

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-5897-2023 (O&M)

Reserved on: 04.11.2024

Pronounced on: 20.11.2024

Satish Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Manish Kumar Singla, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. P.P. Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana and
Ms. Kushaldeep K. Manchanda, Advocate
for MC Assandh/respondent.

Mr. Mohit Rathee, Advocate
for respondent No.9.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for declaring null, void and ultra vires the Haryana Municipal (Amendment) Act, 2018 (Annexure P-6) dated 19.04.2018 and the notification No. Leg.34/2019 dated 04.09.2019 publishing Haryana Act No.33 of 2019, which has amended the Haryana Municipal (Second Amendment) Act, 2019 (Annexure P-7), to the extent, that the provisions of Section 13I have been untenably inserted/substituted in the Principal Act of 1973, wherebys the State Election Commission has been untenably empowered to remove the

President or Member(s), thus on account of theirs respectively incurring any statutory disqualification. The petitioner further prays for setting aside the Show Cause Notice dated 21.11.2022 (Annexure P-2) issued by the State Election Commission to the petitioner, who is the elected President of Municipal Committee, Assandh, whereby the petitioner has been asked to show cause against the initiation of action under impugned Section 13I of the Haryana Municipal Act, 1973 (hereinafter referred to as 'the Act of 1973'), provisions whereof becomes extracted hereinafter.

"13I. Removal of an elected member having any disqualification at 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 order, remove 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 member so disqualified shall become vacant immediately."

Factual Background

2. The State Election Commission, Haryana, vide notification No. SEC/1ME/2022/1481 dated 23.05.2022, issued a programme for conducting general elections for the post of President and Members of all wards of 28 Municipal Committees and 18 Municipal Councils in the State including the Municipal Committee, Assandh, District Karnal. The seat of the President of Municipal Committee, Assandh, was reserved for Scheduled Caste (Male) Category, as such, the petitioner contested the election to the said seat. 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 a margin of 553 votes.

3. Thereafter, Ms. Sonia Bohat daughter of Sh Bhagat Singh, Sh. Princepal Singh son of Sh Devender Singh and Sh. Rajiv son of Lichman, all residents of Assandh, Karnal, vide complaints respectively dated 27.06.2022 and 12.07.2022, have filed false and frivolous complaints against the petitioner alleging therein, that the petitioner, at the time of filing of nomination, had attached invalid matriculation certificate issued by 'Uttar Pradesh State Open School Board' especially when the said Board is not available in the list of equivalence issued by the Board of Education Haryana, Bhiwani. On the said basis, it has been 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'). Resultantly, the petitioner was served with a show cause notice dated 21.11.2022 (Annexure P-2) by the State Election Commissioner, exercising the powers under Section 13I of the Act of 1973, and he was directed to give reply till 12.12.2022, to the aforementioned allegations. Consequently, acting upon the said show cause notice, the petitioner gave a comprehensive reply on 05.12.2022.

4. The complainants had also approached this Court vide CWP No.16125 of 2022 titled "Soniya Bohat versus State of Haryana and Others" which was disposed of vide order dated 28.07.2022 (Annexure P-4) with directions to conclude the inquiry with respect to the genuineness of the 10th standard certificate but within a period of 08 weeks. Accordingly, the Deputy Commissioner, Karnal, vide Memo No.2228/LFA dated 15.11.2022, 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 21.11.2022, the proceedings commenced on 17.03.2022, before the State Election Commission, Haryana.

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, but 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 becoming instituted 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 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-
 - (i) 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

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 Co-

operative 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. Secondarily, the learned counsel for the petitioner in the alternative submits, that since merely on the basis of a preliminary enquiry report, the impugned show cause notice (Annexure P-2) has been issued, and that too, without the participation of the present petitioner thus in the enquiry proceedings, therebys no reliance was required to be placed on the preliminary enquiry, as the non participation in the enquiry proceedings of the present petitioner vitiatedly rather militates against the norm of *audi alteram partem*.

8. Thirdly, the learned counsel for the petitioner while placing reliance upon Article 243GZ(b) of the Constitution of India, provisions whereof become extracted hereinafter, wherebys 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, whereupon he submits that since the law enacted in terms of the (supra) Constitutional provisions, becomes embodied in Rule 85 carried in the Rules of 1978. As such the Haryana State Legislative Assembly, when in terms of Article 243ZG(b) of the Constitution of India, but has enacted the (supra) provisions, therebys the challenged amendment necessarily militates against the (supra) Constitutional provision, whereupon 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.

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(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

9. 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 once the election process commences, therebys 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."

10. 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.

11. A reading of the contemplations made thereins, 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.

12. 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, wherebys 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.

13. 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 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 reiteratedly, thus also irrefutably within the legislative competence of the Haryana State Legislative Assembly.

14. 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 wherebys 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 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.

15. Significantly, also a duo of remedies are preserved to the aggrieved i.e. one under the impugned amendment and the other through recoursings being made to Rule 85 of the Rules of 1978, wherebys 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 to against the creation of two statutory bodies under the Constitution of India, 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 remedy 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 made with the completest wisdom of fullest legislative empowerment, thus vested in the Haryana State Legislative Assembly, as such it does suffers from any infirmity.

16. Though, the learned counsel for the petitioner submits, that since implicit reliance became placed by the State Election Commission upon the apposite enquiry report unfavourable to the petitioner as become drawn by the Deputy Commissioner, Karnal that too without the petitioner becoming joined in the enquiry proceedings, wherebys but naturally non adherence was made to the rule of the *audi alteram partem*. Resultantly he also submits that the show cause notice as such vitiate. *However*, even the same is also liable to be rejected.

17. The reason for rejecting the same arises from the factum, that in the connected writ petition No.CWP-8068-2023, a challenge is made to the removal of the petitioner by the State Election Commission. Resultantly, when the show cause notice merges into the final decision

made by the competent authority, besides when the said decision is under challenge in CWP-8068-2023, as such, the argument (supra) warrants rejection, especially when the said argument would become dealt with by this Court when it proceeds to make a decision upon the writ petition (supra).

18. In aftermath, the writ petition is dismissed and the impugned amendment (Annexure P-6) is upheld. Moreover, the impugned show cause notice is also upheld, as the same has merged into a final decision made by the State Election Commission, wherebys the present petitioner has been, on account of his incurring the statutory disqualification, as manifested in CWP-8068-2023, thus ordered to be removed from the office of President, Municipal Committee, Assandh. Moreover, since after the rendition of the order of removal, the present petitioner has filed CWP-8068-2023, therebys the issue relating to the validity of removal of the present petitioner from the office of President, Municipal Committee, Assandh, thus would be determined in the said writ petition.

Final Order of this Court.

19. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

**(SURESHWAR THAKUR)
JUDGE**

20.11.2024
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**(SUDEEPTI SHARMA)
JUDGE**

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