para 15 as follows:-

“In terms of the above provisions, the Deputy Commissioner concerned may after inquiry as he may deem fit and after giving an opportunity of being heard to Sarpanch or Panch, as the case may ask him to show cause for the action and by order remove him from his office if he is disqualified to be a member of Gram Panchayat at the time of his election. The order (Annexure P4) passed by the Deputy Commissioner, Jhajjar (respondent No.2) has been passed in exercise of powers conferred under Section 177 of the Act. The petitioner in terms thereof was held to be disqualified for the post of Sarpanch. Besides, the post of Sarpanch, Gram Panchayat, Village Gochhi was also declared vacant. Section 177 of the Act relates to

disqualification for continuing as members. Such Section (1) provides (a) that if any member of a Gram Panchayat, Panchayat Samiti or Zila Parishad who is elected, as such, was subject to any of the disqualifications mentioned in Section 175 at the time of his election; (b) during the term for which he has been elected, incurs any of the disqualifications, mentioned in Section 175, shall be disqualified from continuing to be a member, and his office shall become vacant. Section 177 (2) provides for exercise of power where vacancy has arisen to be decided by the Director. Director in Section 2(xix) has been defined to mean Director of Panchayats appointed under the Act. Therefore, though the order has been passed by the Deputy Commissioner in exercise of powers under Section 177 of the Act, the same would not be of any consequence as the Deputy Commissioner has the power to remove a Sarpanch in terms of Section 51(3)(b) of the Act. In Peerless General Finance and Investment Co. Limited & Anr. v. Reserve Bank of India, JT 1992 (1) SC 405 it was held that exercise of power by an authority under a wrong provision, however, which action is within its competence, cannot be held to be invalid merely because it purports to be under a wrong provision, if it can be shown to be within its power under any other provision. In B.S.E. Brokers Forum, Bombay & Ors. v. Securities & Exchange Board of India & Ors, (2001) 3 SCC 482 it was held that it is well-established principle of law that so long as the impugned power is traceable to the statute concerned, mere omission or error in reciting the correct provision of law does not denude the power of the authority from taking statutory action so long as its action is legitimately traceable to a statutory power governing such action. In the present case, the statutory power governing the action of removal of Sarpanch by the Deputy Commissioner (respondent No.2) is traceable to the provisions of Section 51 (3)(b) of the Act. Therefore, even if it is taken that the provisions of Section 177 are inapplicable, the order would be valid in view of the provisions of Section 51(3)(b).”

12. In view of the above, the contention of learned counsel for the petitioner with regard to the Deputy Commissioner having exercised the powers under Section 177 of the 1994 Act, cannot be accepted.

13. As regards the contention of the counsel for the petitioner that the Board from which the petitioner has obtained his matriculation certificate i.e. Delhi Board of Senior Secondary Education was a recognised Board, the same does not find mention in the list of Boards recognised by the Council of School Education in India. Further the General Secretary, Council of Boards of School Education in India in its report dated 21.10.2016 stated that on verification of the records maintained in the Council, it has been found that the name of Delhi Board of Senior Secondary Education, from where the petitioner has obtained his matriculation certificate, does not find mention in the list of members of the Boards. The Delhi Board of Senior Secondary Education also does not find mention in the list of recognised Board issued by the State Election Commission, Haryana. That apart, despite various opportunities granted to the petitioner by the authorities, no evidence has been produced by the petitioner to the effect that the Delhi Board of Secondary Education is recognised by the Government of India or Government of Haryana. Even during the hearing of the case, counsel for the petitioner had sought time to place on record documentary evidence to show that the Delhi Board of Secondary Education is a recognised Board but has failed to do so. This Court thus, has no hesitation in coming to a conclusion that the orders as passed by the Deputy Commissioner, Kaithal, dated 26.10.2017 (Annexure P-1) as also the Appellate Authority dated 08.05.2018 (Annexure P-2) in the appeal preferred by the petitioner,

are in accordance with law, which do not call for any interference by this Court.

- 15. The writ petition being devoid of merit stands dismissed.
- 16. Caveat discharged.

July 13th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

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