

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-31682-2024 (O/M)

Reserved on : 16.12.2024

Date of decision : 12.03.2025

Kuldeep Kumar

..... Petitioner

Versus

The Commissioner, Karnal Division, Karnal and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Jindal, Mr. Pardeep Sharma,
Mr. Pankaj Gautam, Mr. Abhishek Kumar Shukla, Advocates
for the petitioner.

Mr. Rajneesh Chadwal, AAG Haryana.

Mr. Mohit, Advocate
for respondent No. 4.

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HARSH BUNGER, J.

1. Petitioner (Kuldeep Kumar) has filed the instant civil writ petition under Article 226 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 26.07.2024 (Annexure P-4), passed by learned Deputy Commissioner, Panipat (in short 'Deputy Commissioner'), whereby petitioner was suspended from the post of Sarpanch of village Kalkha, District Karnal.

1.1 A further prayer has been made for setting aside the order dated 07.11.2024 (Annexure P-8), passed by learned Commissioner, Karnal Division, Karnal (in short 'Divisional Commissioner'), whereby an appeal filed by the petitioner against the order dated 26.07.2024 (Annexure P-4), was dismissed.

2. Briefly, the petitioner was elected as a Sarpanch of village Kalkha, District Karnal, in the panchayat elections, held in the year 2022.

2.1 One Deepak son of Dharam Singh and Randhir son of Suraj Bhan filed a complaint against present petitioner on the plea that at the time of election, the petitioner has wrongly mentioned his date of birth as 09.09.1997, whereas his actual date of birth is 09.09.1988. The aforesaid complaint is stated to have been withdrawn by Deepak on 29.05.2023. It appears from records that subsequently they submitted an application saying that the complaint was withdrawn under some misunderstanding.

2.2 Be that as it may, it appears that another complaint (Annexure P-1) was submitted against the petitioner by Mahender Singh son of Prem Singh, Bal Kishan son of Partap Singh etc., on 03.07.2023; wherein the following allegations were made :-

- (i) *that at the time of election in October, 2022, present petitioner had attached matriculation certificate, issued by Haryana School Education Board, Bhiwani, having roll number 2213780857, in which his date of birth is mentioned as 09.09.1997, whereas his actual date of birth is 09.09.1988, which he had disclosed in Government Senior Secondary School, Kalkha at the time of admission in 9th class on 24.04.2004 at serial number 2974, from where he had passed his middle examination in February, 2004, vide roll number 697593 and thereafter, he also passed matriculation examination in March 2006, vide roll number 605418 ;*
- (ii) *that the petitioner had cheated the Government machinery deliberately by showing his age 9 years less than his actual age ;*

- (iii) that the petitioner applied for Government service with false particulars ;*
- (iv) that the petitioner illegally took benefit of his less age from various offices of the Government ;*
- (v) that the petitioner fraudulently obtained the benefit of Government Schemes on the basis of aforesaid documents;*
- (vi) that the petitioner obtained his second mark sheet of matriculation examination fraudulently ;*
- (vii) that the documents attached by the petitioner alongwith his nomination form are result of his fraudulent act, whereby he has committed the offence of forgery ; and*
- (viii) that the petitioner at the time of election deliberately gave wrong information and thus he is liable to be removed from the post of Sarpanch.*

2.3. The aforesaid complaint (Annexure P-1) was got inquired into from the district level committee comprising of Additional Deputy Commissioner, Panipat; Chief Executive Officer, Zila Parishad, Panipat; District Education Officer, Panipat and District Elementary Officer, Panipat; wherein a report dated 23.11.2023 was submitted, stating that the petitioner had passed matriculation from Haryana School Education Board, Bhiwani twice from two different schools and the date of birth is also different. It was stated that when the petitioner (Kuldeep Kumar) filed his nomination form for the post of Sarpanch then as per both the certificate(s) of matriculation provided by him, he had completed 21 years. Accordingly, it was observed in the report that there is no provision in Section 175 of Haryana Panchayati Raj Act, 1994 (in short '1994 Act') attracting ineligibility in such cases.

2.4 The aforesaid report dated 23.11.2023 was sent by the Deputy Commissioner, Panipat to the Director, Department of Rural Development and Panchayat, Haryana as well as to the Secretary, State Election Commissioner, Haryana, vide his letters dated 08.01.2024 (Annexures P-2 and P-3) seeking guidance as regards the action to be taken against the petitioner.

