

Reserved on 15th of January, 2024
Pronounced on 16th of January, 2024

....Petitioner

....Respondents

Ms. Veena Hooda, Advocate
for the complainant.

“xxx complaint of Sh. Ashok Kumar son of Sh. Attar Singh resident of Village Raiya, Tehsil and District Jhajjar against Smt. Chander newly elected Sarpanch of Gram Panchayat, Raiya was received for inquiry in connection with her educational

qualification. It is written in the complaint; 1. That I, the complainant Ashok Kumar son of Attar Singh, am a resident of Village Raiya, Tehsil and District Jhajjar, 2. That in the Panchayati election held in our village Raiya in year 2022, Smt. Chander w/o Jagdev had filed nomination form for the post of Sarpanch, in which Smt. Chander had written her educational qualification as middle from Haryana School Education Board, Bhiwani in February, 1993 and has attached the mark-sheet of her educational qualification with the form, in which the serial number of mark-sheet is 015294 and roll number issued by Education Board is 071191 and date of birth is written as 01.11.1979, in which the name of Chander is written as Chander Nee Krishna Kumari whereas in the year 1993 Smt. Chander's sister Smt. Krishna has passed middle class examination on roll no.071191 from Education Board, Bhiwani. In order to contest the election for the post of Sarpanch, Smt. Chander, in collusion with her sister Krishna and by taking help of the name of Krishna forged and fabricated the documents with the help of her sons Satender and Bhupender and has contested the elections of Sarpanch by keeping in dark the Election Commission and Administration, 3. That Smt. Chander has also attached her aadhaar card, voter card, PAN card with the nomination form for the post of Sarpanch in which the date of birth of Smt. Chander in aadhaar card is 01.11.1979. 4. That the voter card which Smt. Chander has attached with her nomination letter, that has been issued by Election Commission on 15.10.1994 in which the age of Smt. Chander has shown to be 32 years. If the age of Smt. Chander is calculated from 01.11.1979 then the age of Smt.Chander till year 1994 comes to 14 years 11 months. 5. That Smt. Chander got studied her sons Satender and Bhupender in Bright High School, Raiya, District Jhajjar and as per the record of the school the date of birth of Satender is 03.06.1989 and date of birth of Bhupender is 05.06.1990, from which it appears that as per the date of birth of Smt. Chander is 01.11.1979, Smt. Chander gave birth to her son Satender at the age of 10 years and

the second son was born at the age of 11. Smt. Chander in collusion with her sister Krishna and her sons Satender and Bhupender and some other persons has contested the election for the post of Sarpanch by forging the documents and by keeping the Election Commission and Administration in dark. 6. That Smt. Chander in collusion with her sister Krishna and her sons Satender and Bhupender and some other persons has forged and fabricated the documents. Smt. Chander has written her name on the nomination paper as Chander w/o Sh. Jagdev aged 63 years, which does not tally with any of her document. From this it appears that Smt. Chander with the help of her sister Krishna and sons Satender and Bhupender and some other persons has prepared false documents and has contested the elections of Sarpanch by keeping Election Commission and Administration in dark. You are therefore requested to get conducted complete enquiry of the documents of Smt. Chander Sarpanch w/o Sh. Jagdev, Village Raiya, Tehsil and District Jhajjar and Smt. Chander be terminated from the post of Sarpanch. Appropriate action be initiated against Smt. Chander, Satender, Bhupender, Krishna and some other persons for preparing false and fake documents regarding contesting of election." In connection with the enquiry into the matter complainant Sh. Ashok Kumar son of Attar Singh Village Raiya and Smt. Chander newly elected Sarpanch w/o Sh. Jagdev, Village Raiya were called and their statements were recorded. On 30.11.2022, Smt. Chander w/o Jagdev did not come present for enquiry. At the time of enquiry her son Sh. Satender come present who stated that, "I have come present for enquiry today i.e on 30.11.2022. My mother could not come present due to being unwell. In this connection, I am producing medical certificate. In connection with this complaint I have shown original middle class certificate bearing serial no.015294, aadhaar card, voter card, original ration card. Besides this, I have also shown the originals of my aadhaar card, PAN card and I am submitting photocopies of my aadhaar card, PAN card, my mother's voter card and middle class certificate

which are total 5 pages. The age which has been shown in the form is mistake of the clerk. It is the matter of my age. My father was illiterate. Due to this reason the age has been shown wrongly in the ration card and all the documents are genuine." On 30.11.2022, Sh. Ashok Kumar son of Attar Singh, complainant came present in the enquiry. He stated that, "I have given a complaint against Chander wife of Jagdev to D.C. Jhajjar and that may be considered as my statement. Besides this, I state that the date of birth of her son is shown as 03.06.1989 in aadhaar card. In the ID of the family the name of head of family is Chander in which the date of birth is 1.1.1959 whereas in the mark-sheet of 8th it is 1.11.1979. The voter list at serial no.139 there is name of Krishna wife of Dharamraj, Ward No.9, Nimdiwali, whose mark-sheet has been attached. In the school admission register the date of birth of Satender s/o Sh. Jagdev is written as 3.6.1989 at serial no.78. In this connection I am enclosing herewith page no.1 to 10." On 30.11.2022, letter was written to headmaster BC Middle School, Raiya for verification of the documents given by complainant and letters were written to Secretary, Haryana School Education Board, Bhiwani and headmaster Government Girls Middle School, Dhani Phogat, District Charkhi Dadri for verification of the certificate of educational qualification. On 30.11.2022, at the time of enquiry Smt. Chander newly elected Sarpanch Village Raiya did not come present. Therefore, vide office's letter no.2968 dated 6.12.2022, she was given opportunity to come present again on 12.12.2022. On 12.12.2022, Smt. Chander w/o Jagdev came present for enquiry and made the following statement, "I, Chander wife of Jagdev, am a resident of Village Raiya. Today i.e. on 12.12.2022, I have come present for enquiry. I state that I had given up the studies in 1993. I have passed 8th class after my marriage. My age is about 45-50 years. When I was aged about 18 years, my son Satender was born and after one and a half year second son was born. We are three sisters. The names of two sisters are Maya Kaur and Daya Kaur." On 16.12.2022,

complainant met the enquiry officer in this office and produced copy of the jamabandi relating to Revenue Department in connection with this complaint, which is signed by Halka Patwari on 14.12.2022. On 20.12.2022, complainant again came present in the office and produced a copy of the mark-sheet of 8th class, which as per the statement of complainant Smt. Chander Devi had submitted with her form at the time of nomination. In connection with this complaint Smt. Chander newly elected Sarpanch Raiya was called again for enquiry vide this office's letter no.3297 dated 22.12.2022 as the complainant produced more documents on 16.12.2022 and 20.12.2022 and the documents produced by the complainant were shown to her and she was asked about those. On 23.12.2022, Smt. Chander Devi after perusing the documents produced by the complainant stated that, "I Chander, have come present today i.e. on 23.12.2022. The name of my mother is Bhagwati. We have three sisters namely Daya Kaur and Maya Kaur, Chander Krishan. We had one brother namely Jagbir who had since expired. We do not know Krishna. The mark-sheet given by the complainant is fake and my signatures have been forged on it. We have given the mark-sheet and my signatures have been forged on it." As per your orders the letter no.5762/panchayat dated 27.12.2022 received from your office has also been included. The genuineness of certificate no.56, No.Cert. E015294, Roll No.071191, Chander Nee Krishna Kumari d/o Sh. Pratap Singh attached by Smt. Chander newly elected sarpanch village Raiya with her nomination form submitted at the time of Panchayati Election 2022 was got conducted from Secretary Haryana School Education Board, Bhiwani and Government Girls Senior Secondary School, Dhani Phogat, District Charkhi Dadri. The report received from Secretary Haryana School Education Board is at Annexure-1 and report received from Government Girls Senior Secondary School, Dhani Phogat, District Charkhi Dadri is at Annexure-2. Besides this, the date of birth of Satender and Bhupender sons of Smt. Chander Devi was got conducted from

admission register of Bright Career Senior Secondary School, Jhajjar. The report received from Bright Career Senior Secondary School is at Annexure-3. Conclusion: From the perusal of the statements of complainant Sh. Ashok Kumar and Smt. Chander newly elected Sarpanch village Raiya and documents produced by them at the time of enquiry it has been found that; 1. Smt. Chander has written her age as 63 years at the time of filing of nomination form. The voter ID card no.HR/05/35/225190 issued by the Election Commission on 15.10.1994 attached with the nomination form the age of Chander is written as 32 years but in other documents attached with the form viz. aadhaar card no.776049424730, Permanent Account Number CUOPC88598, her date of birth is written as 01.11.1979. As per the date of birth written in aadhaar card and Permanent Account Number (01.11.1979), the age of Smt. Chander at the time of issuance of voter card on 15.10.1994 comes to about 15 years. But in the identity card the age of Smt. Chander is written as 32 years. Therefore, her date of birth 01.11.1979 does not appear to be correct because the department issues voter card on attaining the age of 18 years. Complainant has produced copies of aadhaar and admission register of BC High School Raiya regarding date of birth of Satender and Bhupender sons of Smt. Chander. Therefore, the date of birth was got verified from BC High School Raiya. Principal BC High School Raiya has verified the date of birth of Sh. Satender as 3.6.1989 and the date of birth of Bhupender as 5.6.1990. As such if the date of birth of Smt. Chander is considered as 01.11.1979 then it does not appear valid/appropriate the birth of sons at the age of about 10-11 years. 3. From the perusal of copy of Will of Sh. Partap Singh village Dhani Phogat, Charkhi Dadri father of Smt. Chander and copy of jamabandi signed by Halka Patwari, Revenue Department on 14.12.2022 at Annexure-4 produced by the complainant, it has been found that Sh. Partap Singh had 4 daughters namely Daya Kaur, Maya Kaur, Chander Devi and Krishna Devi and one son Jagbir Singh and 2 sons of Jagbir

