

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

**CWP No.25976 of 2023
Reserved on 12.03.2024
Pronounced on: 05.04.2024**

Nisva @ Nisha Khatoon, Sarpanch

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sanjeev Sharma, Senior Advocate with
Ms. Sharmila Sharma, Advocate;
Mr. Vikram Sharda, Advocate;
Mr. Mazlish Khan, Advocate and
Mr. Mohd. Tarif, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Vikram Singh, Advocate with
Mr. Surjit, Advocate
for respondent No.8.

RAJESH BHARDWAJ J.

1. Petitioner has approached this Court impugning order dated 03.07.2023 (Annexure P-7) passed by respondent No.3 whereby the petitioner has been removed from the post of Sarpanch and order dated 08.11.2023 (Annexure P-10) passed by respondent No.2 whereby the statutory appeal filed by the petitioner has been dismissed and thus the order passed by respondent No.3 has been upheld. Further prayer has been

made for staying the operation of impugned order dated 08.11.2023 (Annexure P-10) and order dated 03.07.2023 (Annexure P-7) during the pendency of the present petition.

2. Succinctly the facts as culled out from the pleadings of the present case are that the petitioner was elected as Sarpanch of Gram Panchayat Chila, Block Tauru, Distrit Nuh, Haryana on 02.11.2022. Respondent No.8 also contested the election however the petitioner remained successful by winning the election. Respondent No.8 thereafter filed a complaint wherein primarily three allegations were made against the petitioner, which are as follows:

1. The petitioner did not complete the minimum age of 21 years as on the date of nomination and thus, she has filed the nomination papers on the basis of fake certificates to manipulate her age.
2. The petitioner in support of her minimum qualification required of 8th class has filed a fake educational certificate and
3. The petitioner had more than 5 votes in the village.

3. Thus, it was alleged that the petitioner is disqualified as per the statutory provisions of Haryana Gram Panchayat Act, 1994 and hence she deserves to be removed from the post of Sarpanch.

4. On the complaint filed, an inquiry was entrusted to the Sub Divisional Officer (Civil), Tawru. He conducted the inquiry in the allegations made and submitted his report dated 20.02.2023 to the Deputy Commissioner, Nuh. In pursuance to the inquiry conducted, a show cause notice dated 09.03.2023 was issued to the petitioner along with the inquiry report. The learned Deputy Commissioner, Nuh heard both the sides and

finding the allegations having been substantiated during the inquiry, removed the petitioner under Section 51(3)(b) of the Haryana Panchayati State Act, 1994 (hereinafter referred to as 'the Act') by passing the impugned order dated 03.07.2023. Being aggrieved, the petitioner assailed the same by way of filing the appeal under Section 51 (5) of the Panchayati Raj Act before the learned Commissioner, Faridabad. However on hearing both the sides and re-appreciating the evidence on record, the learned Commissioner found no merit in the appeal filed by the petitioner and thus dismissed the same vide order dated 08.11.2023. Hence the petitioner is before this Court by way of filing the present writ petition.

5. Learned senior counsel along with Ms. Sharmia Sharma, Advocate appearing for the petitioner has vehemently contended that the petitioner has fallen victim to the conspiracy hatched by respondent No.8 in order to settle the score with the petitioner as she (respondent No.8) lost the election of Sarpanch where the petitioner remained successful. He has submitted that the complaint was filed on the basis of false and frivolous allegations which were inquired in violation of the settled principles of law. He submits that the inquiry report dated 20.02.2023 is based on no evidence but the same has been made the basis for removal of the petitioner from her duly elected post and thus, the impugned orders passed are totally unsustainable in the eyes of law. He submits that the petitioner had duly produced her birth certificate issued by the Government of Haryana wherein her date of birth has been shown to be 04.12.1998. It has been submitted that on summoning the school record, it was found that the

petitioner was student of class 1st on 14.07.2003 whereas later on her name was struck off from class 4th on 30.08.2007 due to her continuous absence from the school. It has been submitted that conclusion arrived at by the respondent authorities that date of birth of the petitioner was 07.04.2002 is beyond any comprehension as the petitioner would be only 1 year old at that time and thus, child of one year of age could never be the student of class 1 in 2003, if the age of petitioner is taken to be 07.04.2002.

6. Learned senior counsel has submitted that in support of the date of birth, the petitioner has produced the birth certificate issued by the Haryana Government and Health Department wherein her age has been recorded as 04.12.1998. He submits that father's name has been recorded as Israil whereas mother's name is recorded as Ruksana. He submits that though the name of father is Issar however inadvertently the same has been recorded as Israil. He has submitted that in response to the show cause notice, the petitioner filed her reply wherein the allegations levelled in the complaint were duly explained. He has submitted that the petitioner made a request to provide her the complete record for filing the reply, however the complete record was not supplied to her and thus she was constrained to file reply dated 22.03.2023 on the basis of incomplete record provided to her. Learned senior counsel has submitted that though in the inquiry report dated 20.02.2023 on the basis of which the petitioner was removed, the petitioner was held to be minor at the time of filing her nomination. However in the affidavit filed by the Block Education Officer

(BEO), Rohtak dated 06.12.2023 in response to this petition, it has been submitted by the BEO in para No.3 of the affidavit which is as follows:

“3. That as per the order dated 17.04.2023 issued by respondent No.3 an inquiry regarding the record of Saraswati Vandana High School, Roop Nagar, Rohtak (Privately Recognized School) relating to the petitioner was conducted by Block Resource Co-ordinator, Rohtak. When the whole record related to admission and passing of 8th class of the petitioner was sought, the school authorities verbally told that due to the short circuit, the record room of school was caught fire and most of the record had burned. On the basis of the record, the below mentioned facts came in light which are as below:

“That the petitioner was admitted in Saraswati Vandana High School, Roop Nagar, Rohtak (Privately Recognized School) in 8th on 16.04.2012, on the basis of affidavit dated 15.04.2012 (Annexure P-11) furnished by the father of petitioner wherein he mentioned the date of birth of his daughter/petitioner is 01.01.1998 and she never been a student of any recognized school. Further, it is submitted that petitioner passed 8th class and she was issued 8th class passing certificate/school leaving certificate by Headmaster, Saraswati Vandana High School, Roop Nagar, Rohtak (Privately Recognized School) on 11.10.2022 (Annexure P-13) and same was countersigned by the then Block Education Officer, Rohtak.”

7. It has been submitted by learned Senior counsel that in the 10th certificate issued, the date of birth of petitioner is recorded as 07.04.2002 whereas as evident from the date of birth certificate issued by the State, as has been already submitted, her date of birth is recorded as 04.12.1998. In the 8th certificate, her age is recorded as 01.01.1998.

However, the petitioner belongs to a rustic family and as her admission was made by her Dadi, who was never aware of the intricacies of the law, she inadvertently got it recorded as 31.07.1997. However, father of the petitioner filed his affidavit explaining the same and thus, regarding the allegation of manipulating the age by the petitioner was duly explained but the same has been illegally ignored by the Inquiry Officer. He has submitted that the inquiry officer has taken the date of birth of the petitioner as 07.04.2002 by ignoring the Government record wherein the date of birth of petitioner has been recorded as 04.12.1998, which is totally unsustainable in the eyes of law. He however submits that her father got her admission in Rohtak with her correct date of birth as 01.01.1998 by filing the affidavit dated 15.04.2012. It has been submitted that her father also submitted an affidavit dated 06.03.2023 wherein he submitted that the petitioner is his 3rd child and her date of birth is 01.01.1998. It is submitted by the learned Senior counsel that the statements of employees working in the office of Registrar, Death & Birth-cum-Deputy Civil Surgeon, Nuh at Mandi Khera were recorded wherein they specifically stated that during the period 02.01.1998 to 28.12.1998, the record of village Patuka was presented and as per the record, at Sr. No.109 dated 08.12.1998, date of birth of Nisha Khatoon was mentioned as 04.12.1998. It has also been stated that between the period 02.01.2002 to 07.12.2002, there was no record available of village Patuka in the name of her father Issar and mother Ruksana. He submits that it is thus evident that the petitioner was born on 04.12.1998 and as there was no entry between the periods 02.01.2002 to 07.12.2002 in the

name of her parents, thus there was no doubt left regarding the authenticity of the date of birth of petitioner. He has submitted that the report regarding the qualification of the petitioner was given by Block Education Officer, Rohtak to District Elementary Education Officer, Rohtak vide letter dated 01.06.2023. Herein the school specifically mentioned that the petitioner was the student of 8th class and her date of birth was recorded as 01.01.1998. He submits that father of the petitioner got the School leaving certificate (SLC) which was counter signed by the Block Education Officer, Rohtak on 14.10.2022. He has thus submitted that the documents submitted by the petitioner were duly attested by the State Officer and hence, authenticity of the same cannot be doubted. However the Inquiry Officer without taking into consideration the same, had ignored the admissible record and has given the findings on the basis of conjectures and surmises. He has submitted that regarding the allegation pertaining to 05 votes of the petitioner in the village, the same is totally baseless. He has invited the attention of this Court to the receipt of application appended as Annexure P-17 wherein the petitioner duly filed her application dated 23.08.2022 for deleting the excess votes made in her name. Thus, it is evident from the document that the petitioner had got deleted her excess votes made prior to filing her nomination papers. He submits that the allegations levelled against the petitioner having 5 votes in the village is totally unsustainable in the eyes of law. He submits that the inquiry report dated 20.02.2023 is totally based on the wrong facts and no allegations levelled against the petitioner is proved and hence the impugned orders are unsustainable in the eyes of law.

8. It has been vehemently submitted by learned counsel for the petitioner that after the petitioner having been elected as Sarpanch of the village, respondent No.8 has also filed the election petition before the Tribunal and the same is pending adjudication. He submits that despite the election petition having been filed, the parallel proceedings have been initiated against the petitioner for her removal, which is in violation of Article 243(O) of Constitution of India. To buttress his arguments, learned senior counsel for the petitioner has relied upon “*Rimpi Devi vs. State of Haryana*”, 2012 SCC Online P&H 1320; “*State of H.P. and others vs. Surinder Singh Banolta*”, (2006) 12 SCC 484 and “*Anju vs. Additional Civil Judge (Sr. Division), Pehowa and others*”, 1998 SCC Online P&H 413 and submits that once the remedy of election petition has already been initiated against the petitioner, the proceedings under Section 51 of the Act are totally unsustainable in the eyes of law and as such, the impugned orders are liable to be set aside.

9. It has been submitted by learned senior counsel for the petitioner that regarding her educational qualification, the petitioner duly submitted before the Inquiry Officer that she was admitted in Government Girls Primary School Patuka for her initial education by her grandmother, who was an illiterate lady and hence inadvertently got recorded her date of birth as 31.07.1997. However later on her father got her admitted in Rohtak with her correct date of birth as 01.01.1998 vide affidavit dated 15.04.2012. It has been submitted by learned senior counsel that Saraswati Vandana High School vide its certificate Ref. No.SVHC-Jan-2023-XIV had certified that the petitioner studied in 8th class in the year 2012-13 in

their school and her admission was registered at Sr. No.902. This school vide its letter dated 15.02.2023 had submitted to the Sub Divisional Officer, Tawru and clarified that record of the petitioner of 8th class has been submitted to the official. He has submitted that the school had clarified that there was a clerical mistake in the gender and religion of the petitioner, which was subsequently rectified and thus the school had issued School Leaving Certificate (SLC) to the petitioner dated 11.10.2022. This SLC was counter signed by the Block Education Officer, Rohtak. He submits that copy of 8th class admission application dated 16.04.2012 supported by the affidavit of her father and admission form was countersigned by Block Education Officer. He has thus submitted that 5 votes as alleged in the name of petitioner were deleted in August, 2022 itself and the same was duly proved from the record produced. A letter was written by the BLO i.e. Booth Level Officer to the Deputy Commissioner wherein it is mentioned that copy of voter list of ward No.3 showing the vote of petitioner at Sr. No.3 and 171 were deleted. Further a copy of receipt of application dated 23.04.2022 to delete 4 votes also substantiates the same. He has submitted that as at the time of filing the nomination papers, the petitioner had rightly mentioned her date of birth as 01.01.1998 and educational qualification as 8th class from Saraswati vandana High School, Rohtak and thus there being no disqualification as per the statute, the petitioner was illegally removed from the post of Sarpanch, which deserves to be set aside.

10. *Per contra*, learned State counsel has vehemently opposed the submissions made by learned senior counsel for the petitioner. He has

submitted that on receiving the complaint against the petitioner by the Deputy Commissioner, an inquiry was entrusted to the Sub Divisional Officer (C), Tawru. The Inquiry Officer on conducting the inquiry had found that initially the admission of the petitioner was done in 1st class in Government Girls Primary School, Patuka by her grandmother and her name was mentioned as Nisha Khatoon daughter of Issar where her date of birth was mentioned as 31.07.1997. She got her admission on 14.07.2003 in 1st class and in the record, it was found mentioned at Sr. No.485. In the School Leaving Certificate of 4th class of Government Girls School, Patuka, the date of admission was mentioned as 24.07.2010 at Sr. No.863 and name of student was mentioned as Nisva daughter of Issar. Here her date of birth was found to be mentioned as 07.04.2002. The School Leaving Certificate for this was issued on 08.07.2011. Saraswati Vandana High School, Rohtak did not provide some of the relevant record of student Nisva. The Principal, Saraswati Vandana High School, Rohtak had written a letter dated 08.02.2022 to the Block Education Officer, Rohtak wherein it was mentioned that father of the petitioner had submitted an affidavit before the School wherein he stated that date of birth of petitioner is 01.01.1998. Thus, this school had recorded her date of birth on the basis of the affidavit given by her father but this school has not recorded her date of birth on the basis of some authenticate evidence. He submits that during the inquiry, it was found that in the school record of Saraswati Vandana High School, Rohtak, there was an overwriting at the place of gender and religion. He has submitted that during the inquiry, no record from class 5th to 7th of the petitioner was presented and thus, it

was suspicious that the petitioner had not obtained her education from 5th class to 7th class from anywhere. He has vehemently submitted that from the inquiry conducted, it was found that the petitioner obtained her primary education from Government Girls Primary School in village Patuka and thereafter she obtained admission in Saraswati Vandana High School, Rohtak by mentioning the wrong date of birth and filing false affidavit.

11. It has been further contended that in the ration card wherein the details of family members of the petitioner is given, the petitioner's name was found recorded as Nisva at Sr. No.5 and there was an over writing in the same. Thus, there was found a dual identity of the petitioner as Nisva and Nisha Khatoon from which the serious suspicion arises regarding the authenticity of the documents. He has submitted that date of birth shown by the petitioner in the nomination was found to be incorrect. He has drawn the attention of this Court to the inquiry report submitted by the Inquiry Officer dated 20.02.2023, wherein it was found during the inquiry that as per the record of G. C. Model High School, Tawru, she studied from 1st to 3rd class and thereafter she studied in Government Girls High School, Patuka in class 5th and her name was struck off while studying there. Thus, the record of Government School could not have been ignored. He has submitted that the Inquiry Officer has found that if the identity of the petitioner is taken as Nisha Khatoon then from the record available, her date of birth was mentioned as 31.01.1997 and as the student remained absent from class 4th continuously, her name was struck off on 30.08.2007. Thereafter, student Nisha Khatoon had obtained

regular education from Jamiya Nurul Islam Miswan, Jamiya Nagar, Mahipag Mau, Lucknow from 11.07.2011 to 30.03.2015. Not only this, she resided in hostel of Madarsa and obtained religious education which was not equivalent to any board for the class 8th or class 10th. He thus submits that as per the record, during the same period when the petitioner was studying in Haryana, she was a regular student studying in Madarsa as well which is not possible from the record available. He submits that the petitioner at every stage was mentioning her date of birth differently to her convenience. He has submitted that as per record of the Registrar, Death and Birth, her date of birth is mentioned as 04.12.1998 wherein her name has been found to be recorded as Nisha Khatoon. Thereafter, her date of birth was found to be as 07.04.2002 and thirdly as 01.01.1998. He thus submits that there are three different dates of birth found from the record of the case.

12. It has been submitted by learned State counsel that if her date of birth is taken to be of 1998, then her age in 8th class was also do not match. He submits that there were 5 votes found to have been made by the petitioner in her name and the same were deleted after filing of the nomination papers when the petitioner realized the same to be a ground for her disqualification. He thus submits that the allegations made in the complaint were duly established during the inquiry conducted and hence, the learned Deputy Commissioner had rightly exercised his jurisdiction by removing the petitioner from the post of Sarpanch. He submits that in the appeal filed, the parties were duly heard and record was re-appreciated and finding no merit in the appeal, the same was rightly dismissed. He

further submits that as per the law settled even if the election petition is pending, the same does not bar the State from invoking its power under Section 51 of the Act from removing the petitioner from the post. He thus relied upon the judgments passed by this Court in “*Amit Chillar vs. State of Haryana and another*”, 2008(4) SCT 329 and “*Ambika Kaul vs. Central Board of Secondary Education and others*”, 2015(3) SCT 350. He thus submits that the present petition being devoid of any merit deserves to be dismissed.

13. Learned counsel for respondent No.8 has vehemently opposed the submissions made by learned counsel for the petitioner. He has supported the submissions made by learned State counsel. He submits that the allegations made against the petitioner were duly inquired into by entrusting the inquiry to the Sub Divisional Officer (C), Tawru wherein she has been found to be less than 21 years of age and as per the record of the inquiry conducted. He submits that the petitioner kept changing her date of birth so as to become eligible for contesting the election and thus, the whole record produced was found to have been manipulated during the inquiry. He submits that the election petition is already pending adjudication. However as per the law settled in **CWP-12426-2021** titled as “*Gurdev Singh vs. State of Haryana and others*”, there is no bar for the official respondents to initiate action against the petitioner under Section 51 of the Act.

14. Heard.

15. On hearing learned counsel for the parties and having gone through the record with the able assistance of learned counsel for the

parties, it is evident that the petitioner was elected as Sarpanch of village Tauru on 02.11.2022. Respondent No.8 thereafter filed a complaint to the Deputy Commissioner. In order to probe the allegations as already mentioned above, the inquiry was entrusted to the SDO (Civil). The SDO (Civil) conducted the detailed inquiry in the same. However on issuance of notice, reply dated 22.03.2023 was filed. Thereafter the inquiry officer summoned the complainant and the petitioner. Though the petitioner did not appear, however on her behalf, her husband appeared. The inquiry officer summoned the relevant record for examining the allegations made in the complaint. The nomination form dated 19.10.2022 of the petitioner was summoned and the record from the school was also summoned. From the information received through RTI, date of birth of the petitioner was found to be mentioned as 07.04.2002. Her father submitted the affidavit deposing therein that his daughter did not obtain education from anywhere and her date of birth was mentioned as 01.01.1998. She was shown to have passed 8th class on 31.03.2013. The record of Saraswati Vandana High School, Rohtak was inspected wherein earlier it was found to be in the name of a male and later it was found to have been changed to female. The petitioner was found to have obtained her education on regular basis from year 2011 onwards from Jamiya Nurul Islam Niswan/Molana Azad Girls School, Mehpatmau, Lucknow. The school leaving certificate has been obtained from Primary School of Village twice i.e. on 16.12.2017 and 08.07.2011. The letter dated 19.01.2023 issued by the Nurul Islam Niswan informed that Nisha Khatoon, daughter of Issar Khan, whose mother's name was Ruksana Bhano had studied on regular basis in village

Patuka from 11.07.2011 to 30.03.2015 and she got Alima Education from Jamiya Nurul Islam Niswan where she resided in Hostel of Madarsa and her admission was mentioned in form No.255. The Headmaster of Government Primary School submitted in her statement that as per the record of the School admission and relieving register, the admission dated 24.07.2010 was recorded at Sr. No.863 and as per the particulars mentioned of student Nisva, the date of birth was 07.04.2002. Thereafter she was studying in class 5th and on the request of parents, the school leaving certificate dated 08.07.2011 was issued and her name was struck off. Hereinafter again the School Leaving Certificate was issued on 16.12.2017. She further deposed that student Nisva had obtained admission in their school in class 4th after obtaining School Leaving Certificate from G.C. Model High School, Tawru. As per record of the Civil Hospital, Mandi Khera, name of the girl was mentioned as Nisha Khatoon and her father's name as Israil whereas mother's name was mentioned as Ruksana. The Block Education Officer, Rohtak sent education record of student Nisva, daughter of Issar pertaining to Saraswati Vandana High School, Rohtak. Her date of birth was found to be mentioned as 01.01.1998 and her admission in class 8th was mentioned as 16.04.2012. The Head master of the School had informed that as per the admission register, the entry regarding sex and religion was corrected as it was a clerical mistake. She further deposed that as the record was old, hence, the record of the attendance register was not available in the school. The verification regarding the allegation of more than 5 votes was also done. On verifying the record and analyzing the statement made by

the concerned officials, it was found that the petitioner mentioned her name in the nomination paper as Nisva wife of Mohammad Altmaz. In the certificate produced in support of her qualification having passed 8th class, her date of birth was found to have been mentioned as 01.01.1998. As per the record received from the Government Primary School, Patuka, Nisva took admission in G.C. Model High School on 19.04.2007 and after passing class 3rd, transfer certificate was issued on 16.04.2010 wherein her date of birth was mentioned as 07.04.2002. On the basis of the same, she was admitted by her guardian on 24.07.2010 in Government Girls Primary School, Patuka. She was studying in this school in class 5th and on the request of her parents, School Leaving Certificate was issued on 08.07.2011 where her date of birth was mentioned as 07.04.2002. It was found by the inquiry officer that no document pertaining to her education from class 5th to class 7th was produced. Thereafter on the basis of the affidavit of her father, her admission was made in Saraswati Vandana High School on 16.04.2012 and this school had issued School Leaving Certificate showing her having passed 8th class and her date of birth was mentioned as 01.01.1998. However, no record pertaining to the examination certificate and attendance register of student Nisva was produced. From the record produced, 02 different identities of the petitioner were found as Nisva and Nisha Khatoon. At one and the same time, the petitioner was found to have been studying at two different places i.e. in Madarsa w.e.f. 2011 to 2015 and in Saraswati Vandana High School in 2012-2013. Thus, the petitioner failed to prove her age and qualification as mentioned in the nomination papers. The multiple votes

were also found to have been made by the petitioner which were deleted after filing of the nomination papers.

16. The relevant provisions i.e. Section 51(3) & 51(3)(b), 173 and 175 of the Haryana Panchayati Raj Act attracted to the issue involved in the present case are as follows:

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) xxxx

(b) If he was disqualified to be a member of the Gram Panchayat at the time of his election.

(c) to (e) and (4) to (6) xxxxx

Section 173 Persons qualified to vote and be elected:

(1) *Every person whose name is in the list of voters shall, unless disqualified under this Act or any other law for the time being in force, be qualified to vote at the election of a member for the electoral division to which such list pertains.*

(2) *Every person who has attained the age of twenty-one years and whose name is in the list of voters shall, unless disqualified under this Act or under any other law for the time being in force, be qualified to be elected from any electoral division.*

(3) *No person whose name is not entered in the list of voters for the villages, shall be qualified to be elected from any electoral division thereof.*

(4) *Subject to any disqualification of a person the list of voters shall be conclusive proof for the purpose of determining under this section whether any person is or is not qualified to vote, or to be elected at any election, as the case may be.*

173(a) xxxxx

“Section 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-

(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

17. Thus, it is clear that as per Section 51(3)(b) of the Act, the Director or the Deputy Commissioner, after enquiry, as he may deem fit and after providing opportunity of being heard to a Sarpanch or Panch may ask him to show cause against the action proposed to be taken against him and by order can remove him from his office in case he was disqualified to be a member of Gram Panchayat at the time of his election. As per Section 173, every person who has attained the age of 21 years and whose name exists in the voter list, unless disqualified under the Act or any other law shall be qualified to be elected from any electoral division. As per section 175, for the election of Sarpanch or a Panch of Gram Panchayat or a member of Panchayat Samiti, the person should be matriculate pass or equivalent examination from any recognized institution or Board. In the case of woman candidate, the minimum qualification has been prescribed as middle pass. In

the present case, four dates of birth have been given by parents of the petitioner as mentioned in her educational record, which are as follows:

- 1) 31.07.1997;
- 2) 01.01.1998,
- 3) 04.12.1998 and
- 4) 07.04.2002

18. On receipt of the complaint, enquiry officer was appointed and a thorough enquiry was conducted by Sub Divisional Officer (Civil) in which it was found that the petitioner was less than 21 years of age at the time of her election. She was also having multiple votes in the village, which fact was also considered by the official respondents. As such, the petitioner was held to be disqualified for the election of Sarpanch.

19. Learned Senior counsel for the petitioner has assailed the maintainability of the proceedings conducted by the official respondents contending that the election petition against the petitioner is already pending and hence the parallel proceedings under Section 51 of the Act could not be initiated against the petitioner.

20. As far as contention of learned Senior counsel for the petitioner that during the pendency of the election petition, no action under Section 51 of the Act could have been taken by the official respondents is concerned, this Court does not agree with this contention of learned Senior 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 senior 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.”

21. Thus it is clear that none of the provisions of the Act overlap other and both operate in their own field independently. Thus, there is no bar for the official respondents to take action against the petitioner under Section 51 of the Act. Hence from the above discussion, it is clear that the petitioner has got prepared multiple votes in the village and the surplus votes were got cancelled by her only after filing of her nomination papers. There are four different dates of birth given by parents of petitioner as mentioned in the educational record of the petitioner.

22. All these facts were considered by the learned Deputy Commissioner and discussed by him in the order dated 03.07.2023 vide which the petitioner was removed from the post of Sarpanch and the petitioner could not give any satisfactory explanation in this regard. So the action taken by the learned Deputy Commissioner i.e. respondent No.3 against the petitioner cannot be said to be unjustified or illegal in the facts and circumstances of the present case. Rather by her conduct, the petitioner has rendered herself disqualified for the post of Sarpanch.

23. The initiation of the proceedings under Section 51 of the Act is also found to be not suffering from any illegality in view of the law settled by this Court in *Gurdev Singh's case (supra)*.

24. The authorities relied upon by the learned State counsel i.e. *Amit Chillar's case (supra)* and *Ambika Kaul's case (supra)* are fully applicable to the facts of the case in hand. In *Amit Chillar's case (supra)*, it has been held that a candidate cannot carry two date of birth certificates, one as matriculation certificate and another from the Registrar, Birth & Death. Once a candidate chooses to rely upon the matriculation certificate, he cannot be allowed to switch over to another certificate to take benefit of any favourable to him as per the situation. Further if he was not eligible as per matriculation certificate attached with the application form, he cannot be considered eligible on the basis of other certificate. Similarly in *Ambika Kaul's case (supra)*, it has been held that entry of date of birth is a relevant fact and if it is made by a public servant in discharge of his official duties in case of a Government school and in performance of a

duty enjoined by law in case of a private school, thus, entries of date of birth made in the school records are relevant.

25. There is no quarrel with 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.

26. Thus, this Court does not find any infirmity or illegality in the action taken by the official respondents in removing the petitioner from the post of Sarpanch.

27. In view of the above position, no ground to interfere with the impugned orders is made out, thus, the present petition is dismissed.

(RAJESH BHARDWAJ)
JUDGE

05.04.2024

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