

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

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CWP-7141-2018

Date of Pronouncement: 20.3.2019

SUMAN PARKASH

.... Petitioner.

Vs.

STATE OF HARYANA AND ORS.

... Respondents.

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

Present: Mr. Ashish Gupta, Advocate for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Rao Ajender Singh, Advocate for respondent No.2.

ANUPINDER SINGH GREWAL, J.

The petitioner has sought issuance of writ in the nature of certiorari for quashing the order dated 8.2.2018 (Annexure P-4) passed by the Civil Judge (Senior Division), Rewari whereby the election petition preferred by him has been dismissed. He has also sought direction for conducting fresh election after allowing his election petition.

It is the case of the petitioner that elections for the post of Sarpanch of Gram Panchayat, Nangal Shabajpur were held on 10.1.2016. Respondent No.2, who was convicted in a criminal case, was not eligible to contest and he had, by concealing the material facts, filed the nomination paper and in collusion with the Returning Officer, respondent No.5, his nomination was approved and he had won the election.

The election petition was preferred by the petitioner under Section 176 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the 'Act'). The election petition was dismissed by the order dated 8.2.2018 which is impugned herein.

Learned counsel for the petitioner has contended that respondent No.2 was convicted in FIR No. 183 dated 16.12.1994. He was charge-sheeted and convicted in the case registered under Sections 307, 148, 149, 323, 324, 325, 452, 506 IPC and, therefore, was not eligible to contest the election. He also contended that although the sentence had been reduced later on to probation but he was directed to pay a fine/compensation and in total he is to undergo sentence of three years. The respondent had failed to pay the fine and, therefore, he was required to undergo imprisonment and in any event he was disqualified to contest the election.

Learned State counsel, on the other hand, has contended that as in the appeal preferred by respondent No. 2, he was not sentenced and was kept on probation, he would not be said to be disqualified at the time of the election.

We have heard learned counsel for the parties and perused the record.

The relevant para of Section 175 of the Act is reproduced hereunder:-

“175. Disqualifications. (1) 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 this Act, been convicted-

- (i) *Of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or*
- (ii) *Of any other offence and 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”*

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Through the amendment in the year 2017, another clause (aa) after clause (a) was inserted in Section 175 of the Act, which is reproduced hereunder:-

“(aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years; or”

A bare reading of section 175 (1)(a)(i) manifests that if a person is convicted for any offence under the Protection of Civil Rights Act, 1955, he would incur the disqualification for a period of 5 years after his conviction or any lesser period allowed by the government. This is not attracted in the instant case as respondent No.2 has not been convicted under the Protection of Civil Rights Act, 1955. Although we find that the trial Court has mistakenly proceeded on such an assumption and has not analysed this provision in its correct perspective. The case of respondent No.2 would have to be examined in the light of Section 175

(1) (a) (ii), which is applicable to conviction for any other offence. FIR No. 183 dated 16.12.1994 under Sections 148, 149, 452, 323, 324, 325, 506, 307 IPC, Police Station Bawal was registered against respondent No.2. He was convicted by the Additional Sessions Judge, Rewari by the judgment dated 8.2.2018 and sentenced him by the order dated 30.10.2000 to undergo rigorous imprisonment for a period of 7 years. He had preferred an appeal against his conviction and the Single Bench of the High Court by judgment dated 26.9.2007, had set aside his conviction under Section 307 IPC and he was convicted under Sections 323, 148, 149 and 452 IPC. The operative part of the judgment dated 26.9.2007 is reproduced hereunder:-

“From the above discussion, I hold that case for the offence under Section 307 IPC is not made out. As such, acquitting accused-appellant for the offence under Section 307/149 IPC, conviction of the accused for the offence under Sections 148/323 IPC read with Section 149 and 452 IPC are maintained.

In this case, Ram Bilas had appeared in the Court on 20.02.1997 as witness and had stated that his backbone was fractured in the incident and all his four limbs had lost life and he cannot control urination and defecation. He had been brought to the court on wheel chair. Even now in the year 2007, his condition was stated to be not improved and he was a crippled man and totally dependent person for help.

Bal Mukand & Naresh appellants-accused are stated to have already undergone one year, six months, accused Chuni Lal had undergone seven months, accused Dinesh had undergone seven months, accused –appellant Surender had undergone

one year and nine months of sentence whereas accused-appellant Laxman had undergone one year and three months.

I find it a fit case, where instead of sending the accused to jail, it is proper that they are burdened with heavy compensation payable to Ram Bilas, who was just 50 years of age at that time when he appeared in the court and may be now sixty years and has to remain dependent on others for his even day to day movements.

