
(2020) 03 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13559 Of 2017

Nirmala Devi

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 51, 51(5), 51(3)(b), 51(3)(c), 51(5), 175, 175(v), 176,

Citation : (2020) 03 P&H CK 0087

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : Vikas Bahl, Priyanka Kansal, Siddharth Sanwaria, Vinod S. Bhardwaj

Final Decision : Allowed

Judgement

Sanjay Kumar, J

The petitioner was removed from the post of Sarpanch of the Gram Panchayat of Village Badwa, Block Siwani, District Bhiwani, Haryana, vide order dated 09.01.2017 (Annexure P-7) passed by the Deputy Commissioner, Bhiwani, in exercise of power under Section 51(3)(c) of the Haryana Panchayati Raj Act, 1994 (hereinafter, 'the Act of 1994'). The same was confirmed in appeal by the Additional Chief Secretary, Development and Panchayats Department, Government of Haryana, vide order dated 31.05.2017 (Annexure P-10).

Aggrieved thereby, she is before this Court.

By order dated 06.06.2017, this Court directed that further proceedings pursuant to the impugned orders shall remain stayed. Mr. Siddharth Sanwaria, learned Deputy Advocate General, Haryana, appearing for the authorities, confirmed that the petitioner is continuing to hold office as on date, pursuant to the aforesaid interim order.

Before advertng to the factual aspects of the case, it would be appropriate to

consider the contextual statutory scheme of the Act of 1994. Section 51 thereof deals with suspension and removal of a Sarpanch. Section 51(3)(b) states to the effect that the Director or the Deputy Commissioner may remove a Sarpanch from office after following the due procedure if he/she was disqualified to be a member of the Gram Panchayat at the time of the election. Section 51(3)(c) deals with such removal if the Sarpanch incurs any disqualification after his/her election as a member of the Gram Panchayat. Section 175 of the Act of 1994 sets out the disqualifications in relation to various posts, including that of a Sarpanch. Section 175(v) postulates that, generally, a male candidate should have passed Matriculation, or its equivalent examination from any recognized Institution/Board to become a Sarpanch, but in so far as a female candidate is concerned, she is required to possess the minimum qualification of middle pass. Therefore, any woman ordinarily aspiring to the post of Sarpanch must have middle pass qualification or its equivalent from a recognized Institution/Board. In terms of this restriction, it is not necessary that such recognition must be only by a local Board or Institution in Haryana and even if such qualification is recognized by any Institution/Board from any other State, it would suffice.

The removal of the petitioner from office was at the behest of the 6th respondent herein. Be it noted that the daughter of the 6th respondent contested against the petitioner in the election to the post of Sarpanch and was defeated. Earlier, the 6th respondent's daughter filed CWP-2854-2016 assailing the petitioner's eligibility to hold the post. However, by order dated 12.02.2016 passed therein, she was non-suited by this Court on the ground that the statutory remedy of an election petition was available to her. Thereupon, she filed an election petition in Case No.20-EP of 17.02.2016 before the learned Civil Judge (Senior Division), Siwani, under Section 176 of the Act of 1994 assailing the election of the petitioner on the ground that she had adopted fraudulent means by relying upon a forged Matriculation certificate. The Matriculation certificate dated 16.07.2008, on the strength of which the petitioner had participated in the election to the post of Sarpanch, was issued by the Bhartiya Shiksha Parishad, Uttar Pradesh. There is no indication of the petitioner having acquired the minimum qualification of middle pass separately. She seems to have directly appeared for the Matriculation examination conducted through the aegis of the Bhartiya Shiksha Parishad, Uttar Pradesh.

It appears that the Bhartiya Shiksha Parishad, Uttar Pradesh, offers courses not only at the Matriculation level but also up to higher studies, including graduation in various disciplines. In this context, litigation seems to have arisen between the Bhartiya Shiksha Parishad, Uttar Pradesh, and the University Grants Commission, New Delhi, by way of a civil suit in RS No.336 of 1998 on the file of the learned Civil Judge (Junior Division) South, Lucknow. The Bhartiya Shiksha Parishad, Uttar Pradesh, and the Independent Institute of Professional Studies, Lucknow, its affiliated college, are the plaintiffs therein while the University Grants Commission, New Delhi; the State of Uttar Pradesh; the State of Maharashtra; and the Union of India, are arrayed as the defendants. Perusal of the suit plaint

