

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3943 of 2023 (O&M)

Date of Decision:20.09.2023

Kiranjeet Kaur

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. P.S. Jammu, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. A.G., Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside the impugned Enquiry Report dated 13.01.2023 (Annexure P-3) submitted by respondent No.3 as well as the impugned order dated 23.01.2023 (Annexure P-4) passed by respondent No.2 whereby on the basis of enquiry report (Annexure P-3), complaint made by the petitioner was filed and consigned to the office, with a further prayer to issue a writ in the nature of Mandamus, directing the official respondents to cancel the election of respondent No.5 and conduct a fair and impartial enquiry against her as she is in illegal occupation of the land, which belongs to the Municipal Council.

FACTUAL BACKGROUND

2. Succinctly, facts of the case are that the petitioner and respondent No.5 had contested the election of Municipal Committee, Rania for Ward No.2 wherein respondent No.5 was declared as the elected candidate. The elections of the

Municipal Committee, Rania were slated to be held on 19.06.2022 for which respondent No.5 namely Suraiya had filed her nomination papers on 03.06.2022 and given an undertaking that she was living in joint family along with her father-in-law at Unit No.303 of Ward No.2. Since father-in-law of respondent No.5 namely Durga was in illegal occupation of the land of the Municipal Committee, Rania, objections were raised by the petitioner in this regard before respondent No.3-Returning Officer at the time of scrutiny of her nomination papers but he did not consider the said objections and discarded the documentary proof furnished by the petitioner against respondent No.5. The petitioner herein had also made a complaint dated 07.07.2022 (Annexure P-1), which was duly supported by the affidavit on which an enquiry was conducted by respondent No.3. As the petitioner had an apprehension that respondent No.3 would not conduct a fair and impartial enquiry, she had submitted an application to respondent No.2 on 23.08.2022 (Annexure P-2) requesting therein to change the enquiry officer but no action was taken thereon and respondent No.3 was allowed to continue with the enquiry. On 13.01.2023, respondent No.3 had submitted the enquiry report wherein he concluded that objections were called in respect of all the contesting candidates at the time of election process but no objections were received by the Returning Officer, Municipal Council, Rania and if the complainant i.e. the petitioner herein had any objection against the elected candidate, she could avail the remedy available to her as per Rules. Vide his report dated 13.01.2023, respondent No.3 had recommended to file the complaint made by the petitioner against respondent No.5. On the basis of aforesaid report, respondent No.2 had passed order dated 23.01.2023 (Annexure P-4) informing the petitioner that her complaint was consigned in the office. Hence, the present writ petition is filed.

CONTENTIONS

3. Learned counsel for the petitioner argues that respondent No.3 has gravely erred in returning a finding that respondent No.5 is residing separately from her father-in-law and has a separate family identity card as well, therefore, she cannot be disqualified on the ground that her father-in-law is in illegal occupation of the land owned by the Municipal Council, while completely ignoring the report submitted by the Secretary, Municipal Committee, Rania, who vide his letter dated 29.11.2022 (Annexure P-5) has stated that Durga i.e. father-in-law of respondent No.5 is in illegal occupation of the land, which belongs to the Municipal Committee, Rania. As per the voter list of Municipal Committee, Rania for the year 2022 with respect to Ward No.2, address of respondent No.5 and her father-in-law is the same and therefore, by no stretch of imagination, can it be held that respondent No.5 is not living with her father-in-law under one roof. It is further argued that official respondents have failed to consider the fact that the Municipal Committee, Rania had issued a notice under Section 181 of the Haryana Municipal Committee Act, 1973 to the father-in-law of respondent No.5 namely Durga son of Kanshi Ram to direct him to remove the illegal encroachment upon the land belonging to Municipal Committee, Rania within 7 days failing which proceedings will be carried out by the Municipal Committee, Rania for removal of said encroachment. It is also argued that mere oral assertion that the respondent No.5 is living separately from her father-in-law is not sufficient to discard the documentary evidence produced by the petitioner.

