

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

CWP-14015-2023

Date of decision: 05.07.2023

Jai Singh

....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. Vikas Lochab, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (Oral)

1. The petitioner has filed the instant petition for issuance of a writ in the nature of mandamus directing the official respondents to reject the nomination papers of respondent No.7-Poonam Devi in view of instructions issued for Panchayat Election(Annexure P-1), on the ground that she is not eligible for contesting the election for the post of Panch. Further prayer has been made for directing the respondents to decide the representation dated 30.06.2023 (Annexure P-3) stated to be pending in the office of respondent No.2.

FACTUAL BACKGROUND

2. Briefly, the facts of the case are that petitioner is a resident of Gram Panchayat Nanagwas, Block Mahendergarh, District Mahendergarh and election for the post of Panch were scheduled to be held on 09.07.2023. Respondent No.7-Poonam Devi filed her nomination papers for the post of Panch of Ward No.4 of the said village by concealing the material fact that she is a defaulter of house tax for the last 11 years. A detailed representation has

been submitted by the petitioner in the office of respondent No.2 in this context but no action has been taken thereon as yet. The inaction of the respondents in this regard itself is in violation of respondents' instructions as stipulated in Section 175 of the Haryana Panchayat Raj Act, 1994 (in short 'the Act').

CONTENTIONS

3. Learned counsel for the petitioner contends that as per the instructions issued for the Panchayat Elections for the year 2022, the respondent No.7-Poonam Devi is not eligible to contest the elections for the post of Panch of Village Nanagwas as she is in the arrears of House Tax. He has referred to Annexure P-1 in which the instruction No.10 provides that any person desiring to contest the Panchayat Election should not be defaulter of Panchayat. He further referred to the certificate issued by the Sarpanch of the Gram Panchayat Nanagwas (Annexure P-2) regarding the default in payment of House Tax. He further contends that the nomination papers of respondent No.7-Poonam Devi are liable to be rejected and he has filed a representation on 30.06.2023 in the office of respondent No.2 (Deputy Commissioner, Mahendergarh) with regard to the concealment made by respondent No.7 at the time of filing her nomination papers.

4. The learned counsel for the petitioner further contends that a perusal of Annexure P-2 shows that Mahipal Singh son of Mam Chand is in the arrears of Rs.330/- towards the House Tax for the last eleven years as per the House Tax Register 2023-24. Mahipal Singh is the father-in-law of respondent No.7-Poonam Devi and she is living in the same house, as such, she is also to be treated as a defaulter and as per the instruction issued by the Returning Officer, her nomination papers ought to have been rejected.

OBSERVATIONS & ANALYSIS

5. Having heard the learned counsel for the petitioner and perused the record, we find that before adverting to the facts of the case, this Court is required to adjudicate the elemental issue of maintainability of the instant writ petition in the light of the bar contained in Article 243-O of the Constitution of India read with provisions contained in Section 176 of the Act providing alternative remedy.

6. Undisputedly, a notification for the Panchayat Elections has already been issued, setting into motion the election process and as per the schedule, the date for filing nomination was fixed from 21.06.2023 to 26.06.2023. The date for scrutiny was fixed for 27.06.2023 and the date for allotment of the symbols to the candidates was fixed for 28.06.2023. The voting is scheduled to take place on 09.07.2023.

7. 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 faced with the situation as to whether it 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.

8. 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 challenge to elections to any Panchayat shall be raised except by way of an election petition.

The bar created under Article 243-O of the Constitution 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 as under:-

“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.”

9. 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 243-O 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 al-

lotments 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.”

10. Similarly, a three Judge Bench of the Hon’ble Supreme Court in ***Ram Phal Kundu Versus Kamal Sharma 2004 (2) SCC 759***, speaking through Justice G.P. Mathur, held as follows:-

“ 24. ...That apart, it has been held by a catena of decisions of this Court that once the nomination papers of a candidate is rejected, the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. ”

11. As far as the question of the power of this Court to interfere in the election matters in exercising its jurisdiction under Article 226 is concerned, the law is well settled that there is no absolute bar in entertaining a writ petition in election matters but such interference is only warranted and permissible in order to facilitate the completion of the election process and the High Court can invoke its extraordinary power under Article 226 of the Constitution to invigorate the conduct of free and fair elections.

12. The Full Bench consisting of five judges of this Court in ***Prithvi Raj versus State Election Commission and others, 2007 (3) RCR (Civil) 817*** and Constitution Bench of the Hon’ble Supreme Court in ***Mohinder Singh Gill and another versus Chief Election Commissioner, AIR 1978 SCC 405***, has authoritatively held that the power under Article 226 can be invoked for seeking such directions which subserves the progress of the election and it would not amount to calling in question any election. In ***Prithvi Raj (supra)***, the Full Bench, speaking through the Justice Vijender Jain, the following was held:-

“35....The power of a High Court, under Article 226 of the Constitution of India would, however, be available, where exercise of the said power subserves the progress of the election, facilitates its completion and is exercised to further the election process. One should not forget that the statutory mandate to the authority under the Election Commission Act is to conduct free and fair poll. For achieving that objective and in furtherance thereof, there is no fetter to achieve that objective by invoking extra ordinary powers of this Court under Article 226 of the Constitution.”

13. In ***Mohinder Singh Gill (supra)***, speaking through Justice Krishna Iyer, the following was observed:-

“28. What emerges from this perspicacious reasoning, if we may say so with great respect, is that any decision sought and rendered will not amount to ‘calling in question’ an election if it subserves the progress of the election and facilitates the completion of the election. We should not slur over the quite essential observation “Anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election.” Likewise, it is fallacious to treat a singly step taken in furtherance of an election as equivalent to election.”

14. Chapter XIX of the Act deals with the elections of Members of Gram Panchayat, Panchayat Samiti and Zila Parishad and Election Disputes etc. Section 175 and 176 of the Act would require reproduction in order to adjudicate the present controversy.

“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 newspapers 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.]”

176. Determination of validity of election enquiry by judge and procedure:-

(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or (omitted by ibid) 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 related, such person may at any time within thirty days after the date of declaration of results of the election present an election petition to the civil court having ordinary jurisdiction in the area within the election has been or should have been held, for the determination of such question.

(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 or 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 the 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 holding of 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

(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 as it concerned 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 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 candidates 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.

Explanation1.- 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.

Explanation2. 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.

(6) Any person, aggrieved by an order passed by the Civil Court under Sub-Section (4), may within a period of thirty days from the date of such order, prefer an appeal to the District Judge having ordinary jurisdiction in the area. The District Judge may after hearing the appeal, confirm, vary or reverse the order. The decision of the District Judge shall be final.

15. Section 176 of the Act provides for the filing of election petition to challenge the validity of election of any 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.

16. Section 176(4)(a) of the Act clearly indicates that an 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 Distt., and others, 1952 AIR SC**

64 wherein the Constitution 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 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.”

17. 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."

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

21. The voting for Panchayat Elections in a Village Nanagwas is scheduled to be held on 09.07.2023. The bar contained in Article 243-O of the Constitution of India and the provision contained in Section 176 of the Act would prevent us from interfering in the election process. In view of the facts and circumstances of the case, we hold that the instant petition is not maintainable and no ground is made out for this Court to interfere in any manner in the election process.

22. In view of the above discussion, instant petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

05.07.2023

Neha

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