

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

CWP No.21046 of 2018
DATE OF DECISION : 6th FEBRUARY, 2019

Shakeel

.... Petitioner

Versus

Mehboob Khan @ Jakir & others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

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Present : Mr. Surinder Dagar, Advocate for the petitioner.

Mr. Vivek Saini, Deputy Advocate General, Haryana
for respondents No.2 and 3.

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A. B. CHAUDHARI, J.

1. By the present writ petition the petitioner (original respondent No.1 in Election Petition) has challenged order dated 28.09.2016 passed in Election Petition No.18 of 2016 by learned Additional Civil Judge (Senior Division), Hathin (Election Tribunal) by which the present petitioner was declared to be disqualified on the date of his election and further declaring respondent No.1-Mehboob Khan (original petitioner in Election Petition) as elected for the post of Panch of Ward No.6 of Gram Panchayat Ali Meo.

FACTS:

2. The present petitioner-Shakeel son of Rashid contested the election for the post of Panch of Ward No.6 of Gram Panchayat Ali Meo, held on 17.01.2016, the result of which was declared on 17.01.2016. According to respondent No.1-Mehboob Khan-the original petitioner in

election petition, the present petitioner who was declared elected, was 20 years and 6 months of age i.e. below 21 years when Section 173(2) of the Haryana Panchayati Raj Act 1994 (hereinafter referred to as the Act, for short) provides for the minimum age of 21 years on the date of election and therefore he was disqualified from contesting the election itself. There was a further prayer that after declaring the present petitioner as disqualified, respondent No.1 should be declared elected in his place. The petitioner-Shakeel filed written statement opposing the election petition and submitted that he had completed the age of 21 years and was rightly declared elected. On the basis of the pleadings and documents the Election Tribunal framed 6 issues and also admitted oral as well as documentary evidence before it. The Tribunal held that the present petitioner, the elected candidate, was not of 21 years of age on the date of election and therefore was disqualified. The trial Court went ahead and granted the further relief of declaring respondent No.1-Mehboob Khan @ Jakir as elected in place of the petitioner for the post of Panch from Ward No.6 Gram Panchayat Village Ali Meo. Hence this petition.

ARGUMENTS:

3. The learned counsel for the petitioner vehemently argued that the petitioner is aggrieved by the second part of the relief granted by the Election Tribunal namely the declaring of respondent No.1-Mehboob Khan @ Jakir elected in his place rather than following the mandate of law to direct holding of fresh elections. To repeat, the counsel for the petitioner fairly conceded that it was difficult for him to assail the finding regarding the age of the petitioner as 20 years 6 months. He, however,

submitted that in terms of the provision under Section 176(4)(a)(ii), (iii) of the Act, the second relief granted by the trial Court is illegal and contrary to the provision of Section 176 of the Act. He, therefore, prayed for partly allowing the petition and removal of the second relief granted.

4. Per contra, learned counsel for respondent No.1 submitted that he being the only candidate against the petitioner in the election in question, the relief granted by the Election Tribunal, by order, cannot be faltered. In the wake of the two candidates in the fray, the Election Tribunal did the right thing instead of directing holding of fresh elections when the petitioner was disqualified and that is the finding of fact. He, therefore, prayed for dismissal of the present petition. The other respondents also supported the impugned judgment and order.

CONSIDERATION:

5. Apart from the concession given by the learned Election Tribunal in respect of the age of the petitioner as 20 years and 6 months on the date of election i.e. below 21 years, having perused the evidence tendered by respondent No.1-Shakeel, I am inclined to agree with the finding of fact recorded by the trial Court in para10 of its order. Para 10 reads thus:

10.Perusal of above mentioned Section shows that a person age of 21 years is qualified be elected for any electoral division. In the present case, plaintiff has produced Ex.P10 which secondary school examination certificate of Sakeel in which the date of birth is mentioned as 02.07.1995. When respondent no.1 appeared as DW1, then he in his cross-examination admitted is date of birth as 02.07.1995. It is no disputed that nomination form

was filled up on 04.01.2016. So, on the date of filing nomination form the age of respondent no.1 was 20 years 6 months, so he was below the age of 21 years. So he is disqualified to be elected.

xxx.... xxx.... xxx....

