

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

**CR. No.7661 of 2019
Date of decision :06.11.2020**

Smt. Janta Devi

.....Petitioner

versus

Sunil and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Vikram Singh, Advocate for the petitioner.

Mr. Harkesh Manuja, Advocate for respondent No.1.

Mr. Sandeep Moudgil, Addl. A.G., Haryana.

ALKA SARIN, J.

Heard through video conferencing.

This petition has been filed under Article 227 of the Constitution of India for setting aside the judgement dated 13.11.2019 (Annexure P-11) passed by the Additional Civil Judge (Senior Division), Ganaur whereby the election for the post of Sarpanch of Gram Panchayat, Saiya Khera, held on 24.01.2016, was declared as null and void and the same was set aside.

Elections for the post of Sarpanch of Gram Panchayat Saiya Khera were held on 24.01.2016. The petitioner and respondent No.1 were the candidates for the said post. The petitioner won the election and was declared elected as Sarpanch.

Respondent No.1 filed an election petition under Sections 176(1) and 176(4) of the Haryana Panchayati Raj Act, 1994 for setting

aside the election of the petitioner as Sarpanch. In the election petition it was averred that though the minimum academic qualification for contesting an election for the post of Sarpanch was that the candidate must have passed Class-8, whereas the petitioner was not even middle-class pass. It was alleged that the petitioner had obtained forged and fabricated School Leaving Certificate(SLC) of Class-8 from Chetna Vidyapeeth Junior High School, Dubhar, Kishanpur, Gangoh, District Saharanpur (UP) and had indulged in corrupt practices.

The petitioner filed her reply to the election petition stating that she had passed her middle class from District Saharanpur and had submitted her middle pass certificate to the Returning Officer and that she was duly qualified to contest the election to the post of Sarpanch; that respondent no.1 never raised any objection before the Returning Officer at the time of filing of the nomination papers and now after the completion of the election process and the declaration of the result, he cannot challenge her candidature; that she was married in village Saiya Khara and after her marriage she intended to study in Saraswati High School in Ganaur where her academic capability was tested by the Head Master of the school and she was given admission in Class-7 and that she passed Class-7 in the year 1996 and thereafter took admission in Class-8 in Saharanpur from where she passed Class-8.

The following issues were framed by the Trial Court vide order dated 28.09.2016:

1. Whether the Nomination form of respondent no.1 as well as counting process and the results announced in favour of respondent no.1 is null, illegal and void? OPP

2. Whether the election process of respondent no.1 is liable to be declared null and void, ab-initio? OPP
3. Whether the petition is not maintainable? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the petitioner has filed the present petition to harass and humiliate the answering respondent, hence, answering respondent is entitled to special costs from the petitioner? OPD

On behalf of respondent no.1 (petitioner therein) the following witnesses were examined:

PW1 Ashok Kumar

PW2 Javed, Clerk

PW3 Respondent no.1

PW4 Padam Singh, Head Master

PW5 Hari Parkash Sharma

The following documentary evidence was produced by respondent no.1 (petitioner therein) :

Ex.P1 Reply of application under RTI

Ex.P2 Application under RTI

Ex.PW4/A Copy of entry of register

Ex.PW4/B Copy of SLC

Ex.PW4/C Reply of application under RTI

Ex.PW5/A Copy of lost property report

Ex.PW1/A Copy of SLC

Ex.PW1/A Entry of register

Ex.PW1/B Copy of SLC

Ex.PW1/C Copy of application

Mark-A Application under RTI

Mark-B Copy of reply to application under RTI

Ex.P3 Copy of letter No.1169 dated 03.04.2018

Ex.P4 Copy of letter No.516 dated 28.02.2017

Ex.P5 Copy of letter No.SEN/2E-II/2016

Ex.P6 Copy of letter No.2960 dated 02.08.2017

On behalf of the petitioner(respondent therein) the following witnesses were examined:

DW1 Petitioner

DW2 Sandeep Kumar

DW3 Hari Parkash Sharma, Principal

The following documentary evidence was produced by the petitioner (respondent therein) :

Ex.D1 Copy of school record

Ex.D2 Copy of SLC

Ex.D3 Application dated 04.01.2016

Ex.D4 Copy of Rules

Ex.D1 Authority letter

Ex.DW3/A Copy of school record

Ex.DW3/B Copy of affidavit

Ex.PX Copy of statement of Hari Parkash Sharma

After discussing the pleadings of the parties and the evidence on the record, the Trial Court inter-alia found that the petitioner had played fraud upon the authorities to get elected as a Sarpanch on the basis of forged and fabricated document i.e. certificate of Class-8. Issue

Nos.1 and 2 were decided in favour of respondent no.1 while Issue Nos.3 to 5 were decided as not pressed. Vide judgement dated 13.11.2019 (Annexure P-11) the Trial Court allowed the election petition filed by respondent no.1 and declared that the election for the post of Sarpanch of Gram Panchayat Saiya Khera was null and void and set-aside the same. The Deputy Commissioner, Sonapat was directed to make necessary alternative arrangements for the Office of Sarpanch, Gram Panchayat Saiya Khera till the fresh election/re-poll was conducted by the Haryana State Election Commission.

The present revision petition was filed on 26.11.2019 challenging the impugned judgement dated 13.11.2019 (Annexure P-11). Notice of motion was issued on 02.12.2019. During the pendency of the present revision petition, the official-respondents initiated the process for electing a Sarpanch from amongst the Panches. On 22.1.2020 the election process was stayed by this Court.

Mr. Vikram Singh, Advocate, counsel for the petitioner, has contended that the Trial Court erred in setting aside the election of his client by holding that the Class-8 certificate (Ex.PW1/A) was forged. According to him the certificate was proved to be genuine. PW1 the school in-charge produced by respondent no.1 had stated that Ex.PW1/A, Ex.PW1/B and Ex.PW1/C were true and correct. Even PW2 had admitted that as per their records the petitioner had passed Class-8 and further even respondent no.1, while appearing as PW3, had admitted that the petitioner had passed Class-8 from Chetna Vidyapeeth Junior High School. According to counsel, not even one witness of respondent no.1

had stated the Class-8 certificate was forged. The burden of proof which was on respondent no.1 had not been discharged.

Mr. Harkesh Manuja, Advocate, counsel appearing for respondent no.1, did not file any reply but supported the impugned judgement Annexure P-11 by contending that it was not explained by the petitioner how she passed Class-8 from Saharanpur without a SLC from her earlier school. He has contended that the petitioner failed to explain why after doing Class-7 from Ganaur she took admission in Class-8 in a school in District Saharanpur. It was also contended that in fact there was no school by the name of Chetna Vidyapeeth Junior High School.

In view of the argument raised by counsel for respondent no.1 that there was even no school by the name of Chetna Vidyapeeth Junior High School, on 05.02.2020, this Court requested the Deputy Commissioner, Sonipat to get a report from the District Magistrate, Saharanpur on the following facts :

1. Whether in the year 1996-97, Chetna Vidyapeeth Junior High School, DubharKishanpur, Gangoh, District Saharanpur, was in existence.
2. Whether Janta Devi-petitioner passed her 8th Class from the said school.
3. Whether the School Leaving Certificate (Annexure P-10) attached with the present petition and Ex.D-2 in the records of Courts below, was issued by the said school.

Pursuant to the same, a report has been sent by the District Magistrate, Saharanpur to the Deputy Commissioner, Sonipat. In this report existence of Chetna Vidyapeeth Junior High School in the year

1996-97 is confirmed along with the fact that the petitioner passed her Class-8 from the said school as well as issuance of the school leaving certificate. The report sent by the District Magistrate, Saharanpur also includes the recognition granted to Chetna Vidyapeeth Junior High School in 1991, the school itself has been in existence since 1983. There is, therefore, no substance in the argument raised by counsel for respondent no.1 that there was no school by the name of Chetna Vidyapeeth Junior High School.

The Trial Court while discussing the pleadings and evidence drew adversely against petitioner. According to the Trial Court when the petitioner dropped out from Class-5 in 1992 and the SLC was obtained only on 01.04.2000, how could she take admission in Class-8 on 01.07.1996 in Chetna Vidyapeeth Junior High School, Dubhar, Kishanpur, Gangoh, Distt. Saharanpur (UP) and get the SLC on 20.05.1997. The Trial Court also found that though the Class-8 certificate of the petitioner was proved by PW2, her attendance record was not forthcoming and similarly her admission in Class-7 was proved but the school record was missing and no SLC after Class-7 was forthcoming.

The evidence on the record produced by respondent no.1 leaves no manner of doubt that the petitioner has completed Class-8. Her admission in Class-8 in Chetna Vidyapeeth Junior High School stands duly proved. Her having passed Class-8 from that school also stands proved. These facts are proved by none other than witnesses produced by respondent no.1. The Trial Court has reproduced a gist of the depositions made by the witnesses in the impugned judgement. Once there was material enough on the record to prove that the petitioner had

passed Class-8, there was no occasion for the Trial Court to start looking at the academic qualifications of the petitioner before Class-8. In such circumstances, the Trial Court misdirected itself leading to a situation of perversity, patent illegality and error of jurisdiction. The Trial Court erred in an endeavour to establish the authenticity of the petitioner's education right from Class-5. Once the admission and passing from Class-8 by the petitioner stood proven on the record, which is the legal educational requirement for being elected a lady Sarpanch, the Trial Court clearly exceeded in the exercise of its jurisdiction while finding loopholes in the educational qualifications of the petitioner for classes lower than Class-8.

It is well settled that the valuable verdict given in an election must be given due respect and should not be disregarded on vague, indefinite, frivolous or fanciful allegations. The election results cannot be lightly brushed aside in election disputes. Removal of an elected office bearer has serious repercussions and unless a clear case is made out, there cannot be any justification for his removal. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

Mr. Manuja, learned counsel for respondent no.1 attempted to convince the Court to go through and re-appreciate the evidence on the record to uphold the findings recorded by the Trial Court. However, in a civil revision petition filed under Article 227 of the Constitution of India this Court cannot become an Appellate Court to re-evaluate the evidence. The main grouse of respondent no.1 was that the petitioner was not

Class-8 pass. This contention was not proved by the evidence on the record but rather his own witnesses deposed to the contrary.

In view of the discussion above, it is clear that the Trial Court exceeded in the exercise of jurisdiction and the impugned judgement cannot be sustained. The present civil revision petition is allowed and, as a result, the impugned judgement dated 13.11.2019 (Annexure P-11) is set aside and the election petition (Annexure P-1) filed by respondent no.1 is dismissed.

All pending applications stand disposed off.

06.11.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO