

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

**LPA-378-2020 (O&M)
IN CWP-21057-2016**

Date of Decision: June 10, 2020

Vikram Singh

...Appellant

Versus

Ramesh Kumar and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

**Present: Mr. Rohit Nagpal, Advocate,
for the appellant.**

SANT PARKASH, J.

The present intra-court appeal is directed against the judgment dated 18.03.2020, passed by the learned Single Judge of this Court, vide which the writ petition filed by the petitioner-Ramesh Kumar has been allowed to the extent of directing the Deputy Commissioner, Panipat, to inquire into the matter on merits, and take a reasoned decision thereafter, on facts and in accordance with law.

Brief facts of the case are that both the petitioner and the appellant contested the election of Sarpanch of Village Bohli, Post Office Kabri, Tehsil Madlauda, District Panipat. The appellant having been elected, was appointed as Sarpanch of the said village. Thereupon, the petitioner made a complaint to the authorities alleging that at the time of submission of the nomination papers, the appellant had furnished a fake

Matriculation certificate and he was not entitled to hold the post of Sarpanch, being not having the minimum educational qualification of Matriculation from a recognized Institution/Board, as required under the provisions of the Haryana Panchayati Raj Act, 1994 (for short, 'the 1994 Act').

Initially, the petitioner filed CWP No. 10127 of 2016, which was disposed of vide order dated 20.05.2016, with a direction to the Deputy Commissioner, Panipat, to take a decision on the representation made by him, in accordance with law. The Deputy Commissioner, Panipat, vide order dated 20.08.2016 (P-7) decided the representation of the petitioner by observing that as the status of Bhartiya Shiksha Parishad, Uttar Pradesh, was *sub judice* before the Civil Court, no action could be taken at this stage and deferred the matter on that ground. Feeling aggrieved, the petitioner again approached this Court by filing present CWP No. 21057 of 2016, which has been disposed of by learned Single Judge, in terms as indicated hereinabove. Hence, the present appeal.

Learned counsel for the appellant has argued that since the petitioner has approached this Court without availing the alternative remedy of statutory appeal under Section 51(5) of the 1994 Act against the order dated 20.08.2016 (P-7), therefore, the writ petition filed by the petitioner ought not to have been entertained and liable to be dismissed. Secondly, the learned Single Judge while exercising the jurisdiction under Article 226 of the Constitution ought to have called for the records from the Bhartiya Shiksha Parishad, Uttar Pradesh and enquired the matter at own level. Finally, he has submitted that the impugned order passed by the

learned Single Judge be set aside as the learned Single Judge has wrongly allowed the writ petition.

Before dwelling upon the merits of the case, it would be appropriate to consider the statutory scheme of the 1994 Act in this regard. Section 51 thereof deals with suspension and removal of a Sarpanch or a Panch from office. Section 51(3)(b) of the 1994 Act postulates that the Director or the Deputy Commissioner may remove a Sarpanch or a Panch from office after following the due procedure if he was disqualified to be member of the Gram Panchayat at the time of his election. Section 175(v) of the 1994 Act sets out the disqualifications in relation to various posts, including that of a Sarpanch. It provides that, generally, a male candidate, who has not passed Matriculation examination or its equivalent examination from any recognized Institution/Board, shall not be a Sarpanch or a Panch. Therefore, any male ordinarily aspiring to the post of a Sarpanch must have passed Matriculation examination or its equivalent from a recognized Institution/Board. Be it noted that, in terms of that restriction, it is not necessary that such recognition must be by a local Board of Institution in the State of Haryana only and even if the Matriculation certificate is recognized by any Institution/Board from any other State, it would serve the purpose.

In the present case, the appellant claimed to have passed his Matriculation course from Takshila College, Karnal, which has now been renamed as Manas Sanskrit Maha Vidyalaya/Manas Model Senior Secondary School, Karnal and is under the control of the Bhartiya Shiksha Parishad, Uttar Pradesh. The said Bhartiya Shiksha Parishad, Uttar

Pradesh, offers courses not only at the Matriculation level but also up to higher studies and a litigation arose between Bhartiya Shiksha Parishad, Uttar Pradesh and the University Grants Commission, New Delhi, by way of a civil suit in RS No.336 of 1998, which was pending in the Court of Civil Judge (Junior Division), South Lucknow.

A careful perusal of the plaint of said suit makes it evidently clear that Bhartiya Shiksha Parishad, Uttar Pradesh, claimed to be a Society registered under the provisions of the Societies Registration Act, 1860, and its aim was to provide education to the general public. Bhartiya Shiksha Parishad, Uttar Pradesh never claimed either to be a University or affiliation to a University and its grievance was that the University Grants Commission, New Delhi, was brandishing it to be a fake University. In this backdrop, a declaration has been sought that it was not claiming to be a University but only a registered Society, promoting education amongst the common people in accordance with the standard and norms settled by itself and consequently it was issuing its own certificates to the successful candidates. It was only on account of the pendency of the aforesaid civil suit, the Deputy Commissioner, Panipat, has deferred consideration of the petitioner's claim against the appellant.

Coming to first submission of counsel, the learned Single Judge, while disagreeing with the submission, has observed that the writ petition was pending consideration before this Court since October, 2016 and, therefore, it would not be proper to non-suit the petitioner at this stage on the ground of availability of an effective alternative remedy. Learned Singh Judge has further observed that be it noted that the said doctrine

does not postulate a straitjacketed formula and it would be well within the discretion of this Court to entertain a writ petition notwithstanding the availability of an alternative remedy.

We are in total conformity with the observations of the learned Single Judge. From the impugned order, it was crystal clear that there was no proper application of mind and the Deputy Commissioner, Panipat, without going into the merits of the case before it, decided it merely as per the directions of this Court contained in the order dated 20.05.2016 passed in CWP No.10127 of 2016. The pending litigation pertains to the status of Bhartiya Shiksha Parishad, Uttar Pradesh, *vis-à-vis* the University Grants Commission, New Delhi. The said Commission is only concerned with education at the University level and not at Matriculation level. Therefore, the pendency of said civil suit, which obviously, has reference to the graduation degrees etc. offered by the Bhartiya Shiksha Parishad, Uttar Pradesh, has no impact on the validity or otherwise of the Matriculation certification in question. Otherwise also, there is no material to support this submission that every institution in the country which offers Matriculation Course would invariably have to be recognized by the Council of Boards of School Education. When the statutory provision merely require recognition by any Institution/Board, it was for the authorities concerned to verify, as a matter of fact, whether such recognition was conferred upon the institution which issued the Matriculation certificate. However, no such exercise was undertaken by the Deputy Commissioner, Panipat to ascertain whether Matriculation Certificate secured by the appellant from Bhartiya Shiksha Parishad, Uttar

Pradesh, was recognized by any Board/Institution in the State of Uttar Pradesh or from elsewhere.

With regard to the next submission that the learned Single Judge ought to have conducted such enquiry at its own level as to whether Matriculation certificate conferred upon the appellant was issued by any recognized Board/Institution, the same is totally misconceived. While exercising the jurisdiction under Article 226 of the Constitution of India, this Court is not required to collect evidence on behalf of either of the parties. This Court is not a fact finding Court. The only question before the learned Single Judge was as to whether the order passed by the Deputy Commissioner, Panipat was in consonance with the canons of justice. We do not hesitate to observe that the order passed by the Deputy Commissioner, Panipat, is totally non-speaking and sketchy and the learned Single Judge has rightly issued the directions to the Deputy Commissioner, Panipat in the terms as indicated above.

In view of above, we find no merit in the present appeal warranting interference in the impugned judgment passed by the learned Single Judge. Accordingly, the appeal is dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

June 10, 2020
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO