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ITEM NO.54

COURT NO.15

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 15393/2024

(Arising out of impugned final judgment and order dated 01-11-2022 in CWP No. 24930/2022 passed by the High Court Of Punjab & Haryana At Chandigarh)

SANDEEP KUMAR

PETITIONER(S)

VERSUS

VINOD & ORS.

RESPONDENT(S)

(FOR ADMISSION and I.R., IA No.62721/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.62723/2024-EXEMPTION FROM FILING O.T.)

Date : 10-09-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. Rameshwar Singh Malik, Sr. Adv.
Mr. Jitesh Malik, Adv.
Mr. Jatin Hooda, Adv.
Mr. Abhaya Nath Das, Adv.
Mr. Sunil Kumar Das, Adv.
Ms. Monica Goel, Adv.
Mr. Satish Kumar, AOR

For Respondent(s) Mr. Siddharth Mittal, AOR
Mr. Darshan Sejwal, Adv.
Mr. Sumit Kumar Sharma, adv
Mr. Abhijeet Varshney, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appellant has challenged the order dated 01.11.2022 passed by the Punjab & Haryana High Court (hereinafter called "the High Court") in a Writ Petition filed by the respondent no.1 herein Sri Vinod. The following orders were

passed: -

"The petitioner has referred to the letter dated 09.02.2015 (Annexure P8) where the Chhattisgarh Secondary Education Commission has issued a letter to the extent that students who have obtained certificate(s) between 07.11.2012 to 10.03.2014 should not be refused for study in higher class and to participate in the higher class examination. The petitioner has placed on record the matriculation examination certificate (Annexure P4), which was issued on 25.02.2014. It is further brought to the notice of the Court that he had earlier contested the election on the basis of same certificate.

Keeping in view the said letter (Annexure P 8), the petitioner's nomination papers cannot be rejected as his matriculation certificate was valid for higher studies as per (Annexure P 8).

Adjourned to 13.12.2022.

In the meantime, nomination paper of the petitioner be accepted by concerned Returning Officer.

Copy of this order be dasti under the signature of Bench Secretary."

3. The Petitioner therein (Respondent No.1 here) was a candidate in the 2022 Panchayat elections for the post of Sarpanch Asaudah (Siwan) in District Jhajjar, Haryana and his nomination paper was rejected on the grounds that he has not done 'matriculation' from a recognized board. It was against the rejection of his nomination that the respondent had approached the High Court by means of a writ petition, in which the above order was passed.

4. The above writ petition is still pending before the High Court though as we have been informed at the Bar that no hearing subsequent to the above order has taken place in the case.

5. The background of the case is as follows: The State Election Commissioner, Haryana-Respondent no.4 (hereinafter called "the Commissioner") has issued a notification for holding general election to the Panchayat in the State of Haryana on 07.10.2022 in which the last date for filing of nomination papers is 19.10.2022; and the last date for scrutiny was 20.10.2022 and the date of polling was 02.11.2022. Four nomination papers were filed, out of which two were rejected on the ground that the candidates have not done their matriculation from the recognized institute. These rejections include the rejection of the present respondent no.1 (who was the petitioner before the High Court). Consequently, there were only two candidates left in the fray on 20.10.2022 and one of the two i.e. Om Parkash withdrew from the race leaving the present appellant as the only candidate. Consequently, he was declared elected by the Returning Officer. The appellant, however, has not been given the charge of a Sarpanch till today. The reason being that meanwhile the present respondent no.1 had filed the above-mentioned writ petition before the High Court in which the above order was passed. The appellant was not made a party in the writ petition but later when he had the knowledge of the writ petition and the order passed therein he too filed another writ petition before the High Court seeking direction from the High Court to direct the Election Officer to give charge of Sarpanch to the appellant. All the same, no order has been passed in the writ petition and that

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writ petition has simply been connected with the earlier writ petition and that is as things stand in the High Court is what we have been informed.

6. Under these circumstances, the appellant has come before this Court. The respondent no.1 is the only contesting party in this case who in spite of service is not represented before this Court. The respondent no.1 who had approached the High Court, we have been informed also did not disclose before the High Court that the present appellant being the only candidate in the fray had been elected as Sarpanch before the orders were passed by the High Court. Moreover, the present respondent no.1 did not even implead the appellant as a party in the writ petition before the High Court.

In any case, under the Haryana Panchayati Raj Election Rules, 1994 (hereinafter called "the Rules") after the elections, the remedy available for a candidate to challenge the result of an election is by means of an election petition under the provisions of Section 176(1) of the Rules which reads as :-

"If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or 2 [***] Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil court having ordinary

jurisdiction in the area within which the election has been or should have been held, for the determination of such question.”

7. Under the law presently applicable as laid down by this Court, particularly in the case of “Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors. reported in 1978 (1) SCC 405, once elections are announced, they should not be interfered with and after the election, the only remedy is to file an election petition and the rejection of a nomination paper is definitely one of the grounds that can be raised in an election petition. The respondent no.1 has not availed this remedy. More so, he has not even made appellant as a party in the writ petition.

8. The consequence of all this has been that the appellant who is an elected candidate is being denied the office to which he has been elected. Mr. Siddharth Mittal, learned counsel for respondent no.4 - State Election Commissioner accepts this position as to the facts but would also contend that a petition has also been filed by the Election Commissioner (Respondent no.4) challenging the same order of the High Court, which is pending as SLP(C)No.21612/2022 titled as State Election Commissioner Haryana & Ors. vs. Vinod & Anr.

9. Under these circumstances, we are of the opinion that an interim order needs to be passed in this case as a candidate who has been duly elected in a democratic process cannot be stopped from assuming the elected office,

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particularly in the manner in which it has been done.

10. Accordingly, we direct the Deputy Commissioner, Jhajjar, District Jhajjar-cum-District Election Officer (respondent no.6) to forthwith give the charge of Sarpanch of a Village Panchayat namely Asaudah (Siwan), District Jhajjar, Haryana, to the appellant.

11. Meanwhile, this appeal be tagged with the aforesaid SLP(C)No.21612/2022, so that suitable orders be passed in both the matters. We also make it very clear that any of our observations here will not prejudice the rights of any of the parties in case they choose to file an election petition challenging the election of the appellant to the office of Sarpanch.

(NIRMALA NEGI)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)