

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 25362-2017
Date of Decision: 12.03.2019

Hina Begam

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Partap Singh, Advocate, for the petitioner.

Ms. Tanisha Peshwaria, DAG, Haryana.

Mr. Ashok Verma, Advocate, for respondent No.3.

Harnaresh Singh Gill, J.

1. Challenge in the present writ petition is to the order dated 09.10.2017 (P.3) passed by the learned Election Tribunal, whereby the election petition filed by respondent No.3- Ikram-Ul (respondent No.3), was allowed and the petitioner's election for the post of Sarpanch, Gram Panchayat Malhaka, Tehsil Ferozepur Jhirka, District – Nuh, was set aside, with a further direction to hold fresh election at the earliest.

FACTS

2. As per the facts on record, the petitioner had contested the election for the post of Sarpanch of Malhaka District Mewat, held on 17.1.2016. Apart from the petitioner, some more candidates had also contested the said election. As per Clause (5) of Section 175 of the Haryana Panchayati Act, 1994, the

educational qualification for a female candidate, is middle pass and its equivalent examination from any recognized Institution/Board, with the age of the candidate being 21 years of age. The petitioner states that she was 9th Class pass at the time of election and 21 years of age. Being eligible, she filed her nomination paper, which was duly accepted by the Returning Officer. In the election that was held, she was declared as elected Sarpanch by a margin of 40 votes.

3. Respondent No.3-Ikram-Ul, filed election petition challenging petitioner's election as Sarpanch before the Election Tribunal, by stating therein that the petitioner had produced a bogus educational certificate of the 8th Class pass from Shivaji Composite Junior College, Bhalki, District Bidar, Karnataka-State and she had submitted a school leaving certificate/transfer certificate allegedly issued by the Principal of the said institution along with the nomination form, wherein the date of birth of the petitioner was shown as 21.3.1993 and the educational qualification having been shown as student of 8th Standard and 'not qualified for higher standard.' The said petition was contested by the petitioner. Upon the pleadings, various issues were framed. Parties led their respective evidence.

4. As noticed above, vide the order impugned, the election petition was allowed. Election of the petitioner as Sarpanch, was set aside with a direction to hold the election afresh.

5. The petitioner has challenged the impugned order on various grounds, as detailed in the writ petition, primarily

stating that the learned Tribunal has totally misread and misinterpreted the evidence adduced and proved by the petitioner. It is further argued that it stood proved on record that the date of birth of the petitioner is 21.03.1993 and not 21.03.1997. Thus, considering the same, the finding recorded by the learned Tribunal that the petitioner was underage at the time of filing of the nomination form and her subsequent election as Sarpanch, is unsustainable. It is further averred that the learned Tribunal, has ignored the birth certificate of the petitioner (Ex.D5), issued under the Birth and Death Registration Act, 1969. The learned Tribunal did not take into consideration the inquiry report submitted pursuant to the orders passed by the Deputy Commissioner. In the said report, the date of birth of the petitioner i.e. 21.3.1997 was found to be correct.

6. In the written statement filed by respondent Nos. 1 and 2, the factual position as regards the election process and the consequent election of the petitioner, stands admitted. But it is stated that on receipt of the complaint filed by Ikram-Ul as regards the petitioner lacking the requisite qualification, she was removed from the post of Sarpanch vide order dated 11/19.04.2017 on the basis of the inquiry conducted by the Sub Divisional Officer (Civil), Ferozepur Jhirka. Aggrieved there-against, the petitioner filed an appeal before respondent No.1, who vide order dated 26.4.2017, set aside the order dated 11/19.4.2017 and remanded the case to the Deputy Commissioner, Nuh with a direction to pass a well reasoned

speaking order within a period of 45 days. In compliance with the order dated 26.04.2017 passed by respondent No.1, the Deputy Commissioner, Nuh, vide order dated 9.10.2017 set aside the election of the petitioner for the post of Sarpanch. In the meantime, the Court of Ms. Reetu Yadav, Civil Judge (Junior Division), Mobile Court and Election Tribunal at Pinagwan pronounced her judgment on 9.10.2017 in the Election Petition filed by respondent-Ikram-Ul under the Haryana Panchayati Raj Act, 1994. It is further stated that the petitioner did not avail the remedy of appeal or revision against the impugned order and, hence, the present petition could not have been filed. It is further pleaded that during inquiry proceedings before the administrative authorities, the petitioner failed to prove that her educational qualification was 9th pass at the time of filing of the nomination papers. The order passed by the learned Tribunal is perfectly justified as the same was based on the evidence led by the parties.