2.5 In the meanwhile, one of the complainants namely Sh. Bal Kishan, filed a writ petition (**CWP-26885-2023**) alleging non-action on the part of authorities; however, the said writ petition was disposed of vide order dated 30.11.2023 by observing that since the inquiry report stands submitted, accordingly, the Deputy Commissioner, Panipat was directed to pass an order within four weeks.

2.6 It transpires that a final inquiry report dated 22.07.2024 was submitted, the relevant extract of which reads thus :-

“that Sh. Kuldeep S/o Krishan has passed the matric (10th) twice. Firstly, in the year 2006 wherein date of birth is recorded 09.09.1988 and secondly in the year 2014 therein date of birth is shown as 09.09.1997. But, it is not clear that on the basis of which documents, the Tagore Public School, Kalkha has recorded his date of birth as 09.09.1997. The Sarpanch, Gram Panchayat Kalkha has not submitted any cogent evidence that why he has passed matriculation examination twice. In the documents of the nomination paper filed by him during the election in the year 2022, the date of birth is shown as 09.09.1997, whereas, in his own statement it is disclosed that his original/correct date of birth is 09.09.1988.”

2.7 Thereafter, a show cause notice dated 08.01.2024 was issued to the petitioner to which he submitted a reply dated 13.02.2024.

2.8 Upon consideration of the matter, the Deputy Commissioner, Panipat, passed an order dated 26.07.2024 (Annexure P-4) under Section 51 of 1994 Act, whereby the petitioner was placed under suspension and further regular inquiry was marked. The relevant extract of order dated 26.07.2024 (Annexure P-4) reads as under :-

“At one hand, Kuldeep Kumar have knowledge that he passed Matric in 2006 under date of birth 09.09.1988 and again appeared/passed matric in 2014 under date of birth 09.09.1997 and showing his age 25 years in nomination paper for the post of Sarpanch is apparently wrong and misrepresentation, which is not acceptable from a persons who is going to represent the public and going to use the Govt. funds. Hence, the desirable was spot free record but appearing and passing matriculation two times with different date of births (which is proved in enquiry report) is not acceptable conduct on the part of Kuldeep Kumar, Sarpanch.

...The Sarpanch has contested the election with false showing his age 25 years which be 40 years if written as per actual date of birth 09.09.1988, as well as, other documents attached with the same. Therefore, he has committed an offence under the ibid provision of law.

Therefore, after going through the record and reports placed on the file, I, Virender Kumar Dahiya, IAS, Deputy Commissioner, Panipat exercising the powers conferred under section 51 of the Haryana Panchayati Raj Act, 1994 hereby orders as under :-

1. Sh. Kuldeep Kumar, Sarpanch, Gram Panchayat Kalkha, District Panipat is hereby placed under suspension with immediate effect and he is directed to hand over records, money or any other property of the Gram Panchayat in his possession or under his control to the

Panch commanding majority in the Gram Panchayat Kalkha.

2. The charge sheet be issued against the Sarpanch placed under suspension with immediate effect.

3. The Commissioner, Municipal Corporation, Panipat is hereby appointed as enquiry officer to conduct the regular enquiry to ascertain the role and conduct of Kuldeep Kumar, concerned Schools or any other person who has helped, for issuance of wrongly mentioned marks sheet, as well as, other documents pertaining to Sh. Kuldeep Kumar, Sarpanch, Gram Panchayat Kalkha placed under suspension and also to ascertain whether any monetary loss is caused to the Gram Panchayat as Sarpanch till date, the regular enquiry officer is requested to submit the clear enquiry report along with details, comments, clear finding within four weeks.

4. That the Block Development and Panchayat Officer Matlauda is directed to ensure that the charge from the above Sarpanch placed under suspension be handed over to the Panch commanding majority in the Gram Panchayat without any delay.

In this way, the complaints submitted by the complainants are hereby disposed of and the order dated 30.11.2023 passed in CWP No. 26885/2023 titled as 'Bal Kishan Versus State of Haryana and others' by the Hon'ble Punjab and Haryana High Court, Chandigarh is hereby complied with.

*Deputy Commissioner,
Panipat"*

2.9 The petitioner challenged the order dated 26.07.2024 (Annexure P-4) by filing an appeal before learned Divisional Commissioner alongwith an application for stay. It appears that the said stay application filed by the petitioner came to be dismissed by learned Divisional Commissioner, vide order dated 14.08.2024.