(b) If, any case to which [clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidate, 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 fovour, to have been duly elected.”

6. There is, therefore, no need to interfere with the said finding of fact, which is based on evidence. The finding that the petitioner was disqualified on the date of election is therefore upheld.

7. The next legal question that arises for consideration is framed as under:

(i) Whether on a close reading of Section 176(4) of the Act, coupled with sub-Section 5, the case at hand would fall under Section 176 (4)(b) of the Act as held by the trial Court or fall under Section 176 (4)(aa) of the Act.

8. Sections 176 (1), (4) and (5) are reproduced as under:

176. (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or 1[x x x] 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. xxx.... xxx....
xxx....

(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 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 noncompliance 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 1[clause a or clause (a a)] 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 candidates, declare the candidates who is found to have the largest number of valid votes in his favor, 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 entitled any of the candidates to be declared elected, on 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 favor 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.

9. As stated earlier, the petitioner was found to be disqualified because his age was below 21 years on the date of his election by holding that he was not qualified to be elected. We have already reproduced the said finding of fact supra. It is thus clear that the case of petitioner-Shakeel fell exactly in Section 176(4)(aa) (i), which shows that on holding such inquiry the civil court found that on the date of election of returned candidate was not qualified to be elected. Having said so, let us turn to the last two sentences of Section (4)(aa) (iii), which says that the election of such returned candidate shall be set aside and fresh election may be held. It is thus manifest that the Election Tribunal, after declaring the returned candidate being not qualified on the date of election, was required to order fresh election.

10. Now, let us consider sub-Clause (b) of Section 4 which enables the Election Tribunal to declare the candidate, having largest number of valid votes, to have been duly elected. A careful perusal of sub-Clause (b) reveals that it opens with words “If, in any case to which clause (a) and (aa) does not apply”, the civil Court shall declare the candidate duly elected. It is again manifest that sub-Clause (b) comes into operation only if the case is not found to fall either in sub-Clause (a) or (aa) of Section 176(4). Obviously if sub-Clause (a) or (aa) applies, sub-Clause (b) cannot be applied. Therefore, the operation of sub-Clause (b) would be dependant on exclusion of application of sub-Clause (a) and (aa) of sub-Section 4 of Section 176 of the Act. In the case of ***Bhavnagar University Vs. Palitana sugar Mill (P) Ltd., 2003(2) SCC, 111***, the Apex Court pronounced that “when a power is to be exercised in a particular manner/mode it cannot be exercised in any other manner”.

This proportion has apt application in this case.

11. Though not necessary, it would be apt to mention about sub-Clause (5) of Section 176 of the Act. Sub-Clause (a) of sub-Section (4) of the Act again provides for holding of fresh election if a finding is recorded that corrupt practice within the meaning of sub-Section (5) of the Act was adopted during election. In the case at hand it was nobody's case that any corrupt practice within the meaning of Section (5) was adopted. In the result, we answer the aforesaid legal question, holding that the Election Tribunal committed the legal error in declaring respondent No.1-Mehboob Khan @ Jakir, as elected in place of the petitioner-Shakeel for the post of Panch of Ward No.6 Gram Panchayat Village Ali Meo instead of directing holding of fresh elections.

12. The upshot of the above discussion is that the following order is inevitable:

ORDER

- (i) CWP No.21046 of 2018 is partly allowed.
- (ii) Impugned judgment and order dated 28.09.2016 passed in election petition No.18 of 2016 by learned Additional Civil Judge (Senior Division), Hathin (Election Tribunal), declaring respondent No.1-Mehboob Khan @ Jakir as elected in place of the petitioner, is quashed and set aside and following further direction is issued:
 - a) The respondents No.2 and 3 are directed to hold fresh election for the post of Panch of Ward No.6 Gram Panchayat Village Ali Meo within a period of two months from today.
- (iii) No order as to costs.

(A. B. CHAUDHARI)
JUDGE

6th FEBRUARY, 2019
'raj'

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned: **Yes**

Whether Reportable: **Yes**