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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21431-2018 (O&M)
Date of Decision : 27.08.2018

Vishpal

.... Petitioner

Versus

The State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present :- Mr. Pankaj Maini, Advocate
for the petitioner.

MAHABIR SINGH SINDHU, J.

Petitioner, *ex situ* Sarpanch of Village Agondh has filed the present writ petition under Articles 226/227 of the Constitution for quashing of the impugned judgment dated 13.08.2018 passed by learned Additional Civil Judge (Sr. Div.), Guhla, whereby the election petition filed by respondent no.4- Birender Singh under Section 175 and 176 of the Haryana Panchayati Raj Act, 1994 (for short 'Act') was accepted and election of the petitioner has been set aside. Present petitioner was impleaded as respondent No.1 in the election petition.

2. Brief facts of the case are that petitioner as well as respondent no.4 are the registered voters in village Agondh, tehsil Guhla, District-Kaithal as per voters list published for Panchayat Election in the State of Haryana.

3. Respondent no.4 challenged the election of the petitioner on account of concealment of the pendency of a criminal complaint under Sections 323, 324, 325, 326, 307, 506 and 34 IPC, P.S Assandh in the Court of learned

Judicial Magistrate, First Class, Assandh (for short the 'JMIC') and illegal acceptance of his nomination paper by the Returning Officer.

4. Further alleged that petitioner along with other three co-accused have been summoned by Learned JMIC vide order dated 24.02.2015 (P4) under Sections 323, 324, 325, 326, 341, 506 read with Section 34 of IPC and he was granted bail by the learned Additional Sessions Judge, Karnal, therefore, they are very well aware about the pendency of the criminal complaint.

5. It had been averred by respondent no.4 that petitioner was bound to disclose the factum of pendency of above criminal case and he should have made a true declaration supported by way of an affidavit with his nomination paper in terms of Forms 4-A and 4-B prescribed under Rules 26 and 27 of the Haryana Panchayati Raj Election Rules, 1994 (for short 'Rules'). It was specifically alleged that during the scrutiny of the nomination paper, the above factual position was brought to the notice of the Returning Officer, but despite that, no action was taken and nomination paper of petitioner was accepted in a totally illegal and arbitrary manner due to the connivance between them.

6. Upon notice, the petitioner filed reply and raised preliminary objections including maintainability, locus-standi, non-joinder and miss-joinder of necessary parties, suppression of material facts and lack of verification. On merits, inter alia submitted that there is no concealment on the part of the petitioner; rather as a matter of fact, FIR no.444, dated 14.08.2010 under Sections 323, 324, 341, 506 read with Section 34 of IPC, P.S. Assandh, District Karnal was registered against him along with other co-accused on the basis of a complaint made by one Jitender Kumar son of Labh Singh resident of Village Rajaund, District-Kaithal, but after investigation, the allegations in the FIR were found to be false and consequently the same was cancelled. Also

submitted that although said Jitender Kumar had filed a complaint against the petitioner along with other co accused and in which summoning order were passed, but the same is totally false and he is likely to be acquitted. Again submitted that at the time of filing nomination paper, no charge(s) was framed against the petitioner and as such mere filing of the complaint does not disqualify him to contest the election for the office of Sarpanch.

7. On the basis of pleadings of the parties the following issues were framed by Id. Civil Court:-

1. Whether the nomination papers for the post of Sarpanch of Village Agondh are improper, illegal, unlawful and not as per the Rules and are liable to be rejected? OPP.
2. Whether the election of respondent No.1 as Sarpanch of village Agondh is liable to be set aside? OPP
3. Whether the present election petition is not maintainable? OPR
4. Whether the petitioner has got no locus standi and cause of action to file the present petition?OPR
5. Whether the petition is bad for non-joinder and miss-joinder of necessary parties?OPR
6. Whether the petitioner has not come to the Court with clean hands and has suppressed true and material facts from the Court?OPR
7. Relief.

