

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8068-2023 (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. G.S. Sandhu, Advocate
for respondent No.8.

Dr. Rau P.S. Girwar, Advocate,
Ms. Archna, Advocate and
Ms. Babita Gupta, Advocate
for respondent No.10.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for setting aside and quashing the impugned order dated 10.04.2023 (Annexure P-8), whereby the petitioner has been removed from the post of President, Municipal Committee, Assandh.

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 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' as 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 disqualification under Section 13A (1)(h) of the Haryana Municipal Act, 1973 (hereinafter referred to as 'the Act of 1973'), and Rule 21(1)(p) of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as the 'Rules of 1978').

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 10th standard certificate 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 letter dated 31.10.2022 of SDO (C), Assandh and report dated 06.09.2022 (Annexure P-3) of the Naib Tehsildar cum Assistant Returning Officer, Assandh along with the documents to the State Election Commission, Haryana for further necessary action. Subsequently, Deputy Commissioner, Karnal vide his memo No.2167/LFA dated 31.10.2022 has submitted that name of "Uttar Pradesh State Open School Board" is not included in the equivalence list mentioned in Chapter 12 and 14 of the Council Regulations and examinations conducted by the Uttar Pradesh State Open School Board are not valid nor approved by the Board of Secondary Education, Uttar Pradesh. The Deputy Commissioner Karnal relying upon the finding of the Naib Tehsildar cum Assistant Returning Officer, remarked that matriculation certificate submitted by Sh. Satish Kataria along with election form is not valid.

5. Subsequently, the petitioner was served with a show cause notice dated 21.11.2022 (Annexure P-6) by the State Election Commissioner, exercising the powers under Section 13(l) of the Act of 1973, and he was directed to give reply till 12.12.2022 to the allegations, to which the petitioner submitted his comprehensive reply on 05.12.2022 (Annexure P-7).

6. In furtherance of the impugned show cause notice dated 21.11.2022, the proceedings before the State Election Commission, Haryana against the petitioner commenced on 17.03.2022. Respondent

No.3 (State Election Commission) without conducting any formal regular inquiry or testing the evidence led by the petitioner or giving any opportunity to cross-examine the witnesses, has proceeded to pass the impugned order dated 10.04.2023 (Annexure P-8).

Finding of the Court

7. Since the Deputy Commissioner, Karnal vide his memo No.2167/LFA dated 31.10.2022, has submitted that since the name of "Uttar Pradesh State Open School Board", is not included in the equivalence list, mentioned in Chapter 12 and 14 of the Council Regulations, besides impliedly declares that the examinations conducted by the "Uttar Pradesh State Open School Board" are not valid nor become approved by the Board of Secondary Education, Uttar Pradesh. Resultantly, the Deputy Commissioner, Karnal, has but concluded that the matriculation certificate submitted by Sh. Satish Kataria along with his nomination form, rather is not valid. Besides also similar contents and conclusions in the enquiry report is available in the letter dated 31.10.2022 of SDO (C), Assandh and in the enquiry report dated 06.09.2022 furnished by the Naib Tehsildar cum Assistant Returning Officer, Assandh. As per the said enquiry report, the name of "Uttar Pradesh Open School Board" is neither available in the list of Institutions recognized by the "Council of Boards of School Education in India" nor occurs in the list of Boards/Universities/Institutions issued by the "Board of School Education Haryana, Bhiwani".

8. Since no challenge is made by the petitioner to the said list issued by the Institutions/Boards concerned, whereins, the name of "Uttar Pradesh State Open School Board", is not included in the equivalence list mentioned in Chapter 12 and 14 of the Council

Regulations nor when the examinations conducted by the "Uttar Pradesh State Open School Board" thus become approved by the Board of Secondary Education, Uttar Pradesh. Resultantly, the impugned order is a well made order. Consequently, the challenge to the impugned order as made by the Election Commissioner, while making reliance upon enquiry report, thus acquires no aura of validity.

9. Though, the learned counsel for the petitioner has argued that since the present petitioner was never joined in the enquiry proceedings, which resulted in the making of an enquiry report adversarial to him, therebys when the principle of *audi alteram partem* became breached. Resultantly, he argues that both the enquiry report as well as the order of removal become vitiated.

10. However the said argument may have found some favour with this Court, but only when a sound challenge was made to the trite factum appertaining to the exclusion of the name of "Uttar Pradesh State Open School Board" in the equivalence list mentioned in Chapter 12 and 14 of the Council Regulations and examinations conducted by the "Uttar Pradesh State Open School Board", besides when a sound challenge was also made to the wants of approval becoming accorded to the said Board/Institution, thus by the Board of Secondary Education, Uttar Pradesh. However, no challenge is made to (supra). Resultantly, when therebys the (supra) trite facts, do acquire tenacity, besides when no evidence countervailing the ill effects of (supra) vis-a-vis the petitioner's espousal, thus becomes adduced. Resultantly, the consequence thereof, but naturally is that, irrespective of non adherence being made to the principles of natural justice, yet the said non adherence rather does not vitiate either the enquiry report nor vitiates

the consequential ill actions banked thereons, thus by the respondent concerned in his removing the petitioner from the post of President, Municipal Committee, Assandh, especially when the certificate was per se invalid as it emanated from a Board/Institution, which was not competent to issue the same.

Final Order of this Court.

11. 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

Ithlesh

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