Singh have been shown namely Sandeep and Mandeep. In this connection Smt. Chander newly elected sarpanch village Raiya was given an opportunity to put forth her part. Smt. Chander informed that they are 3 sisters and they do not know Smt. Krishna. Smt. Chander had not produced any such proof on which it could be proved that Smt. Krishna Devi is not her younger sister. As per the report of Halka Patwari, Sh. Partap Singh's 4 daughters (Dayakaur, Mayakaur, Chander and Krishna Devi) and one son Jagbir has shown as legal heir of property. From this it appears that Smt. Krishna Kumari is younger sister of Smt. Chander. 4. From the perusal of the information received from Principal, Government Girls Senior Secondary School, Dhani Phogt, Charkhi Dadri i.e. result of Middle Annual Examination of year 1992-93 and admission register, it has been found that Smt. Krishna Kumari has passed middle class examination from Haryana School Education Board in year 1992-93. 5. After getting verified the genuineness of the certificate serial No.Cert. E015294, Roll No.071191, Chander Nee Krishna Kumari d/o Sh. Pratap Singh attached with complaint regarding educational qualification of Smt. Chander newly elected sarpanch village Raiya from Secretary Haryana School Education Board Bhiwani, it has been found that Smt. Krishna Kumari had given an application to Haryana School Education Board, Bhiwani on 17.11.2022 for change of her name in certificate from Krishna Kumari to Chander. Secretary Haryana School Education Board, Bhiwani re- issued certificate serial No.Cert. E015294, Roll No.071191, Chander Nee Krishna Kumari d/o Sh. Pratap Singh on 17.11.2022. It is pertinent to mention here that the last date for filing nomination for the post of sarpanch was 19.10.2022 and elections were held on 02.11.2022. The certificate relating to educational qualification of Smt. Chander received with the complaint has been re-issued by Haryana School Education Board, Bhiwani on 17.11.2022. It appears that Smt. Chander had attached other certificate regarding educational qualification with the nomination form

during filing of nomination because the certificate regarding educational qualification attached with the complaint received by the undersigned has been re-issued by Haryana School Education Board, Bhiwani on 17.11.2022. Therefore, at the time of scrutiny of nomination form, there appears to be fault/guilt of concerned Returning Officer and Assistant Returning Officer deputed at that time. The copy of nomination form received with the complaint has been attested by concerned Block Development and Panchayat Officer. The applicant has got re-issued the certificate relating to educational qualification on 17.11.2022 from Haryana School Education Board, Bhiwani whereas the process of filing the nomination form had expired on 19.10.2022. From this it is clear that after the last date of filing of nomination form, the certificate relating to educational qualification re-issued by the Board has been attached. The educational qualification certificate has been changed later with the nomination form of Smt. Chander newly elected Sarpanch Village Raiya and therefore, there appears to be fault/guilt of concerned Block Development and Panchayat Officer/concerned staff also. Therefore, the allegations levelled by the complainant appears to be proved. From the above-said facts it proves that the educational qualification certificate attached by Smt. Chander newly elected Sarpanch Village Raiya during the nomination is wrong and has been got made after the completion of the nomination process. Therefore, action under Section 51 of the Haryana Panchayati Raj Act, 1994 is liable to be initiated against her and action is also required to be initiated against concerned persons involved in this matter. Xxxx”

3 The allegation in sum and substance against the petitioner is of having forged educational qualification to exercise right to contest elections for the post of Sarpanch. The certificate forged belongs to the sister of the petitioner.

4. Counsel for the petitioner relies upon law laid down by the Apex Court in '**Satender Kumar Antil vs. Central Bureau of Investigation and another**', (2022) 10 SCC 51 to submit that the petitioner being a lady needs to be treated as a separate category in terms of the provision contained under Section 437 of the Code.

5. The Apex Court in Satender Kumar Antil's case (supra) while interpreting Section 437 of the Code observed as under :

“58. Section 437 of the Code empowers the Magistrate to deal with all the offenses while considering an application for bail with the exception of an offense punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intentment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.”

6. Thus even as per Section 437 the pre-arrest bail of woman does not confer any right to bail though the Courts are required to be sensitive

wherein the applicant is a woman.

7. The allegation against the petitioner is not that she also had an educational qualification and the certificate was handed over inadvertently. Rather the allegation is that the certificate of educational qualification was forged and fabricated to create right to contest in favour of the petitioner as educational qualification of Middle Standard is mandatory to contest the election.

8. I have heard counsel for the parties and have gone through records of the case.

9. Keeping in view the allegations levelled against the petitioner, the role attributed to her and the fact that seriousness of allegation is one of the prime consideration while granting pre-arrest bail as per the law laid down by the Supreme Court in **Gurbaksh Singh Sibbia vs. State of Punjab, 1980 (2) SCC 565** reiterated in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1**, this Court does not find any reason to grant discretionary relief of pre-arrest bail to the petitioner. Resultantly, the present petition is dismissed.

January 16, 2024
Dpr

(Pankaj Jain)
Judge

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