

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

CWP-1403-2018 (O&M)
Date of decision: 13.2.2020

Smt. Sonil

.....Petitioner.

vs.

The State of Haryana and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. Balraj Gujjar, Advocate for the petitioner

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Mr. S.P.Arora and Mr. Himanshu Arora, Advocates
for respondent No. 5

Mr. A.D.S. Jatana, Advocate
for respondents No. 6 to 8.

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Sanjay Kumar, J. (ORAL)

The petitioner, the elected Sarpanch of the Gram Panchayat of Village Somain, Tehsil Tohana, District Fatehabad, Haryana, filed this writ petition assailing her removal from the post, *vide* order dated 28.7.2017 (Annexure P-13) passed by the Deputy Commissioner, Fatehabad District, and also the appellate order dated 11.1.2018 (Annexure P-14) passed by the Principal Secretary to Government of Haryana, Development and Panchayats Department, Haryana, Chandigarh, confirming her removal from the post.

This writ petition was filed on 20.1.2018. By order dated 23.1.2018, this Court stayed further proceedings pursuant to the impugned orders dated 28.7.2017 (Annexure P-13) and 11.1.2018 (Annexure P-14).

While so, the State Election Commission, Haryana, the fifth respondent, produced the Election Notification issued on 11.1.2018 in relation to the subject post of Sarpanch, which was held by the petitioner. The said Notification indicates that the same was to be published by the District Election Officer (Panchayats) on 12.1.2018 for inviting nominations and the nomination papers were to be presented between 18.1.2018 and 24.1.2018. Significantly, the present writ petition was filed on 20.1.2018, but the petitioner made no mention of the fact that an Election Notification had been issued and the election process was underway.

In her reply filed in response to the application filed by the State Election Commission to vacate the interim order dated 23.1.2018, the petitioner claimed that she was unaware of the issuance of the Election Notification. She stated that she had filed CWP-1130-2018, titled '*Smt. Sonil vs. State of Haryana*', before this Court assailing her removal from the post but got the same dismissed as withdrawn on 19.1.2018, due to some typographical mistakes and thereafter, she filed the present writ petition. She further stated that as she was busy getting the relevant documents to file a writ petition, she remained in Chandigarh during this time and was therefore ignorant of the issuance of the Election Notification.

The web-site of this Court indicates that *CWP-1130-2018* was filed only on 18.1.2018 against *Diary Number 1915861*. Though the petitioner claimed that she remained in Chandigarh throughout, there is no evidence placed on record in proof of the same. Further, it is not believable that the petitioner, no less than the Sarpanch of the Village,

issuance of the Election Notification on 11.1.2018. It is not the case of the petitioner that she has no family or supporters in the Village, whereby she could claim that she remained uninformed of the developments taking place in the Village.

This Court is therefore, constrained to hold that the petitioner willfully suppressed the Election Notification dated 11.1.2018 and the steps that were taken pursuant thereto, even before the filing of the present writ petition on 20.1.2018.

In this regard, reference may be made to the observations made by the Supreme Court in *K.D. Sharma v. SAIL* [(2008) 12 SCC 481]. The Supreme Court stated as under:-

‘The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination

of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.'

In the light of the aforestated edict of the Supreme Court, the petitioner is deemed to have abused the process of this Court by failing to disclose the material fact that an Election Notification had already been issued. By suppressing the factum of issuance of the Election Notification, the petitioner surreptitiously secured interim relief in this writ petition. It is a settled proposition of law that once an Election Notification is issued, this Court would be chary of interfering with the election process in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. (*See: CWP-10349-2008, titled 'Baldev Raj vs. State of Punjab and others' dated 11.7.2018 and 'Prithvi Raj vs. State Election Commission and others', AIR 2007 (P&H) 178*).

The writ petition therefore does not merit consideration given the aforestated facts and is accordingly dismissed. Interim order dated 23.1.2018 shall stand vacated. Pending miscellaneous applications, if any, shall also stand dismissed. Though the petitioner deserves to be mulcted with costs, this Court takes a lenient view in the light of her circumstances. There shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

13.2.2020

preeti

whether speaking/non speaking

yes/no

whether reportable/non reportable

yes/no