8. Respondent No.4, in order to prove his case examined himself as PW-1, Subhash Chand Patwari – PW2 and Surinder Kumar, Record keeper as PW3 and produced the following documents on record:-

1. Ex PW2/A Copy of nomination performa
2. Ex PW2/B Nomination form
3. Ex.PW2/C Form-4A
4. Ex.PW2/D Form-4B
5. Ex.PW2/E Affidavit
6. EX.PW2/F Affidavit
7. EX.PW2/G Affidavit

- 8. EX.PW2/H Form-4B
- 9. EXPW3/A Copy of complaint
- 10. EX.PW3/B Order dated 24.02.2015
- 11. Ex.P1 Order dated 09.09.2016
- 12. Ex.P2 Order dated 26.08.2016
- 13. Ex.P3 Order dated 19.01.2016
- 14. Ex.P4 Order dated 10.04.2015
- 15. Ex.P5 Copy of bail application

9. On the other hand, petitioner examined himself as RW-1 and produced the documentary evidence i.e. charge-sheet dated 19.01.2016 (Ex.RA), order dated 09.09.2016 (Ex.RB) and statement of Jitender dated 09.09.2016 (Ex.RC).

10. Ld. the Civil Court while deciding issue no. 1 and 2 came to the conclusion that nomination paper; filed by the petitioner for the office of Sarpanch of Village Agondh is improper, illegal and unlawful as he misrepresented and concealed the true and material facts regarding pendency of criminal case against him and thus his nomination is liable to be rejected. Consequently, it was concluded that the election of the petitioner deserves to be set aside.

11. Issues nos. 3 to 5 were decided against the petitioner in view of the fact that neither any evidence was led; nor any arguments was raised on his behalf. Ultimately, the petition filed by respondent no.4 was allowed and the election of petitioner for the office of Sarpanch has been set aside.

12. It is argued by learned counsel for the petitioner that mere pendency of a criminal case is not a ground for setting aside the election of the petitioner under Section 176 of the Act, as no charges were framed against him at the time of filing of nomination paper. In support of his contention, reference has been made to the judgment of Hon'ble Supreme Court in case **Krishna**

Moorthy Vs. Siva Kumar and others, (2015) 3 Supreme Court Cases 467 as well as judgment rendered by learned Single Judge of this Court reported as *Sukhdev Singh Vs. Mukhtiar Singh and others, 2017(2) PLR 338, P&H.*

13. Heard, learned counsel for the petitioner and perused the paper-book.

14. Before proceeding with the matter, it is necessary to extract the relevant part of Section 176 of the Act and which reads as under:-

“176. Determination of validity of election enquiry by judge and procedure.

(1) If the validity of any election of a Sarpanch of Gram Panchayat..... 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)

(3)

4 (a)

(aa) if on holding such enquiry the Civil Court finds that :-

(i)

(ii)

(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)

(5)

Perusal of Section 176(4)(aa)(iii) makes it clear that the result of an election of a returned candidate can be set aside if it has been materially affected by improper acceptance of any nomination or by non-compliance or violation of the Act, Rule(s) or order(s) made thereunder.

15. Still further relevant part of Rule 26 and 27 alongwith Form 4-A and Form 4-B being material for proper adjudication of the matter in controversy are also extracted as under :-

“26. *Nomination of Candidates.*-- (1)

(2)

(3) A nomination paper along with Form-4A and Form 4-B shall be supplied by the Returning Officer (Panchayats) to any voter on demand.

(4) A candidate shall have to furnish full and complete information in Form 4-A and Form 4-B before the Returning Officer alongwith nomination paper.

Provided

Provided further that the candidate seeking to contest the election of the seat of Panch and Sarpanch of a Gram Panchayat shall have to furnish the information on a plain paper.

“27. *Presentation of nomination papers.*-- On or before the date appointed under clause (a) of rule 24, each candidate shall in person deliver to the Returning officer (Panchayat) or Assistant Returning Officer (Panchayat) so authorised by the Returning Officer (Panchayat) for that purpose during the time and at the place specified in the notice made under rule 24, a duly completed nomination paper in Form 4, Form 4-A and Form 4-B and signed by the candidate.

