

IN THE HIGH COURT OF PUNJAB ANDHARYANA AT
CHANDIGARH.

CWP No. 8093 of 2021 (O&M)

Date of Decision: 15.09.2021

Kanwar Singh

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HONBLE MR.JUSTICE TEJINDER SINGH DHINDSA
HONBLE MR. JUSTICE VIVEK PURI

Present: Mr.Ajay Jain, Advocate for the petitioner.
Mr.Aman Bahri, Addl. AG Haryana
for respondents No.1, 3 and 4.
Mr.A.S.Shera, Advocate for respondent No.2.

TEJINDER SINGH DHINDSA, J.

This case has been taken up through Video Conferencing via Webex facility in the light of Pandeic Covid-19 situation and per instructions.

Challenge in the instant petition is to the order dated 15.03.2021 (Annexure P-4) passed by the second respondent i.e. State Election Commissioner, Haryana exercising the powers under Section 13 (I) of the Haryana Municipal Act, 1973 and in terms of which the petitioner has been removed from the post of President, Municipal Committee, Dharuhera.

Brief facts which are not in dispute may be noticed.

The second respondent vide notification dated 03.12.2020 issued a programme for conducting general elections for the seat of President and members of all the wards of Municipal Council Rewari, Municipal Committee, Sampla (Rohtak), Dharuhera (Rewari) and Ukalana

(Hisar). Elections of these municipalities were conducted on 27.12.2020 and the result was declared on 30.12.2020. Petitioner herein was declared elected as President of Municipal Committee, Dharuhera.

One Sh.Sandeep Bohra along with others filed a petition on 06.01.2021 in the office of the second respondent alleging that the petitioner had incurred a disqualification at the time of election under Section 13-A (1) (h) of the Haryana Municipal Act, 1973 (hereinafter to be referred to as 'the Act') as he had not passed the Matriculation examination or its equivalent examination from any recognised institution/board. Copy of such complaint/petition was forwarded to the Deputy Commissioners, Rewari to enquire into the matter. Inquiry was marked to the Sub Divisional Officer (C), Kosli. The inquiry report was submitted returning findings that even though the Matriculation certificate produced by the petitioner had been issued by the Central Board of Higher Education (Uttam Nagar), New Delhi but the same cannot be seen as valid qualification since any examination conducted by the Central Board of Higher Education, New Delhi is not recognised equivalent to the same category of examination conducted by the Haryana School Education Board nor is it included in the list of same category of the Board. Based on such findings the second respondent issued a show cause notice dated 28.01.2021 calling upon the petitioner to produce evidence so as to prove that he had passed the Matriculation examination or equivalent examination from a recognised institution/board failing which it would be presumed that the petitioner had incurred a disqualification at the time of election and action against him would then be initiated under Section 13 (I) of the Act. Petitioner submitted a detailed reply dated 22.02.2021 and a copy of the same stands appended as Annexure P-3.

The second respondent thereafter has taken a view that petitioner has incurred a disqualification under Section 13-A (1) (h) of the Act as also under Rule 21 (1) (p) of the Haryana Municipal Election Rules, 1978 ('the Rules for short) and upon exercise of powers under Section 13 (1) of the Act has removed the petitioner from the post of President, Municipal Committee, Dharuhera vide impugned order dated 15.03.2021 (Annexure P-4).

Counsel appearing for the petitioner submits that petitioner had passed his Matriculation in 1981 from the Central Board of Higher Education at Uttam Nagar, New Delhi and which is a recognised board. It is contended that as per Section 13-A (1) (h) the requirement is of possessing an educational qualification of Matriculation or its equivalent from a recognised institution/board and which the petitioner fulfils. Under the statutory provision there was no requirement that the qualification should be from a particular institution/board and to be recognised by the Haryana School Education Board. It is argued that the impugned order dated 15.03.2021 (Annexure P-4) is as such illegal and contrary to the provisions of the Act. In support of his contention that the Matriculation qualification possessed by the petitioner is from a recognised board, reliance is placed upon a Division Bench judgment of this Court rendered in **CWP No. 4994 of 1998 titled as Ex. L/NK Jai Singh vs. Union of India and others** decided on **05.08.1999** (Annexure P-9). Counsel has also relied upon a Division Bench judgment of the Delhi High Court in **W.P.(C) No. 5135 of 2003 titled as Nek Mohammad vs. Union of India and others** decided on **04.06.2010** (Annexure P-8). Counsel has further argued that the impugned order suffers from a total non-application of mind inasmuch as the

contentions and grounds raised in the detailed reply submitted by the petitioner dated 22.02.2021 (Annexure P-3) to the show cause notice dated 28.01.2021 have not even been dealt with.