7. RespondentNo.3-Ikram-Ul has filed a separate written statement stating therein that the petitioner with a view to obtain the desired relief, has wrongly relied upon the order dated 30.3.2016 passed by the Deputy Commissioner, Nuh, whereas on appeal, the said order was set aside by the Additional Chief Secretary to Government of Haryana, Development and Panchayat Departments vide order dated 13.06.2016 and the case was remanded to the Deputy Commissioner to get a regular inquiry conducted in the matter and thereafter pass a detailed speaking order within a period of

two months. In compliance with the said order, a regular inquiry was conducted through the Sub Divisional Officer (Civil), Ferozepur, Jhirka, wherein the allegations levelled against the petitioner were found to be correct. During the said inquiry proceedings, statements of various witnesses had been recorded. Copy of the report received during the said inquiry proceedings, is annexed with the written statement as Annexure R.3/7. In the said report, it was clearly mentioned that the actual date of birth of the petitioner is 21.03.1997, but by mistake the same had been given as 21.03.1993. The said mistake was found while the OMR sheets of all the students were being filled up and, accordingly, a correction was made in that regard. With the said report various, other documents were also supplied i.e. a copy of the application for admission of the petitioner filled up by her mother; a copy of transfer certificate issued by the previous school; copy of office admission register's abstract and the status of the student having not qualified 8th Class. Thus, while agreeing with the said report, the Deputy Commissioner, Nuh, ordered removal of the petitioner from the post of Sarpanch vide order dated 11.4.2017. The petitioner challenged the said order by way of an appeal before Addl. Chief Secretary to the Government of Haryana, Development and Panchayat Departments, Chandigarh, who vide order dated 26.4.2017, set aside the order dated 11.4.2017 and remitted the case back to the Deputy Commissioner for passing order afresh. The Deputy Commissioner, Nuh, vide order dated 19.07.2017, again ordered removal of the petitioner from the post of Sarpanch.

8. It is further alleged that the petitioner has tried to mislead this Court by producing on record the false and fabricated document Annexure P.6. The said document is a transfer certificate issued by Maruti High School, Kamal Nagar, which is a forged document. The said school stood closed in the year 2011 itself as per the statement made by Mr. Dharmender son of Shankar Rao, owner of Maruti High School, Kamal Nagar, T.B.E. Society, District Bidar (Karnataka) and that there was no admission in this School after the said date. Dharmender Singh in his statement (Annexure R.3/14) had stated that he had neither issued the said certificate to the petitioner nor had he put any stamp thereon. Even the husband of petitioner, namely, Ayub, admitted in his statement that he had got filled the age of the petitioner as 21.03.1993 instead of 21.03.1997 in her Nomination Form in order to enable her to contest the elections of Sarpanch and when the investigations started in the case, he had got prepared forged certificate of the aforesaid Maruti High School, Kamal Nagar, in order to save her later on. This certificate was not attached with the Nomination Form. This certificate was also not produced and proved on record before the learned Election Tribunal. It is further averred that because of the aforesaid conduct of the petitioner, FIR No.327 dated 13.6.2016 under Sections 420, 467, 468, 471 and 120-B IPC stands registered against the petitioner and her husband at Police Station Punhana, Mewat. Though her bail was declined by the learned Additional Sessions Judge, Nuh, yet she was granted bail by this Court and now she is facing the trial.

9. It may be noticed that this Court while issuing notice of motion vide order dated 7.11.2017, stayed operation of the impugned order allowing the petitioner to continue as Sarpanch. However, the Hon'ble Supreme Court, vide order dated 9.2.2018 passed in Special Leave to Appeal (C) No.33845-33846/2017, was pleased to direct that the petitioner – Hina Begum, shall not exercise any financial power and that the financial powers shall be exercised by the Deputy Commissioner, who shall do so in consultation with the other members of the Panchayat. This Court, however, was requested to dispose of the writ petition by the end of March, 2018.

