



CWP No.28460 of 2022

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.28460 of 2022
Reserved on : 28th NOVEMBER,2024
DATE OF DECISION : 16.12.2024

Anju Bala @ Anju Devi

.... Petitioner

Versus

State of Haryana and Ors.

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

*** * * ***

Present : Mr. Vikram Singh, Advocate for the petitioner.

**Mr. Ankur Mittal, Addl.AG, Haryana with
Mr. Saurabh Mago, DAG, Haryana,
Ms. Kushaldeep K Manchanda, Advocate,
Mr. Siddhant Arora, Advocate for the State of Haryana.**

**Mr. Pradip Bhandari, Advocate,
Mr. Bharat Bhandari, Advocate for respondent No.3.**

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SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for setting aside order dated 28.11.2022 (Annexure P-7), whereby the State Election Commission has removed the petitioner from the post of President, Municipal Council, Sohna.

Factual Background

2. The State Election Commission, Haryana, vide notification No.SEC/1ME/2022/1481 dated 23.05.2022, issued a programme for conducting

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general elections for the post of President and Members of all wards of 28 Municipal Committees and 18 Municipal Councils in the State. The petitioner contested the election for the post of President, Municipal Council, Sohana, Gurugram. The elections for the said municipal committee was conducted on 19.06.2022 and the result was declared on 22.06.2022 whereby the petitioner was declared as the winner by securing 12185 votes.

3. Thereafter, Smt Lalita-respondent No.8, resident of Sohana, Gurugram vide complaint dated 28.06.2022, rather allegedly raised frivolous allegation against the petitioner, that the petitioner, at the time of filing of nomination for the post of the President, rather had attached therewith an invalid/fake mark sheet for Class VIII. Resultantly, in the complaint, it was alleged that the petitioner suffers from a disqualification, as contemplated under Section 13A (1)(h) of the Act of 1973 and also under Rule 21(1)(p) of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as the 'Rules of 1978'). Therebys, the petitioner was served with a show cause notice dated 21.09.2022 (Annexure P-4) by the State Election Commissioner, exercising the powers under Section 13I of the Act of 1973, and therefore, she was directed to give reply till 28.10.2022, to the aforementioned allegations. Consequently, acting upon the said show cause notice, the petitioner gave a comprehensive reply on 28.10.2022.

4. The complainant had also approached this Court vide CWP No.14020 of 2022, which was disposed of vide order dated 14.10.2022 with directions to conclude the proceedings expeditiously. Accordingly, the Deputy Commissioner, Karnal, vide Memo No.1127/L.B dated 06.09.2022, sent a copy of the inquiry report to the State Election Commission, whereupon the impugned show cause notice has been issued to the petitioner.

5. In furtherance of the impugned show cause notice dated 21.09.2022,

the proceedings commenced before the State Election Commission, Haryana, and
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upon culmination of the inquiry proceedings, thus the impugned order became rendered whereby the present petitioner has been ordered to be removed from the post of President.

Submissions of the learned counsel for the petitioner

6. Though the learned counsel for the petitioner submits, that though through the provisions engrafted in Section 13I of the Act of 1973 provisions whereof becomes extracted hereinafter, thus the State Election Commission becomes enabled to remove any democratically elected President or a Member to a Municipal Council and to the Municipal Committee concerned. However, he submits, that the said vested empowerment in the State Election Commission, does untenably undo the effect of Rule 85 of the Rules of 1978, provisions whereof also becomes extracted hereinafter. He submits that the said emanates, thus on the premise that when only through the institution of an election petition before the Election Tribunal concerned, and on proof of the ingredients spelt therein, thus the Election Tribunal concerned, becomes empowered to declare the election to be vitiated, on account of the democratically elected person concerned, inviting any of the statutory disqualification, as become contemplated in Section 13-A of the Act of 1973, provisions whereof also becomes extracted hereinafter. Therefore, he submits that the contra thereto empowerment vested in the State Election Commission, rather has caused pervasive breaches to the statutory mandate enclosed in Rule 85 of the Rules of 1978.

Section 13I of the Act of 1973

13I. Removal of an elected president and member having any disqualification at the time of election.- The State Election Commission may, after such enquiry, as it may deem fit and after giving an opportunity of being heard, by an order, remove the president or a member, if he was having any disqualification mentioned in section 13A or rules framed under this Act at the time of



his election. The office of the president or member so disqualified shall become vacant immediately.

Rule 85 of the Haryana Municipal Elections Rules, 1978

85. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-rule (2), if the Tribunal is of the opinion.-

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Act or the rules made thereunder;
- (b) that any corrupt practice specified in clauses (1), (2), (5) or (6) of rule 73, has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-
 - (j) by the improper acceptance of any nomination; or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or
 - (iii) by the improper reception, refusal or rejection of any vote or reception of any vote which is void; or
 - (iv) by any material irregularity in the procedure of the election, the Tribunal shall declare the election of the returned candidate to be void.

Explanation:- “Material irregularity in the procedure of any election” includes any improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void for non-compliance with the provision of the Act or of the rules made thereunder or any mistake in the use of any form annexed thereto which materially affect the result of an election.

(2) If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, of any corrupt practice, but the Tribunal is satisfied-

- (a) that no such corrupt practice was committed at the election by the candidate, and every such corrupt practice was committed contrary to the orders and without the consent of the candidate;
- (b) that the candidate and his agent took all reasonable means for preventing the commission of corrupt practice at the elections; and
- (c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent, then the Tribunal may decide that the election of the returned candidate is not void.

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Clause (h) of Section 13-A of the Act of 1973

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13A. Disqualifications for President and Members.—

(1) A person shall be disqualified for being chosen as and for being President or a member of a municipality.

(a) if he is so disqualified by or under any law for the time being in force for the purposes of election to the Legislature of the State of Haryana: Provided that no person shall be disqualified on the ground that he is less than twenty- five years of age if he had attained the age of twenty one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State of Haryana;

(c) Omitted.

(d) if he is convicted or has been convicted of an offence punishable under section 29, 30 and 31 of the Haryana Municipal Corporation Act, 1994 (16 of 1994), the Prevention of Corruption Act, 1988 (49 of 1988) or the Prevention of Terrorism Act, 2002 (15 of 2002)[;or]

(e) if he has been convicted or charges have been framed against him by a court in a criminal case for an offence, punishable with imprisonment for not less than ten years; or

(f) if he fails to pay an arrear of any kind due to him to any Primary Agriculture Co-operative Society, District Central Cooperative Bank and District Primary Co-operative Agriculture Rural Development Bank; or

(g) if he fails to pay arrears of electricity bills; or

(h) if he has not passed matriculation examination or its equivalent examination from any recognized institution/ board:

Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass

Provided further that in case of a woman candidate belonging to Scheduled Caste, the minimum qualification for members excluding the

President shall be 5th pass; or (i) if he fails to submit a self declaration to the effect that he has a functional toilet at his place of residence; or (j)

if he makes expenditure beyond the prescribed limit on his election or fails to submit his election expenditure statement. (2) If any question

arises as to whether “President or” a member of a municipality has become subject to any of the disqualifications mentioned in sub-section

(1), the question shall be referred for the decision of such authority and in such manner as may be prescribed by rules. (3) If any person

furnishes a false caste certificate at the time of filing nomination, he



shall be disqualified for a period of six years from contesting the election to the municipality.”

7. Thirdly, the learned counsel for the petitioner while placing reliance upon Article 243GZ(b) of the Constitution of India, provisions whereof become extracted hereinafter, whereby there is a bar against any election to any Municipality being challenged except by way of an election petition becoming presented before such authority and in such manner as the Legislature of a State may, by law, provide. Therefore, thereupons he submits that since the law enacted in terms of the (supra) Constitutional provisions, becomes embodied in Rule 85 as carried in the Rules of 1978. As such, when the Haryana State Legislative Assembly, thus in terms of Article 243ZG(b) of the Constitution of India, but has enacted the (supra) provisions, thereby the challenged amendment necessarily militates against the (supra) Constitutional provision, whereupons the impugned amendment is required to be declared to be ultra vires vis-a-vis the (supra) Constitutional provisions.

243ZG. Bar to interference by courts in electoral matters. xxx (b)
no election to any Municipality shall be called in question except
by an election petition presented to such authority and in such
manner as is provided for by or under any law made by the
Legislature of a State.]

Reasons for rejecting the said submission

8. The submission (supra) as becomes addressed before this Court by the learned counsel for the petitioner, as relates to the impugned provisions, being ultra vires the mandate of the (supra) Constitutional provisions, besides contravening the declaration of law made by the Hon’ble Supreme Court in case titled as ‘N.P. Ponnuswami Versus The Returning Officer, Namakkal Constituency and others’, reported in 1952 SCC Online (SC) 3, wherein in paragraph 25 thereof,

paragraph whereof becomes extracted hereinafter, it becomes expostulated, that
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once the election process commences, thereby vis-a-vis the ongoing elections rather no interference is required to be made, rather the remedy to the aggrieved is to institute the apposite election petition in terms of the relevant statutory provisions, thus is a submission, which is required to be rejected.

“25. The conclusions which I have arrived at may be summed up briefly as follows :--

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.”

9. The reason for rejecting the said argument arises from a keen perusal becoming made of the provisions embodied in Article 243V of the Constitution of India, provisions whereof becomes extracted hereinafter.

243V. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of a Municipality—

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.



(2) If any question arises as to whether a member of a Municipality has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

10. A reading of the contemplations made therein, reveals that when any democratically elected person invites any statutory disqualification, thus for being elected as a member of the Municipality concerned, thereupon the (supra) controversy is amenable for a decision becoming recorded thereons, but only by an authority as becomes created through a valid legislation becoming passed by the State Legislature concerned.

11. Since in pursuance to the (supra) provisions, the Haryana State Legislative Assembly, has made the impugned amendment (supra). Resultantly, the amendment falls in alignment with the (supra) Article carried in the Constitution of India, whereby the decision over the controversy concerned, is amenable to be recorded by an authority to be created for the said purpose, thus by a law becoming passed by the State Legislature concerned, as has been evidently done in the present case.

12. In consequence, when a plenitude of legislative competence becoming preserved vis-a-vis the State Legislative Assemblies concerned, to enact a law for conferring jurisdiction upon any authority as deemed fit to decide, thus an issue relating to any democratically elected member to a Municipality or a Municipal Committee, rather inviting or not inviting any statutory disqualification. As such, since the impugned legislative amendment has been made in pursuance to the supra Constitutional provisions. Therefore the argument (supra) addressed before this Court by the learned counsel for the petitioner becomes rudderless and is rejected. Conspicuously when the impugned amendment is reiterated, thus also irrefutably within the legislative competence of the Haryana State Legislative Assembly.

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13. Emphatically when a plenitude of legislative competence becomes bestowed upon the State Assemblies to, in terms of the (supra) extracted Constitutional mandate, thus make enactments whereby the State Legislative Assemblies become clothed, with legislative competence, to create such an authority and in such manner, as is provided for by or under any law made by the Legislature of a State, thus for making a decision over a subject concerning the elected member to a Municipality, rather inviting or not inviting the statutory disqualification, as become mentioned in the clause (b) of Article 243ZG of the Constitution of India. Resultantly, it also supports the inference (supra), that therebys there would arise no conflict inter se the impugned amendment with Rule 85 of the Rules of 1978. Consequently when as stated (supra), there is irrefutable legislative competence vested in the Haryana State Legislative Assembly, to pass the impugned legislation whereby there is a conferment of an able jurisdiction, upon the State Election Commission, to decide the issue relating to the incurring of the statutory disqualification by the present petitioner. As such the impugned legislation does not suffer from any invalidity.

14. Significantly, also a duo of remedies are preserved to the aggrieved i.e. one under the impugned amendment and the other through recursings being made to Rule 85 of the Rules of 1978, whereby the choice for opting for one or the other of the duo of (supra) remedies lies with the aggrieved. In other words, the preservation of the dual remedies (supra) rather are but complementary to each other. Therefore, if the aggrieved chooses to avail the remedy under the impugned amendment therebys he may become estopped to avail the remedy, as created in his favour under Rule 85 of the Rules of 1978. Emphatically there is no Constitutional bar against the creation of two statutory bodies, thus for dealing with a common subject. Therefore, when the said created dual remedies thus are

not in mutual conflict, rather are complementary to each other. In sequel the
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remedy created under the impugned amendment when as stated (supra), is clothed with legislative competence, as endowed upon the Haryana State Legislative Assembly, thus through the mandate of the Constitutional provisions (supra). Resultantly, therebys too, the impugned amendment is endowed with the halo, of completest wisdom besides with an effective fullest legislative empowerment, thus vested in the Haryana State Legislative Assembly, as such it does nor suffer from any infirmity.

15. Having said that the issue relating to the statutory aptness of jurisdictional competence of the Election Commission, thus to determine the fakeness or otherwise of the Middle standard Certificate issued by one Mukesh Upadhyay qua the present petitioner, rather in the year 1994-1995, thereupons the reasons which became recorded by the Inquiry Officer, to state that the said mark sheet could not have been issued in the said year, became well grooved in :

a) Said Mukesh Upadhyay being disabled to issue the said mark sheet in the year 1993-1994, especially when then he was aged merely 15 to 16 years, as such, was unfit to be employed in any educational Institution wherefrom it emanated. A photo copy of the supra mark sheet along with its original, if it was in the custody of the present respondent, therebys the same became enjoined to become produced before the Inquiry Officer, whereas, the same remaining unadduced into evidence. Resultantly, the validity of issuance thereof became precluded to be tested, especially from the original records thus, on the purported ground that the original record were destroyed in a fire, which took place in the year 2003.

16. Now, the eighth standard Certificate, which became issued in favour of the present petitioner, thus became declared to become ingrained with a stench of fakeness, on the ground, that School Leaving Certificate, as required to be then issued to the present petitioner, to subsequently enable her to engage herself into

educational pursuits in another School i.e Adarsh Public School Rainur (Bada),
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Alwar (Rajasthan), was issued much subsequently therefrom rather in the year 2018. Therefore, the apposite belated subsequent issuance of the School Leaving Certificate vis-a-vis the present petitioner rather in the year 2018, from the School Authorities, from where she was earlier pursuing education, did thus become concluded by the Inquiry Officer, to render incapacitated the present petitioner, to pursue much prior thereto rather in the year 1993-1994, her education in any educational Institution and that too much prior to the subsequent thereto issuance of the SLC belatedly in the year 2018.

17. Though, the learned counsel appearing for the petitioner argues with much vigour before this Court that since the Inquiry Officer was exercising quasi judicial powers therebys he became enjoined to, from the pleadings of the parties raise issues appertaining to the purported fakeness of the Middle Standard Certificate as became appended by the present petitioner along with her Nomination Form. Moreover, after the formulation of the issues, the Inquiry Officer was required to subsequently asking for the evidence discharging onus thereons becoming so discharged by the litigant concerned.

18. He submits that since as apparent from the reading of the impugned order qua no issues being struck, despite the striking of the issues being a dire necessity, thereupons he contends that there was no opportunity granted to the present petitioner to adduce best evidence, to prove that the said Certificate was endowed with a sanctified aura of authenticity.

REASONS FOR REJECTING THE SUBMISSION

19. The above argument is bereft of vigour as the present petitioner could only from the adduction of the relevant revenue record maintained at the School establishment concerned, thus prove that the photo copy of the Middle Standard Certificate which he appended with the Nomination Form, thus was validly issued from the Educational Institution concerned.

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20. However, since as is apparent from the reading of the inquiry report, the original record was destroyed therebys, the present petitioner was expected to retain the original of the said apposite Certificate as therefrom the validity of the seal and signatures made thereovers, thus could become proven by the School Establishment concerned.

21. Conspicuously, even the original of the Certificate, became untendered into evidence by the present petitioner. Consequently, therebys there was no opportunity for the Inquiry Officer to make any inter se comparison inter se the apposite, photo copy, thus with the apposite original nor could the Enquiry Officer, thus proceed to also ask for the adduction of further evidence, from the Educational Establishment whether all the endorsements as made over the original were either authentic or were unauthentic.

22. Irrespective of the above inferences, what magnifies the ill conduct of the present petitioner as but arises from the withholding of the original, wherefrom an adverse inference has been drawn against her, thus, also become borrowed from the trite fact, that the Certificate, has been issued by one Mukesh Upadhayay, who, however unclinchingly and unrefutably, has been stated to be at the time of issuance of same, rather aged 14 to 15 years. Since therebys he was, as aptly concluded by the Enquiry Officer, rather completely disabled to claim that he was an empowered employee of the Educational Institution. As but a naturally corollary thereto, the Certificate concerned issued vis-a-vis the present petitioner, thus clearly is a fake and unauthentic Certificate.

23. In the wake of the above, irrefutable evidence as emerges to the fore, besides with this Court recording the hereinabove adverse inference against the present petitioner, therebys, at this stage, the learned counsel for the petitioner but cannot argue, that yet there was any requirement qua formulation of issues nor can



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argue that the present petitioner has been disabled to discharge the evidence adducing onus as was to be rested upon her on the issues concerned.

24. While upholding for all the above stated reasons as occur in the impugned enquiry supra, this Court after concurring with the impugned Inquiry report, finds no merit in the present petition and is constrained to dismiss the instant petition.

25. Ordered accordingly.

26. All pending application(s), if any, shall also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

16.12.2024
manoj

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No