
(2001) 08 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1001 of 2001

Ram Mehar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 175(1)

Citation : (2001) 08 P&H CK 0121

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : Ashu M. Punchhi and J.S. Khera, for the Appellant; Amol Rattan and Rameshwar Malik, for the Respondent

Final Decision : Allowed

Judgement

Adasrh Kumar Goel, J.—This writ petition challenges the order dated 20.12.2000 Annexure P-2 setting aside the order passed by the Deputy Commissioner, Sonapat-respondent No.2 whereby respondent No.3 was expelled from the post of sarpanch u/s 51(3)(c) of the Haryana Panchayati Raj Act 1994 (for short the Act). It was held that the Sarpanch was not eligible in view of proviso to Section 175(1)(q) of the Act which disqualifies a person from being Sarpanch if third child is born to him after 22.4.1995 (within one year of the coming into force of the Act). The said order was set aside by respondent No. 1 with the observations that there was a reply by the Sarpanch that he had given the child born on 14.10.1999 in adoption and the said plea of the Sarpanch had not been dealt with.

2. Learned counsel for the petitioner has assailed the order Annexure P-2 dated 20.12.2000 on the ground that the plea of adoption was not relevant once it was not disputed that the Sarpanch already having two children had another child after 22.4.1995. There was no dispute in the present case that a child was born to the Sarpanch-respondent No. 3 who admittedly had 3 children prior to the birth of the fourth child born on 14.10.1999. He submits that though the

Financial Commissioner ought to have remanded the matter if he felt that a point which was required to be decided had not been decided, but having regard to the admitted facts in this case, the order of the Financial Commissioner is erroneous. Even if the factual aspect pleaded by the Sarpanch in reply to the show-cause notice that the fourth child had been given in adoption was proved, the disqualification still remained. He submitted that the object of providing disqualification was to put a check on the growth of population and to provide a norm for person elected or who was to be elected as Sarpanch in the form of a disqualification. He has referred to two Division Bench judgments of this Court in *Mani Ram v. State of Haryana and Ors.* 1998(1) RCR (Civil) 545 (FCH) : 2000 CWP 12425 and *Fazru and Ors. v. State of Haryana and Ors.*? 1998(1) RCR 111 (Civil) : 1997 CWP 11439 . Learned counsel for respondent No. 3 has pointed out that the matter was pending in the Supreme Court and there was a stay of operation of the order of the High Court and the said judgments have thus not attained finality. Even if it is so, the provision has not been struck down and remains on the statute book and I have to proceed on the assumption that the provision is valid. Learned counsel of respondent No. 3 raised the following further submission.

i) the birth of fourth child was in such circumstances in which respondent No.3 could not be held to be at fault as his wife had died and he had re-married and the second wife legitimately expected the child; ii) the language of Section 175(1) (q) did not apply when the two children had been born prior to a provision for disqualification was made; iii) u/s 12 of the Hindu Adoption and Maintenance Act, the Child given in adoption becomes the child of the adoptive parents as has also been held in *Smt. Sitabai and Another Vs. Ramchandra*, (para 6); (iv) the case of respondent No. 3 would be covered by the proviso to Section 175(1)(q) and he will not be disqualified; v) wife of respondent No. 3 had only one child and she was not disqualified and, therefore, respondent No. 3 could not be held to be disqualified.

3. Learned Assistant Advocate-General, Haryana has also supported the interpretation of Section 175(1)(q) that once a third child is born after the specified date, the disqualification will accrue and the same will not be wiped out by any voluntary act of the affected person including adoption.

4. Having heard the learned counsel for the parties, I find force in the submission of the learned counsel for the petitioner and I hold that respondent No. 3 was disqualified from contesting or continuing as Sarpanch in view of clear provisions of Section 175(1)(q). The disqualification could not be removed merely because respondent No. 3 gave the child in adoption and even if his act was bonafide. The consequences of adoption provided u/s 12 of the Hindu Adoption and Maintenance Act have no relevance to the issue involved herein. The fact that the wife is not qualified which is not disputed, makes no difference to the disqualification of the husband, I find no force in the contention that respondent No. 3 would be protected under proviso to Section 171(1)(q). In my view, this proviso is not

attracted at all.

For the foregoing reasons, this writ petition is allowed. Order dated 20.12.2000 passed by the Financial Commissioner is set aside and the order passed by the Deputy Commission, Sonapat, dated 24.10.2001 is restored. No order as to costs.