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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5547 of 2024
Date of Decision: 11.03.2024

Tarsem Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S. S. Mor, Advocate
for the petitioner.

Mr. Sandeep Kotla, Advocate
for respondent No.5.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for setting aside the order dated 21.02.2024 (Annexure P-9) passed by respondent No.2 and order dated 26.12.2023 (Annexure P-7) passed by respondent No.3 being wrong, illegal and against the provisions of law.

The petitioner before this Court was elected as Sarpanch of village Tamaspura, Block Nagpur, District Fatehabad in the election held in the year 2022. After election of petitioner as Sarpanch, respondent No.5 filed a complaint to the Deputy Commissioner alleging therein that at the time of filing his nomination, the petitioner had submitted forged matriculation certificate in support of the requisite qualification for contesting the election and as he had contested the election on the basis

of the forged matriculation certificate, thus he deserves to be removed from the post of Sarpanch. Taking cognizance of the complaint filed by respondent No.5, the Deputy Commissioner entrusted the inquiry to the Block Development and Panchayat Officer, who conducted the inquiry on the allegations made in the complaint. On finding that the allegations made in the complaint were genuine, the Block Development and Panchayat Officer submitted his report to the Deputy Commissioner. A show cause notice was issued to the petitioner. Thereafter on hearing the petitioner, the Deputy Commissioner by exercising his power under Section 51(3) of the Haryana Panchayati Raj Act (hereinafter referred to as 'the Act') removed the petitioner from the post of Sarpanch vide impugned order dated 26.12.2023. Being aggrieved by the same, the petitioner filed an appeal under Section 51(5) of the Act before the learned Divisional Commissioner, Hisar Division, Hisar i.e. respondent No.2. However, finding no merit in the appeal filed by the petitioner, the learned Divisional Commissioner dismissed the same vide impugned order dated 21.02.2024 and thus, upheld the order passed by the Deputy Commissioner. Thus, being aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the petitioner duly contested the election on the basis of genuine documents submitted at the time of filing of nomination. He has submitted that no objection whatsoever was raised by the respondent authorities at the time of filing nomination and thus, finding him eligible for contesting the election, the petitioner was allowed to contest the

same. He submits that the petitioner successfully won the election with majority of the votes by margin of 125 votes and thus, was elected as Sarpanch of the village on 25.11.2022. He has submitted that there is a party faction in the village. He submits that father of respondent No.5 contested the election against the petitioner, however he lost the same and hence, respondent No.5 filed a frivolous complaint before respondent No.3 against the petitioner dated 28.11.2022 on the allegation that the petitioner had submitted a fake 10th class certificate. He has submitted that respondent No.3 on 01.12.2022 entrusted the inquiry to the Block Development & Panchayat Officer and directed him to submit his report within 10 days. On submission of the report, respondent No.3 issued a show cause notice dated 20.11.2023 to the petitioner. The petitioner filed his reply to the show cause notice on 22.11.2023. He submits that the petitioner also sought the information vide letter dated 24.11.2023 regarding verification of his certificate and the Director (Academic & Verification Department), Uttar Pradesh State Open School Board verified the certificate of the petitioner to be genuine one. He has submitted that on verification, the certificate was found to be genuine but despite the same, respondent No.3 arbitrarily ignored the same and passed the impugned order dated 26.12.2023 by illegally removing the petitioner from the post of Sarpanch. He submits that the appeal filed by the petitioner before respondent No.2 was also illegally dismissed by the learned Divisional Commissioner vide order dated 21.02.2024.

Learned counsel for the petitioner has further contended that the impugned order passed by the learned Deputy Commissioner i.e.

respondent No.3 under Section 51(3) of the Act is totally unsustainable in the eyes of law as the result of election could only be challenged by way of election petition under Section 176 of the Act. He submits that the petitioner never claimed that he has passed the examination equivalent to matric and as the petitioner passed the matriculation examination, so as per Section 175(v) of the Act, he was very much eligible to hold the post of Sarpanch. He submits that the petitioner was removed from the post of Sarpanch on the basis of inquiry conducted by the Block Development & Panchayat Officer in which the petitioner was never associated. He submits that the petitioner duly filed his reply to the show cause notice and the verification report issued by the Uttar Pradesh State Open School Board, Pryagraj dated 18.12.2023 was also produced. He submits that from perusal of the report, it is evident that there is clear observation wherein it has been mentioned that the certificate submitted by Tarsem Singh on verification was found to be genuine. However, the authorities miserably failed to appreciate the same and thus, illegally rejected the same. It has been submitted by learned counsel for the petitioner that the impugned order was passed totally in violation of the statutory provisions of the Act, law settled and the principles of natural justice. He submits that the Sarpanch is elected representative under the Act and he can not be removed from his post under Section 51(3) of the Act without any reasonable cause. He submits that as per the law settled, election of the Sarpanch can only be challenged by way of election petition. Learned counsel for the petitioner has placed reliance upon the judgments passed by this Court in **CWP No.14149 of 2017** titled as “*Rajbir Singh vs. State*

of Haryana and others”; CWP No.13559 of 2017 titled as “*Nirmala Devi vs. State of Haryana and others*” and “*Jagtar Singh vs. State of Haryana and another*” 2004 (1) PLR 368 [DB] in support of his submissions.

Notice of motion.

On asking of the Court, Ms. Upasna Dhawan, AAG, Haryana appears and accepts notice on behalf of the respondents-State. At this stage, Mr. Sandeep Kotla, Advocate appears and accepts the notice on behalf of respondent No.5 by filing his vakalatnama.

Per contra, learned counsel appearing on behalf of respondent No.5 has opposed the submissions made by learned counsel for the petitioner. He has submitted that the cognizance on the complaint filed by respondent No.5 was taken by the Deputy Commissioner and thus, the inquiry was entrusted to the Block Development & Panchayat Officer. He has submitted that a thorough inquiry was conducted by the Block Development & Panchayat Officer and he submitted his report No.1243 dated 30.10.2023. He submits that the educational certificate produced by the petitioner was found to be issued by the Uttar Pradesh State Open School Council, which is neither recognized as equivalent to any examination conducted by the Haryana School Education Board, Bhiwani nor is included in the equivalence list. Thus, the petitioner was served with a show cause notice for initiating the proposed action against him under Section 51 of the Act. He has submitted that the petitioner filed his reply to the same and he was provided the opportunity of personal hearing as well. He has submitted that finding no force in the

reply filed by the petitioner, he was found ineligible as per the provisions of Section 175(v) of the Act. Thus, the petitioner having been found elected by producing the forged matriculation certificate, he was rightly removed from the post of Sarpanch by the Deputy Commissioner vide impugned order dated 26.12.2023. He submits that in the appeal filed by the petitioner, the parties were heard again and the record was re-appreciated. He submits that there being no violation of the statutory provisions, the appeal was found to be without any merit and thus, the same was dismissed by the learned Divisional Commissioner vide impugned order dated 21.02.2024. Thus, both the authorities have taken a concurrent view in removing the petitioner from the post of Sarpanch. He submits that the petition being totally without any merit, deserves to be dismissed.

Heard.

On hearing learned counsel for the parties and perusing the record, it is evident that the petitioner contested the election of Sarpanch and was declared winner on 25.11.2022. On his being elected as Sarpanch, a complaint was filed by respondent No.5 wherein the allegations were made regarding the eligibility of the petitioner for contesting the election as he produced 10th class certificate issued by the Uttar Pradesh State Open School Council, which was not recognized as equivalent to any examination conducted by the Haryana School Education Board. The Deputy Commissioner entrusted the enquiry to the Block Development & Panchayat Officer, who carried out a thorough

enquiry and submitted his report dated 30.10.2023. It was concluded in the report by the Block Development & Panchayat Officer that the verification of the certificate produced by the petitioner was carried out. The letter dated 09.10.2023 was written to the Secretary, Haryana School Education Board, Bhiwani regarding verification of the educational certificate of the petitioner. In response to the same, the Secretary, Haryana School Education Board, Bhiwani vide his letter dated 12.10.2023 replied the same. As per reply received, it was found that neither any examination conducted by the Uttar Pradesh State Open School Council is recognized as equivalent to any examination conducted by the Haryana School Education Board, Bhiwani nor the same is included in the equivalence list. Thus, the certificate submitted by the petitioner was found to be not recognized/as per mandate of law. In view of the same, show cause notice along with the original report was issued to the petitioner. The petitioner filed his reply to the same refuting the charges made against him. The petitioner was given an opportunity of personal hearing as well. The relevant provisions attracted in the issue involved are as follows:

“Section 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) to (u) xxxxx*
- (v) 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.”

(w) xxxxxx

Section 51 (suspension & removal of a Sarpanch):-

(1) and (2) xxxxxx

(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) & (b) xxxxxx

(c) if he incurs any of the disqualifications mentioned in Section 175 after his election as member of the Gram Panchayat.”

[(d), (e), 3(a), 4 to 6] xxxxxxxx

On perusal of the above, it is evident that the Director and the Deputy Commissioner are empowered to proceed against the Sarpanch after carrying out the inquiry, if the Panch or Sarpanch earns a disqualification as per Section 175 of the Act. The charges against the petitioner were found to have been duly established and thus he was removed from the post of Sarpanch. The appeal filed by the petitioner under Section 51(5) of the Act was duly heard by the Appellate Authority. The record was duly appreciated and both the sides were provided ample opportunities of hearing. However, the petitioner failed

to dislodge the investigation conducted against him on the complaint filed by respondent No.5. The petitioner has produced matriculation certificate issued by Uttar Pradesh State Open School Council. However, on verification, it was found that FIR No.78, dated 17.02.2018, under Sections 419, 420, 467, 468, 471 IPC was registered in BDS Police Station Indiranagar, District Lucknow North, Uttar Pradesh against this Board. This fact was mentioned in FIR No.0123, dated 09.05.2023, under Sections 120-B, 420, 465, 467, 468, 471 IPC lodged by the Chief Minister Flying Squad, Hisar in Police Station Sadar Ratia, District Fatehabad whereas the petitioner has passed his matriculation in 2020 i.e. after the FIR had already been registered against this Board in 2018. Thus, when the Board from where the petitioner has produced the certificate of qualification is not recognized, the certificates issued by such a Board cannot be taken as genuine. Hence, the petitioner is rightly found ineligible as per Section 175 (v) of the Act. Hence, the charges against the petitioner for contesting the election on the basis of fake matriculation certificate were duly established and thus, he was rightly removed from the post of Sarpanch by the authorities by virtue of passing the impugned orders.

As far as contention of learned counsel for the petitioner that only the election petition for removal of a Sarpanch is maintainable, is concerned, this Court does not agree with this contention of learned counsel for the petitioner. In “**Gurdev Singh vs. State of Haryana and others**”, **2021(4) Law Herald 2936** dealing with the same question, this Court observed as under:

“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 both the 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.”

Thus it is clear that none of the provisions of the Act overlap other and both operate in their own field independently.

There is no quarrel to the proposition of law held in the authorities cited by learned counsel for the petitioner but the same are distinguishable on the facts of the present case.

Thus in view of the overall facts and circumstances of the case, this Court does not find any infirmity in the impugned orders passed. Hence, the present petition being devoid of any merit is hereby dismissed.

11.03.2024
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(RAJESH BHARDWAJ)
JUDGE

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