2.10 Being aggrieved against order dated 14.08.2024, the petitioner filed a civil writ petition (CWP-21103-2024) before this Court, which came to be disposed of, vide order dated 02.09.2024 (Annexure P-7), whereby the order of suspension of the petitioner was stayed till final decision of appeal and further direction was issued to the appellate authority to decide the appeal filed by the petitioner in a time bound manner i.e. within two weeks from 05.09.2024.

2.11 Apparently, the appeal filed by the petitioner has been dismissed, vide order dated 07.11.2024 (Annexure P-8), passed by learned Divisional Commissioner. Hence, the present civil writ petition.

3. Learned senior counsel appearing for the petitioner would contend that the impugned orders dated 26.07.2024 (Annexure P-4) and 07.11.2024 (Annexure P-8) are perverse and thus liable to be set aside. It is submitted that a Sarpanch can be suspended by the Deputy Commissioner under Section 51 of 1994 Act only if there is a criminal investigation, inquiry or trial pending against him, which shall embarrass him in the discharge of his duties or involves moral turpitude or defect of character. It is submitted that the case of the petitioner does not fall within the scope of Section 51 of 1994 Act. It is next submitted that if the date of birth of the petitioner is to be considered as 09.09.1997, even then the petitioner is qualified to contest the election for the post of Sarpanch and no disqualification, as mentioned in Section 175 of 1994 Act, is attracted. It is also submitted that the learned Deputy Commissioner, Panipat has passed the order in a hasty manner, which is not in accordance with law. It is further submitted that the learned Divisional Commissioner has erred in concluding that the petitioner is guilty of offence punishable under

Section 187(1)(h) of 1994 Act. It is still further submitted that while making the said observations, the learned Divisional Commissioner has failed to appreciate the provisions contained in Section 188 of 1994 Act, which state that the Court can take the cognizance of offence under Section 187(2)(b) of 1994 Act where a complaint is made by an order or under the authority of State Election Commission. In the instant case, no complaint, as envisaged under Section 187(2)(b) of 1994 Act, has been instituted against the petitioner by the State Election Commission nor any trial has taken place for convicting the petitioner under Section 336 of Bharatiya Nyaya Sanhita (in short 'BNS'). With the aforementioned submissions, it is prayed that the impugned orders be set aside.

4. Per contra, learned State counsel appearing for respondents No. 1 to 3 opposed the submissions made on behalf of the petitioner by submitting that the complaints received against the petitioner were inquired into by the inquiry committee, which was constituted in compliance of letter dated 18.11.2022, issued by State Election Commission, Haryana, for getting conducted an inquiry into the allegations made against the newly elected Panchayati Raj Institutions members pertaining to bogus/fake educational qualification certificate submitted or other disqualifications. It is stated that in the final inquiry report, it was observed that the petitioner had passed matric twice i.e. firstly in the year 2006 wherein his date of birth is recorded as 09.09.1988 and secondly, in the year 2014, wherein his date of birth is shown as 09.09.1997. It was stated that in the nomination papers filed by the petitioner during the election in the year 2022, the date of birth is shown

as 09.09.1997, whereas in his own statement, it is disclosed that his original/correct date of birth is 09.09.1988.

4.1 In this regard, reference has been made to Annexure R-1 attached with the reply, filed on behalf of respondents No. 1 to 3, submitted by the petitioner, which reads as under :-

“Statement of Kuldeep Kumar

Sir,

That I, Kuldeep Kumar Sarpanch am resident of village Kalkha Tehsil Matlauda, District Panipat and am a law abiding citizen.

1. That I had passed my 10th Class in the year 2006, in which my date of birth was 09.09.1988. Because I have get less marks in 10th Class I have re-appeared in 10th Class in the year 2014 in which due to clerical mistake my date of birth has been made as 09.09.1997.

2. That I in the year 2022 contested the election of Sarpanch, in which in all of my documents my date of birth is 09.09.1997.

*Sd/- Kuldeep Kumar
Kuldeep Kumar Sarpanch village
Kalkha, Tehsil Matlauda, District
Panipat.”*

4.2 It is submitted that in all the documents submitted by the petitioner alongwith his nomination papers, i.e. second matriculation certificate, Aadhar card, PAN card, Voter card, are containing date of birth as 09.09.1997, therefore, it cannot be said that the date of birth written as 09.09.1997 is a clerical mistake. It is stated that once the petitioner knew that he had passed matric in 2006 with the date of birth as 09.09.1988, then again passing the matric examination in 2014 with a different date of birth as 09.09.1997 and showing his age as 25 years in the nomination papers for the post of Sarpanch, is an apparent

mis-representation, which is not acceptable from a person, who is going to represent the public and would use the Government funds. It is stated that since the petitioner has contested the election by falsely showing his age as 25 years (although he would be about 40 years of age as per his initial date of birth recorded as 09.09.1988), therefore, he has committed an offence under Section 187 (1)(h) of 1994 Act. It is submitted that considering the finding of the inquiry report and in compliance of the orders passed by this Court, the petitioner has been placed under suspension, vide order dated 24.07.2024 (Annexure P-4) and a regular inquiry has been assigned to the Commissioner, Municipal Corporation, Panipat, which is pending. Accordingly, prayer has been made for dismissal of the instant civil writ petition.

5. Learned counsel appearing for respondent No. 4 has also opposed the submissions made on behalf of the petitioner on similar grounds and prayed that the instant civil writ petition be dismissed.

6. I have heard learned counsel(s) for respective parties and perused the paper-book with their able assistance.

7. In the present case, petitioner (Kuldeep Kumar) had made the statement before the authorities below that he had passed his 10th Class in the year 2006, in which his date of birth was recorded as 09.09.1988; however, since he had secured less marks in 10th Class, accordingly, he re-appeared in 10th Class in the year 2014 in which due to clerical mistake, his date of birth was written as 09.09.1997. Before this Court as well, learned senior counsel representing the petitioner has acknowledged that the correct date of birth of the petitioner is 09.09.1988, with no dispute as to its veracity.

7.1 It is not disputed before this Court that while submitting his nomination papers at the time of election, the petitioner had submitted documents which reflected his date of birth as 09.09.1997 and the same date of birth was filled up in the nomination papers as well. It is, thus, apparent that the petitioner, despite being aware that his correct date of birth is 09.09.1988, had falsely declared his date of birth as 09.09.1997 and that too, on the basis of the documents reflecting his date of birth as 09.09.1997. Therefore, it cannot be accepted by any stretch of imagination that mentioning of date of birth in the nomination form by the petitioner as 09.09.1997, is a clerical mistake. Rather, it is evident that the petitioner had got made other identity proofs/documents reflecting his date of birth as 09.09.1997. Even in the Memo of Parties and affidavit of the petitioner attached to the instant writ petition, he has mentioned his age as 26 years, which is apparently based upon his Aadhar Card, wherein his date of birth is reflected as 09.09.1997.

7.2 In view of the above, the only conclusion that can be arrived at is that the petitioner had misrepresented not only at the time of submitting his nomination papers for election to the post of Sarpanch but before this Court as well, which clearly reflects upon his conduct and character.

7.3 The afore-said act and conduct of the petitioner in submitting nomination form with a false/incorrect date of birth, supported by other documents reflecting the wrong date of birth i.e. 09.09.1997; would amount to concealment; misrepresentation and a false declaration within the scope and ambit of Section 187(1)(h) of the 1994 Act, which is an offence under the 1994 Act, punishable for a term which may extend to

six months imprisonment or with fine of Rs.5,000/- or with both. It needs no reiteration that withholding of material information or making false representation itself amounts to moral turpitude. Resultantly, the petitioner is guilty of offence under Section 187(1)(h) of the 1994 Act and this Court cannot shut its eyes to such conduct of the petitioner.

7.4 In ***Devendra Kumar vs State of Uttaranchal, 2013(4) SCT 482***, Hon'ble the Supreme Court observed as under :-

“...the ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves...”

8. Considering the totality of circumstances, especially when the petitioner is guilty of concealment; misrepresentation/false declaration within the scope and ambit of Section 187(1)(h) of the 1994 Act, involving moral turpitude and/or defect of character; the case in hand would clearly attract the provisions of Section 51(1)(a) of the 1994 Act, justifying the suspension of the petitioner. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

8.1 Further, since the petitioner has been found guilty of concealment; misrepresentation and making a false declaration within the scope and ambit of Section 187(1)(h) of the 1994 Act, accordingly, it is directed that a copy of this order be forwarded to the Haryana State Election Commission for submitting a written complaint before the concerned/competent court for prosecuting the petitioner in terms of Section 187 read with Section 188 of the 1994 Act.

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

(HARSH BUNGER)
JUDGE

12.03.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No