
(2020) 03 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21057 Of 2016

Ramesh Kumar

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 18-03-2020

Acts Referred:

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

Citation : (2020) 03 P&H CK 0086

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : P.S. Jammu, Siddharth Sanwaria, Harkesh Manuja

Final Decision : Allowed

Judgement

Sanjay Kumar, J

The petitioner is a resident of Village Bohli, Post Office Kabri, Tehsil Madlauda, District Panipat. He is aggrieved by the order dated 20.08.2016 passed by the Deputy Commissioner, Panipat, upon his petition against the Sarpanch of the Gram Panchayat of the said village, the 6th respondent herein. The complaint of the petitioner was that the 6th respondent suffered disqualification to hold the post of Sarpanch as his Matriculation certificate was not genuine. The petitioner pointed out that the 6th respondent claimed to have passed his Matriculation course from Takshila College, Karnal, but as per his information, there was no such college in existence. He further asserted that the Bhartiya Shiksha Parishad, Uttar Pradesh, which was stated to have issued the subject Matriculation certificate was not recognized by the Council of Boards of School Education, New Delhi. The petitioner therefore wanted action to be taken by the authorities under Section 51 of the Haryana Panchayati Raj Act, 1994 (hereinafter, 'the Act of 1994'), for removal of the 6th respondent from office. However, by the impugned order dated 20.08.2016, the Deputy Commissioner, Panipat, opined that as the status of Bhartiya Shiksha Parishad, Uttar Pradesh, was sub judice before the civil Court, no action could be taken at this stage and deferred the

matter on that ground.

Before advertent to the factual aspects of the case, it would be appropriate to consider the statutory scheme of the Act of 1994 in this regard. Section 51 thereof deals with suspension and removal of a Sarpanch/Panch. Section 51(3) (b) states to the effect that the Director or the Deputy Commissioner may remove a Sarpanch or Panch from office after following the due procedure if he was disqualified to be a member of the Gram Panchayat at the time of his election. 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 who has not passed Matriculation examination or its equivalent examination from any recognized Institution/Board shall not be a Sarpanch or a Panch. Therefore, any man ordinarily aspiring to the post of Sarpanch must have passed Matriculation examination or its equivalent from a recognized Institution/Board. Be it noted that, in terms of this restriction, it is not necessary that such recognition must be by a local Board or Institution in the State of Haryana only and even if the Matriculation certificate is recognized by any Institution/Board from any other State, it would suffice.

In the case on hand, the 6th respondent claims to have passed his Matriculation course from Takshila College, Karnal, which is under the control of the Bhartiya Shiksha Parishad, Uttar Pradesh. As per the 6th respondent, this institution was thereafter renamed as Manas Sanskrit Maha Vidyalaya/Manas Model Senior Secondary School, Karnal. 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 arose 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 context 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 is owing to the pendency of the aforestated suit that the Deputy Commissioner deferred consideration of the petitioner's petition against the 6th respondent. Perusal of the order passed by the Deputy Commissioner demonstrates that he took up the matter only at the behest of this Court, which had disposed of the earlier writ petition filed by the petitioner complaining of inaction. The said writ petition was disposed of on 20.05.2016, requiring the Deputy Commissioner to dispose of the petitioner's complaint within a time frame. Thereupon, the Deputy Commissioner took note of the pendency of the above referred civil suit filed by the Bhartiya Shiksha Parishad, Uttar Pradesh, and the operation of the interim order therein to reach the conclusion that it would be appropriate to take a decision only after the suit was disposed of.

At the outset, Mr. Harkesh Manuja, learned counsel for the 6th respondent, contended that if the petitioner had any grievance with the aforestated order, he could have availed the statutory appellate remedy provided to him under Section 51(5) of the Act of 1994. It is no doubt true that any person aggrieved by an order passed under Section 51(3) is afforded the remedy of an appeal before the Government under the above provision. However, as this writ petition has been pending consideration before this Court since October, 2016, it would not be proper to non-suit the petitioner at this late stage on the ground of availability of an effective alternative remedy. Be it noted that the said doctrine does not postulate a straitjacketed formula and it would be well within the discretion of this Court to entertain a writ petition notwithstanding the availability of an alternative remedy. All the more so, when the order under challenge does not even reflect proper application of mind. Presently, that is precisely the case.

It may be noted that the pending litigation before the trial Court 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. Though the Bhartiya Shiksha Parishad offered Matriculation course through an institution earlier named as Takshila College, the said fact, by itself, would not equate the said course or the Matriculation certificate of the 6th respondent with a higher status, requiring its recognition by the University Grants Commission, New Delhi. Therefore, pendency of the said civil suit which, obviously, has reference to the graduation degrees etc. offered by the Bhartiya Shiksha Parishad, Uttar Pradesh, has no impact on the validity or otherwise of the Matriculation certificate, presently in question.

In terms of Section 175(v) of the Act of 1994, what is required is that the 6th respondent's Matriculation certificate must be recognized by any Institution/ Board. Though the petitioner seems to have inquired as to the status of the Bhartiya Shiksha Parishad in this regard with the Council of Boards of School Education, New Delhi, there is no material to support his contention that every

institution in the country which offers Matriculation course would invariably have to be recognized by this Council. 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, Panipat, to ascertain whether the Matriculation certificate secured by the 6th respondent 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 and losing sight of the limited scope of the pending litigation before the trial Court, the Deputy Commissioner, Panipat, abdicated his statutory function and power under Section 51(3) of the Act of 1994 and unnecessarily deferred the matter.

At this stage, it may also be noted that it is the claim of the 6th respondent that the petitioner affirmed before the elders of the village that he did not file this case. The 6th respondent asserted that this case was being sponsored in the name of the petitioner by someone from behind the scenes. This aspect of the matter would also have to be examined by the Deputy Commissioner, Panipat, by calling upon the parties to be present in person, before undertaking further inquiry.

On the above analysis, this Court has no hesitation in holding that the Deputy Commissioner, Panipat, was not justified in deferring the matter to await the decision of the trial Court in the pending suit.

The writ petition is accordingly allowed to the extent of directing the Deputy Commissioner, Panipat, to inquire into the matter on merits, in terms of the observations made hereinbefore, and take a reasoned decision thereafter, on facts and in accordance with law. This exercise shall be completed expeditiously and in any event, not later than eight weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.