
(2017) 01 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 75 of 2017

Purushottam

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 175, Section 51

Citation : (2017) 1 LawHerald 577 : (2017) 3 RCRCivil 42

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Dr. Naresh Kaushik, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Amit Rawal, J. - The petitioner is aggrieved of the impugned orders dated 30.6.2016/17.7.2016 (Annexure P-1) passed by the Deputy Commissioner, Jind and 20.12.2016 (Annexure P-2) of the Additional Chief Secretary in appeal. The Deputy Commissioner by invoking the powers under Section 51 of the Haryana Panchayati Raj Act, 1994 (for short "1994 Act") has removed the petitioner from the post of Sarpanch finding him to be disqualified.

2. Dr. Naresh Kaushik, learned counsel for the petitioner has submitted that as per the amendment caused in Section 175 of 1994 Act vide notification dated 7.9.2015, no person shall be eligible for the post of Sarpanch or Panch if he has not passed the matriculation examination or its equivalent examination from any recognised institution/board. The petitioner has passed his matriculation examination from the Central Board of Higher Education, Uttam Nagar, New Delhi, which is evident from Annexure P-13.

3. He further submitted that the petitioner, on account of his popularity, contribution and active participation in the village development and welfare activities, was elected as Sarpanch of Village Chhatar, Block Uchana, District Jind in the panchayat election held on 17.1.2016 by defeating rival candidate,

namely, Ramehar, who developed grudge against him and filed false/frivolous complaint to the Deputy Commissioner qua his matriculation qualification. Resultantly, a show cause notice dated 31.3.2016 was served upon the petitioner, which was duly replied vide Annexure P-3. It was specifically mentioned therein that the aforementioned matriculation certificate is duly recognised and in this regard, he has drawn the attention of this Court to Annexure P-4, a letter dated 8.9.1990, whereby it has been referred that the Central Board of Higher Education, New Delhi is recognised from Government of India. The aforementioned fact was brought to the notice of the Deputy Commissioner, but in a cryptic and erroneous manner, accepted the complaint and removed the petitioner from the post of Sarpanch. He further submitted that the procedure as envisaged under Section 176 of 1994 Act has not been followed, in essence the complaint could not have been entertained by the Deputy Commissioner and only the election petition lied. He further submitted that the educational qualification was completed in the year 2011 and the documents submitted by him were got verified. If at all, the documents were not conforming the requirement of law, his nomination was liable to be cancelled. Having failed to do so, the petitioner contested the election and, therefore, the orders under challenge are not acceptable.

4. In support of his contention, he has drawn the attention of this Court to the decision rendered by the High Court of Delhi at New Delhi in W.P. (C) No.5135 of 2003 (Nek Mohammad v. Union of India & others), decided on 4.6.2010, wherein the challenge was laid to the order removing the petitioner therein from service on the premise that he had passed his matriculation examination from the Central Board of Higher Education (CBHE), Uttam Nagar, New Delhi, which was not recognised.

5. I have heard the learned counsel for the petitioner, seen the paper book and the annexures attached thereto and of the view that there is no force and merit in the submissions of Mr.Kaushik, for, the Deputy Commissioner had held that the examination conducted by the Central Board of Higher Education, New Delhi is not recognised by the Board of School Education, Haryana Bhiwani, Haryana Veterinary and Agriculture University, Hisar, Kurukshetra University, Kurukshetra, Himachal Pardesh Board of School Education, Dharamshala and also the fact that the Council of Boards of School Education in India, National Institute of Open Schooling, Bhartiya Shiksha Parishad, U.P. (Lucknow) declared the Board of Higher Education, Uttam Nagar, New Delhi as bogus education board. Even Guru Nanak Dev University, Amritsar has also not recognised the Board of Higher Education, Delhi on the basis of the report received from the Council of Boards of School Education in India, New Delhi dated 28.7.2008 and Association of India Universities, New Delhi dated 12.3.2010.

6. The provisions of Section 176 of 1994 Act would not apply as Section 51 enables the Deputy Commissioner to remove the Sarpanch in case he is being found to be disqualified to be a member or has incurred any of the

disqualifications mentioned in Section 175. Sections 51 and amended provisions of Section 175 of 1994 Act read as under: -

Section 51

51. Suspension and removal of a Sarpanch [- - - -] or Panch. - (1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch [- - - -] or Panch, as the case may be, -

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(a) where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director or Deputy Commissioners concerned the charge made or proceeding taken against him in the discharge of his duties or involves moral turpitude or defect of character ;

(b) during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.

[(2) Any Sarpanch or Panch, as the case may be, suspended under sub-section (1), shall not take part in any act or proceeding of the Gram Panchayat during the period of his suspension and shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control - -

(i) if he is a Sarpanch to a Panch commanding majority in the Gram Panchayat;

(ii) if he is a Panch to Sarpanch :

Provided that the suspension period of a Panch or a Sarpanch, as the case may be, shall not exceed one year from the date of handing over the charge in pursuance of the suspension order except in criminal cases involving moral turpitude.]

(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) if after his election he is convicted by a criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months;

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

(c) if he incurs any of the disqualifications mentioned in section 175 after his election as member of the Gram Panchayat ;

(d) if he is absent from five consecutive meetings of the Gram Panchayat without prior permission or leave of Gram Panchayat ; and

(e) if he has been guilty of misconduct in the discharge of his duties and his continuance in the office is undesirable in the public interest.

(4) A person who has been removed under sub-section (3) may be disqualified for re-election for such period as may be mentioned in the order but not exceeding the period of six years.

(5) Any person aggrieved by an order passed under subsections (1) , (3) and (4), may within a period of thirty days from the communication of the order, prefer an appeal to the Government.

[(6) Any Sarpanch or Panch, as the case may be, removed under sub-section (3), shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control - -

(i) if he is Sarpanch to a Panch commanding majority in the Gram Panchayat ;
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(i-a) if he is Sarpanch belonging to reserve category, to a Panch of that reserve category commanding majority, and if no Panch in that category is available, to a Panch of general category commanding majority in the Gram Panchayat; and}

(ii) if he is a Panch to Sarpanch .]"

Amended provisions of Section 175

"2. In Section 175 of the Haryana Panchayati Raj Act, 1994, -

I. after clause (a), the following clause shall be inserted namely: - (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years; or";

II. after clause (s), the following clauses shall be inserted, namely: -

"(t) fails to pay any arrears of any kind due to him to any Primary Agriculture co-operative Society, District Central co-operative Bank and District Primary Cooperative Agriculture Rural Development Bank; or

(u) fails to pay arrears of electricity bills; or

(v) has not passed matriculation examination or its equivalent examination from any recognised institution/board:"

7. On conjoint reading of the aforementioned provisions, in case the candidate has not passed the matriculation examination from any recognised institution/ board, it would entail into disqualification. There is no force in the argument of Dr. Kaushik that the nomination of the petitioner was required to be cancelled if his qualification apparently was found to be not recognised one. When a detailed enquiry was conducted, it was found that it was not recognised and this fact has been reiterated while dismissing the appeal by the Additional Chief Secretary, thus, the provisions of Section 175 of 1994 Act would not apply. Nek Mohammad

(supra) was a case, where the petitioner had not obtained the matriculation examination from the recognised board, but the judgment had been rendered on the basis of the recruitment rules, which do not prescribe any disqualification, thus, the judgment relied upon would not be applicable in the present case.

8. Amended provisions of Section 175 of 1994 Act, extracted above, would entail into disqualification if the candidate has not obtained the certificate from the recognised board. The order of the Deputy Commissioner, Jind and upheld by the Additional Chief Secretary in appeal for removing of the petitioner from the post of Sarpanch of having not passed the matriculation examination from the Institution/Board recognised by the Haryana School Education Board, Haryana, Bhiwani is perfectly legal, justified and does not call for any interference by exercising the power of judicial review.

9. For the foregoing reasons, I do not find any illegality and perversity in the impugned orders. No ground for interference is made out.

10. Writ petition stands dismissed.

11. A copy of this order be given under signature of Reader attached to this Court.