

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

LPA No. 159 of 2018 (O&M)

Date of Decision: 23.10.2018

Dharambir

.....Appellant

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
 HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Sanchit Punia, Advocate, for the appellant.

KRISHNA MURARI, C.J.(oral)

This appeal under clause X of the Letters Patent has been filed challenging the judgment and order dated 06.12.2017 passed by the learned Single Judge dismissing the writ petition filed by the appellant-petitioner. Challenge in the petition was made to an order dated 10.05.2016 passed by the Deputy Commissioner, Hisar removing the appellant-petitioner from the post of Sarpanch in exercise of the powers conferred upon him under Section 51(3)(c) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act') and the order dated 20.07.2016 passed by the Appellate Authorities dismissing the appeal filed by the appellant-petitioner under section 51(5) of the Act.

2. Relevant facts in brief can be summarized as under:-

Elections for the post of Sarpanch in District Hisar were held in January, 2016. The appellant-petitioner was one of the contestants in the said election. Though it was disclosed by him in the nomination papers that he was involved in two criminal cases registered vide FIR No. 279 dated

02.04.2010 under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code at Police Station Sadar Civil Lines, Hisar and FIR No. 159 dated 11.04.2010 under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code at Sadar Civil Lines, Hisar and was convicted in both the cases vide judgment and order dated 26.08.2015 and was awarded sentence for a period of three years, still his nomination paper was accepted and was declared successful in the election.

3. A resident of the village made a complaint to the Deputy Commissioner, Hisar that since the appellant-petitioner is convicted, hence he incurred a disqualification and thus cannot be permitted to continue as Sarpanch of the Gram Panchayat. The Deputy Commissioner directed an enquiry in the complaint. Accordingly, a preliminary enquiry was held in which it transpired that the appellant-petitioner had been convicted and sentenced for three years in both the cases besides a fine of Rs.30000/- was also imposed. A show cause notice was issued to which a reply was submitted and the Deputy Commissioner finding that the appellant-petitioner was not qualified to be elected as Sarpanch passed an order dated 10.05.2016 for his removal from the post. The appeal filed against the Appellate Authority was also dismissed.

4. Learned Single Judge vide the impugned judgment and order dated 06.12.2017 after considering the provisions of the Act and Article 243(o) of the Constitution of India dismissed the writ petition.

5. Learned counsel for the appellant vehemently contended that the proceedings initiated against the appellant under Section 51 of the Act are totally without jurisdiction and the remedy of the complainant was by way of an election petition under Section 176 of the Act and under Article

243(A) of the Constitution of India. It is further pointed out that since the power has been exercised by the Deputy Commissioner under Section 51(3)(A) of the Act, the order is without jurisdiction inasmuch as the said Section is not at all applicable as it deals with a situation where the conviction is after the election whereas in the case in hand the appellant-petitioner was already convicted when he filed the nomination papers.

6. The pith and substance of the argument is that once elected the appellant-petitioner could only be removed by way of an election petition and the proceedings initiated against him for removal are illegal and without jurisdiction. In order to appreciate the arguments it may be relevant to refer to the following provisions of the Act:-

Section 51 of the Act provides for suspension and removal of the Sarpanch. Section 51(3)(b) of the Act relevant for adjudication of the issue raised herein reads as under:-

“51. Suspension and removal of a Sarpanch or Panch:-

(1) xx xx xx

(2) xx xx xx

(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)

b) If he was disqualified to be a member of the Gram Panchayat at the time of his election;

c)

d)

e)”

7. Section 175 of the Act provides for disqualifications. This section clearly prescribes that 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 has incurred any of the disqualifications specified therein. A part of the Section relevant for adjudicating the controversy in hand reads as under:-

“Section 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) has, whether before or after the commencement of the Act, been convicted.

- i)
- ii) of any other offence has been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release; or

7. A conjoint reading of the aforesaid two provisions of the Act clearly go to show that no person is entitled to continue as Sarpanch who has been convicted of any offence and has incurred punishment of imprisonment for not less than six months unless a period of five years or such lesser period as the State Government may allow in any particular case, has elapsed since his release.

8. Admittedly, the appellant-petitioner was convicted and sentenced to undergo imprisonment for three years vide order dated 26.08.2015 and period of five years had not elapsed since when he was

elected and thus he was not entitled to continue as Sarpanch. The power to remove the Sarpanch having the aforesaid disqualification is clearly contained under Section 51(3)(b) of the Act where under any person could be removed after following the procedure prescribed by Sub Section (3) if he was disqualified to be a member of the Gram Panchayat at the time of his election. The case of the appellant-petitioner is squarely covered under the said section.

9. The argument advanced by learned counsel for the appellant that the impugned order having been passed under Section 51(3)(c) of the Act since relates to disqualifications mentioned in Section 175 of the Act is totally without jurisdiction inasmuch as the provisions of Sub Section (c) do not at all stand attracted as even at the time of filing of the nomination the disqualification was there and it was not incurred after the election. The argument has only been advanced to be rejected. It is well settled proposition that an order, in case refers to a wrong section of the enactment but otherwise the powers exist under the statute merely by mention or reference to a wrong section, the order is not rendered illegal or without jurisdiction. In the case in hand, the power under the authority is vested under sub clause (b) and thus the reference of Section 51(3)(c) of the Act in the order passed by the Deputy Commissioner would not render it illegal or without jurisdiction.

10. The argument advanced on behalf of the appellant that the election petition was only the remedy available for his removal from the elected post of Sarpanch in view of Article 243(A)(O) of the Constitution read with Section 176 of the Act, also has no legs to stand. The said remedy is available to any person who intends to challenge the election of any

person. In the case in hand, the issue was not in respect of the election of the appellant-petitioner. The issue was in respect of continuance of the appellant-petitioner as Sarpanch on account of the disqualification prescribed in section 175 of the Act and thus the provisions of Section 176 of the Act do not stand attracted at all and for the same reason Article 243(o)(b) of the Constitution is also not applicable.

11. In view of the aforesaid facts and discussion, we do not find any fault with the view taken by the learned Single Judge in dismissing the writ petition and the same does not require any interference. The appeal is thus devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

23.10.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No