

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

CWP-12426-2021 (O&M)

Date of decision: 16.07.2021

Gurdev Singh

...Petitioner

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Ajay Jain, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The petitioner prays for a writ in the nature of certiorari to quash the orders dated 29.10.2018 and 23.06.2021/25.06.2021.

Some facts are required to be noticed. The petitioner was elected as a Sarpanch of Gram Panchayat village Ludas, Tehsil and District Hisar, in the general election held in the year 2016. The tenure of the petitioner has already come to an end. The petitioner while filing nomination paper claimed that he has passed matriculation examination from Bihar Sanskrit Shiksha Board, Patna, (in short 'the Board') in the year 1989. On a complaint submitted by one Sukhbir son of Godhu Ram, the then Deputy Commissioner, Hisar, directed that a preliminary inquiry be held. The Law Officer (Panchayat) held the preliminary inquiry. During the inquiry, the District Education Officer, Hisar, after verification, sent a report vide his communication dated 16.01.2017 informing the inquiry officer on the basis of information provided by the Controller of Exams, Bihar

Sanskrit Shiksha Board, Patna, that the result of serial No.376 to 447 of the year 1989 has been cancelled subject to final decision of the Board. The inquiry officer on the basis of the aforesaid information submitted a report. On the basis of the aforesaid inquiry report, a show cause notice was issued to the petitioner calling upon him to file response. The reply submitted by the petitioner was not found satisfactory, therefore, the petitioner was issued show cause notice under Section 51(3)(c) read with Section 177 of the Haryana Panchayati Raj Act, 1994, (in short 'the 1994 Act') and granted an opportunity of hearing by the Deputy Commissioner, Hisar. During the hearing, the petitioner was directed to produce the final decision taken by the Board. The Deputy Commissioner also called for the information. Vide an e-mail dated 06.08.2018, the Board informed that vide resolution No.9 dated 20.09.2017, the result of students from serial No.376 to 447 of the year 1989 stands cancelled. Even thereafter the petitioner was granted one more opportunity. The Deputy Commissioner on the basis of the aforesaid report found that the petitioner was not qualified to be elected as a Sarpanch and hence, ordered his removal in the exercise of power under Section 51(3)(b) of the 1994 Act. The petitioner filed an appeal which has also been dismissed by the Additional Chief Secretary to Government of Haryana, Development and Panchayats Department, vide an order dated 23.06.2021.

The petitioner assails the correctness of the order dated 23.06.2021.

Heard, learned counsel for the petitioner at length and with his

able assistance perused the paper book.

Learned counsel representing the petitioner contends that the order passed by the Deputy Commissioner is without jurisdiction as the petitioner could not be removed from the post of Sarpanch except by the Election Tribunal in an election petition filed under Section 176 of the Act. He contends that the Deputy Commissioner could not exercise the powers to remove the petitioner from the office of Sarpanch under Section 51. In support thereof, learned counsel relies upon the judgment passed by the Punjab and Haryana High Court, titled as **Lal Chand Vs State of Haryana, 1998 (3) RCR (Civil) 255 (FB)**.

This Court has considered the submission, however, find no merit therein. Before this Bench proceed to analyse the arguments of learned counsel, it becomes important to note Sections 51 and 176 of the 1994 Act, which is extracted as under:-

Section 51

(1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch 1[* * * *] 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 a Panch, as the case may be, 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 disqualifications 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 Panchayat ; 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 re-election 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 Sarpanch 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 ; and

(ii) if he is a Panch to Sarpanch.

Section 176

(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election , present an election petition to the civil court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question. Determinatio n of validity of

election enquiry by judge and procedure.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.

(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5) he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

1[(aa) If on holding such enquiry the Civil Court finds that-

(i) on the date of his election a returned candidate was not qualified to be elected;

(ii) any nomination has been improperly rejected; or

(iii) the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.;

(b) If, in any case to which 2[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice- (a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person ; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.— A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.— The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.

It may be noted here that by Amendment Act No.8 of 2015 (the

Haryana Panchayati Raj) (amendment) Act), 2015, the State Government amended Section 175 of the Act and inserted a new Clause v in Section 175 to lay down the minimum qualification which a Sarpanch is required to possess before he can contest the election. Section 175 lays down the disqualification of a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad. Section 175 also provide that no person shall continue as such who either incurs the disqualification or is found lacking in possessing the requisite qualification. Section 175 (v) is extracted as under:-

No person shall be a Sarpanch or a Panch or a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who 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 contesting election for the post of Panch, the minimum qualification shall be 5th pass.

It is apparent from a bare reading of the provision that a

Sarpanch shall not continue as such who has not passed the matriculation examination or its equivalent examination from any recognised institution/board. For a woman candidate or a candidate belonging to Scheduled Caste the minimum qualification shall be middle pass.

The petitioner relies upon the certificate “Annexure P2” issued by the Board on 23.12.1993. He claims that he has passed 10th class in second division in the examination conducted by the Board in the year 1989 with serial No.444. As per the information received on an email dated 06.08.2018, it is apparent that the Board vide a resolution No.9 dated 20.09.2017 has cancelled the result of candidates from serial No.376 to 447 which includes serial No.444 allotted to the petitioner. Thus, there can hardly be any doubt about the fact that the petitioner does not possess the minimum qualification. The aforesaid findings arrived at by the Deputy Commissioner as well as the Additional Chief Secretary have not been assailed by the learned counsel. However, as noticed above, he contends that the petitioner could only be removed by filing an election petition under Section 176 of the Act.

On a bare reading of Sections 51 and 176 of the Act, it is apparent that both provisions operate in different fields. Section 176 enables the Court to examine the validity of election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad. Such petition can be filed by any person qualified to vote at the election. Such petition is required to be filed within the period of 30 days from the date of declaration of the

election. Learned counsel has failed to draw the attention of the Court to any provision of Sub section 176 or Section 51 of the 1994 Act, debarring the Director or the Deputy Commissioner to suspend or remove a Sarpanch or a Panch under Section 51 of the Act. On a bare reading of Section 51, it becomes apparent that sub-section (3) enlist various grounds on which a Sarpanch or a Panch can be ordered to be removed from his office. The clause (b) of sub-section (3) of Section 51 of the 1994 Act, provide that if an elected Sarpanch or a Panch was disqualified to be a member of the Gram Panchayat at the time of his election then he can be removed by the Director or the Deputy Commissioner concerned. Clause (c) of sub-section (3) of Section 51 of the 1994 Act provide that if the Sarpanch or Panch incurs any of the disqualification mentioned in Section 175 of the 1994 Act, after his election as a member of the Gram Panchayat then the Director or the Deputy Commissioner concerned can remove him from the office. As already noticed, Section 175 (v) requires a Sarpanch to be qualified upto matriculation. As noticed above, the result of the petitioner has been cancelled. Therefore, the petitioner was not qualified to be a member of the Gram Panchayat at the time of his election. Even if the petitioner is considered to have lost his qualification on cancellation of the result by the Board's decision dated 20.09.2017, still the petitioner was liable to be removed in terms of clause (c) of sub-section (3) of Section 51.

It is well settled that all the provisions of the Act have to be given effect by harmonious construction. If two separate provisions overlap

then both the provisions have to be read conjointly. On a conjoint reading of the Act, it is apparent that the both provisions do not exclude each other. Both the sections operate in their own field. Section 176 operates when election petition brought before the competent Court of jurisdiction. Whereas, Section 51 enables the Director or the Deputy Commissioner concerned to pass an order of removal on the basis of grounds specified in sub-section (3) of Section 51. Clause (c) of sub section (3) of Section 51 in turn refers to Section 175. Thus, there is no substance in the arguments of learned counsel for the petitioner that Section 176 exclude the operation of Section 51. Still further, on a bare reading of Section 176, it is apparent that it deals with the determination of validity of election by a Judge of a Court. Such petition is maintainable before the Civil Court having ordinary jurisdiction in the area within which the election has been held or should have been held. Whereas, Section 51 enables the Director or the Deputy Commissioner concerned to order removal after such inquiry as he may deem fit and after giving an opportunity of hearing to a Sarpanch and a Panch.

This Bench has also carefully read the judgment of the Hon'ble Full Bench in **Lal Chand (supra)**. The Hon'ble Full Bench in para 6 noticed the questions referred by the Division Bench for its decision. In para 28 of the judgment, the Hon'ble Full Bench concluded as under:-

To sum up, our answers to the questions referred to the Full Bench are as follows :

1. The question with regard to Clause (a) of Article 243-O and Clause (a) of Article 243-ZG of the; Constitution stands answered in the judgment of, the Supreme Court in the case

of Pradhar Sangh Khestra Samiti (AIR 1995 SC 1512) (supra).

2. With regard to Clause (b) of Article 243-O and Clause (b) of Article 243-ZG of the Constitution, we hold that the words "notwithstanding anything in this Constitution " appearing in the aforesaid two Articles will be read down as "notwithstanding anything in this Constitution" subject, however, to Articles 226/227 of the Constitution. Accordingly, Clause (b) of Article 243-O and Clause (b) of An. 243-ZG would be read to mean as follows :

"No election to any Panchayat/Municipality shall be called in question except an election petition presented to such an authority and in such manner as is provided for by or in any law made by the Legislature of a State, but this will not oust the jurisdiction of the High Court under Articles 226/227 of the Constitution".

3. The second question pertaining to grounds on which an election of a returned candidate to Gram Panchayat/Zila Parishad can be challenged, under the Haryana Act and Haryana Rules already stands answered in the Full Bench judgment of this Court in the case of Smt. Anju v. Addl. Civil Judge (Sr. Division, Pehovva), C.W.P. No. 15310 of 1996 decided on 12th March, 1998 (reported in AIR 1998 Punj & Har 140).

It is apparent that the questions answered in the aforesaid judgment were entirely different. It has not been held by the Hon'ble Full Bench that except by filing an election petition, a Sarpanch or a Panch cannot be ordered to be removed in the exercise of powers under Section 51 of the 1994 Act.

In fact, while answering the second question, the Hon'ble Full Bench has referred to another Full Bench's judgment in **Smt. Anju Vs. Addl. Civil Judge (Sr. Div.), Pehowa, 1998 (2) PLR 393 (FB)**. This Bench has also read the aforesaid judgment passed in **Smt. Anju (supra)**. In that case, the question was that "whether an election petition can be entertained on the ground of change of symbols". The Hon'ble Full Bench held that an election petition can be presented only on the grounds specified in Section

176 of the 1994 Act.

In view of the aforesaid discussion, there is no ground to issue the writ, as prayed for, is made out.

Consequently, the writ is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

16.07.2021
ashok

(ANIL KSHETARPAL)
JUDGE

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