Per contra, Mr.Aman Bahri, learned Addl.,AG, Haryana representing respondents no. 1, 3 and 4 submits that proper opportunity of hearing had been granted to the complainant side as also the petitioner herein. The Matriculation certificate produced by the petitioner at the time of filing the nomination papers was issued by the Central Board of Higher Education, New Delhi and it is only those boards and institutions which are recognised by Haryana School Education Board are to be considered as recognised institutions/Boards. It is urged that an inquiry had been conducted into the matter and findings had been recorded that examination conducted by the Central Board of Higher Education, New Delhi was not recognised by the Haryana School Education Board and as such the Matriculation certificate produced by the petitioner was found to be not valid. Learned State counsel submits that the petitioner has not assailed the findings of the inquiry officer and under such circumstances no challenge can be raised to the order dated 15.03.2021 issued by the second respondent as the same is based on the inquiry report. A preliminary objection has also been raised that the petitioner has an alternate remedy of filing a review under Section 13 (K) of the Act against the impugned order dated 15.03.2021 (Annexure P-4) and such remedy has not been exhausted.

Mr.A.S.Shera, Advocate has appeared on behalf of the second respondent. He has reiterated the submissions advanced by learned State counsel. That apart, he supports the issuance of the impugned order in terms of the reasoning adopted therein.

We have heard counsel for the parties at length and have perused the pleadings on record.

It may be taken note that even though private respondents No. 5 to 11 were duly served but no representation has been caused on their behalf and neither any written statement has been filed.

The impugned order dated 15.03.2021 (Annexure P-4) removing the petitioner from the post of President, Municipal Committee, Dharuhera has been passed on the basis that he has incurred a disqualification as per Section 13-A (1) (h) of the Act.

It would be useful to reproduce the relevant statutory provisions of the Act and the Rules which are as follows:-

“Section 13-A. Disqualification for president and members.-

(1) No person shall be disqualified for being chosen as and for {being president or a member) of a municipality-

(a) xxxxx xxxxx xxxxx xxxxx

(b) xxxxx xxxxx xxxxx xxxxx

(c) xxxxx xxxxx xxxxx xxxxx

(d) xxxxx xxxxx xxxxx xxxxx

(e) xxxxx xxxxx xxxxx xxxxx

(f) xxxxx xxxxx xxxxx xxxxx

(g) xxxxx xxxxx xxxxx xxxxx

(h) if he 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, the minimum {qualification for members excluding the president shall be 5th pass}; or

(i) if he fails to submit a self declaration to the effect

that he has a functional toilet at his place of residence;

(j) if he makes expenditure beyond the prescribed limit on his election or fails to submit his election expenditure statement;

(2) xxxx x xxx xxxx xxxx

(3) xxxx x xxx xxxx xxxx

Rule 21.Disqualifications for membership.- *(1) No person shall be eligible for election as a member of a committee, who-*

- (a) xxxx xxxx xxxx xxxx*
- (b) xxxx xxxx xxxx xxxx*
- (c) xxxx xxxx xxxx xxxx*
- (d) xxxx xxxx xxxx xxxx*
- (e) xxxx xxxx xxxx xxxx*
- (f) xxxx xxxx xxxx xxxx*
- (g) xxxx x xxx xxxx xxxx*
- (h) xxxx xxxx xxxx xxxx*
- (i) xxxx xxxx xxxx xxxx*
- (j) xxxx xxxx xxxx xxxx*
- (k) xxxx xxxx xxxx xxxx*
- (l) xxxx xxxx xxxx xxxx*
- (m) xxxx xxxx xxxx xxxx*
- (n) xxxx xxxx xxxx xxxx*
- (o) xxxx xxxx xxxx xxxx*

(p) 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, the minimum qualification shall be 5th pass; or

(q) xxxx xxxx xxxx xxxx

(2) xxxx xxxx xxxx xxxx

The provision in question i.e. Section 13-A (1) (h) is couched in clear and unambiguous terms. A person shall be disqualified for being chosen as president or member of a municipality if he has not passed matriculation examination or its equivalent examination from **any** recognised institution/board. It is a well settled principle of interpretation that if the words of the statute are precise and unambiguous then the Court must expound those words in their natural and ordinary sense because the words themselves best declare the intent of the law giver. As per language of the provision there is no stipulation or requirement of the matriculation qualification being from any particular institute or board. If the legislature wanted to incorporate such requirement of possessing matriculation from any particular board or to treat such qualification valid only if it is recognised by the Haryana School Education Board then the language of the provision would have been differently worded.

The second respondent has taken a view that since the matriculation qualification possessed by the petitioner is not recognised by the Haryana School Education Board, the same is not to be treated as a valid qualification and would amount to a disqualification under Section 13-A (1) (h) of the Act. We have no hesitation in holding that the impugned order proceeds on a clear misreading and misinterpretation of the provision. The disqualification would apply only if the petitioner had not passed the matriculation or its equivalent from **any** recognised institution/board. It has been consistently held that effort should be made to give meaning to each and every word in the provision and it would not be a sound principle of construction to brush aside any word or to render any word in the provision

as meaningless. In terms of confining the matriculation examination as valid only if the same is acquired from an institution/board recognised by the Haryana School Education Board, the second respondent has rendered the word *any* appearing in Section 13-A (1) (h) to be redundant. Such an interpretation would play foul of the statutory provision and as such cannot sustain. We accordingly hold that so long the petitioner held the matriculation qualification from any recognised institution or board the disqualification under Section 13-A (1) (h) would not be attracted.