4. Per contra, learned State counsel argues that in the communication dated 13.04.2023 received from the Directorate of Urban Local Bodies, Haryana, it is stated that scrutiny of nomination forms filed by the candidates for election to the Municipal Committee, Rania in the year 2022 started at 11.30 AM on 06.06.2022

and no objections in writing or oral were received qua nomination of any of the candidates including respondent No.5 herein during the process of scrutiny, however, nomination forms were cancelled by the Returning Officer-cum-District Revenue Officer, Sirsa during said scrutiny as per Rules. It is further argued that a field inspection/enquiry was conducted wherein it came forth that respondent No.5 is living separately from her parents-in-law in a rented accommodation with her husband and to corroborate the said fact, husband of respondent No.5 had submitted a rent agreement as well as the Family Identity Card bearing No.9VRR677. It is also argued that the present writ petition is not maintainable and the petitioner has the remedy to file an election petition before the appropriate forum.

ANALYSIS AND OBSERVATION

5. We have heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that elections of the Municipal Committee, Rania have already taken place on 07.07.2022 and respondent No.5 was declared as the elected candidate. Admittedly, during the process of scrutiny of nomination papers, the petitioner had not filed any objection qua respondent No.5 before the Returning Officer. A perusal of the complaint (Annexure P-1) clearly indicates that the said complaint was made to the Deputy Commissioner, Sirsa on 07.07.2022. Vide a communication dated 13.04.2023 addressed to Ld. Advocate General, Haryana by Directorate of Urban Local Bodies, Haryana, it is stated that no objection in writing or oral was received qua nomination of any of the candidates including respondent No.5. On 18.05.2023, this Court while referring to the communication dated 13.04.2023 had passed the following order:-

*“As per communication dated 13.04.2023, from Director General,
Urban Local Bodies, Haryana, Panchkula to learned Advocate General,*

Haryana, it is stated that no objection in writing or oral was received qua nomination of any of the candidates including that of respondent No.5. It is further stated that the respondent No.5 is living separately from her parents-in-law in a rented accommodation.

This writ petition had been passed over at request of learned counsel for the petitioner and now none appears on behalf of petitioner on second call.

In the interest of justice, adjourned to 20.09.2023.”

6. The petitioner has not controverted the aforesaid factum by filing any replication.

7. Undisputedly, the present petition was filed on 20.02.2023 i.e. after seven months from the declaration of the result of elections of Municipal Committee, Rania. A detailed enquiry was conducted to check the veracity of the allegations levelled by the petitioner of being illegally occupied the land owned by the Municipal Committee, Rania by the father-in-law of respondent No.5. The father-in-law of respondent No.5 was also issued a notice under Section 181 of the Haryana Municipal Act, 1973 for removing the illegal encroachment. During the course of enquiry, a report was called from Tehsildar, Rania regarding illegal possession of the land owned by the Municipal Committee, Rania by respondent No.5 and vide letter dated 22.12.2022, Secretary, Municipal Committee, Rania had stated that Durga son of Kashi Ram i.e. father-in-law of respondent No.5 was found in illegal possession of Unit No.303, Ward No.2 comprised in Khasra No.814. However, respondent No.3, after appreciation of the material available before him, has concluded vide his report dated 13.01.2023 that respondent No.5 had produced separate family identity cards issued in her name and in the name of her father-in-law and therefore, it cannot be stated that respondent No.5 is

living in a joint family with her father-in-law. Similarly, vide communication dated 13.04.2023, the Directorate of Urban Local Bodies, Haryana has also vouched for the fact that respondent No.5 is living separately from her parents-in-law in a rented accommodation.

8. Learned State counsel has taken a categorical stand that the petitioner has an efficacious alternative remedy of filing an election petition for laying challenge to the acceptance of nomination papers of respondent No.5 and the present writ petition is not maintainable, in view of the bar contained under Article 243ZG of the Constitution of India. As per sub-clause (b) of Article 243ZG, no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

9. It is a settled proposition of law that an election petition can be filed on the ground of improper acceptance and rejection of nomination papers. A Constitution Bench of the Hon'ble Supreme Court in ***N.P. Ponnuswami vs. The Returning Officer, Namakhal Constituency, Namakkal, Salem Distt., and others, 1952 AIR SC64*** speaking through Justice Fazl Ali has held as under:-

“The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage

before any court. It seems to me that under the election law, the only significance which the rejection of a nomination papers has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like article 329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.”

10. It is no longer *res integra* that a statute should be read as it is and this Court cannot contort the same and read something which is not expressly provided therein. The Hon’ble Supreme Court in ***B. Premanand and others versus Mohan Koikal and others, (2011) 4 SCC 266*** has articulated the principle governing the interpretation of the statute and reiterated the literal rule of interpretation by observing the following:-

“30. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. 31. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what

we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.”

11. Section 13-A of the Haryana Municipal Act, 1973 and Rule 21 of the Haryana Municipal Elections Rules, 1978 which deal with disqualifications for being chosen as and for being a member of a municipality, are reproduced as under:-

“13A. Disqualification for President and members. - (1) A person shall be disqualified for being chosen as and for being the president or a member of a municipality—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of election to the Legislature of the State of Haryana:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age if he had attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State of Haryana;

(c) ----

(d) if he is convicted or has been convicted of an offence punishable under Sections 29, 30 and 31 of the Haryana Municipal Corporation Act, 1994 (16 of 1994), the Prevention of Corruption Act, 1988 (49 of 1988) or the Prevention of Terrorism Act, 2002 (15 of 2002) or

(e) if he has been convicted or charges have been framed against him by a court in a criminal case for an offence, punishable with imprisonment for not less than ten years; or

(f) if he fails to pay an arrear of any kind due to him to any Primary Agriculture Co-operative Society, District Central Co-operative bank and District Primary Co-operative Agriculture Rural Development Bank; or

(g) if he fails to pay arrears of electricity bills; or

(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) If any question arises as to whether the president or a member of a municipality has become subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of such authority and in such manner as may be prescribed by rule.

(3) If any person furnishes a false caste certificate at the time of filing nomination, he shall be disqualified for a period of six years from contesting the election to the municipality.”

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

(a) is not an elector, that is, a qualified voter for any constituency of that committee under these rules; and has not attained the age of twenty one year; or

(b) in the case of a seat reserved for the Scheduled Castes and Backward Classes, is not a member of Scheduled Castes and Backward Classes in relation to the State of Haryana; or

(c) is under contract for work to be done for or goods to be supplied to the Committee; or

(d) receives any remuneration out of the municipal fund for services rendered to the committee:

Provided that nothing contained in this clause shall debar a person, who receives as President, salary sanctioned by the State Government

under section 58 from standing for election or re-election as a member of the committee;

(e) has, within five years from the date fixed for the nomination of candidates under the provision of rule 20, been prescribed from Government employment; or

(f) has, at any time within five years from the date specified for the nomination of candidates under the provisions of rule 20 been serving a sentence of imprisonment for not less than two years; or

(g) has, at any time within five years from the date specified for the nomination of candidates under the provisions of rule 20 been convicted under the Protection of Civil Rights Act, 1955; or

(h) is an undischarged insolvent; or is in arrears of any kind exceeding rupees one hundred due from him (otherwise than as a trustee) to the Committee when a special demand in this behalf has been served upon him by the committee; or

(i) is a whole time salaried official in the service of any Panchayat Samiti, Gram Panchayat, Municipal Committee, Notified Area Committee or Cantonment Board, Improvement Trust or holds any office of profit under the Government of India or the Government of any State other than an office declared by the Legislature of the State of Haryana by law not to disqualify its holder for being chosen as and for being a member of the Legislative Assembly of the State; or

(j) who is disqualified for such membership as a result of his election having been set aside under these rules; or

(k) is disqualified for membership of any Panchayat Samiti or Grtam Panchayat or Municipal Committee or Notified Area Committee or Cantonment Board or Improvement Trust as a result of his election for membership of such Samiti or Panchayat or Board or Trust or Committee having been declared void for corrupt practices; or

(l) has at any time within five years from the date fixed for the nomination of candidates under the provisions of rule 20 been convicted of an offence under section 171-E or 171-F of the Indian Penal Code (Act 45 of 1860), or having been disqualified from exercising any electoral right for a period of not less than five years in connection with an election of the State

Legislature is, on the said date of nomination, still subject to the disqualification.

(m) has been convicted, or charges have been framed against him by a court in a criminal case for an offence, punishable with imprisonment for not less than ten years; or

(n) fails to pay an arrear of any kind due to him to any Primary Agriculture Co-operative Society, District Central Co-operative Bank and District Primary Co-operative Agriculture Rural Development Bank; or

(o) fails to pay arrears of electricity bills; or

(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) fails to submit a self declaration to the effect that he has a functional toilet at his place of residence.

(2) The State Government may, for reasons to be recorded, exempt any person or class of persons from the disqualification contained in clauses (c) to (h) and clause (j).

(3) xxxx

(4) If any question arises as to whether a member of a committee has become subject to any of the disqualifications mentioned in the Act and the rules, the question shall be referred by the Deputy Commissioner to the State Election Commissioner, Haryana whose decision shall be final.”

12. A bare perusal of Section 13-A of the Haryana Municipal Act, 1973 and Rule 21 of the Haryana Municipal Elections Rules, 1978 clearly indicates that disqualification on account of illegal possession of the land owned by the Municipal Committee is not one of the grounds specified under the Act & Rules *ibid*. Moreover, the individual who commits such an illegality is alone liable for

disqualification for all intents and purposes and it cannot be extended to all and sundry members of the family.

13. A Division Bench of this Court while dealing with the similar issue in **Jai Singh Vs. State of Haryana and others 2023 (3) RCR (Civil) 687** has held as under:-

“18. A bare perusal of Section 175 (i) would lead to the conclusion that for all intents and purposes, only the person who has made the default earns the disqualification under Section 175 of the Act and this disqualification on account of default cannot be fastened upon the kith and kin of the defaulter.

*19. The Division Bench of this Court while dealing with the similar situation in **Manjeet Kaur versus State of Haryana, 1995 PLJ 55** came to the conclusion that as per the provision of Section 175 of the Act, only the person who commits the default incurs the disqualification. Holding the wife, who was a candidate for the post of the Gram Panchayat, to be eligible, as the default by her husband would earn disqualification to him alone, the following was observed:-*

“If any amount was held to be due against him the liability could not be fastened against her. Even against the husband the provisions of Section 53(2) barred the remedy of recovery because of lapse of period of six years from the date of alleged misapplication and a period of two years from the cessation of office. Be that as it may, the main contention of learned counsel for the petitioner is that for any disqualification alleged to have been incurred by her husband, her nomination could not be rejected. Reference to Section 175 of the Haryana Panchayati Raj Act relating to disqualification makes it clear that it is only the person who commits one of the acts specified therein that such a person incurs disqualification. In this view of the matter we find that the order rejecting the nomination papers of the petitioner is altogether arbitrary.”

20. Having examined the legal position in the backdrop of the facts, we are of the opinion that the contention of the learned counsel for the petitioner with regard to the disqualification of the respondent No.7- Poonam Devi on account of default of House Tax by her father-in-law, is totally misconceived. The disqualification under Section 175 of the Act can only be fastened on the person who commits any of the acts specified in Section 175 of the Act.”

CONCLUSION

14. As an upshot of our finding, we do not find any ground to interfere with the enquiry report dated 13.01.2023 (Annexure P-3) as well as the order dated 23.01.2023 (Annexure P-4) passed by respondents No.3 and 2 respectively under Article 226/227 of the Constitution of India. Resultantly, the instant writ petition stands dismissed *sans* merit.

15. Civil Misc. Application pending, if any, also stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

September 20, 2023
Pankaj*

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