

C.W.P. No. 4370 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 4370 of 2018

DATE OF DECISION:21.03.2018

Dharambir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Mr. Arun Singla, Advocate
for caveator-respondents No.3 to 6.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned orders dated 8.1.2018 (Annexure P-2) passed by Additional District Judge, Panipat as well as dated 31.5.2017 (Annexure P-1) passed by Civil Judge (Junior Division), Panipat under Section 176 of Haryana Panchayati Raj Act, 1994 (hereinafter referred to 'the Act').

Briefly, the facts of the case as made out in the present petition are that Prem Chand-respondent No.3 filed election petition to challenge the election of the petitioner under Section 176 of the Act on the ground that he produced forged and fabricated documents while filing nomination for the post of Sarpanch and contested the election. He was not qualified to contest the election as he did not possess the requisite qualification. Said election petition was allowed by Civil Judge (Junior Division), Panipat vide its

judgment dated 31.5.2017 and election of Sarpanch was declared null and void being contrary to provisions of the Act. Aggrieved by aforesaid judgment dated 31.5.2017, the petitioner filed an appeal before Additional District Judge, Panipat, which was also dismissed vide order dated 8.1.2018 and the judgment passed by the Civil Court was affirmed.

Learned counsel for the petitioner submits that impugned orders are liable to be set aside on the ground that the election petition was not maintainable as the election petition was not filed in person. As per provisions of Section 176 of the Act read with Section 81 of the Representation of People Act, 1950, it is mandatory to file election petition in person. Learned counsel further submits that certificate of the 8th class was kept by the school authorities and it was never issued to the concerned candidate but this fact was not considered by both the Courts below. Learned counsel also submits that it has been proved on record that the petitioner was eligible to contest the election as he was having certificate of transfer of the school, which clearly shows that he has passed middle class examination. Learned counsel for the petitioner has also relied upon the judgments of Hon'ble the Apex Court in the cases of **Chandrika Misir and another Vs. Bhaiyalal** 1973 AIR (SC) 2391, **Gauri Shanker Vs. M/s Hindustran Trust and others** 1972 RCJ 850, of this Court in cases of **Haryana Financial Corporation Vs. Deepak Singhal and another** 2017 (5) RCR (Civil) 38, **Rohtash through LRs Vs. State Election Commission and others** (C.R. No. 5641 of 2016, decided on 9.9.2016) and **Raj Kumar Vs. Mukhtyar Singh and others** 2011 (3) PLR 44 in support of his contentions.

Learned counsel for caveator-respondents No.3 to 6 has

opposed the submissions made by learned counsel for the petitioner. He submits that judgments passed by the Courts below are based on proper appreciation of evidence. It was proved on record that the petitioner has procured forged and fabricated documents just to contest the election. The petitioner was not qualified to contest the election at the time of filing of the nomination and his election was accordingly declared as null and void. An application was also given to Deputy Commissioner, Panipat and Superintendent of Police, Panipat regarding allegations of fraud and cheating and a request was made to reject the nomination of the petitioner but no action was taken thereupon. A specific finding has been given by the trial Court that there was no document on record on the basis of which it can be said that school leaving certificate was issued by the concerned authority. It was proved on record that it was not a genuine document and the transfer certificate was procured in a fraudulent manner without having any relevant record to prove that he attended the classes and passed middle class.

Heard the arguments advanced by learned counsel for the parties and have also gone through the judgments passed by the trial Court as well as by the appellate Court.

The issue in the present case is as to whether the election petition filed under Section 176 of the Act or under other provisions challenging the election of the returned candidate has to be filed by the petitioner-in-person along with Advocate or not?

In order to answer the aforesaid question, it would be appropriate to reproduce and analyse the provisions of Section 176 of the Act, which reads thus:-

“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 candidate 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 candidate 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.”

In the present case, respondent No.3 challenged the election of the petitioner by filing an election petition on the ground that the election petition was filed by the Advocate, whereas, it was mandatory to file an election petition under Section 176 of the Act by the candidate himself.

Hon'ble the Apex Court in **Raj Kumar Vs. Mukhtyar Singh and others**, Special Leave to Appeal (Civil) No. 17041 of 2011 on 22.4.2014 has held that the provisions of Section 176 of the Act are directory being the procedural and the said defect, if any, is curable if so directed by the Election Tribunal and has set aside judgment of the High Court passed in **Raj Kumar's case (supra)**.

The appellate Court while dismissing the appeal filed by the petitioner has given a specific finding that in the transfer certificate dated 21.12.2015 (Ex. P2), date of birth of the petitioner was mentioned as 5.3.1985, which shows that he remained student of DPS Senior Secondary School, Village Bandh, District Panipat till 31.3.2011 and passed 8th class from that institute. However, the Block Education Officer, Israna, Panipat through Ex. P3 reported that no such transfer certificate was ever prepared by Block Education Office. It was reported that name of the petitioner was not in existence on 21.12.2015 in their official record. It was also reported that serial number 437 as shown in Ex. P2 was not pertaining to their office as they did not have any serial number beyond 213 upto 22.1.2016. As per Block Education Officer report Ex. P3, the transfer certificate Ex. P2 was found bogus and fictitious, which finds corroboration with the statement of PW-2. A criminal case of cheating was also registered against the petitioner vide Ex. P5 i.e. FIR No. 77 dated 11.3.2016 under Sections 420,467,468,471 and 120-B IPC. It has been mentioned in the judgment of appellate Court that Ex P7 shows that the school leaving certificate was issued in the name of the petitioner in the year 1994 regarding class II and thereafter there was no record regarding his further studies. Ex. P8 reflects that the name of the petitioner was removed from the school record due to

his absence from the school and he was issued school leaving certificate on 7.5.1994 from Rajkiya Primary School, Rajapur, Panipat. The findings recorded by the appellate Court are reproduced as under:-

“Learned civil Court rightly observed that appellant as a witness during cross-examination could not answer the question which usually could be answered by a person in respect to his educational qualification and therefore, certainly the statements of appellant as a witness corroborates the evidences as led by respondent-petitioner in order to substantiate his petition. The learned civil Court even rightly observed that appellant could not be able to examine any of his classmate as a witness as well to place and prove on record the fact of attaining his education from Class 3rd to class 7th. Thus, in view of totality of the conclusion that the document relied on by the appellant was not a genuine document. It is necessary to point out here that this Court also considered the fact that an enquiry was conducted by Deputy Executive Officer, Zila Parishad, Panipat against the appellant and during enquiry it was found that appellant attached fake and fabricated certificate to show his education upto class 8th and this fake and fabricated document was attached with the nomination paper. The enquiry report is Ex.P-12. It is further that a show cause notice was issued against the appellant vide Ex.P-13 by the Deputy Commissioner, Panipat and even Deputy Commissioner, Panipat directed the Superintendent of Police, Panipat with Ex. P-14 to conduct the enquiry in respect to involvement of

Principal, DPS Senior Secondary School, Bandh, Panipat, who has been arrayed in election petition as respondent No.5. Even this Court noticed that appellant was terminated by Deputy Commissioner, Panipat from the post of Sarpanch vide order dated 11.01.2017 i.e. Ex.DA. In respect to Ex.DA, an appeal was preferred by appellant before Additional Chief Secretary, Government of Haryana, Development and Panchayat Department. The Additional Chief Secretary, Government of Haryana, Development and Panchayat Department passed an order Ex.D1. It is further that with Ex.D1, the matter was remanded back to the Deputy Commissioner, Panipat for examining the matter again and passing speaking order. However, it is noticed by this Court that further enquiry was conducted by Deputy Commissioner through Additional Deputy Commissioner, Panipat and in compliance thereof, the Additional Deputy Commissioner, Panipat after conducting an enquiry submitted his report before Deputy Commissioner, Panipat. Further, the Deputy Commissioner, Panipat after taking cognizance of the report of Additional Deputy Commissioner, Panipat and considering the document produced by the concerned parties as well officials again dismissed the appellant from the post of Sarpanch vide order dated 27.06.2017. A bare perusal of appeal makes it clear that this very fact has not been disclosed by the appellant in his appeal which amounts to concealment of fact as well. Thus, in view of above discussion whichever has been held so far, this Court

could not be convinced by learned counsel for appellant that the order of learned civil Court devoid merit on any ground for its reversal. Even no benefit could be advanced of case laws relied on by learned counsel for appellant during the course of arguments as facts not appreciated to the facts and circumstances of the present case.

Thus, in view of above noted facts and circumstances, impugned order needs no interference. The impugned judgment is hereby upheld and affirmed. The appeal in hand being devoid of merit is dismissed with costs. Memo of costs be prepared accordingly. Record of the Civil Court be sent back to the quarter concerned with a copy of this judgment. Appeal file be consigned to the record room after due compliance.”

It has been proved by both the Courts below that school leaving certificate produced by the petitioner was procured just to contest the election as the requisite qualification was 8th pass for the reserve category.

The standard of proof in an election petition where a challenge to election of the returned candidate is not based on corrupt practice is that equal to in a civil cases and it is to be seen as to whether from the evidence on record, the trial Court on that standard of proof has come to a legal and valid conclusion that school leaving certificate of the returned candidate for passing 8th class was forged and fabricated and as such he was not eligible to contest the election on the post of Sarpanch.

On perusal of judgments passed by both the Court below, I am of the considered view that there is no illegality in the judgments passed by

both the Courts below and the same are based on proper appreciation of evidence and no interference is required. It has clearly been proved on record that the petitioner has contested the elections on the basis of forged and fabricated documents, which were never issued by the school authorities

Accordingly, the present petition being devoid of any merit is hereby dismissed.

March 21, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes