

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-31458-2024 (O/M)
Date of decision : 22.11.2024

Warsina

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Madan Pal, Advocate
for the petitioner.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Warsina) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for quashing the order 21.08.2024 (Annexure P-10), passed by learned Deputy Commissioner, Nuh, and also order dated 04.11.2024 (Annexure P-11), passed by learned Commissioner, Faridabad Division, Faridabad (in short 'Divisional Commissioner').

1.1 A further prayer has been made for issuance of a writ of mandamus for directing official respondents not to remove the petitioner from the post of Sarpanch of Gram Panchayat Nawabgarh, Block and Tehsil Indri, District Nuh.

2. Briefly, the elections to the post of Sarpanch and Member Panchayats for village Nawabgarh were held in the month of

November, 2022, wherein the petitioner contested the elections for the post of Sarpanch and was declared elected. It transpires that at the time of elections, petitioner had submitted Class VIIIth examination certificate, issued by Saraswati Shiksha Sansthan (Junior High School), Roshanpur, Gautam Buddha Nagar.

2.1 It appears that a complaint dated 10.11.2022 (Annexure P-1A) was filed against the petitioner, inter alia, alleging that the petitioner contested the elections for the post of Sarpanch on the basis of a forged certificate as regards her educational qualification. It was further alleged that the petitioner/her family members were in illegal occupation of panchayat land, wherein they had built a house and are staying therein. The Deputy Commissioner, Nuh, vide an order dated 15.09.2023 (Annexure P-4) passed under Section 51 (3) (b) and (c) of Haryana Panchayati Raj Act, 1994 (in short '1994 Act'), removed petitioner from the post of Sarpanch.

2.2 The aforesaid order dated 15.09.2023 (Annexure P-4) was challenged by the petitioner by filing an appeal before learned Divisional Commissioner; who vide order dated 18.10.2023 (Annexure P-5), disposed the appeal by holding as under :-

“ In view of the above situation, I deem it justified and proper to direct that the matter needs to be properly enquired into by some senior level officer of the district and accordingly the Deputy Commissioner, Nuh is directed to appoint the Additional Deputy Commissioner, Nuh to inquire into all the issues/aspects pertaining to the educational certificate in question including its authenticity, and also to look into the roles of individuals

involved in any unlawful activity or submission of false reports concerning the certificate. The enquiry officer should examine the school record of the disputed certificate and should also record the statement of the concerned District Basic School Education Officer. The Additional Deputy Commissioner, Nuh shall submit the detailed and conclusive inquiry report to the Deputy Commissioner, Nuh who shall take a decision in the matter by passing a detailed speaking order preferably within 2 months time till then the status quo shall be maintained. The appeal is disposed of accordingly.”

2.3 It transpires that the learned Deputy Commissioner, Nuh, vide order dated 03.05.2024 (Annexure P-7) reinstated the petitioner, during the pendency of inquiry. It further transpires that in order to look into the allegations levelled against the petitioner; a committee was constituted, who submitted its report. Upon consideration of the report, submitted by the committee through Additional Deputy Commissioner, Nuh and also considering the other evidence as regards the unauthorized occupation of panchayat land by petitioner's husband; learned Deputy Commissioner, Nuh, vide order dated 21.08.2024 (Annexure P-10), removed petitioner from the post of Sarpanch under Section 51 (3) (b) and (c) of 1994 Act. A further appeal filed by the petitioner against her removal order dated 21.08.2024 (Annexure P-10) was also dismissed by learned Divisional Commissioner, vide order dated 04.11.2024 (Annexure P-11). Accordingly, instant civil writ petition has been filed before this Court.

3. Heard.

4. In the instant case, the petitioner has been removed from the post of Sarpanch by learned Deputy Commissioner, Nuh and the said order has been further upheld by learned Divisional Commissioner, vide order dated 04.11.2024 (Annexure P-11). The findings returned by Authority below can be summed up as under :-

- (i) *the school has tried to mislead the investigating committee;*
- (ii) *the school code of Saraswati Shiksha Sansthan is 9100306202 which is recognized only till Class Vth whereas the transfer certificate for passing Class VIIIth has been issued to petitioner by the said school itself;*
- (iii) *as per affidavit given by petitioner's father, it is declared that he had taught the petitioner at home till Class Vth;*
- (iv) *no name/register of stamp vendor is mentioned and neither the registration number of Notary Public from whom it has been verified is mentioned on the seal;*
- (v) *the school promoted the petitioner from Class VIIth to VIIIth on 20.05.2012, which was a Sunday and on 30.06.2013, when transfer certificate for passing Class VIIIth issued, was also a Sunday.*

4.1 On the basis of aforesaid findings, it has been concluded that the petitioner's Class VIIIth pass certificate was prepared by petitioner's father and Manager of Saraswati Shiksha Sansthan by committing fraud.

5. Learned counsel for petitioner has failed to put-forth any plausible argument nor he has referred to any material to show that the

findings as well as conclusion arrived at by authorities below are incorrect.

6. As regards allegations of unauthorized possession over panchayat's land by petitioner/her family members is concerned, learned Deputy Commissioner, Nuh, vide order dated 21.08.2024 (Annexure P-10), has referred to eviction orders, passed by Sub Divisional Officer (Civil) and Assistant Collector 1st Grade, Nuh, in respect of a house built by petitioner's husband on Gram Panchayat's land. Further, as per demarcation report dated 08.05.2023, the house of petitioner's husband has been shown to have been illegally built on the panchayat land, comprised in Killa No. 202/22/1, wherein both petitioner and her husband are living together.

6.1 Recently, in ***Janabai vs Additional Commissioner, 2018(18) SCC 196***, Hon'ble Supreme Court while considering an issue “*whether the forums below as well as the High Court is justified in disqualifying the appellant for continuing as a member of the Gram Panchayat Kalamba (Mahali) on the ground that there has been encroachment upon the government land since 1981 by her father-in-law and husband and she is using the said land*”, held as under:-

“29. We may note here with profit that the word ‘person’ as used in Section [14](#) (1) (j-3) is not to be so narrowly construed as a consequence of which the basic issue of “encroachment” in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorized occupation has to be viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in

mind that it is the Panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the Panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision...”

6.2 Keeping in view the aforesaid authoritative pronouncement in ***Janabai’s case (supra)***; since the petitioner’s husband has been found to have illegally built a house on panchayat land, wherein petitioner is also residing; therefore the petitioner has attracted disqualification as provided under section 175(1)(n) of the 1994 Act, which reads as under:-

175. Disqualifications. - (1) 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 (m) xxx xxx xxx

(n) is or has been during the period of one year preceding the date of election, in unauthorised possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parishad..”

7. Considering the totality of circumstances, I am of the considered view that the petitioner has been rightly removed from the post of Sarpanch of village Nawabgarh and there is no scope for any interference by this court in the impugned orders.

8. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

22.11.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No