
(2020) 12 SHI CK 0162

High Court Of Himachal Pradesh

Case No: Civil Writ Petition No. 3445 Of 2020

Anshul Kainthla

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision: Dec. 24, 2020

Acts Referred:

Himachal Pradesh Panchayati Raj Act, 1994 " Section 122, 180#Code Of Criminal Procedure, 1973 " Section 110

Citation: (2020) 12 SHI CK 0162

Hon'ble Judges: Sureshwar Thakur, J; Chander Bhusan Barowalia, J

Bench: Division Bench

Advocate: Nitin Thakur, Ashwani Sharma, Sanjeev Bhushan, Rakesh Chauhan

Final Decision: Dismissed

Judgement

Sureshwar Thakur, J

1. Respondent No. 6, is a member, of, Zila Parishad, from Jarol Ward, Tehsil Kumarsain, District Shimla, and she, through Annexure P-1, became

declared, as L-1, for, the execution, of, public works, mentioned therein. Consequently, the writ petitioner strives to attract against her, the statutory

prohibition, constituted in the second explanation, occurring in Section 122 of the Himachal Pradesh Panchayati Raj Act, 1994, provisions whereof

stand extracted hereinafter, and, the apt provisions whereof are underlined:

Ã, Ã¢, -Ã"122. Disqualifications.- (1) A person shall be disqualified for being chosen as, and for being, an office bearer, of a Panchayat-

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

Provided that no person shall be disqualified on the ground that he is less than 25 years, if he has attained the age of 21 years;

(b) if he has been convicted of any offence involving moral turpitude, unless a period of six years has elapsed since his conviction; or

(bb) if he has been found to have been guilty of any corrupt practices under section 180 of this Act; or

(c) if he or any of his family member(s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State

Government, a Municipality, a Panchayat or a Co- operative Society unless a period of six years has elapsed since the date on which he or any of his

family member, as the case may be, is ejected therefrom or ceases to be the encroacher; or Explanation. "For the purpose of this clause the

expression "family member" shall mean grand-father, grand-mother, father, mother, spouse, son(s), unmarried daughter (s); or

(d) if he has been convicted of an 4 [electoral offence under Chapter X-A of this Act or] under any law for the time being in force; or

(e) if he has been ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1973; or

(f) if he has been removed from public service or disqualified for appointment in public service,

(g) if he is in the employment or service under any Panchayat or of any other local authority or Co-operative Society or the State Government or

Central Government or any Public Sector Undertaking under the control of the Central or the State Government:

Provided that an office bearer shall not be disqualified for being an office bearer of the panchayat if he is directly or in directly engaged in any work

being executed by another panchayat of which he is not the office bearer;

Explanation. "For the purposes of this clause the expression

“service” or “employment” shall include persons appointed, engaged or employed on whole time, part time, daily or contract basis.

(h) if he is registered as a habitual offender under the Himachal Pradesh Habitual Offenders Act, 1969; or

(i) if, save as hereinafter provided, he has directly or indirectly any share or interest in any work done by an order of a Panchayat, or in any contract

or employment with, or under, or by, or on behalf of, the Panchayat; or

(j) if he has not paid the arrears of any tax imposed by a Panchayat or had not paid the arrears of any kind due from him to the Sabha, Samiti or Zila

Parishad Fund; or has retained any amount which forms part of, the Sabha, Samiti or Zila Parishad Fund;

(k) if, he is a tenant or lessee holding a tenancy or lease under a Panchayat is in arrears of rent of lease or tenancy held under the Panchayat;

(l) if he has been convicted of an offence punishable under the Protection of Civil Rights Act, 1955, unless a period of six years has elapsed since his

conviction;

(m) if he is so disqualified by or under any other law made by the State Legislature; and

(n) if he has made any false declaration as required under this Act of the rules made thereunder:

(2) The question whether a person is or has become subject to any of the disqualifications under sub-section (1), shall after giving an opportunity to the

person concerned of being heard, be decided-

(i) if such question arises during the process of an election, by an officer as may be authorized in this behalf by the State Government, in consultation

with the State Election Commission; and

(ii) if such question arises after the election process is over, by the Deputy Commissioner.

He emphasizes that, since through the afore Annexure, respondent No. 6, is, directly a beneficiary, of, public work(s), to be purportedly executed

through the order, of, the Panchayat concerned, thereupon, the afore disqualifying echoing, borne therein, becoming pointedly attracted, against

respondent No. 6. However, the afore made contention is rudderless, as the learned counsel for the writ petitioner, is, completely unfamiliar, vis-À -

vis, the factum, that the afore statutory provision(s), rather, appertain, to, the elected office bearers, of, the Panchayat(s) concerned, and, it/they does

not appertain(s), to the elected member(s), of, the Zila Parishad(s) concerned, as, is the status of respondent No. 6.

2. The sequel of the afore is that, the endeavor of the writ petitioner, to, beget disqualification of respondent No. 6, through his making dependence,

upon, the afore alluded statutory provision, becoming, a gross misendeavor, and, hence is amenable to be discountenanced by this Court, especially

with the afore respondent not falling within the ambit, of, the disqualifying mandate, of, sub clause J, of, Section 122 of the Himachal Pradesh

Panchayati Raj Act, 1994, and importantly, with the apposite works, being not executed from the Parishad funds, rather, are to be executed from the

funds of the Himachal Pradesh Public Works Department.

3. Consequently, there is no merit in the extant writ petition, and, the same is dismissed. No order as to costs. All pending applications are disposed of.