Under these circumstances, it is directed that each of the accused-appellants shall pay/deposit a sum of Rs.1,50,000/- (Rs.One lac and fifty thousand only) each as compensation for payment to Ram Bilas. This will be apart from the fine already imposed. If this amount is deposited, then all the accused-appellants shall be released on probation to maintain good conduct for a period of two years. They shall file bonds to the satisfaction of CJM, Rewari. In that case, fine shall be treated as costs of proceedings.

Failing to deposit of compensation as directed in the court of CJM Rewari within three months, appellants shall be liable to undergo sentence for three years for the offence under Section 148 IPC, to undergo RI for three years for the offence under Section 325/149 IPC and to undergo RI for three years for the offence under Section 452 IPC. Sentence of fine as imposed by the trial Court of these offences and that of sentence in lieu of fine shall remain as it is.

With the above modification in sentence, appeals & revisions stand disposed of.”

He had filed SLP bearing No.7807 of 2007 against this judgment in the Supreme Court wherein the following order was passed on 14.12.2007:-

“UPON hearing counsel for the Court made the following:-

ORDER

Taken on board.

Issue notice.

The direction for payment of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand) each is stayed.”

Learned counsel for the appellant has furnished a copy of the judgment of the Supreme Court in Criminal Appeal No(s). 58 of 2010 with Criminal Appeal No(s).59-60 of 2010, Criminal Appeal No(s).62-63 of 2010 and Criminal Appeal No(s). 61 of 2010 wherein the compensation to be paid by the accused was enhanced to ₹ 6,50,000/-, failing which they were to undergo imprisonment for a period of 5 years. The amount already paid was to be adjusted and the appeal was disposed of. The operative part of the judgment dated 29.10.2018 is reproduced hereunder:-

“In the peculiar facts and circumstances of the cases, as the injured person has been crippled as noted in the judgment of the High Court, we find that the compensation awarded is highly inadequate. It would be appropriate to award compensation of Rs.5,00,000/-, in addition to what has been imposed by the High Court on each of the surviving accused. The total compensation to be deposited by each of the accused would be Rs.6,50,000/- failing which they have to undergo imprisonment for a period of five years, adjusting the amount already deposited.

Let the compensation be paid to the complainant – Ram Bilas within a period of three months from today.

It is stated that Chuni Lal, Mam Chand and Sanjay Saini have expired. The appeal qua Chuni Lal, Mam Chand and Sanjay Saini has abated. In case amount is deposited by the other accused persons they shall be released on probation as ordered by the High court and shall be entitled for all benefits under the Probation Act. In default of payment of compensation, appellants shall suffer imprisonment for five years.

The appeals are disposed of.”

Learned counsel for the appellant has also contended that the amount of compensation as directed by the Supreme Court has been deposited by the appellant.

It is thus apparent that the petitioner had been convicted under the provisions of the IPC and not under the Protection of Civil Rights Act. For a person to incur the disqualification for conviction under any offence other than the Protection of Civil Rights Act, he should be sentenced to a period of 6 months or more. In other words, a mere conviction under the IPC would not incur disqualification and it is only that conviction where an accused is sentenced to not less than 6 months that he would incur disqualification. The disqualification would operate for a period of 5 years or lesser period as may be determined by the Government.

The petitioner had been convicted under Section 307 IPC and sentenced by the trial court for an imprisonment of 7 years. However, in appeal, by judgment dated 26.9.2007 the conviction under

Section 307 IPC was set aside and he was convicted under Sections 148/323 IPC read with Section 149 and 452 IPC and was to undergo probation for a period of two years. The Supreme Court by judgment dated 29.10.2018 had increased the compensation to be paid by respondent No.2 and only in default, he was to undergo the sentence. The compensation is stated to have been paid by respondent No.2. Mere conviction under the IPC and probation cannot, in any manner, be said to be a disqualification.

Furthermore, the election was held on 10.1.2016. At that time, respondent No.2 did not suffer disqualification in terms of Section 175 of the Act as the High Court had set aside his conviction under Section 307 IPC. He was convicted under Section 148/323 IPC and he was to undergo probation. The compensation ordered by the High Court was stayed by the Supreme Court by order dated 14.12.2007.

Consequently, we do not find any manifest error in the judgment of the Civil Judge dismissing the election petition. The petition being devoid of merit stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

20.3.2019.

SwarnjitS

Whether speaking/reasoned :	YES
Whether reportable :	YES