



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20133-2024 (O&M)
Date of decision :21.08.2024

SANJEEV KUMAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vinay Kumar Pandey, Advocate
for the petitioner.

HARSH BUNGER, J. [ORAL]

Petitioner (Sanjeev Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *mandamus* for directing respondent No.3 (Deputy Commissioner, Kurukshetra) to take action on the Enquiry Report dated 01.07.2024 (Annexure P-8) conducted by respondent No.4 against respondent No.5 (Pawan Kumar) for misrepresenting and giving false information in the nomination form, in order to contest the election as Sarpanch, by tendering fake documents/mark sheet of Class Xth (Annexure P-1).

2. Briefly, respondent No.5 (Pawan Kumar) contested the elections of Sarpanch of Gram Panchayat Kharindwa and was declared elected therein.

2.1 It appears that some of the villagers jointly submitted a representation dated 21.11.2022 (Annexure P-2) to the Deputy

Commissioner, Kurukshetra, complaining that respondent No.5 (Pawan Kumar), at the time of submitting his nomination form, had attached a fake certificate of Class Xth. It also appears that one of the villagers namely, Prem Singh, approached this Court by way of filing ***CWP No.2795 of 2024***, seeking a direction therein to enquire into the complaint made against respondent No.5 herein. The said writ petition was disposed of by a co-ordinate Bench of this Court vide order dated 08.02.2024 by directing the Sub Divisional Magistrate to conclude the enquiry already initiated against respondent No.5 within a period of three months.

2.2 It transpires that the Sub Divisional Magistrate, Kurukshetra, submitted an Enquiry Report dated 01.07.2024 (Annexure P-8) wherein, it was observed that the mark-sheet of respondent No.5 had not been issued by the Central Board of Secondary Education (C.B.S.E.).

2.3 Petitioner claims that he had obtained a copy of the nomination form of respondent No.5 under the Right to Information Act, 2005 (in short 'RTI Act'), which reveals that respondent No.5 has mentioned his educational qualification to be 10th pass from the C.B.S.E. and that two criminal cases were pending against him, whereas, according to the petitioner, there were total five criminal cases registered against respondent No.5.

2.4 In the afore-mentioned circumstances, the petitioner has filed the instant writ petition, seeking a writ of *mandamus* for directing respondent No.3-Deputy Commissioner, Kurukshetra to take action on the Enquiry Report (Annexure P-8) against respondent No.5 (Pawan Kumar).

3. It is contended on behalf of the petitioner that despite the Enquiry Report (Annexure P-8), no action has been taken by the Deputy

Commissioner, Kurukshetra against respondent No.5 (Pawan Kumar). It is submitted that respondent No.5 is not worthy to hold the post of Sarpanch and is liable to be removed/suspended. It is further submitted that respondent No.5 had misrepresented and given false information in the nomination form in order to contest the election as Sarpanch, by submitting fake documents of Class Xth, which fact is proved from the Enquiry Report and respondent No.3 has failed to discharge his legal duty to act upon the Enquiry Report. It is further submitted that Section 51(3)(b) of the Haryana Panchayati Raj Act, 1994, makes it obligatory upon the Deputy Commissioner to remove respondent No.5 from his Office as he did not fulfill the eligibility criteria to contest the election for the post of Sarpanch.

4. With the afore-said submissions, learned counsel for the petitioner submitted that a writ of *mandamus* be issued by directing respondent No.3-Deputy Commissioner to take action on the Enquiry Report dated 01.07.2024 (Annexure P-8) against respondent No.5 (Pawan Kumar).

5. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

6. A pointed query was raised to the learned counsel for the petitioner as to which of his legal rights has been infringed so as to maintain the present writ petition seeking a writ of *mandamus*; the only answer forthcoming is that the petitioner had got certain documents (nomination paper etc.) and other information as regards respondent no. 5 (Pawan Kumar) under the Right to Information Act, 2005 and that the petitioner had submitted representations to the authorities for taking action against respondent no. 5-Pawan Kumar. In my considered view, none of the petitioner's legal right has been infringed.

7. In *Dr. Raj Shivendra Bahadur v. The Governing Body of the Nalanda College, 1962(2) Supp SCR 144*, a Larger Bench of Hon'ble Supreme Court of India had held that in order that *mandamus* may issue to compel the authorities to do something it must be shown that the statute imposes a legal duty and the aggrieved party had a legal right under the statute to enforce its performance.

8. As regards the contention that once it is clearly indicated in the enquiry report (Annexure P-8) that 10th Class certificate claimed by respondent No. 5 (Pawan Kumar) has not been issued by C.B.S.E., the Deputy Commissioner was duty bound to act upon the said enquiry report and necessary action in terms of Section 51(3) of the Haryana Panchayati Raj Act, 1994 was required to be taken; it is observed that the enquiry officer's report is only in the nature of a report which is for consideration of the competent authority, who can, if the facts so warrant, even differ from the findings/observations made in the report. There is no binding order made by the Enquiry Officer.

8.1 Even otherwise, a perusal of the Enquiry Report (Annexure P-8) would show that the same is in the nature of an in house enquiry or preliminary enquiry only, whereas in *Suman v. State of Haryana, 2024(3) RCR (Civil) 287*; a Division Bench of this court while dealing with the aspect of '*enquiry*', as envisaged under section 51(3) of the Haryana Panchayati Raj Act, 1994, observed that the word 'enquiry' as mentioned in Section 51(3) requires to be an enquiry of quasi judicial nature. The candidate who has already been elected must be given a fair and proper opportunity to cross examine the witnesses and the documents produced. Merely by conducting an in-house enquiry and relying on such enquiry report where there is no participation of the elected

Panch/Sarpanch, the concerned Officer/Commissioner could not have removed the Sarpanch based on such preliminary enquiry.

9. In view of the aforementioned facts and circumstances, I do not find any merit in this petition, resultantly, the writ petition is dismissed.

10. This order, however, would not be taken as an approval of delay in finalizing action against respondent no. 5, which is left open without expressing any opinion on the merits, being a matter strictly within the domain of the State Government.

11. A copy of this order be supplied to the learned counsel for the State of Haryana, for onward transmission to all concerned for information and necessary action.

12. All pending applications (if any) shall also stand closed.

August 21, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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