**“FORM 4-A
(see rule 26(3) and 27)**

Affidavit to be filed by the candidate alongwith nomination paper before the Returning Officer for election (Name of the Gram panchayat.....), Block....., District.....

PART-A

I..... son of Aged..... years,

resident of (mention full postal address), a
candidate at the above election, do hereby solemnly affirm and state on
oath as under:

- 1.
- 2.
- 3.
- 4.
- 5. I am/am not accused of any offence(s) punishable with imprisonment for six months or more in pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction. If the deponent is accused of any such offence(s) he shall furnish the following information:-

(i) The following case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for six months or more:-

(a)	A Case/First Information Report No./Nos. Together with complete details of concerned Police Station/District State.	
(b)	Section(s) of the concerned Act(s) and short description of the offence(s) for which charged	
(c)	Name of the Court, Case No. and date of order taking cognizance:	
(d)	Court(s) which framed the charge(s)	
(e)	Date(s) on which the charge(s) was/were framed	
(f)	Whether all or any of the proceeding(s) have been stayed by any Court(s) of competent jurisdiction	

(ii) The following case(s) is /are pending against me in which cognizance has been taken by the court (other than the cases mentioned in item(i) above):-

(a)	Name of the Court, Case No. and date of order taking/cognizance	
(b)	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offences(s) for which cognizance taken	
(c)	Details of Appeal(s)/Application(s) for revision (if any) filed against the above order(s)	

- 6.
- 7.
- 8.

- 9
10.

Part -B

11. Abstract of the details given in (1) to (10) of Part -A:

1	Name of the Candidate	
2	Full postal address	
3		
4		
5	(i)Total number of pending cases where charges have been framed by the Court for offences punishable with imprisonment for six months or more	
	(ii) <u>Total number of pending cases where the court(s) have taken cognizance (other than the cases mentioned in item(i)above.</u>	
6		
7		
8		
9		
10		
11		

Verification

I, the deponent, above named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed there from. I further declare that:-

(a)There is no case of conviction or pending case against me other than those mentioned in item 5 and 6 of Part A and B above.

(b)

Verified at..... this the..... day of.....

Deponent

- Note: 1.
- Note: 2.
- Note: 3.
- Note: 4. All column should be filled up and no column to be left blank.
If there is no information to furnish in respect of any item, either “Nil”
or “Not applicable”, as the case may be, should be mentioned.
- Note: 5.The Affidavit/Declaration should be either typed or written legibly and neatly.

16. A perusal of Rules 26(4) and 27 make it clear that a candidate is under an obligation and mandatorily required to furnish the full and complete information in Forms-4-A and 4-B before the Returning Officer along with nomination paper regarding the pendency of criminal case(s) punishable with imprisonment for a period of six months or more, which are pending at two different stage(s) i.e. (i) in which charge(s) have been framed;

(ii) case(s) in which cognizance has been taken by the court of competent jurisdiction.

Therefore, both the columns i.e. Clause 5(i) and 5(ii) have been purposely incorporated to cover the pending criminal case(s) against a candidate at both the stages so that the voter(s) may become aware about his antecedents and this is what exactly the Hon'ble Supreme Court has held in Krishana Moorthy's case(supra) while dealing with a case pertaining to the Panchayat Election in the State of Tamil Nadu and para 94.4 and 94.5 of the judgment being relevant are reproduced as under:-

“94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Tribunal 100(1)(b) of the 1951 Act.

94.5 The question whether it materially affects the election or not will not arise in a case of this nature”.

17. Further perusal of the nomination paper (P5) filed by the petitioner clearly reveal that instead of complying with the provisions of Rules 26(4) and 27, he furnished the incorrect and false information under Clause 5(ii)(Part-A) of Form 4-A as well as left the column 5(ii)(Part-B) of Form-4-A as 'Blank' and to substantiate the same relevant part of Form 4-A submitted by the petitioner

along with nomination paper is extracted as under:-

FORM 4-A
(PART-A)

“5. I am/am not accused of any offence(s) punishable with imprisonment for six months or more in pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction. If the deponent is accused of any such offence(s) he shall furnish the following information:-

