

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

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**CWP-25517-2022(O&M)
Date of Decision: 20.01.2023**

KETAN WALIA AND ORS.

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Tejpal Dhull, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

LISA GILL, J.

Grievance raised by the petitioners in this writ petition is that respondent No.7 who has been elected to the post of Sarpanch Gram Panchayat, Thakurpura is disqualified to hold the said post in terms of Section 175(i) of The Haryana Panchayati Raj Act, 1994 (for short 'the Act'). It is submitted that respondent No.7 who had earlier remained Sarpanch of village, Thakurpura for the term starting from the year 2012 was in illegal possession of certain articles which were the property of the Gram Panchayat. The then Sarpanch of the village from 2016 to 2021 had also submitted a complaint in this respect whereon the District Development and Panchayat Officer directed the Block Development and Panchayat Officer on 10.04.2017 (Annexure P-3) to ensure transfer of all articles from the previous Panchayat. However, the articles were not returned by respondent No.7.

Respondent No.7, it is stated, submitted his nomination papers for the post of Sarpanch on 26.10.2022 pursuant to notification dated 21.10.2022, issued by the respondent-State. The petitioners are stated to have raised an objection on 29.10.2022 with regard to the

nomination form submitted by respondent No.7. Objections submitted by the petitioners were rejected by the Returning Officer on 31.10.2022 (Annexure P-4). It is observed therein that the amount of Rs.18,528/- stands deposited by respondent No.7 in the office of the Block Development and Panchayat Officer and No Objection Certificate (NOC) regarding list of the goods has been issued by the Block Development and Panchayat Officer.

Learned counsel for the petitioners submits that rejection of this objection is absolutely unjustified in view of the fact that the receipt in question is dated 29.10.2022 and respondent No.7 continued to flout all rules and his nomination paper was incorrectly accepted.

Though prayer in the writ petition is for setting aside the election of respondent No.7, learned counsel submits that in view of Section 175 and 177 of the Act, necessary inquiry should nevertheless be carried out by the competent authority and in case it is found that the elected person i.e. member of Gram Panchayat, Panchayat Samiti or Zila Parishad was disqualified in terms of Section 175, necessary action should be taken by the competent authority. Learned counsel for the petitioners further submits that de hors the rejection of the objections by the Returning Officer, disqualification as contended by the petitioners is evident. Section 175 reads as under:-

175. Disqualifications:-

“No person shall be a Sarpanch, or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-

XX XX XX XX

(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;”

Section 177 of the Act reads as under:-

177. Disqualification for continuing as members--(1)

If any member of a Gram Panchayat, Panchayat Samiti or Zila Parishad—

(a) who is elected, as such, was subject to any of the disqualifications mentioned in section 175, at the time of his election;

(b) during the term for which he has been elected, incurs any of the disqualifications, mentioned in section 175, shall be disqualified from continuing to be a member, and his office shall become vacant.

(2) In every case, the question whether a vacancy has arisen shall be decided by the Director. The Director may give its decision either on an application made to it by any person, or on its own motion. Until the Director decides that the vacancy, has arisen, the members shall not be disqualified under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Director may, within a period of fifteen days from the date of such decision, appeal to the Government and the orders passed by Government in such appeal shall be final : Provided that no order shall be passed under this sub-section by the Director against any member without giving him a reasonable opportunity of being heard.

Learned counsel for the petitioners, at this stage confines

and restricts his prayer in this petition for a direction to the competent

authority to decide the question of respondent No.7 being disqualified in terms of Section 175(i).

Learned counsel for the State does not deny that in the cases where complaints are filed regarding disqualifications being incurred by the members, the matter is being looked into by the competent authority and necessary decision taken.

In the present case, it is brought to our notice that no such application has been filed by the petitioners before the competent authority. Therefore, it is directed that in case such application alleging disqualification of respondent No.7 under Section 175(i) is filed by the petitioners within the next two weeks, the same be thereafter considered and decided in accordance with law by the competent authority within the next two months, after affording due opportunity of hearing to all concerned. Needless to say the question of the effect or otherwise of rejection of the objections filed by the petitioners by the Returning Officer as well as the arguments regarding discrepancy in the date of deposit of the amount etc. shall be within the realm of consideration by the competent authority. It is clarified that there is no expression of opinion on the merits of the matter.

Writ petition is accordingly disposed of.

(LISA GILL)
JUDGE

20.01.2023
Rimpal

(RITU TAGORE)
JUDGE

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