

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 8439 of 2014

Reserved on: 30.03.2017

Date of decision: 31.03.2017

Smt. Veena Devi

... Petitioner

Versus

State of Himachal Pradesh and others

... Respondents

Coram :

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner: Mr. Dushyant Dadwal, Advocate.

For the respondents: Mr. V.S. Chauhan, Additional Advocate General with Ms. Parul Negi, Deputy Advocate General, for respondents No. 1 to 3.

Mr. Ajay Sharma, Advocate, for respondent No. 4.

Ajay Mohan Goel, J. (Oral):

By way of this writ petition, petitioner has challenged the order passed by Sub Divisional Officer (Civil), Dehra, exercising the powers of authorized officer under Section 161 of the Himachal Pradesh Panchayati Raj Act,

¹Whether reporters of Local Papers may be allowed to see the judgment?

1994, in an Election Petition No. 42/EP/2011 dated 16.02.2012, vide which the said authorized officer while accepting the election petition filed by respondent No. 4 under Section 163 of the Himachal Pradesh Panchayati Raj Act, 1994, set aside the election of the present petitioner as Ward Panch, Ward No. 7, Gram Panchayat Bhadal, Development Block Pragpur, District Kangra, by holding that her husband was an encroacher of Government land and also the order passed in appeal by learned appellate authority i.e. Deputy Commissioner, Kangra at Dharamshala in Case No. 9/2012 dated 21.10.2013 vide which learned appellate authority dismissed the appeal so filed by the present petitioner against the order of learned authorized officer dated 16.02.2012.

2. Before proceeding further, it is clarified that though the election which is subject matter of the writ petition pertains to the year 2010 and the term of the said election is over and thereafter fresh elections to elect various Ward Panchs of different Gram Panchayats in the State of Himachal Pradesh have taken place, the necessity of deciding this case on merit is that the ground on which the present petitioner was held to be disqualified continuous to be a stigma, as far

as petitioner is concerned, to contest Gram Panchayat elections etc.

3. Brief facts necessary for adjudication of the present case as can be carved out from the pleadings of the parties are that the present petitioner was elected as Ward Panch, Ward No. 7, Gram Panchayat Bhadal, Tehsil Dehra, District Kangra, in the Panchayat elections which were held in the month of December, 2010. Her election as such was challenged under Section 163 of the Himachal Pradesh Panchayati Raj Act, 1994, by respondent No. 4 before learned authorized officer by filing an election petition which was instituted on 08.06.2011. Primary ground of assailing the elections of the petitioner was that her husband had encroached upon the Government land which rendered the petitioner disqualified to contest the elections.

4. In her reply filed to the election petition, the petitioner inter alia took an objection with regard to the maintainability of the election petition on the ground that the same was time barred. There was a specific preliminary objection taken in this regard.

5. Learned authorized officer vide order dated 16.02.2012 held that the husband of the petitioner was an

encroacher upon the Government land and on these basis, it held that the petitioner was disqualified to contest the Panchayat elections and learned authorized officer on this account declared the election of the present petitioner as Ward Panch, Ward No. 7, Gram Panchayat Bhadal, as void.

6. A perusal of the order demonstrates that the issue of limitation was not dealt with by learned authorized officer in the said order.

7. Feeling aggrieved, the present petitioner filed a statutory appeal under Section 181 of the Himachal Pradesh Panchayati Raj Act, 1994, wherein also a ground was taken that the order passed by the authorized officer was not sustainable as learned authorized officer had not appreciated that the election petition filed before it was time barred and the election petition in fact was liable to be dismissed on this account alone.

8. Learned appellate authority vide order dated 21.10.2013 while dismissing the appeal so filed by the present petitioner and upholding the order of learned authorized officer held as under on the point of limitation:-

“On the point of limitation raised by the counsel of appellant I feel this point should have been

raised before the lower court during trial. From the case file there is no proof that this point was raised at the lower court. Hence this can be looked at this stage.”

9. Said orders passed by learned authorized officer as well as learned appellate authority respectively are under challenge in the present writ petition.

10. Mr. Dushyant Dadwal, learned counsel for the petitioner, has argued that the order passed by learned authorized officer as well as the order passed by learned appellate authority are *non est* and liable to be set aside on this account alone that both learned authorities below erred in not appreciating that as the election petition was filed beyond the limitation as is prescribed under the statutory provisions of the Himachal Pradesh Panchayati Raj Act, 1994, the same could not have been adjudicated upon by learned authorized officer on merit at all as the said authority was not having any power in law to entertain and adjudicate upon the election petition which was time barred. Mr. Dushyant Dadwal has further argued that the order passed by learned appellate authority was not sustainable in law at all as while dealing with the issue of limitation it erred in not appreciating that the

issue of limitation is a legal issue and it can be looked at any stage and further learned appellate authority did not appreciate that in fact the point of limitation was duly taken up in the reply which was filed to the election petition by the present petitioner as well as in the grounds of appeal. On these basis, it has been urged by Mr. Dushyant Dadwal that the orders passed by both the authorities below were liable to be quashed and set aside.

11. Learned counsel for the respondents have justified the impugned orders on the ground that when the husband of the petitioner was an encroacher, she in fact was not eligible to contest the election and her election, therefore, was rightly set aside by both the authorities below and further the petition in fact has become infructuous with the efflux of time.

12. I have heard learned counsel for the parties and have also gone through the records of the case.

13. As far as the factum of the petition having become infructuous with the efflux of time is concerned, I have already mentioned above that the petition is being adjudicated on merit in view of the fact that the stigma of the petitioner being disqualified for contesting Panchayati Raj

elections is writ large as there are findings returned against her by the statutory authority in an election petition under the Himachal Pradesh Panchayati Raj Act, 1994, to this effect and the said findings stood affirmed in the appeal by the appellate authority.

14. It has not been disputed during the course of arguments by the respondents that the petitioner in fact was elected to Gram Panchayat elections which took place in December, 2010 itself. It has also not been disputed by learned counsel for the respondents that the election petition which was filed by respondent No. 4 before the prescribed authority were beyond the period of limitation as is prescribed under Section 163 of the Himachal Pradesh Panchayati Raj Act.

15. Chapter-XI of the Himachal Pradesh Panchayati Raj Act, 1994, deals with the disputes relating to election. Section 163 of the Act contemplates that any elector of a Panchayat may, on furnishing the prescribed security in the prescribed manner, present **within 30 days of the publication of the result**, on one or more of the grounds specified in sub-section (1) of section 175, to the authorized officer an election petition in writing against the election of

any person under this Act. Section 165 of the Act contemplates that if an election petition is not furnished in the prescribed manner, or the petition is not presented within the period specified in section 163, the authorized officer shall dismiss the petition provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard.

16. There is no corresponding provision in the Act whereby learned authorized officer has been conferred the power to condone delay in filing the election petition beyond the period of limitation prescribed in Section 163 of the Act.

17. Himachal Pradesh Panchayati Raj Act is a Special Act and right to appeal is a statutory right. In the absence of any enabling provision being there in the Himachal Pradesh Panchayati Raj Act, conferring upon the authorized officer authority to entertain and adjudicate an election petition beyond the period of limitation prescribed in Section 163 of the same, no election petition can be entertained and adjudicated on merit in case the same is not presented within 30 days of the publication of the result. A co-ordinate Bench of this Court in ***CMPMO No. 27 of 2007*** titled ***Deepender***

Rohal Vs. Suresh Thakur and others, decided on 14.12.2007 has held:-

“The provisions of Section 165 of the Act cast a mandatory duty on the Authorized Officer to dismiss the petition if the election petition is not furnished in the prescribed manner or the petition is not presented within the period specified under section 163.”

18. Admittedly, the elections were held in December, 2010, whereas the petition was presented before respondent No. 3 on 08.06.2011. Though it is not clear from the pleadings as to when did the publication of the result took place, however, it was stated at Bar by learned Additional Advocate General that the publication also took place in December, 2010, as all the elected members were given oath in the month of January, 2011. Besides this, it is not even the case of the private respondent that the election petition was in fact filed by him within 30 days of the publication of the result.

19. In these circumstances, in my considered view, respondent No. 3 erred in entertaining and adjudicating upon the said election petition on merit when admittedly

the said election petition was not filed within the statutory period as is envisaged in Section 163 of the Act, and when a specific stand was taken in the reply so filed to the election petition by the present petitioner that the petition was time barred. Even otherwise, issue of limitation being a legal issue, it was incumbent upon the said authority to have had applied its mind as to whether the election petition before it was within limitation or not.

20. Similarly, learned appellate authority while dealing with the point of limitation raised by the counsel of appellant held that the same should have been raised before the lower court during trial and erred in not appreciating that it was the duty of learned appellate forum also to have had adjudicated on the point as to whether the election petition which was decided by respondent No. 3 on merit was in fact filed before the said authority within limitation or not. Learned appellate authority could not have had shirked its responsibility by simply stating that this issue should have been raised before the lower court during trial. This Court deprecates this kind of approach in deciding the matters by quasi judicial authorities.

21. The quasi judicial authorities have to keep in mind while performing their duties as quasi judicial officers that they are deciding rights of the parties and the rights of the parties have to be decided within the parameters of law and legal issues if raised cannot be brushed aside in the manner in which the same has been done by both the authorities in the present case in general and by the appellate authority in particular.

22. Accordingly, in view of the discussion held above, this petition is allowed and impugned order dated 16.02.2012 passed by respondent No. 3 in Election Petition No. 42/EP/2011 and impugned order dated 21.10.2013 passed by respondent No. 2 in Case No. 9/2012 are accordingly quashed and set aside and the findings returned against the petitioner in the impugned orders are held *non est*.

23. It is further clarified that as the term of the office for which the petitioner was elected is since over and fresh elections have also taken place in the Gram Panchayat concerned, this judgment shall not confer any right upon the petitioner to occupy any office on the strength of her having been elected as Ward Panch, Ward No. 7, Gram Panchayat Bhadal, Tehsil Dehra, District Kangra, H.P.

24. It is further clarified that the findings returned by the prescribed authority to the effect that the petitioner was disqualified, are being set aside, as the election petition was not maintainable, having been filed beyond the prescribed period of limitation and this Court has not returned any findings on merit as far as the issue of disqualification of the petitioner is concerned and this issue is left open.

25. Petition accordingly stands disposed of in above terms with cost assessed at Rs.10,000/-. Miscellaneous Applications pending, if any, also stand disposed of.

March 31, 2017
(BSS)

(Ajay Mohan Goel),
Judge