
(2002) 02 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2671 of 2002

Raj Pal

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Panchayati Raj Act, 1994 — Section 175(1)

Citation : (2002) 2 RCR(Civil) 680

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : S.S. Dinarpur, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Phul Chand a resident of village Dhorang had made a complaint against the petitioner. It was alleged that he was not qualified to contest the election to the office of a Member Panchayat as he had a four living children. It was further pointed out that the fourth child was born on June 24, 1995. Notice of the complaint was given to the petitioner. After thorough examination of the matter, the Deputy Commissioner passed the order dt. Feb. 22, 2001, holding that the fourth child was born on June 24, 1995. In view of the provisions of Section 175(1)(g) of the Haryana Panchayati Raj Act, 1994, he was not eligible to hold the office of the Member Panchayat. Thus, he was ordered to be removed. A copy of this order is at Annexure P-1 with the writ petition. Aggrieved by the order, the petitioner filed an appeal. It was dismissed by the Financial Commissioner and Secretary to Govt. Haryana vide order dt. January 9, 20002. The findings recorded by the Deputy Commissioner were confirmed. 2. Aggrieved by the two orders, the petitioner has approached this Court with the prayer that the provisions of Section 175(1)(g) of the Haryana Panchayati Raj Act, 1994 be declared ultra vires the constitution and that the impugned orders be quashed.

3. We have heard Mr. Dinarpur, Ld. counsel for the petitioner. Besides challenging the vires of the provisions, the counsel has submitted that the findings recorded by the authorities are contrary to the entry in the register maintained by the Anganwari workers of the village. Ld. counsel has also pointed out that the record of the Anganwari is authentic. Thus, the counsel prays that the impugned orders be quashed.

4. As far the first submission, it may be mentioned that the constitutional validity of the provision has been upheld by different Benches of this Court in *Jharmal v. State of Haryana* and Ors. 2000 CWP 6335 , decided on March 8, 2001 and in *Gurbax Singh v. State of Haryana* and Anr. 2001 CWP 15540 , decided on Jan. 16, 2002.

5. For the reasons stated in those orders, the challenge to the vires cannot be sustained. Resultantly, the first contention is rejected.

6. As for the submission that the date of birth of the fourth child is March 31, 1995 and not June 24, 1995, it may only be mentioned that the finding recorded by the Authorities is based on the entry in the Register of Birth and Deaths. It is undoubtedly correct that in the register maintained by the Anganwari workers, the date of birth of a child born to Saroj, wife of Rajpal has been mentioned as March 31, 1995. However, on a perusal of the extract produced as Annexure P-4 with the Writ Petition, we are satisfied that it would not be safe to depend upon the entries made in this register. On a perusal of the register, it is apparent that the entry regarding the child born to Saroj is recorded at serial No. 19. As against this, entry with regard to the child born on earlier date viz. March 1, 1995 is at serial No. 22. Ld. Counsel has not been able to explain this. Similarly entry with regard to the child born on May 21, 1995 is at serial No. 20, while the entry with regard to another child born on April 27, 1995 is at serial No. 21. If the register was being maintained in a regular manner, why were the entries not made in accordance with the date of birth? In any event, the authorities specified under the Act have examined the total evidence and recorded a firm finding of fact. That finding is not shown to be wrong. Thus, no ground for interference under Article 226 of the Constitution is made out.

7. Another fact, which deserves mention is that the complainant, Phul Chand has not even been impleaded as a party. He was a necessary party. In his absence, the order passed in his favour cannot be set-aside.

8. In view of the above, we find no merit in the writ petition.

Sd/- N.K. Sud, J.