reflects that the Bhartiya Shiksha Parishad, Uttar Pradesh, claimed to be a Society registered under the provisions of the Societies Registration Act, 1860, having its registered office at Lucknow, and its aim was to provide education to the general public. According to it, it never claimed either to be a University or affiliation to a University and its grievance was that the University Grants Commission, New Delhi, was brandishing it to be a fake University. It is in this milieu that a declaration was sought that it was not a University and was not claiming to be a University but only a registered Society, promoting education amongst the common people in accordance with the standard and norms settled by itself, consequent to which it was issuing its own certificates to successful candidates. An injunction was also sought to restrain the defendants from treating it as a fake University. A temporary injunction was granted in this suit on 18.11.1998 restraining the defendants from declaring the Bhartiya Shiksha Parishad, Uttar Pradesh, as a fake University. This suit is still pending adjudication.

It may be noted that this pending suit pertains to the status of the Bhartiya Shiksha Parishad, Uttar Pradesh, vis-à-vis the University Grants Commission, New Delhi. The said Commission is only concerned with education at the University level and not at Matriculation level. The Matriculation certificate of the petitioner would therefore not require recognition by the University Grants Commission, New Delhi. It appears that the Bhartiya Shiksha Parishad, Uttar Pradesh, also filed a separate suit in RS 901 of 2001 on the file of the learned Civil Judge (Junior Division) North, Lucknow, against the National Council for Teacher Education in the context of the validity of the teacher training course offered by it. An ad interim injunction was granted in this suit also and the suit is still pending consideration. The injunction granted therein is in operation as on date. In effect, pendency of these civil suits which, obviously, have reference to the graduation degrees and the teacher training degrees etc. offered by the Bhartiya Shiksha Parishad, have no impact on the validity or otherwise of the Matriculation certificate, presently in question.

While his daughter was pursuing her own statutory remedy, the 6th respondent simultaneously addressed an independent complaint to the authorities raising the same grounds. This led to the suspension of the petitioner from office, vide order dated 05.10.2016 passed by the Deputy Commissioner, Bhiwani. In view of this suspension order, the 6th respondent's daughter got her election petition dismissed as withdrawn on 02.11.2016. While so, aggrieved by her suspension from office, the petitioner preferred a statutory appeal before the Additional Chief Secretary, Development and Panchayats Department, Government of Haryana, in Appeal No.33 of 2016. This appeal was allowed, by order dated 08.11.2016, and the Appellate Authority remanded the matter to the file of the Deputy Commissioner, Bhiwani, to pass a fresh speaking order after affording an opportunity of personal hearing to the petitioner.

However, the Deputy Commissioner, Bhiwani, thereupon considered the issue of

removal of the petitioner from office and by the impugned order dated 09.01.2017, he ultimately held against her. Perusal of this order reflects that the Deputy Commissioner was fully aware of the remand order as he specifically referred to it. On merits, he observed that the Matriculation certificate of the petitioner was not equivalent to those issued by the institutions named in the list issued by the Haryana School Education Board, Bhiwani. He noted that the issue relating to the status of the Bhartiya Shiksha Parishad, Uttar Pradesh, which had issued the petitioner's certificate, was sub judice in RS No.336 of 1998, but opined that as the said institution did not find mention in the list of equivalent institutions recognized by the Haryana School Education Board, the petitioner's certificate was not valid. He then went on to state that, in exercise of power under Section 51(3)(c) of the Act of 1994, he was removing the petitioner from the office of Sarpanch.

The petitioner thereupon preferred a statutory appeal under Section 51(5) of the Act of 1994, viz., Appeal No. 4 of 2017. While dismissing the said appeal, the Appellate Authority, viz., the Additional Chief Secretary, Development and Panchayats Department, Government of Haryana, noted that the petitioner had contested the election on the basis of the Matriculation certificate issued by the Bhartiya Shiksha Parishad, Uttar Pradesh, but as per the information furnished by the Council of Secondary Education, Allahabad, the Matriculation examination conducted by Bhartiya Shiksha Parishad, Uttar Pradesh, was not equivalent to the examination conducted by the Council. He further noted that the Haryana Board of School Education, Bhiwani, had certified to the same effect. He also noted that the name of Bhartiya Shiksha Parishad, Uttar Pradesh, did not figure in the list of recognized institutions uploaded by the Council of Boards of School Education of India and the National Institute of Open Schooling on their respective web-sites. According to him, the interim order dated 18.11.1998 in RS No.336 of 1998 passed by the learned Civil Judge (Junior Division), Lucknow, was long ago and was not relevant now. He therefore concluded that there was no merit in the appeal and dismissed the same.

The record reflects that the authorities communicated with the Bhartiya Shiksha Parishad, Uttar Pradesh, but only to ascertain as to whether the petitioner had passed Matriculation examination as claimed by her. Significantly, they did not choose to ask the Bhartiya Shiksha Parishad, Uttar Pradesh, to provide proof of recognition of its Matriculation certificates by any Institution or Board. It may also be noted that the petitioner's claim is that she passed Matriculation examination and not any other examination equivalent thereto. The question of examining any equivalence therefore did not arise, be it in the context of the Haryana School Education Board or any other Education Board. All that was required in terms of Section 175(v) of the Act of 1994 was that the petitioner's Matriculation certificate should be recognized by any Institution or Board. It was not necessary that such Institution/Board should be in the State of Haryana or that it should be shown to be equivalent to the Matriculation certificates issued by the Haryana Board.

Though Mr. Vikas Bahl, learned senior counsel appearing for the petitioner, would contend that the Deputy Commissioner, Bhiwani, was not justified in removing the petitioner from office when the remand order passed by the Appellate Authority required him to consider afresh only the issue of the petitioner's suspension from office, this Court is not impressed. The scheme obtaining under Section 51 of the Act of 1994 contemplates suspension from office as an interim measure while removal from the office of Sarpanch/Panch is the end objective in deserving cases. Therefore, the Deputy Commissioner, Bhiwani, was entitled to deal with main issue, viz., the removal of the petitioner from office, notwithstanding the remand order passed in the context of her suspension from office.

Further, the learned senior counsel would also contend that the action of the 6th respondent was malafide, as he was espousing the cause of his daughter whose writ petition and election petition had already been dismissed. However, this Court must note that, notwithstanding the institution and withdrawal of an election petition by the defeated candidate, the 6th respondent's daughter, an independent inquiry by the authorities is envisaged under the provisions of Section 51(3) read with Section 175 of the Act of 1994. Therefore, initiation of proceedings by the 6th respondent cannot be said to be malafide on the sole ground that he is espousing the cause of his daughter, who already got her writ petition and election petition dismissed as withdrawn. Proceedings in this regard under Section 51 of the Act of 1994 cannot be categorized as illegal merely because of the availability of an alternative remedy, by way of an election petition (see *Kavita vs. State of Haryana* [2017(4) PLR 135]).

The further contention of the learned senior counsel that pendency of RS No.336 of 1998 was reason enough for the authorities to stay their hands also cannot be countenanced. Merely because other Deputy Commissioners had opined so would not aid the petitioner's case. As already noticed supra, the scope of the pending litigation is limited and the same would have no impact on the Matriculation certificate issued by the Bhartiya Shiksha Parishad, Uttar Pradesh, which would, in any event, be beyond the ken of the University Grants Commission and the National Council for Teacher Education.

The learned senior counsel would further contend that passing of the removal order under Section 51(3)(c) of the Act of 1994 cannot be sustained as the said provision deals with the case of a disqualification arising after the election whereas the case against the petitioner was that she stood disqualified even before the election, attracting Section 51(3)(b) of the Act of 1994. Be it noted that Section 51(3)(c) of the Act of 1994 speaks of disqualification suffered by an elected Sarpanch and Section 51(3)(b) speaks of disqualification to be a member of a Gram Panchayat at the time of election itself. Therefore, the appropriate provision to be applied in the case on hand was Section 51(3) (b) and not Section 51(3)(c). In effect, the entire exercise was undertaken under an erroneous statutory provision. Though this Court is inclined to agree with the

learned senior counsel that exercise of power by the Deputy Commissioner, Bhiwani, under the wrong provision of law would be a vitiating factor, in itself, it would not be necessary to base this order on that ground.

In terms of Section 175(v) of the Act of 1994, what was required was that the petitioner's Matriculation certificate should be recognized by any Institution/Board. Though the authorities seem to have inquired as to the status of the Bhartiya Shiksha Parishad in this regard with various bodies, no material is produced to support their contention that every institution in the country which offers Matriculation course would invariably have to be recognized by any particular Council or other body. When the statutory provision merely requires recognition by 'any' Institution/Board, it was for the authorities concerned to verify, as a matter of fact, whether such recognition was conferred upon the institution which issued the Matriculation certificate. Admittedly, no such exercise was undertaken by the Deputy Commissioner, Bhiwani, to ascertain whether the Matriculation certificate secured by the petitioner from Bhartiya Shiksha Parishad, Uttar Pradesh, was recognized by any Institution or Board in the State of Uttar Pradesh or from elsewhere. Without inquiring into this aspect, the Deputy Commissioner, Bhiwani, erroneously embarked on the exercise of determining equivalence, which was wholly irrelevant as the petitioner never claimed that she had passed some other examination equivalent to Matriculation.

Though Mr. Vinod S. Bhardwaj, learned counsel for the 6th respondent, would contend that the onus is upon the petitioner to prove the genuineness of her Matriculation certificate, this Court is not inclined to agree. Once a certificate was produced by the petitioner in proof of her having passed Matriculation and the said certificate was issued by a body professing to be authorised to do so, a presumption of genuineness would attach to it and it is for the party who seeks to rebut such a presumption to produce proof to the contrary. Therefore, it was for the authorities to verify the claim of the 6th respondent that the petitioner's Matriculation certificate did not conform to the required standard. Reference may be made to the judgment of this Court in Jagtar Singh vs. State of Haryana and another [2004(1) PLR 368 (DB)], wherein it was observed thus: '9. An analysis of the above reproduced provisions shows that a Sarpanch can be removed if after election he is convicted by a criminal Court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months or if he was disqualified to be a member of the Gram Panchayat at the time of election or if after his election he incurs any of the disqualifications specified in Section 175 or if he is absent from five consecutive meetings of the Gram Panchayat without prior permission or leave of the Gram Panchayat or if he is guilty of misconduct in the discharge of his duties and his continuance in the office is not considered desirable in public interest. The expression "opportunity of being heard" appearing in sub-section (3) of Section 51 has not been defined in the 1994 Act and the rules made thereunder, but keeping in view the fact that the Sarpanch/Panch holds an important elective position in the Gram Panchayat which is an institution of self-government, the said expression has to be so

interpreted as to enable the Sarpanch or Panch to effectively defend himself against the action proposed to be taken by the competent authority. This necessarily means that he has to be informed of the specific allegation/charge on which action is proposed to be taken against him and he is supplied with the adverse material sought to be used by the competent authority and an opportunity is given to him to rebut/controvert the same. The report prepared on the basis of enquiry held against a Sarpanch or a Panch with the finding that charges levelled against him have been proved constitutes such material.'

Ergo, it is clear that the adverse material sought to be used by the competent authority is to be supplied so as to afford an opportunity to the Sarpanch to rebut/controvert the same and defend himself/herself. The burden therefore cannot be reversed and thrown upon the Sarpanch to prove the genuineness of his/her qualification.

On the above analysis, this Court finds that the exercise undertaken by the Deputy Commissioner, Bhiwani, was wholly deficient as no endeavour, whatsoever, was made by him to verify as to whether the Matriculation certificate issued by the Bhartiya Shiksha Parishad, Uttar Pradesh, had recognition from any Institution or Board. The least that was expected of the authorities was to address a query in this regard to the Bhartiya Shiksha Parishad, Uttar Pradesh, but no such step was taken. Without inquiring into this aspect and without recording a finding in that regard, the authorities could not have assumed that the petitioner's Matriculation certificate was not valid on the basis of status reports given by various bodies, including the Haryana School Education Board, Bhiwani, and the Council of Boards of School Education, New Delhi. There is no material placed on record in evidence of the said bodies being the ultimate authorities empowered to recognize all institutions in the country that offer Matriculation course.

The writ petition is accordingly allowed setting aside the order dated 09.01.2017 passed by the Deputy Commissioner, Bhiwani, and the appellate order dated 31.05.2017 passed by the Additional Chief Secretary, Development and Panchayats Department, Government of Haryana. The matter is remitted to the file of the Deputy Commissioner, Bhiwani, for consideration afresh of the complaint made by the 6th respondent in terms of the observations made hereinabove. This exercise shall be completed expeditiously and in any event, not later than 8 weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.