(i) The following case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for six months or more:-

(a)	A Case/First Information Report No./Nos. Together with complete details of concerned Police Station/District State.	No
(b)	Section(s) of the concerned Act(s) and short description of the offence(s) for which charged	No
(c)	Name of the Court, Case No. and date of order taking cognizance:	No
(d)	Court(s) which framed the charge(s)	No
(e)	Date(s) on which the charge(s) was/were framed	No
(f)	Whether all or any of the proceeding(s) have been stayed by any Court(s) of competent jurisdiction	No

(ii) The following case(s) is /are pending against me in which cognizance has been taken by the court (other than the cases mentioned in item(i) above):-

(a)	Name of the Court, Case No. and date of order taking/cognizance	No
(b)	The details of cases where the court has taken cognizance, section (s) of the Act(s) and description of the offences(s) for which cognizance taken	No
(c)	Details of Appeal(s)/Application(s) for revision (if any) filed against the above order(s)	No

PART-B

5	(i)Total number of pending cases where charges have been framed by the Court for offences punishable with imprisonment for six months or more	
	<u>(ii)Total number of pending cases where the court(s) have taken cognizance (other than the cases mentioned in item(i)above.</u>	

Clause 5(ii) Part-A, Form 4-A, extracted above substantiate that petitioner supplied the wrong information while answering/writing as 'No'. Again under Clause 5(ii), Part-B of Form-4-A, he left the column blank which he was supposed to say fill up in consonance with Note-4 appended under Form 4-A and even the Returning Officer failed to insist that all columns should be filled up and none should be left blank.

18. The argument that charge(s) was/were not framed against the petitioner at the time of filing the nomination may be an escape route from the provision of Clause 5(i), but he cannot wriggle out of the rigour of Clause 5(ii) which covers the pending case(s) in which cognizance has been taken by the Court of competent jurisdiction. There is no dispute that in the present case, the cognizance has already been taken by learned JMIC at the time of filing of his nomination paper by the petitioner. Even he has neither raised any plea before the learned Civil Court; nor disputed or urged before this Court also that cognizance had not been taken in the criminal complaint on the date of filing of nomination paper. Thus, petitioner was under an obligation to disclose the pendency of criminal complaint in which the cognizance had already been taken against him, but instead he furnished the incorrect and false information while writing that 'No' case is pending against him. Not only that, rather, under Clause 5(ii), Part-B (Form 4-A), he left the column blank deliberately, which he was supposed to fill either way.

19. In view of the facts and circumstances discussed hereinabove, the irresistible conclusion is that :-

- a. Rules 26(4) and 27 mandate that the petitioner should have disclosed full and complete information regarding the pendency of the criminal complaint in Form-4A alongwith nomination paper before the Returning Officer, but he deliberately concealed the same under Clause 5(ii) of Form-4-A in which cognizance had already been taken by the Court of competent jurisdiction before the date of filing of his nomination paper.

- b. It has also come on record that petitioner furnished false information in Clause 5(ii), Part-A of Form 4-A while writing 'No' and left the Clause 5(ii), Part-B of Form 4-A as 'Blank' deliberately.
- c. The petitioner committed a breach of above Rules and in view of the provisions of Section 176 (4)(aa)(iii) his nomination paper ought to have been rejected, but the same was improperly accepted by Returning Officer.
- d. Learned Civil Court has rightly set aside the election of the petitioner while passing the impugned judgment.

20. In view of the discussion made in para 18 of this order, the judgment of Hon'ble Supreme Court in Krishna Moorthy's case (Supra) relied upon by the petitioner is not helpful to his case; rather it goes against him.

21. The judgment rendered by learned Single Judge in Sukhdev Singh's case(supra) is also not helpful to the petitioner for the simple reasons that Section 176 of the Act read with Rule 26(4) and 27 as well as Form 4-A and Form 4-B were not under consideration in that case.

22. Consequently, there is no merits in the present writ petition and the same is dismissed.

(MAHESH GROVER)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

August 27, 2018
dkp

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes