

CWP-15654-2020 (O&M)
Date of decision : November 09, 2020

Gian Chand

.....Petitioner

Versus

State of Harana and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.D.R. Bansal, Advocate for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Mr. Sansar Kundu, Advocate for respondent No. 5.

Mr. Munish Kumar Garg, Advocate
for the applicant in CM-11339- CWP-2020.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioner, who was elected as Sapranth of Gram Panchayat, Jalalpur Khurd, Block Jind, District Jind in January, 2016, is aggrieved of order dated 05.08.2020 (Annexure P7) whereby suspension of the petitioner has been ordered and he has been restrained from participating in any proceedings of the Gram Panchayat under Section 51(2) of the Haryana Panchayati Raj Act, 1994 (for short – ‘the Act’). Appeal filed by the petitioner under Section 51(5) of the Act has also been dismissed vide order dated 14.09.2020 (Annexure P11). Aggrieved therefrom present writ petition has been filed.

Learned counsel for the petitioner vehemently argues that the petitioner is being targeted by his rivals and specifically the person whom he had defeated, when elected to the post of Sarpanch. It is submitted that false and

frivolous complaints have been filed and the only effort at this stage is to delay the proceedings so that the petitioner is unable to function at the post of Sarpanch. It is thus, prayed that impugned orders dated 05.08.2020 (Annexure P7) and 14.09.2020 (Annexure P11) be set aside.

Learned counsel for the State has opposed this writ petition. It is denied that there is any effort to delay the proceedings in this matter. Application under Order 1 Rule 10 CPC has been filed by the complainant.

Section 51 of the Act, which deals with suspension and removal of a Sarpanch, reads as under:-

1. Suspension and removal of a Sarpanch {x x x} or Panch:

(1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch {Omitted by Haryana Act No. 10 of 1999} or Panch, as the case may be:-

(a) Where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director or Deputy Commissioners concerned the charge made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character;

(b) During the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.

(2) Any Sarpanch or Panch, as the case may be, suspended under sub-section (1) shall not take part in any act or proceeding of the Gram Panchayat during the period of his suspension and shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control:-

(i) if he is a Sarpanch to a Panch commanding majority in the Gram Panchayat;

(ii) if he is a Panch to Sarpanch: Provided that the suspension period of a Panch or a Sarpanch, as the case may be, shall not exceed one year from the date of handing over the charge in pursuance of the suspension order except in criminal cases involving moral turpitude.}

(3) The Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or {{Omitted by Haryana Act No. 10 of 1999) a Panch, as the case maybe, ask him to show cause against the action proposed to be taken against him, and by order remove him from his office:-

(a) if after his election he is convicted by a criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months;

(b) if he was disqualified to be a member of the Gram Panchayat at the time of his election;

(c) if he incurs any of the disqualification mentioned in section 175 after his election as member of the Gram Panchayat;

(d) if he is absent from five consecutive meetings of the Gram Panchayat without prior permission or leave of Gram Pachayat; and

(e) if he has been guilty of misconduct in the discharge of his duties and his continuance in the office is undesirable in the public interest.

(4) A person who has been removed under sub-section (3) may be disqualified for reelection for such period as may be mentioned in the order but not exceeding the period of six years.

(5) Any person aggrieved by an order passed under sub-sections (1) (3) and (4) may within a period of thirty days from the communication of the order, prefer an appeal to the Government.

(6) Any Sapanch or Panch, as the case may be, removed under sub-section (3) shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control:-

(i) if he is Sarpanch to a Panch commanding majority in the Gram Panchayat; (i-a) if he is Sarpanch belonging to reserve category, to a Panch of that reserve category commanding majority, and if no Panch in that category is available, to a Panch of General Category commanding majority in the Gram Panchayat; and

(ii) if he is a Panch to Sapanch}

As per the show cause notice issued to the petitioner, it is mentioned

that as per the demarcation reports dated 15.05.2017 and 12.06.2007, the petitioner

alongwith his three sons is reflected to have encroached upon a portion of the shamlat land of the Gram Panchayat. FIR No. 1020 dated 24.04.2017 under Sections 406, 409, 467, 468, 471, 120B IPC has been registered against the petitioner. Varied and vehement arguments, have been raised by learned counsel for the petitioner, regarding the veracity of allegations against the petitioner, besides arguing that the petitioner is being falsely implicated and subjected to victimization.

However, at this stage, it is to be noticed that the petitioner has been placed under suspension vide impugned order dated 05.08.2020 and his appeal has been dismissed. A regular enquiry in regard to the allegations is admittedly pending against the petitioner. At this stage, I do not deem it appropriate to express any opinion on the merits of the controversy sought to be raised, lest it prejudices any party. Suffice it to say, that the authorities are well within their rights, in terms of Section 51 of Act, to suspend the petitioner. Learned counsel for the petitioner is unable to point out any ground whatsoever for setting aside the order of suspension. However, keeping in view the facts and circumstances of the case, I do find merit in the submission that departmental proceedings/regular enquiry against the petitioner should not be inordinately delayed and should be concluded at the earliest so that the elected representative of the people is not denied his office. Learned counsel for the petitioner submits that the petitioner undertakes to fully co-operate in the inquiry proceedings and not delay the same in any manner.

Keeping in view the facts and circumstances of the case while finding no ground to set aside the impugned orders, this petition is disposed of with a direction to the competent authority, to conclude the regular inquiry initiated against the petitioner within a period of two months from receipt of certified copy of this order.

Keeping in view the order passed in this writ petition, no orders are called for in CM-11339-CWP-2020 or any other pending application.

November 09, 2020
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No Whether reportable : Yes/No