

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.5547 of 2020 (O&M)
Date of Order:16th July, 2020

Dharampal

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pawan Kumar, Sr. Advocate, with
Mr. Surya Kumar, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana

ANIL KSHETARPAL, J.

Challenge herein is to the order dated 12.04.2019 passed by the Deputy Commissioner , Panchkula, removing the petitioner from the office of Sarpanch of Gram Panchayat of village Bhoj Paunta in exercise of the powers vested under Section 51 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the 1994 Act'). On 19.02.2020, the appeal before the Principal Secretary, Department of Development and Panchayat, Haryana was also dismissed.

In the elections held in January, 2016, the writ petitioner was elected to the office of Sarpanch of the Gram Panchayat. The writ petitioner claims that he is matriculate, hence, eligible to hold the office of Sarpanch. The Deputy Commissioner, Panchkula, has removed the petitioner from the office of the Sarpanch after finding that the petitioner has not passed

matriculation examination from any recognized institution/board. Thus, the primary issue which arises in the present case is “whether the petitioner has passed matriculation examination from any recognized institution/board or not?

The State of Haryana amended the 1994 Act in the year 2015 by the Haryana Panchayati Raj (Amendment) Act, 2015. Relevant amendment for the purpose of decision of this case is in Section 175 of the 1994 Act. It has been provided that no person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad unless he has passed matriculation examination or its equivalent examination from any recognized institution/board. For women candidates as well as candidate belonging to Scheduled Caste, the minimum qualification is middle (8th class). For women candidates belonging to Scheduled Caste, the minimum qualification is 5th class, if she wants to hold the office of Panch. Relevant part of Section 175 is extracted as under:-

175. Disqualification.-- *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-*

XX XX XX XX

(V) has not passed matriculation examination or its equivalent examination from any recognized institution/board;

Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass;

Provided further that in case of a woman candidate belonging to Scheduled Caste contesting election for the post of Panch, the minimum qualification

shall be 5th pass.”

While filing nomination, the writ petitioner claimed that he had cleared his matriculation examination from Haryana State Education Board, Bhiwani, in the year 1995. Whereas, he annexed matriculation certificate issued in the year 2009 by the Council of Secondary Education, Mohali. On the complaint of Sh. Mohan Lal Sharma, the Deputy Commissioner, Panchkula, directed Additional Deputy Commissioner, Panchkula, to enquire into the complaint. The enquiry was ordered on three following charges as enumerated in the complaint:-

- 1. That Sh. Dharampal Sharma Sarpanch gram Panchayat has appended matriculation certificate issued by Council of Middle Education, Mohali along with nomination papers submitted during Panchayat election which is not recognised. Therefore, an action be taken against him as per rules.*
- 2. That Sh. Dharampal Sharma's sister-in-law Smt. Dhanwanti Devi was elected as Sarpanch Gram Panchayat in the year 2010. During her tenure Sh. Dharampal Sharma embezzled lacs of rupees resulting in registration of an FIR No.254 dated 11.11.2012 at Police Station-Chandi Mandir.*
- 3. That on 16.09.2014, as per order of the Lokayukt Haryana in the enquiry of embezzlement of lakhs of rupees, Smt. Dhanwanti Devi Sarpanch was removed from the post of Sarpanch. The Block Office Morni was also directed to recover the financial loss caused to the Gram Panchayat, however, the same has also not been recovered till date.”*

The Enquiry Officer decided not to proceed with charges No.2

and 3 keeping in view the pendency of the proceedings before the Courts. However, the Enquiry Officer decided to hold the enquiry into charge No.1. The writ petitioner filed written reply, taking a stand that under Section 175 (1)(4) of the 1994 Act, recognized institutions have not been specified. He claimed that he has passed matriculation examination in the year 2009 from the Council of Secondary Education, Mohali which is a recognized institution. He also claimed that the Council of Secondary Education, Mohali, has also filed various litigations, which are pending in the High Court of Punjab and Haryana as well as in the Hon'ble Supreme Court. During the pendency of the enquiry, information was sought from the Punjab State Education Board, Mohali, as well as the Haryana State Education Board, Bhiwani. Both the Boards informed that none of the examination conducted by Council of Secondary Education, Mohali, is recognized and therefore, has not been granted equivalence. The Punjab State Education Board also informed that it has no concern with the Council of Secondary Education. The Enquiry Officer also noted that, although, the writ petitioner in his nomination paper has claimed that he has passed his matriculation examination from Haryana State Education Board in the year 1995, however, failed to prove/establish the same. Hence, the enquiry officer also found that the writ petitioner is proved to be guilty of giving false information while filing his nomination paper.

On the basis of the report dated 15.03.2017, the Deputy Commissioner, Panchkula, issued a show cause notice along with a copy of the report submitted by the enquiry officer. However, no reply was submitted by the writ petitioner within the time granted. Thereafter, the writ petitioner filed his reply when he was called for personal hearing before

taking final decision. The Deputy Commissioner, Panchkula, also sought the opinion of the Advocate General, Haryana, on this aspect. The office of the Advocate General, Haryana, opined that neither the concerned State Education Board nor the Ministry of Human Resource Development, Union of India, grants equivalence to the matriculation examination conducted by the Council of Secondary Education, Mohali. Hence, the matriculation certificate submitted by the writ petitioner cannot be considered valid. The Deputy Commissioner also noticed that the writ petitioner put forth various excuses in order to delay the decision. The High Court also on 26.09.2018 in Civil Writ Petition No.24755 of 2018 directed the Deputy Commissioner to pass orders within a period of 3 months. On 19.02.2020, the Deputy Commissioner ultimately found the writ petitioner is not qualified to hold the office of Sarpanch and therefore, not only ordered his removal but also ordered that he shall stand disqualified for a period of 6 years to participate in the elections for Panchayati Raj institutions. On 19.02.2020, an appeal filed by the writ petitioner was dismissed.

This court has heard learned counsel for the parties through video conferencing on account of the restricted functioning of the Court and with their able assistance gone through the writ petition filed along with documents in support thereof.

At this stage, it must be noticed that the State of Haryana has waived off its right to file the reply to the writ petition keeping in view the fact that the impugned orders have been passed by the quasi judicial authorities constituted under the 1994 Act.

Learned senior counsel appearing for the writ petitioner has submitted that when the writ petitioner in the year 2016 filed nomination

paper, no objection was raised. Hence, now at this stage, no objection can be permitted to be raised. He further submitted that the only remedy available after the election of the petitioner, is to file an election petition under Section 176 of the 1994 Act and therefore, proceedings initiated under Section 51 are without jurisdiction. He further contended that the Haryana State Education Board has no jurisdiction to recognize or de-recognize any educational institution. He further submitted that the case of the petitioner is covered by a judgment passed in Smt. Nirmala Devi vs. State of Haryana and others (Civil Writ Petition No.13559 of 2017, decided on 18.03.2020). In rebuttal, learned senior counsel further contended that various litigations filed by the Council of Secondary Education, Mohali, are pending in this Court and in the Supreme Court and therefore, the writ petition should be adjourned sine-die to await decision.

On the other hand, Sh. Tapan Yadav, Deputy Advocate General, Haryana, has defended the order while submitting that the authorities have passed the orders after granting sufficient opportunities to the petitioner but he failed to prove that he had the minimum qualification, i.e. Matric, to contest for the office of a Sarpanch at the time of elections in January, 2016.

On careful examination of Section 51(3)(b) of the 1994 Act, it is apparent that a Sarpanch can be removed by the Director or the Deputy Commissioner concerned, if it is found that he was not qualified to be elected as a member of the Gram Panchayat at the time of elections. Learned senior counsel failed to draw attention of the Court to statutory provision debarring filing of such complaint after the Sarpanch has already been elected to the office of Sarpanch of Gam Panchayat. In fact, learned

senior counsel tried to invoke doctrine of estoppel. In the considered view of this Court, since the petitioner has failed to prove that all ingredients of the doctrine of Estoppel stand fulfilled, therefore, it cannot be permitted to be invoked.

Chapter VIII of Part-III of the Evidence Act enumerates doctrine of estoppel. It is provided that when a person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing/information to be true and to act upon such information/omission then neither he nor his representative, in a suit or proceeding between himself and such person or his representative, shall be allowed to take a stand to the contrary. In other words, if because of misrepresentation of one person, the other person while believing the same to be correct and true, acts there upon and changes his position, then the person who made the mis-representation, cannot thereafter take a stand to the contrary. The Supreme Court in *Pratima Chowdhury vs. Kalpana Mukherjee and another, (2014) 4 SCC, 196*, has interpreted Section 115 of the Evidence Act and found that following ingredients must be proved to have been fulfilled before rule of estoppel is permitted to be invoked. Paragraph 35 of the judgment is extracted as under:-

“115. Estoppel.- When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he

had no title. He must not be allowed to prove his want of title.”

It needs to be understood, that the rule of estoppel is a doctrine based on fairness. It postulates, the exclusion of, the truth of the matter. All, for the sake of fairness. A perusal of the above provision reveals four salient pre conditions before invoking the rule of estoppel.

(i) Firstly, one party should make a factual representation to the other party.

(ii) Secondly, the other party should accept and rely upon the aforesaid factual representation.

(iii) Thirdly, having relied on the aforesaid factual representation, the second party should alter his position.

(iv) Fourthly, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position. Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.”

In the present case the writ petitioner has failed to draw attention of the Court, as to how the necessary ingredients stand fulfilled. Hence, Section 115 of the Evidence Act is not applicable.

Second part of the submission of learned senior counsel is that only an election petition is maintainable after the petitioner has been elected.

In this regard, it is important to note that Section 175 of the 1994 Act enumerates dis-qualifications of persons who wish to occupy the office of Sarpanch and Panch of a Gram Panchayat. It provides that no person shall continue as such who has incurred the dis-qualification or was not qualified to be elected listed therein. The election petition is filed before the Civil Court under Section 176 of the 1994 Act which apart from various other grounds like election being illegal on account of corrupt practice, improper rejection of the nomination papers or error in the

computation of the votes, can also be filed if a returned candidate was not qualified to be elected on the date of his election. No doubt, there is certain overlapping of the grounds available for filing an election petition as well as for initiation of the proceedings under Section 51(3) of the 1994 Act. However, Section 51 enables the Director or the Deputy Commissioner of the concerned district to suspend and remove Panch or Sarpanch. Learned senior counsel has failed to draw attention of the Court to the statutory bar prohibiting initiation of the proceeding under Section 51 of the Act by the Director or the Deputy Commissioner against already elected Panch or Sarpanch. Once, the statute itself makes a provision for suspension and removal of a Sarpanch or a Panch of Gram Panchayat and authorize the Director or the Deputy Commissioner concerned to proceed in the manner prescribed, it would not be appropriate for this court to hold that enabling power given under Section 51 stand eclipsed by Section 176 of the 1994 Act.

Next argument of learned counsel is with reference to the power of Haryana School Education Board to recognize or de-recognize an educational institution or Board. It may be noted here that Additional Deputy Commissioner, while holding enquiry, ascertained from District Education Officer with regard to recognition of the Council of Secondary Education, Mohali, who in turn enquired from the Haryana State Education Board. In the present case, this fact has not only been confirmed from the Haryana State Education Board, the District Education Officer, Panchkula, the Punjab State Education Board but also from University Grants Commission under the Ministry of Human Resource Development, Union of India. The writ petitioner while filing the reply before the Enquiry Officer

claimed that the Council of Secondary Education, Mohali, was in fact recognized. However, the writ petitioner did not produce any document in support thereof. In these circumstances, the Deputy Commissioner concluded that the Council of Secondary Education, Mohali, is not a recognized Institution or Board within the meaning of 175 of the 1994 Act. The writ petitioner in para 11 of the writ petition has pleaded as under:-

“11. That it is important to mention here that the council of Secondary Education, Mohali (Chandigarh) was recognized in the year 2009 which is evident from the amendment list up to July 2019. Therefore, in the year of 2009 the Secondary School of Education Mohali was recognized at that time, the petitioner has passed the matriculation examination. And till date it has not been de-recognized does not mean at the time of passing the matriculation examination. The board was not recognized therefore the impugned order passed by the respondent being illegal and against the fact of this case is liable to be set aside. Copy of the list schools and study center under the council of secondary education Mohali and list of the recognition examination others board/university are attached herewith as Annexure P-13.”

The petitioner has annexed Annexure P-13 which is in two parts. First part is with regard to list of affiliated study centres allegedly compiled by the Council of Secondary Education, Mohali. The second part of the document is with the title “Recognition of examinations by Rajasthan Board or other Boards/Universities amended upto July 2009”. This part of the list is further in two different sub parts. The Council of Secondary Education, Mohali, figures in second sub part under the heading “Recognized Boards by Central Government/Union Territories and Ministry

of Human Resource Development”. The document, Annexure P-13 is a computer print out, however, it is not clear as to who has issued this document or who has compiled this information. It is also not clear, when the Central Government or Ministry of Human Resource Development of which of the Union Territory recognized the Council of Secondary Education, Mohali. Thus, the pleadings are vague and alleged document attached does not advance the case of the writ petitioner. This was the only issue involved in the present writ petition. The petitioner ought to have pleaded this fact specifically, supported by relevant document(s). If a writ petitioner wishes to rely upon a particular document in support of his case, he has to plead that fact clearly and specifically and support the same with the document so attached while clarifying how the document attached is authentic. In absence thereof, this Court has no choice but to draw adverse inference against the writ petitioner.

Next argument of learned counsel is based upon the judgment passed in *Nirmala Devi* (supra).

This court has carefully read the judgment. In that case, the court after examining the facts of the case remitted the matter back to the file of the Deputy Commissioner, Bhiwani for fresh consideration of the complaint. No doubt, it has been observed that the onus is on the complainant to prove that the institution is not recognized. In that case, the court found that the authorities did not choose to enquire into whether the institution/Board is recognized or not?

Chapter VII in Part-III of the Evidence Act, 1872 examines the burden of proof and onus of proof or “onus probandi.”. Section 101 lays down that whosoever, wants the court to give judgment as to any legal right

or liability dependent on the existence of fact, which he asserts, must prove that those facts exist. However, Section 106 provides that any fact which is essentially within the knowledge of any person, the burden of proving that fact is upon him. Illustration-b to Section 106 specifically provides that if A is charged with travelling on a railway train without ticket, the burden of proving that he had bought a ticket is on the person who was found travelling. Still further, illustration 'g' of Section 114 require production of best evidence before the Court/authority. It lays down that the evidence which could be but is not produced, would be deemed to be unfavourable to the person who holds it from the Court/authority. It means that if a person fails to produce the best evidence which he could produce then the presumption would be that the aforesaid evidence, if had been produced, would be unfavourable to the person, who withholds it.

This aspect has been examined in detail by the Hon'ble Supreme Court in **Puneet Rai vs. Dinesh Chaudhary, (2003) 8 SCC 204.** This case arose from an election petition. The election petitioner had claimed that the respondent, the elected representative did not belong to Scheduled caste rather he belonged to 'Kurmi' community. Whereas, respondent claimed that he belongs to 'Passi' community which falls in the category of Scheduled castes. The Hon'ble Supreme Court reversed the judgment of the High Court after examining the provisions of Section 106 and Section 114 of the Evidence Act. It was laid down that the onus was on the respondent to prove that he belongs to 'Passi' community which falls in the Schedule caste category.

