

CWP No.14009 of 2023 (O&M)

1 2023:PHHC:084723-DB

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

CWP No.14009 of 2023 (O&M)

Date of Decision:05.07.2023

Mashoon

..... 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. Munfaid Khan, Advocate for the petitioner.

HARPREET SINGH BRAR, J.(Oral)

1. The petitioner has filed the present petition for issuance of a writ in the nature of mandamus directing the official respondents to cancel the nomination paper of respondent No.5 for the post of Panch for Ward No.7 of village Chandraka Pingwan, Punhana, District Mewat, Haryana since he (respondent No.5) was earlier having his vote in village Dungeja, District Mewat which he had used at the time of Panchayat elections held in the year 2022 in respect of village Dungeja, District Mewat. Further prayer has been made for issuance of directions to the official respondents to decide the representations dated 26.06.2023 (Annexures P-3 and P-4) moved by the petitioner before conducting the elections which are scheduled to be held on 09.07.2023.

FACTUAL BACKGROUND

2. Brief facts of the case are that the petitioner applied for the post of Panch for which nominations were to be filed from the period 21.06.2023 to 26.06.2023. The petitioner filed his nomination for the said post being eligible for Ward No.7 of village Chandraka Pingwan, Punhana District Mewat (Haryana). The said post was reserved for BCA category candidates. After filing his nomination papers, the petitioner came to know that one candidate i.e. respondent No.5, who is a resident of village Dungeja, District Mewat and was having his vote in the said village (vide Vote No. YHS1698000), has also filed his nomination papers for the post of Panch for ward No.7 in village Chandraka Pingwan, Punhana District, Mewat, the elections for which are scheduled for 09.07.2023.

Despite having his vote in village Dungeja, District Mewat, respondent No.5 intentionally and wilfully prepared his vote in village Chandraka with the help of official respondents in a fraudulent manner and filed his nomination papers for the post of Panch for Ward No.7 in the said village without even cancelling his earlier vote in village Dungeja, Mewat.

When petitioner came to know about this fact, he immediately approached the higher authorities and requested for cancellation of the vote and nomination papers of respondent No.5 which he had filed for Ward No.7 in village Chandraka Pingwan, Punhana District Mewat. When the authorities did not take any action in this regard, the petitioner gave written representations dated 26.06.2023 to the official respondents in this regard.

CONTENTIONS

3. Learned counsel for the petitioner contends that despite having

his vote in village Dungeja, District Mewat, respondent No.5 has mischievously prepared his vote in village Chandraka by illegal means with the help of the official respondents in a fraudulent manner and his nomination papers for the post of Panch for Ward No.7 in the said village are liable to be cancelled since he has not got his earlier vote cancelled in village Dungeja. The act and conduct of respondent No.5 in using his vote in village Dungeja at the time of Panchayat elections held in the year 2022 would render his nomination in village Chandraka to be illegal. Learned counsel for the petitioner further contends that respondent No.5 is not eligible to contest the present elections for the post of Panch for Ward No.7 of village Chandraka.

OBSERVATION AND ANALYSIS

4. Having heard learned counsel for the petitioner at length and perusing the record with his able assistance, we find no ground to interfere in the election process at this stage, specially when the election is scheduled to take place on 09.07.2023.

5. Undisputedly, the election process has been set into motion. As per the schedule of the election, the date for filing nomination was fixed from 21.06.2023 to 26.06.2023. On a specific query having been put by this Court, learned counsel for the petitioner has responded that after scrutiny the symbols have been allotted to all the candidates and now only the voting remains to be held on 09.07.2023.

6. Chapter XIX of the Haryana Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act' for short) deals with the elections of members of Gram Panchayat, Panchayat Samiti and Zila Parishad and

Election Disputes etc. Sections 162, 163, 167, 171 and 173 of the Act would require reproduction in order to adjudicate the present controversy.

*“S.162. **Electoral division-** Every sabha area, block and district shall be divided into wards as referred in sections 8(3), 58(2) and 119(b) of this Act.*

*S.163. **List of voters for every electoral division-** For every electoral division, there shall be a list of voters which shall be prepared and maintained in accordance with the provisions of this Act under the superintendence, direction and control of the State Election Commission.*

*S.167. **Name of person not to be included in the list of voters for more than one electoral division-** No person shall be entitled to have his name included in the list of voters for more than one electoral division of the same Gram Panchayat, Panchayat Samiti or Zila Parishad*

*S.171. **Making false declaration-**If any person makes in connection with,—*

*(a) the preparation, revision or correction of a list of voters ; or
(b) the inclusion or exclusion of any entry in or from a list of voters,*

a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year or with a fine of one thousand rupees or with both.

*S.173. **Persons qualified to vote and be elected-** (1) Every person whose name is in the list of voters shall, unless disqualified under this Act or any other law for the time being in force, be qualified to vote at the election of a member for the electoral division to which such list pertains.*

(2) Every person who has attained the age of twenty-one years and whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in

force, be qualified to be elected from any electoral division.

(3) No person whose name is not entered in the list of voters for the villages, shall be qualified to be elected from any electoral division thereof.

(4) Subject to any disqualification of a person the list of voters shall be conclusive proof for the purpose of determining under this section whether any person is or is not qualified to vote, or to be elected at any election, as the case may be.”

7. Section 167 provides that a person is debarred from having his name included in more than one the electoral divisions of the same Gram Panchayat. Further Section 173(3) provides that no person whose name is not entered in the voters list of the village shall be qualified to seek election from any Ward of the said village. Sub section 171(b) contains the penal provisions for making any false declaration for inclusion or exclusion of any entry in or from a list of voters. Any person who was found to have made a false declaration in the above context is liable to be punished with an imprisonment for a term which may extend to one year or with a fine of five thousand rupees or with both.

8. Section 175 of the Act deals with the disqualifications for the election to the post of Sarpanch or a Panch of a Gram Panchayat which is reproduced here as under:-

“S.175. Disqualifications--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—

(a) has, whether before or after the commencement of this Act, been convicted-

(i) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or

such lesser period as the Government may allow in any particular case, has elapsed since his conviction ; or

(ii) of any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release ; or

[(aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years; or]

(b) has been adjudged by a competent court to be of unsound mind ;or

(c) has been adjudicated an insolvent and has not obtained his discharge; or

(d) has been removed from any office held by him in a Gram Panchayat, Panchayat Samiti or Zila Parishad under any provision of this Act or in a Gram Panchayat, Panchayat Samiti or Zila Parishad before the commencement of this Act under the Punjab Gram Panchayat Act, 1952 and Punjab Panchayat Samiti Act, 1961, and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the

Government notified in the official Gazette been relieved from the dis-qualifications arising on account of such removal from office ;or

(e) has been disqualified from holding office under any provision of this Act and the period for which he was so disqualified has not elapsed ; or

(f) holds any salaried office or office of profit in any Gram Panchayat, Panchayat Samiti, or Zila Parishad ; or

(g) has directly or indirectly, by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(h) has directly or indirectly, by himself or, his partner share or

interest in any transaction of money advanced or borrowed from any officer or servant or any Gram Panchayat ; or

(i) fails to pay any arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram Panchayat, Panchayat Samiti or Zila Parishad subordinate thereto or any sum recoverable from him in accordance with the Chapters and provisions of this Act, within three months after a special notice in accordance with the rules made in this behalf has been served upon him ;

(j) is servant of Government or a servant of any Local Authority ;or

(k) has voluntarily acquired the citizenship of a Foreign State or is under any acknowledgement of allegiance or adherence to a Foreign State ;or

(l) is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed ;or

(m) is a tenant or lessee holding a lease under the Gram Panchayat, Panchayat Samiti or Zila Parishad or is in arrears of rent of any lease or tenancy held under the Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(n) is or has been during the period of one year proceeding the date of election, in unauthorised possession of land or other immovable property belong to the Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

[(o) being a Sarpanch or Panch or a member of Panchayat Samiti or a Zila Parishad has cash in hand in excess of that permitted under the rules and does not deposit the same along with interest at the rate of twenty-one per centum per year in pursuance of a general or special order of the prescribed authority within the time specified by it; or]

(p) being a Sarpanch 2 [* * *] or Panch or a Chairman, Vice-Chairman or member, President or Vice-President or member of Panchayat Samiti or Zila Parishad has in his custody prescribed records and registers and other property*

belonging to, or vested in, Gram Panchayat, Panchayat Samiti or Zila Parishad and does not handover the same in pursuance of a general or special order of the prescribed authority within the time specified in the order .

(q) [-----]

[(r) admits the claim against Gram Panchayat without proper authorization in this regard ;

(s) furnishes a false caste certificate at the time of filing nomination:

Provided that the disqualification under clauses (r) and (s) shall be for a period of six years]

Explanation (1)—A person shall not be disqualified under clause (g) for membership of a Gram Panchayat, Panchayat Samiti or Zila Parishad by reason only of such person,—

(a) having share in any joint stock company or a share or interest in any society registered under any law for the time being in force which shall contract with or be employed by or on behalf of Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of a Gram Panchayat, Panchayat Samiti or Zila Parishad may be inserted ; or

(c) holding a debenture or being otherwise concerned in any loan raised by or on behalf of any Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(d) being professionally engaged on behalf of any Gram Panchayat, Panchayat Samiti or Zila Parishad as a Legal Practitioner ; or

(e) having any share or interest in any lease of immovable property in which the amount of rent has been approved by the Gram Panchayat, Panchayat Samiti or Zila Parishad in its own case or in any sale or purchase of immovable property or in any agreement for such lease, sale or purchase ; or

(f) having a share or interest in the occasional sale to the Gram

Panchayat, Panchayat Samiti or Zila Parishad of any article in which he regularly trades or in the purchase from the Gram Panchayat of any article, to a value in either case not exceeding in any year one thousand rupees.

Explanation (2).-- For the purpose of clause (1), —

(i) a person shall not be deemed to be disqualified if he has paid the arrears or the sum referred to in clause (i) of this sub-section prior to the day prescribed for the nomination of candidates.

[(ii)-----]

[(t) fails to pay any arrears of any kind due to him to any Primary agriculture Cooperative Society, District Central Cooperative Bank and District Primary Cooperative Agriculture Rural Development Bank; or

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

(v) has not passed matriculation examination or its equivalent examination from any recognised 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 a case of woman candidate belonging to Scheduled Caste contesting elections for the post of Panch, the minimum qualification shall be 5th pass; or

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

9. A perusal of the above Section which deals with the eligibility of a person in seeking election to any post in the Gram Panchayat would clearly indicate that there is no embargo on a person for having his vote shifted to another Gram Panchayat. The revision of electoral roll is done before the elections for the purpose of registration of new voters and to weed out the votes of those persons who are no longer voters of the village.

A procedure is prescribed for inclusion and exclusion of a person in the voter list . Section 171 of the Act deals with a situation if a person is found to have made a false declaration for the purpose of inclusion and exclusion of his name from the voter list and if any person is found to have made a false declaration in the preparation, revision or correction of voter list, he shall be liable for punishment for a term which may extend to one year with a fine of rupees five thousand.

10. Section 176 of the Act provides for the election petition for challenging the validity of any election of a member of Gram Panchayat. Section 176(4)(a) provides for a ground for challenging the validity of the election of a particular candidate on the basis of improper acceptance or rejection of the nomination papers.

11. The acceptance of the present petition amounts to adjudicating the rejection or acceptance of the nomination papers for which alternative remedy is provided under Section 176 of the Act. At this stage this Court is required to first adjudicate as to whether the present writ petition is maintainable and this Court can interfere in any manner when the election process has already progressed to a stage where only voting remains to be held on 09.07.2023 followed by declaration of result by the returning officer under Rule 70 of the Haryana Panchayati Raj Election Rules, 1994.

12. It is settled proposition of law that the election would include in its ambit all stages of the election process starting from the issuance of notification giving schedule of election till its culmination by the declaration of result. The Hon'ble Supreme Court has reiterated time and again that no election to any Panchayat shall be called in question except by

way of an election petition. The bar created under Article 243-O of the Constitution of India is attracted with respect to all matters relating to or in connection with the election process of the elections of the Panchayat. Article 243-O is reproduced hereasunder:-

“243-O. Bar to interference by courts in electoral matters--

Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat 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.”

13. A two Judge Bench of the Hon’ble Supreme Court in **State of U.P. vs. Pradhan Sangh Kshetra Samiti, AIR 1995 SC 1512**, speaking through Justice P.B.Sawant, held as follows:-

“What is more objectionable in the approach of the High Court is that although clause (a) of Article 243O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in Meghraj Kothari v. Delimitation Commission & Ors. [(1967) 1 SCR 400]. In that case, a notification of the Delimitation Commission whereby a city

which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10 [1] of that Act is not part of an Act of Parliament, its effect is the same. Section 10 [4] of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and sections 2 [kk], 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August,

1994.”

14. Similarly the Hon’ble Supreme Court has set aside the order of the High Court on the ground that the High Court has overlooked the bar contained in Article 243-ZG of the Constitution of India. A two Judge Bench of the Hon’ble Supreme Court in **Jaspal Singh Arora vs State of M.P. and others 1998(9) SCC 594**, speaking through Justice J.S.Verma , held as follows:-

“ 3.it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition”

15. Section 176(4)(a) of the Act clearly indicates that election petition can be filed on the ground of improper acceptance and rejection of nomination papers. The above provisions are in consonance with the celebrated decision of the Hon’ble Supreme Court in **N.P.Ponnuswami vs. The Returning Officer, Namakhal Constituency, Namakkal, Salem Dist., and others, 1952 AIR SC 64** wherein a Constitutional Bench speaking through Justice Fazl Ali, held as follows:-

“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 paper 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

CONCLUSION

16. The voting for Ward No.7 of village Chandraka Pingwan, Punhana, District Mewat, Haryana is scheduled to be held on 09.07.2023. A

combined reading of Article 243-O of the Constitution of India and the provisions contained in Section 176 of the Act would prevent us from interfering in the election process. In the circumstances of the case, we hold that the instant petition is not maintainable and no ground is made out to interfere in any manner in the election process.

17. In view of the above discussion, the instant petition is dismissed. However, the petitioner is at liberty to avail his alternate remedy if something survives after declaration of result of the election.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

05.07.2023

sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No