The issue that now arises is as to whether the matriculation certificate issued in the year 1981 from the Central Board of Higher Education (Uttam Nagar), New Delhi, and which was produced by the petitioner at the time of filing his nomination is from a recognised institution/board.

Such issue is no longer *res integra*.

In Ex. L/NK Jai Singh's case (*supra*), the Division Bench of this Court was examining the validity of an order of dismissal dated 03.10.1997 that had been served upon the petitioner therein who had been enrolled in the Central Reserve Police Force as a Constable. The basis of dismissal was that the petitioner therein at the time of enrolment had produced a matriculation certificate issued by the Central Board of Higher Education, Uttam Nagar, New Delhi of the year 1980. The employer was taking a stand that such qualification was not from a recognised institution/board. While allowing the writ petition and setting aside the order of dismissal, the Division Bench had noticed that the Central Board of Higher Education, New Delhi had been derecognised w.e.f. 15.10.1982 and a view was taken that such derecognition could not operate retrospectively

and the certificate pertaining to matriculation qualification possessed by the petitioner therein related to a point of time prior to derecognition. Relevant findings recorded by the Division Bench in the judgment dated 05.08.1999 (Annexure P-9) were in the following terms:-

“ Certificate issued by CBHE was granted to the petitioner at a time when the said Institution had not been derecognised by the Government. The said institution was derecognised subsequently on 15.10.1982 and the derecognition of the said Institution would not operate retrospectively.”

In the facts of the present case, the matriculation qualification certificate possessed by the petitioner was of the year 1981 and as such would be seen as a valid matriculation qualification from a recognised institute.

We may further take note that in the reply dated 22.02.2021 (Annexure P-3) that the petitioner had submitted by way of response to the show cause notice dated 28.01.2021, specific reliance had been placed upon the judgment of this Court in the case of Ex.L/NK Jai Singh (supra). However, the second respondent has chosen not to even examine such judgment. To the contrary, we find that in the impugned order dated 15.03.2021 (Annexure P-4) common judgment dated 22.04.2016 in CWP Nos. 15019 of 2015 and 17499 of 2015 has been taken note of and the operative part of the judgment has been reproduced. Counsel representing the petitioner has invited our attention to such judgment dated 22.04.2016 at Annexure P-10 and a perusal thereof would reveal that the issue pertained to the matriculation qualification possessed by the petitioner therein from the Board of Secondary Education. Gwalior, Madhya Pradesh.

Clearly such judgment would have no applicability to the facts of the present case and such basic distinction has escaped the notice of the second respondent.

The submission advanced by learned State counsel that the petitioner having not raised any challenge to the inquiry report/findings, cannot assail the order dated 15.03.2021 (Annexure P-4) is not well founded. As per inquiry findings, the matriculation certificate relied upon by the petitioner has, in fact, been issued by the Central Board of Higher Education, Uttam Nagar, New Delhi. Further finding is that such qualification and examination conducted by the Central Board of Higher Education, New Delhi is not recognised by the Haryana Board of School Education. The petitioner in the instant petition is not assailing such finding. Rather his case is that in terms of the relevant statutory provisions defining the disqualification there is no requirement for the matriculation qualification to be recognised from any particular board. Categorical case projected on behalf of the petitioner is that he possesses the matriculation qualification from a board which otherwise is approved/recognised.

We find the objection raised on behalf of the State as regards petitioner having not exhausted the alternate remedy of filing a review under Section 13 (K) of the Act against the impugned order dated 15.03.2021 (Annexure P-4) to be without merit. It is by now well settled that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 C.P.C. The power of review is open to be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking review, or could not be produced by

him at the time when the order was made; it may also be exercised where some mistake or error apparent on the fact of the record is found; it may also be exercised on any analogous grounds. But it is not to be exercised on the ground that the decision was erroneous on merits. Herein petitioner is questioning the legality and validity of the impugned order dated 15.03.2021 (Annexure P-4) on merits. Under such circumstances the objection on behalf of the State that the petitioner had an alternate remedy of review would not be tenable.

In view of the reasons recorded herein above, the writ petition is allowed. Order dated 15.03.2021 passed by the second respondent at Annexure P-4 is quashed. As a necessary consequence name of the petitioner shall forthwith be notified as President of the Municipal Committee, Dharuhera.

Petition allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VIVEK PURI)
JUDGE

15.09.2021
sunita

Whether reasoned or not : Yes/No

Whether reportable :Yes/No