Similarly, in **Sushil Kumar vs. Rakesh Kumar, (2003)8 SCC, 673,** the Supreme Court was examining civil appeal arising from an election

petition. The question was “whether the elected candidate was above the age of 25 years as mandatorily required under Article 173(b) of the Constitution of India. The Patna High Court dismissed the election petition, however, the Supreme Court reversed the decision while examining burden of proof in such cases. Relevant discussion is in the following manner:-

28. *It is no doubt true that the burden of proof to show that a candidate who was disqualified as on the date of the nomination would be on the election petitioner.*

29. *It is also true that the initial burden of proof that nomination paper of an elected candidate has wrongly been accepted is on the election petitioner.*

30. *In terms of [Section 103](#) of the Indian Evidence Act, however, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*

31. *Furthermore, in relation to certain matters, the fact being within the special knowledge of the respondent, the burden to prove the same would be on him in terms of [Section 106](#) of the Indian Evidence Act. However, the question as to whether the burden to prove a particular matter is on the plaintiff or the defendant would depend upon the nature of the dispute.*

32. *The age of a person, in an election petition has to be determined not only on the basis of the materials placed on records but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of [Section 106](#) of the Evidence Act. It is also trite that when both parties have adduced evidence, the question of onus of proof becomes academic [[See Union of India and Others vs. Sugauli Sugar Works \(P\) Ltd.](#), (1976) 3 SCC 32, (Para 14) and [M/s Cox and Kings \(Agents\) Ltd. vs. Their Workmen and Others](#), AIR 1977 SC 1666, (Para 36)]. Furthermore, an admission on the part of a party to the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established.”*

In the considered view of this Court, no doubt initial onus to prove that the institution is not recognized is on the complainant. However, once the elected Panch or Sarpanch takes a stand that the institution from where he is alleged to have passed his matriculation examination was recognized, the onus shifts on the petitioner to prove such assertion. The authorities in the present case did make efforts to enquire and find out whether the institution is recognized or not.

In the present case, this court is of the considered view that the authorities have made sufficient enquiries while trying to find out whether the institution is recognized or not. In these circumstances, this court finds that the present case is neither covered by the decision in Niramala Devi (supra) nor the authorities failed to make efforts to enquire into the recognition of the Council of Secondary Education, Mohali.

Last argument of learned counsel does not need much deliberation because in absence of an interim order, the pendency of litigation does not help the petitioner. The petitioner has annexed two orders, one is passed by this court whereas the other is passed by the Supreme Court. However, attention of the court has not been drawn to any interim order passed in favour of the council. Hence, it would not be appropriate to keep pending the writ petition particularly when the writ petitioner continues to hold the office of Sarpanch, taking benefit of the pendency of the writ petition although, this court did not pass order granting interim protection to him.

As a last desperate attempt, learned senior counsel for the petitioner has drawn attention of the Court to Annexure P-6, the statement of marks issued by National Institute of Open Schooling and contends that

the petitioner has once again passed secondary school examination held in October, 2016 and, therefore, the petitioner is now a matriculate from a recognised institution.

It may be noted here that the elections for the office of Sarpanch were held in January, 2016. The writ petitioner is required to show that he was eligible at the time when the election took place. The writ petitioner sat in the examination held in October, 2016 whereas result was declared subsequent thereto. The statement of marks, Annexure P-6 is of 14.12.2016. Hence, the statement of marks issued by the National Institute of Open Schooling cannot have retrospective effect.

Further the present petition has been filed for issuance of a writ of certiorari. Such jurisdiction is not akin to the appellate jurisdiction. Under Article 226 of the Constitution of India, the jurisdiction of the High Court is supervisory while exercising the power of judicial review. Recently, the Hon'ble Supreme Court in 2019(10) SCC 695, has after discussing various precedents, in para 28 observed as under:-

28. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court. It will not reappreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a

jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter 'off bounds' for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath (supra), as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down [See M/s. Perry and Co. Ltd (supra)."

In view thereof, this court does not find that the petitioner has made out a case for interference in exercise of jurisdiction under Article 226 of the Constitution of India.

Hence, the writ petition is dismissed.

16th July 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No