ARGUMENTS

10. Learned counsel for the petitioner has vehemently contended that the impugned order passed by the learned Tribunal is untenable and unsustainable in the eyes of law for the reason that the petitioner has proved on record that her date of birth is 21.3.1997. In support of such assertions, she had produced and proved on record her 9th Standard Certificate issued by Shivaji Pre University College of Arts, Science and Commerce, Bhalki Distt. Bidar (Karnataka). The learned counsel has further argued that on the basis of Ex.D5, which is a document prepared under Section 13(3) of the of the Birth and Death Registration Act, 1969, has not been taken into consideration by the learned Tribunal. The said document reflects the correct date of birth of the petitioner. It is further submitted that there was tampering in the entries of the date of birth of the petition in the documents issued by the

Institute/School at Karnataka and she same was done at the behest of respondent No.4-Ikram-Ul.

11. It is further argued that the Election Petition filed by respondent No.4 is an outcome of a mala-fide on the part of the said respondent, inasmuch as, the tampering in the date of birth from 21.3.1993 to 21.3.1997, had been done by applying of fluid. Much emphasis has been laid on the document Exhibit RW-2/H, which, according to the learned counsel for the petitioner stood proved before the learned Tribunal. On the strength thereof, it is argued that once in the transfer certificate, the date of birth of the petitioner stood proved as 21.3.1993, there was no occasion for the learned Tribunal, to record a finding against the petitioner.

12. Per Contra, learned counsel appearing for the official-respondents, has argued that the order passed by the learned Election Tribunal, is based the evidence on record. It is further argued that even the Deputy Commissioner, Nuh, vide order dated 9.10.2017, had also set aside the election of the petitioner for the post of Sarpanch. Thus, both the findings i.e. the one recorded by the learned Election Tribunal and another by the Deputy Commissioner, Nuh, are against the petitioner. Thus, it cannot be said that the petitioner has suffered any manifest injustice.

13. Learned counsel appearing for respondent No.4-Ikram-Ul (Election Petitioner), while making a detailed reference to the impugned order and the evidence discussed therein, has argued that each and every aspect of evidence has been

discussed threadbare and taken into consideration by the learned Election Tribunal and the petitioner has not been able to point out any misreading or misinterpretation of the evidence. Still further, while making a pointed reference to the acts of omission and commission on the part of the petitioner, learned counsel has referred to the document Annexure R.3/17, which is a copy of an FIR registered against the petitioner for various offences of forgery and criminal conspiracy. It is, thus, prayed that the writ petition filed by the petitioner is misconceived and the same is liable to be dismissed.

CONSIDERATION

14. We have heard learned counsel for the parties and gone through the various documents annexed with the writ petition by the petitioner and the respondents along with their written statements. Besides, we have also gone through the records of the election petition, which was requisitioned.

15. A perusal of the impugned order would show that the learned Tribunal had framed as many as five issues, but under issue No.1 i.e. Whether the petition of the petitioner is liable to be accepted on the grounds mentioned therein, as prayed for? OPP, a finding was recorded that the petitioner was not only underage at the time of filing her nomination for the election to the post of Sarpanch, but she was also not 8th standard pass. In order to return such finding, the learned Tribunal had examined the parallel legality of two documents i.e Ex.PW3/2 and Ex.D.5. It was found that the Ex.P.3/2, as regards the admission of the petitioner in MPS High School, which records the date of birth of

the petitioner as 21.3.1997, holds more evidentiary value than Ex.D.5. Ex. D.5 is the document, which was got prepared by the petitioner during the pendency of the proceedings before the Election Tribunal, under Section 13(3) of the Birth and Death Registration Act, 1969. While relying upon the judgment of the Hon'ble Apex Court in Jai Singh Vs. Shakuntla, 2002(2)RCR (Civil) 482, it was held that as Ex.D.5 was prepared during the pendency of the proceedings, the same cannot be taken into consideration. It was found that correctness of such document cannot be decided in the proceedings, wherein it is relied upon and that such document is not a conclusive proof of evidence as regards the date of birth of the petitioner. While relying upon Ex.PW3/2, it was found that the petitioner had admitted her date of birth as 21.3.1997, as having been entered into the said document. Despite specific directions from the Court, petitioner, while appearing as PW3, refused to tell about Column Nos.18 and 19 of Ex.PW3/2, the same being in Kannada language, and the petitioner being the only person being conversant with and fluent in Kannada language. Hence, the Court drew adverse inference against the petitioner. With regard to the assertions of the petitioner that respondent No.3 and his father had tampered with her date of birth, it was found that if there had been any such incident, then why the petitioner did not initiate any legal proceedings against them, including filing of a complaint with the police. Thus, the learned Tribunal held the petitioner to be underage at the time of filing of her nomination.

16. On the second point, whether or not the petitioner is 8th Standard pass, the learned Tribunal, took into consideration TC No.62/2010-11/17.6.2010 wherein in Column No.12, she had been shown as student of 8th Standard and in Column No.10, she was shown as 'not qualified for promotion to higher standard'. The petitioner had failed to prove by leading any evidence that she is 8th Standard pass. On the other hand, the documents relied upon by the petitioner i.e. Exs. D3, D4 and D.9, were found to be not proved as per the procedure established by the Indian Evidence Act. The documents Exs. D1, PW2/A, PW2/B, PW2/C, PW2/D, PW2/H, relied upon by the petitioner, which had statedly shown her to be 9th Class pass from Maruti High School, were discarded by the learned Tribunal, for the reason that the said documents were based upon the inquiry conducted by Ms. Pooja Sharma, the then BDPO, without any order from the Deputy Commissioner. Ms. Pooja Sharma, was also found to have disobeyed the orders passed by the higher authorities regarding the election of the petitioner as Sarpanch. It was, thus, found that along with the nomination form, the petitioner had filed her Transfer Certificate i.e. TC No. 62/2010-11, wherein she is reflected to be 'not qualified for the promotion to the higher standard.' Consequently, the learned Tribunal held that the petitioner was not 8th standard pass as on the date of filing her nomination papers for election to the post of Sarpanch.

17. We have minutely gone through the evidence led by the parties as contained in the records of the learned Tribunal.

In our considered view, the learned Tribunal has rightly found that the petitioner had failed to prove by leading any cogent and convincing evidence that she was 8th standard pass on the date of filing of the nomination papers. The document, which was filed by the petitioner with her nomination paper was a Transfer Certificate, wherein it is reflected as “not qualified for the promotion to the higher standard.” Learned counsel for the petitioner could not bring out any misreading or misinterpretation of evidence by the learned Tribunal.

18. Still further, while going through the record of the case, we find that Ex. P.9 (Annexure R.3/17) is the copy of FIR registered against the petitioner and her husband for the offences under Sections 420, 467, 468, 471, 120-B IPC. This fact, prima-facie, proves that there was tampering in the date of birth of the petitioner by indicating a wrong date of birth.

19. It may be noticed that a candidate is required to conduct himself/herself with utmost transparency and in an upright manner, while filing the nomination paper. A Sarpanch, who is to hold a public office, requires to possess an impeccable integrity as such post holds a fiduciary relationship with the people (electors) of the area concerned. Thus, if the nomination forms are submitted with the wrong and false documents, the very sanctity of the said post gets eroded. It is expected from every person, who contests elections, to disclose complete and correct particulars. Such is the mandate of Elections Laws.

20. In the instant case, it stood proved on record that the petitioner did not file the correct documents showing her

educational qualification being 8th Class pass. Still further, her date of birth, on the basis of the evidence led by the parties before the learned Tribunal, stood proved to be 21.03.1997. Thus, on both counts, i.e. age and educational qualifications, findings have been recorded against the petitioner i.e. she was not 21 years on the date of the filing of the nomination papers and that she was also not 8th Class pass on that date. As stated above, no material illegality could be pointed out by the learned counsel for the petitioner in the findings recorded. We also find that there is neither any misreading of evidence nor perversity.

ORDER

21. In view of above, finding no merit in the present writ petition, the same is hereby dismissed.

CWP No.25362-2017 is dismissed. No costs.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

12.03.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No