



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

***LPA-1057-2024 (O&M)***  
***Date of Decision: 03.05.2025***

NISVA @ NISHA KHATOON

...Appellant

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH  
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Vijay Kumar Jindal, Sr. Advocate  
with Mr. Akshay Jindal, Advocate  
Mr. Mazlish Khan, Advocate  
Mr. Abhishek Shukla, Advocate  
and Mr. Surya Pratap Singh, Advocate  
for the appellant.

Mr. Vikram Singh, Advocate  
Ms. Ramandeep Kaur, Advocate  
Mr. Ishnoor Singh, Advocate  
and Mr. Vikrant Singh, Advocate  
for respondent No.8.

Mr. Samrath Sagar, Addl. A.G., Haryana.

**HARSH BUNGER, J.**

The present Letters Patent Appeal has been filed against an order dated 05.04.2024 passed by the learned Single Judge in ***CWP-25976-2023***, whereby the writ petition filed by the appellant herein, has been dismissed.

2. Briefly, the appellant was elected as the *Sarpanch* of Gram Panchayat Chila, Block Tauru, District Nuh, Haryana, in the Panchayat

Elections, held in the year, 2022. In the said elections, one Mumtaj daughter of Sh. Khalid, had also contested; however, she remained un-successful.

2.1 Subsequently, Ms. Mumtaj filed a complaint against the appellant herein, primarily on three allegations namely :-

*(i) that the appellant had not completed the minimum age of 21 years as on the date of nomination and thus, she had filed the nomination papers on the basis of fake certificates to manipulate her age;*

*(ii) that the appellant herein had submitted a fake educational certificate in support of her minimum qualification of 8th class, as required for contesting elections;*

*(iii) that the appellant herein had more than five votes in the village.*

2.2 On the basis of the afore-said allegations, it was claimed that the appellant is disqualified, in terms of the provisions contained in the Haryana Panchayati Raj Act, 1994 (for short 'the 1994 Act') and she deserves to be removed from the post of *Sarpanch*.

2.3 It transpires that an enquiry into the complaint, submitted against the appellant, was entrusted to the Sub Divisional Officer (Civil), Tauru, who submitted his enquiry report dated 20.02.2023 to the Deputy Commissioner, Nuh; whereupon, a Show Cause Notice dated 09.03.2023 was issued to the appellant.

2.4 The Deputy Commissioner, Nuh, upon consideration of the matter and finding the allegations made against the appellant being substantiated during the enquiry, removed her from the post of *Sarpanch* vide order dated 03.07.2023 passed under Section 51(3)(b) of the 1994 Act.

2.5 Being aggrieved against the order dated 03.07.2023, the appellant herein preferred an appeal before the learned Commissioner,

Faridabad Division, Faridabad (in short 'the Divisional Commissioner') under Section 51(5) of the 1994 Act.

2.6 The learned Divisional Commissioner, vide order dated 08.11.2023 dismissed the appeal preferred by the appellant. Thereafter, the appellant preferred a writ petition (*CWP-25976-2023*) before this Court, which has also been dismissed by the learned Single Judge, vide impugned order dated 05.04.2024.

2.7 In the afore-mentioned circumstances, the present intra-court appeal (LPA) has been filed before this Court.

3. Learned senior counsel appearing for the appellant would submit that the learned Single Judge, has erred in law and fact in passing the impugned order, without considering that the appellant had placed on record her birth certificate (Annexure P-21), which reflected her date of birth as 04.12.1998. It is submitted that in order to substantiate the afore-said birth certificate, a report from the Office of Sub-Divisional Officer, Tauru dated 14.02.2023 (Annexure P-22) was also placed on record, reflecting that a girl child namely, Nisha Khatoon was born to Issar and Ruksana on 04.12.1998.

3.1 It is contended that the afore-said documents clearly proves the date of birth of the appellant as 04.12.1998, however, the same has been ignored by the learned Single Judge.

3.2 It is next submitted by learned senior counsel for the appellant that respondent No.8-Mumtaj had also instituted an election petition against the appellant and therefore, once an election petition regarding the same issue was pending adjudication, the administrative authorities should have stayed their hands from going into the allegations made in the complaint submitted by respondent No.8-Mumtaj; therefore, the action taken against

the appellant under Section 51 of the 1994 Act, is bad in law and is liable to be set aside. In this regard, learned senior counsel for the appellant places reliance upon the judgment rendered by Hon'ble the Supreme Court in the case titled as *State of Himachal Pradesh vs Surinder Singh Banolta, 2007(1) RCR (Civil) 254*.

3.3 Learned senior counsel for the appellant would further contend that as regards the minimum educational qualification of the appellant is concerned, the appellant had submitted a certificate from Saraswati Vandana High School, certifying that the appellant was studying in 8<sup>th</sup> class in the year 2012-13 and the School Leaving Certificate of the appellant was duly counter-signed by the Block Education Officer. It is, therefore, submitted that there is no disqualification attached as regards the appellant is concerned and the appellant has been wrongly removed from the post of Sarpanch under Section 51 of the 1994 Act, which is un-sustainable in the eyes of law.

3.4 Learned senior counsel for the appellant has also submitted that even the enquiry conducted against the appellant is bad in law as no fair and proper opportunity was afforded to the appellant to cross-examine the witnesses and the documents produced during the course of the enquiry. Learned senior counsel, while placing reliance upon the judgment rendered by Division Bench of this Court in case *Suman vs State of Haryana, 2024(3) RCR(Civil) 287*, contends that the enquiry envisaged under Section 51(3) of the 1994 Act, is required to be in the nature of a *regular enquiry* and not merely an *in-house enquiry*. Accordingly, prayer has been made that the appeal may be allowed by setting aside the impugned order.

4. Per contra, learned State counsel as well as learned counsel

appearing for respondent No.8 have opposed the submissions made by learned senior counsel for the appellant. While referring to the enquiry report, it is submitted that due opportunity of hearing was afforded to the appellant during the course of the enquiry and even the procedure adopted during the enquiry, clearly fulfills the requirement of an enquiry envisaged under Section 51(3) of the 1994 Act and the same cannot be said to be an in-house enquiry. It is further submitted that the appellant herein had failed to substantiate her claim as regards her date of birth and educational qualification; therefore, the appellant was rightly ordered to be removed from the post of *Sarpanch*. It is further submitted that there is no illegality or perversity in the impugned order, accordingly, prayer has been made for dismissal of the present appeal.

5. Heard.

6. From the submissions raised on behalf of the respective parties, the following issues would arise for consideration before this Court:-

*(i) Whether the appellant has been able to prove her date of birth as 01.01.1998 as filled in the nomination form?*

*(ii) Whether the appellant has not been afforded fair and proper opportunity to cross examine the witnesses?*

*(iii) Whether the election of the appellant could have been questioned only by way of filing an election petition and not under Section 51 of the 1994 Act?*

7. Before dealing with the afore-said issues, it would be apposite to refer to Sections 51, 173, 175(v) and 176 of the 1994 Act, which would be germane for the decision of the aforesaid issues as well as the appeal, which read as under :-

***“51. Suspension and removal of a Sarpanch,***

*(1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch, or Panch, as the case may be,-*

*(a) where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director, or Deputy Commissioners concerned the charge made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character;*

*(b) during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.*

*(2) Any Sarpanch or Panch, as the case may be, suspended under sub-section (1), shall not take part in any act or proceeding of the Gram Panchayat during the period of his suspension and shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control –*

*(i) if he is a Sarpanch to a Panch commanding majority in the Gram Panchayat;*

*(ii) if he is Panch to Sarpanch;*

*Provided that the suspension period of a Panch, or a Sarpanch, as the case may be, shall not exceed one year from the date of handing over the charge in pursuance of the suspension order except in criminal cases involving moral turpitude.*

*(3) The Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or a Panch, as the case may be, ask him to show cause against the action proposed to be taken against him, and by order remove him from his office –*

*(a) if after his election he is convicted by a criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months;*

*(b) if he was disqualified to be a member of the Gram Panchayat at the time of his election;*

*(c) if he incurs any of the disqualifications mentioned in Section 175 after his election as member of the Gram Panchayat;*

*(d) if he is absent from five consecutive meetings of the Gram Panchayat without prior permission or leave of Gram Panchayat; and*

*(e) if he has been guilty of misconduct in the discharge of his duties and his continuance in the office is undesirable in the public interest.*

*(3A) The Director or the Deputy Commissioner, as the case may be, shall assess the amount due, if any, from the person removed under sub-section (3) on account of any loss, waste or mis-application of Gram Fund or property as consequence of his negligence or misconduct and the Deputy Commissioner shall recover the amount of loss within a period of three months from the date of order and if the amount is not recovered within the said period, the same shall be recovered as arrears of land revenue.*

*(4) A person who has been removed under sub-section (3) may be disqualified for re-election for such period as may be mentioned in the order but not exceeding the period of six years.*

*(5) Any person who aggrieved by an order passed under sub-sections (1), (3) and (4), may within a period of thirty days from the communication of the order, prefer an appeal to the Divisional Commissioner.*

*(6) Any Sarpanch or Panch, as the case may be, removed under sub-section (3), shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control-*

*(i) if he is Sarpanch to a Panch commanding majority in the Gram Panchayat;*

*(i-a) if he is Sarpanch belonging to reserve category, to a Panch of that reserve category commanding majority, and if no Panch in that category is available, to a Panch*



**“Section 176 (Determination of validity of election enquiry by Judge and procedure. –**

*If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or<sup>3</sup>[---] 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.*

*(2) A petitioner shall not join as respondent to his election petition except the following persons :—*

*(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates;*

*(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.*

*3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same civil court.*

*(4) (a) If on the holding such inquiry the civil court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.*

*<sup>1</sup>[(aa) If on holding such enquiry the Civil Court finds that-*

- (i) *on the date of his election a returned candidate was not qualified to be elected;*
- (ii) *any nomination has been improperly rejected; or*
- (iii) *the result of the election, in so far it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.]*

*(b) If, in any case to which <sup>2</sup>[clause (a) or clause (aa)] does not apply, the validity of an election is in dispute between two or more candidates, the court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected: Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidate to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.*

*(5) A person shall be deemed to have committed a corrupt practice-*

- (a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out*

*any promise of individual profit, or holds out any threat of injury to any person; or*

*(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person; or*

*(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.”*

8. In terms of Section 51(3)(b) of the 1994 Act, a *Sarpanch* or a *Panch* can be removed from his office, if he was disqualified to be a Member of the *Gram Panchayat* at the time of his election.

8.1 As per sub-section 2 of Section 173 of the 1994 Act, every person, who has attained the age of 21 years and whose name is in the list of voters, shall unless disqualified under the 1994 Act or under any other law for the time being in force, be qualified to be elected from any Electoral Division.

9. Further, in terms of Section 51(3)(c) of the 1994 Act, a *Sarpanch* or a *Panch* can also be removed from his office, *if he incurs any of the disqualifications mentioned in Section 175 after his election as member of the Gram Panchayat.*

9.1 Section 175 of the 1994 Act, provides for disqualifications for a *Sarpanch* or a *Member Panchayat* and Clause (v) of Section 175 of the 1994 Act, provides that no person shall be a *Sarpanch* or a *Panch* of a *Gram Panchayat* or a member of a *Panchayat Samiti* or *Zila Parishad* or continue as such, who has not passed matriculation examination or its equivalent

examination from any recognized institution/Board. In terms of first proviso to Sub-Section (v) of Section 175 of the 1994 Act, it is provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass.

10. Sub-section 3 of Section 51 of the 1994 Act, provides that before ordering removal of any Sarpanch or a Panch, the Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving an opportunity of being heard to the Sarpanch or a Panch (as the case may be), ask him to show cause against the action proposed to be taken against him. In other words, sub-section 3 of Section 51 of the 1994 Act, envisages the following actions before the Sarpanch or the Panch is removed from his office namely,

*(i) an enquiry as may be deemed fit by the Director or the Deputy Commissioner concerned;*

*(ii) an opportunity of hearing to the Sarpanch or the Panch, as the case may be;*

*(iii) an opportunity to the said Sarpanch or Panch to show cause against the action proposed to be taken against him.*

11. At the outset, we deem it appropriate to deal with the plea of the appellant that the enquiry envisaged under Section 51(3) of the 1994 Act, is required to be in the nature of a *regular enquiry* regarding which, he has placed reliance upon the judgment of Division Bench of this Court in ***Suman vs State of Haryana, 2024(3) RCR(Civil) 287.***

11.1 We have gone through the above-referred judgment in the case of ***Suman*** (*supra*); however, we do not agree with the contention so raised on behalf of the appellant. A careful perusal of the above-referred judgment in ***Suman's case*** (*supra*), would show that the Division Bench of this Court held that the word “enquiry” as mentioned in Section 51(3) of the 1994 Act,

requires to be an enquiry of *quasi judicial* in nature inasmuch as that the candidate, who has already been elected, must be given a fair and proper opportunity to cross-examine the witnesses and the documents produced. Therefore, a regular enquiry as may be envisaged under the Service Rules, is not contemplated under Section 51(3) of the 1994 Act. In our considered view, the enquiry in the nature of *quasi-judicial* would require association of the *Sarpanch* or the *Panch* (as the case may be) with the enquiry so as to enable such *Sarpanch* or the *Panch*, to put forth his claim and also afford him an opportunity to ask for cross-examination of witnesses or documents. In case, the *Sarpanch* or the *Panch* has been associated with the enquiry and sufficient opportunity was afforded to him to put forth his claim and/or to ask for cross-examination of witnesses or documents; in our considered view, that would suffice the requirements of a *quasi judicial* enquiry as envisaged under Section 51(3) of the 1994 Act.

12. In the backdrop of the afore-said legal position, the stage is set to deal with the above-referred issues.

13. As regards Issue no.(i), it is observed that the appellant herein submitted her nomination form dated 19.10.2022 for election to the post of Sarpanch of Gram Panchayat Chila; wherein, her name is mentioned as Nisva wife of Altmas and she stated her education as 8<sup>th</sup> class pass from Sarasvati Vandana High School, Rupnagar, Rohtak, in the year 2013 and in Annexure `A`, she mentioned her age as 24 years (DOB 01.01.1998).

13.1 After the appellant was elected as the *Sarpanch* in the year 2022, a complaint was submitted by respondent No.8 as noticed here-in-above, wherein, an enquiry was marked to the Sub-Divisional Officer (Civil), Tauru. The said enquiry officer summoned the appellant;

however, the appellant herself stayed away from the proceedings and it was the husband of the appellant namely, Altmas and his brother, who represented the appellant in these proceedings.

13.2 During the course of the enquiry, various reports/information were sought from different quarters/offices so as to verify the age and educational qualification of the appellant and to further examine the allegation of multiple votes in the name of the appellant. Evidently, in the enquiry proceedings, husband of the appellant namely, Altmas presented various documents in the shape of voters' list, application submitted to the BLO etc. and also presented a copy of the statement of the appellant before the Enquiry Officer.

13.3 The Enquiry Officer conducted a detailed enquiry and submitted his enquiry report dated 20.02.2023 (Annexure P-4), the relevant extract of which reads as under :-

*“During enquiry it was found that in this matter, from the beginning, two different identities are continued in parallel namely Nisva and Nisha Khatoon respectively. Keeping in view this fact, for ensuring clarity during enquiry, the basis for name and other particulars were considered as Nisva wife of Md. Altmash Date of Birth 01.01.1998 which were mentioned in the application form during the nomination of elections for Sarpanch and during enquiry it was found that:-*

*1. In SLC of Govt. Girls School Patuka which was issued few years ago, the date of admission is mentioned as 24.07.2010 at S.No. 863 and name of student is mentioned as Nisva daughter of Issar, Mother Rukseena, and date of birth is mentioned as 07.04.2002. The SLC for this was issued on 08.07.2011 and was again issued on 07.04.2002. That this is a Government Institution which cannot be ignored / overlooked.*

2. *Saraswati Vandana High School Rohtak has not provided some important record of student Nisva such as examination test results, attendance Register and SLC issued by office and the record pertaining to fee submitted by the parent from time to time has also not been provided which seems suspicious.*

3. *Principal of Saraswati Vandana High School Rohtak has issued letter dated 08.02.2022 which was written by him to Block Education officer Rohtak and the same was received in this office wherein it has been clearly mentioned by the Principal that regarding date of birth for Nisva daughter of Issar, her father Issar has submitted affidavit before School wherein he has mentioned date of birth of his daughter as 01.01.1998. From this statement, it is clear that School has considered the said affidavit as basis and mentioned the date of birth. The School has not obtained date of birth certificate or any other strong documentary evidence regarding date of birth. Therefore, this date of birth cannot be considered as authentic. Student's father has provided affidavit which was examined and at Point No. 5 he has mentioned that Student Nisva has not been student of any recognized Institution prior to this and at Point No. 06 she has mentioned that has no birth related record anywhere. The above said affidavit in itself being proved as false because the birth record of the student was present in School of Village Patuka.*

4. *In the School record of Saraswati Vandana High school Rohtak, the record has overwriting at the place of Sex and Religion which raises suspicion.*

5. *No record of the student has been presented from class 5<sup>th</sup> to 7<sup>th</sup> by Sarpanch. From this fact, it is relevant to mention that she has obtained primary education in Village Patuka from Govt. School and thereafter, obtained admission in Saraswati Vandana High School Rohtak by mentioning wrong date of birth and by submitting false affidavit (by mentioned*

*that she has not obtained education anywhere and date of birth record is not present).*

*6. Sarpanch Nisva's old ration card which are in name of father Issar son of Surajmal bearing Ration Card No. 811357 wherein in the details of family members, Nisva's name is mentioned at S.No. 5 which has overwriting.*

*7. From dual identity Nisva and Nisha Khatoon, it appears that one person has two different identities which are being continued*

*8. In the nomination of Sarpanch Nisva, for Ward No. 3 S.N. 1 has voter card ID no. 1QF1604925 and age is 19 years and as per statement of applicant, the same has been got prepared by her on the basis of educational certificate of National Open School Enrolment No. MO5300172539, Course Secondary, Candidate Name Nishva DOB 07-04-2002, Mother Name-Ruksina, Father Name-Issar and on the basis of aadhaar card wherein her date of birth is mentioned as 07.04.2002 and on the basis of these documents, the said voter card has been issued. Signatures of present Sarpanch Nisva are matching with the signatures present on the copy of above certificate and the photograph is also matching with her photograph and signatures available on nomination form. From this it appears that Sarpanch Nisva has obtained certificate of Open School education as per date of birth 07.04.2002 in accordance with the education record mentioned in Village Patuka at S.No.863. The same is evidence in itself. The same cannot be ignored."*

*xxx*

*xxx*

*xxx*

*"If as per nomination, the name of Nisva is considered correct then her date of birth is mentioned as 07.04.2002 in GC Model High School Tauru and Govt. Girls High School Patuka. As per record of GC Model High School Tauru she studied from Class 1 to Class 3 and thereafter, she studied in Govt. Girls High School Patuka in Class 5 and her name was struck off while studying there. This record is of Government School which cannot be ignored."*

*“Upon examining all proofs / documentary evidences available on case file, I have arrived at the conclusion that newly elected Sarpanch during her nomination application has mentioned her particulars as Nisva wife of Md. Altmas, Age 24 years, Education Class 8th, Saraswati Vandana High School, Roop Nagar, Rohtak in year 2013 and she has mentioned her date of birth as 01.01.1998 which has been found incorrect during enquiry. Therefore, it shall be appropriate to take action against newly elected Sarpanch Nisva Gram Panchayat Cheela under Haryana Panchayati Raj Act,1994 and in accordance with the latest guidelines / directions received from State Election Commission. Report is submitted for your kind perusal and further necessary action.”*

13.4 After the afore-said enquiry, a Show Cause Notice dated 09.03.2023 (Annexure P-5) under Section 51(3)(b) of the 1994 Act, was served upon the appellant to which she submitted her detailed reply dated 22.03.2023 (Annexure P-6).

13.5 Thereafter, the Deputy Commissioner, Nuh, upon consideration of the matter, vide its order dated 03.07.2023 (Annexure P-7) came to the conclusion that as per the voters’ list, the age of the appellant was 19 years; accordingly, the appellant was held to be ineligible for contesting elections of *Sarpanch* and hence, removed from the post of *Sarpanch* under Section 51(3)(b) of the 1994 Act.

14. Being dissatisfied, the appellant preferred an appeal before the learned Commissioner, Faridabad, who vide its order dated 08.11.2023 (Annexure P-10), dismissed the appeal by observing as under :-

*“After hearing the arguments of the advocates of both the parties and perusing the records of the following court/authority, it was found that as per the records of the first class Government Primary School, Patuka School, the date of*

*birth of the applicant is 31.01.1997 and the fourth class passed from G.C. Modern High School, the date of birth is mentioned as 07.04.2002 and again in Government Primary School, Patuka the applicant has registered the date of birth as 07.04.2022 in Class V. The appellant have passed class 10<sup>th</sup> from National Open School in the year 2019. In which also the date of birth is mentioned as 07.04.2002.*

*Apart from this, the appellant has stated that she has passed 8<sup>th</sup> class from Vandana High School, Roop Nagar District, Rohtak in the year 2013 and she has attached the certificate with the nomination form, in which the date of birth is mentioned as 01.01.1998. On the other hand, she has regularly studied her Alima studies from Jamia Noorul Islamia Niswan Jamiya Nagar Mahapat Mau Lucknow (Uttar Pradesh) from 2011 to 2015, which has been confirmed by Noorul Islam Madrasa during investigation.*

*As far as the five votes of the appellant are concerned, the description of her five votes is in the order under appeal, out of five votes, four votes have been deleted from the voter list, which were deleted after the election for the post of Sarpanch. With the above five votes, the appellant has cast the vote of Ward No.3 in the nomination form, the serial number is marked one and the said vote has been made on the basis of 10<sup>th</sup> class pass certificate in which his date of birth is 07.04.2002.*

*After the above discussion, the date of birth of the applicant as per the 10<sup>th</sup> pass certificate is 07.04.2002, which is an important document regarding age determination. According to which, her age at the time of election is 20 years, which is not as per the age fixed by the government for contesting elections for the post of Sarpanch. As far as the appellant is concerned, she passed her 8<sup>th</sup> class from Saraswati Vandana High School, Roopnagar Rohtak in the year 2013, while on the other hand, she has done regular studies of Alima from the above mentioned Jamia Noorul Islamia Madrasa from the year 2011 to 2015. It is not possible for a person to pursue regular*

*education in two different schools/madarsas at the same time. In such a situation, it would be justified to consider her Class VIII pass certificate as fake and it appears that this has been done only to mention the age of the appellant as 01.01.1998. The allegation of making five votes against the appellant is also confirmed. During the hearing, the advocate for the appellant did not present any such fact/evidence which would show that the order under appeal has been passed arbitrarily without facts. Therefore, action has been taken against the appellants as per rules under 51(3)(b) Panchayati Raj Act 1994 on the basis of evidence. Therefore, the appeal of the applicant is dismissed while upholding the order under appeal. A copy of this order should be sent to the Deputy Commissioner, Nuh/lower authority.”*

15. Thereafter, the appellant preferred a writ petition bearing **CWP No.25976-2023**, which was also dismissed by the learned Single Judge, vide impugned order dated 05.04.2024 by holding that the appellant failed to prove her age and qualification as mentioned in the nomination papers and even the multiple votes were found to have been made by the appellant, which were subsequently deleted after filing of the nomination papers.

16. Before this Court, the appellant has claimed two different dates of birth. In this regard, reference can be made to para Nos.4 and 5 of the instant appeal (LPA), which reads as under :-

*“4. That as regards the date of birth of the appellant, it is humbly submitted that Ld. Single Judge has returned the finding on the basis of conjectures and surmises and the official record from the office of Registrar Death and Birth-cum-Deputy Civil Surgeon, Nuh, has been completely ignored. The appellant has placed on record her birth certificate dated 10.03.2023 (Annexure P-21), reflecting her date of birth as 04.12.1998. She had also placed on record a report from the*

*office of Sub Divisional Officer, Tauru, dated 14.02.2023 (Annexure P-22), reflecting that a girl child namely Nisha Khatoon was born to Issar and Ruksana on 04.12.1998. It was also proved on by way of Report (Annexure P-22) that from 02.12.2002 till 07.12.2022 no child was born to Issar and Ruksana. This unimpeachable record has been given a complete goby and minor discrepancies has been given undue weightage by the Ld. Single Judge.*

5. *That in the reply to the show cause notice, the appellant categorically submitted that the date of birth of the appellant is also mentioned as 01.01.1998 in the copy of the Register of the Chowkidar. Pariwaar Pehchaan Patra, also reflects the date of birth of the appellant as 01.01.1998. Record of all the children, fathered by father of the appellant Issar Khan was also brought to the notice of the Enquiry Officer and also this Hon'ble Court. Still this Hon'ble Court has not lead much credence to the evidence available on record and the finding regarding the date of birth has been recorded on the basis of conjectures and surmises."*

17. A perusal of the paper-book would leave no manner of doubt that there is sufficient evidence available on record in the shape of 'School Leaving Certificate' (SLC) of Government Girls School, Patuka; voter ID Card No.IQF1604925, which has been prepared on the basis of educational certificate of National Open School in the name of appellant with enrollment No.MO5300172539 and also the Aadhar Card of the appellant wherein her date of birth is mentioned as 07.04.2002. The Enquiry Officer as well as the Deputy Commissioner and also the learned Commissioner, have considered the above-referred documents as conclusive as regards the age of the appellant is concerned. It is, therefore, apparent that at the time of submitting nomination papers on 19.10.2022, the age of the appellant was 20 years and in terms of Section 173 of the 1994 Act, the appellant being below 21 years,

was clearly ineligible to contest the elections. Accordingly, Issue no.(i) is decided against the appellant.

18. Now, coming to Issue no.(ii), it is observed from the enquiry report that the appellant was duly summoned by the Enquiry Officer; however, she did not appear in the proceedings rather she was represented through her husband-Altmas and also through the brother of her husband; who participated in the enquiry proceedings and also submitted documents in support of their claim along with a copy of the statement of the appellant. During enquiry, various persons were summoned/examined and sufficient opportunities were available to the appellant and/or her representative Sh. Altmas, to have asked for cross-examining the complainant or any other witness; however, at no point, any such request for cross-examination was made on behalf of the appellant. Therefore, once the appellant herself failed to avail the opportunities to ask for cross-examination of the complainant or other witnesses, then after the conclusion of the proceedings, she cannot turn around and say that no fair and proper opportunity was afforded to her. Accordingly, Issue no.(ii) is decided against the appellant.

19. Now coming to Issue no.(iii) as to whether the election of the appellant could have been questioned only by way of filing an election petition under Section 176 and not under Section 51 of the 1994 Act; suffice it to say that a careful perusal of the provisions contained in Sections 51 and 176 of the 1994 Act, would indicate that both the said provisions operate in different fields and there is nothing contained therein to indicate that the said provisions exclude each other. Section 176 of the 1994 Act, operates when an election petition is brought before the Court of Competent Jurisdiction whereas, Section 51 of the 1994 Act, enables the Director or the Deputy

Commissioner concerned, to pass an order of removal on the basis of the grounds specified in sub-section (3) of Section 51 of the 1994 Act.

19.1 In the judgment rendered by the Hon'ble Supreme Court of India in the case of *State of Himachal Pradesh vs Surinder Singh Banolta, 2007(1) RCR(Civil) 254*, which has been relied upon by the appellant; it has been clearly delineated that the provisions of Sections 122 and 163 read with Sections 174 and 175 of the Himachal Pradesh Panchayati Raj Act, 1994; operate in different situations. Here, it would be apposite to refer to Section 122 and Section 163 of the Himachal Pradesh Panchayati Raj Act, 1994, which reads as under :-

*"122(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) \* \* \**

*(c) if he 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 is ejected therefrom or he ceases to be the encroacher; or*

*\*\*\**

*(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 authorised 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."*

Sections 163 of the Act reads as under :

*"163(1) Any elector of a Panchayat may, on furnishing, the prescribed security in the prescribed manner, present within thirty days of the publication of the result, on one or more of the grounds specified in sub-Section (1) of Section 175, to the authorised officer an election petition in writing against the election of any person under this Act.*

*(2) The election petition shall be deemed to have been presented to the authorised officer - (a) when it is delivered to him*

*(i) by the person making the petition; or  
(ii) by a person authorised in writing in this behalf by the person making petition; or*

*(b) when it is sent by registered post and is delivered to the authorised officer or any other person empowered to receive it."*

19.2 The above referred provisions contained in Sections 122 and 163 of the Himachal Pradesh Panchayati Raj Act, 1994, are somewhat similar to the provisions of Sections 51 and 176 of the 1994 Act.

19.3 Considering the afore-said provisions contained in Sections 122 and 163 of the Himachal Pradesh Panchayati Raj Act, 1994; the Hon'ble Supreme Court in ***Surinder Singh Banolta's case (supra)***, has observed as under :-

*"5. Chapter IX deals with the officers and staff of panchayats. Clause (f) of Section 159 defines "election" to mean an election to fill an office under the provisions of the Act. Section 162 of the Act, in tune with the provisions of Article 243O of the Constitution of India provides that no election under the Act*

*will be called in question except by an election petition presented in accordance with the provisions of Chapter XI.*

*6. Sections 163 of the Act reads as under :*

*"163(1) Any elector of a Panchayat may, on furnishing, the prescribed security in the prescribed manner, present within thirty days of the publication of the result, on one or more of the grounds specified in sub-Section (1) of Section 175, to the authorised officer an election petition in writing against the election of any person under this Act.*

*(2) The election petition shall be deemed to have been presented to the authorised officer -*

*(a) when it is delivered to him –*

*(i) by the person making the petition; or*

*(ii) by a person authorised in writing in this behalf by the person making petition; or*

*(b) when it is sent by registered post and is delivered to the authorised officer or any other person empowered to receive it."*

*7. Section 174 of the Act provides for jurisdiction of the court to pass order in the manner laid down therein after inquiring into the election petition by the authorised officer.*

*8. Section 175 of the Act provides for the grounds upon which an election petition can be dismissed or an election can be set aside.*

*9. Respondent herein was elected as a member of Zilla Parishad. The result of election was declared on 5.01.2001. An application was filed by Respondent No. 2 Daulat Ram before the Deputy Commissioner, Shimla District alleging that as he, having been declared an encroacher within the meaning of the provisions of Sections 4 and 7 of the Himachal Pradesh Public Premises (Rent Recovery and Land Eviction) Act, 1971 was disqualified to hold the elected post and, thus, should not be allowed to continue therein. The Deputy Commissioner took cognizance of the said complaint and by reason of an order dated 4.06.2002 declared Respondent No. 1 as disqualified for*

*being chosen as a member of the Zilla Parishad and consequently his election was set aside.*

*10. It is not in dispute that a proceeding under the Himachal Pradesh Land Revenue Act was initiated against Respondent No. 1. He was held to be unauthorized occupant of a land measuring 13 biswas in terms of the provisions of the Himachal Pradesh Public Premises (Rent Recovery and Land Eviction) Act by the Collector, Sub-Division, Theog. The said order was confirmed by the Financial Commissioner of the Shimla Division by an order dated 6.08.1998. We will proceed on the basis that the said order has attained finality although there appears to be some dispute in relation thereto.*

*11. Respondent No. 1 was declared to be an encroacher in the year 1998. He was directed to be ejected from the land in question. The notification for election of Zilla Parishad by the State Election Commission under the Act was issued on 16.11.2000. As noticed hereinbefore, Respondent No. 1 was declared elected on 5.01.2001. In terms of the provisions of Article 243O read with Section 163 of the Act, an election petition, therefore, was maintainable for setting aside his election.*

*12. Disqualification as provided for under Article 243F has been laid down in Section 122 of the Act. Section 175 of the Act provides for disqualification as one of the grounds upon which an election petition could be filed. Interpreting the aforementioned provisions, a Division Bench of the Himachal Pradesh High Court opined that the order dated 27.06.2002 passed by the Deputy Commissioner is not sustainable in law.*

*13. Mr. J.S. Attri, learned AAG appearing on behalf of the appellants would submit that although the provisions of Section 163 are ordinarily required to be taken recourse to but having regard to the fact that in terms of Sub-section (2) of Section 122 of the Act, the question as regards declaring a candidate as disqualified may arise not only before an election is held but also after the election process is over; and thus, whereas in the*

*former case, it will be the Authorised Officer concerned who can determine the question of disqualification but in a case where processes are initiated after the election, the Deputy Commissioner alone would be the prescribed authority.*

*14. Section 163 of the Act provides for filing of an election petition on one or more grounds specified in sub-section (1) of Section 175 thereof. Clause (a) of sub-section (1) of Section 175 of the Act inter alia lays down a ground for setting aside of an election if on the date of the election the elected person was not qualified or disqualified to be elected under the Act.*

*15. It is no doubt true that Section 122 contemplates both the situations, viz., where a person shall be disqualified for being chosen as also for being an office bearer of panchayat inter alia if he has encroached upon any land belonging to any authority mentioned therein. In view of the language of the said provision, we are of the view that whereas an issue falling under clause (1) of sub-section (2) of Section 122 of the Act must be determined before the Authorised Officer, any order of encroachment passed after the election process is over would be determined by the Deputy Commissioner.*

*16. The provisions of the Act, as noticed hereinbefore, have been enacted pursuant to or in furtherance of the constitutional mandate contained in Part IX of the Constitution of India. The provisions of the Act, therefore, are required to be construed strictly in terms thereof. Clause (b) of Article 243O of the Constitution of India mandates that no election shall be set aside save and except by an order passed by the Authorised Officer. In our considered opinion, Section 122 of the Act must be read in the light thereof. Section 162 of the Act expressly provides for the exclusive jurisdiction of the Authorised Officer to determine the existence or otherwise of any ground enumerated in Section 175 of the Act.*

*17. Once, thus, a person is declared to be an encroacher prior to the date on which he has been declared as elector and if the said order has attained finality, the question as to whether he*

*stood disqualified in terms of the provisions of Section 122 of the Act, in our opinion, must be raised by way of an election petition alone. If the submission of Mr. Attri is to be accepted, the same may result in an anomalous position.*

*18. If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of Section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, it is well settled, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a situation, therefore, must be avoided. It will also lead to an absurdity if two different Tribunals are allowed to come to contradictory decisions.*

*19. Furthermore, it is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided. [See Ashok Lanka v. Rishi Dixit, (2005)5 SCC 598 and M.P. Gopalakrishnan Nair v. State of Kerala, (2005)11 SCC 45]*

*20. It is also a well-settled principle of law that in a case where a statute is found to be obscure the same must be interpreted having regard to the constitutional scheme. In a case of this nature, the doctrine of purposive construction should be applied. [See Bombay Dyeing & Mfg. Co. Ltd.(3) v. Bombay Environmental Action Group & Ors., (2006)3 SCC 434, Nathi Devi v. Radha Devi Gupta, 2005(1) RCR (Civil) 631 (SC) : 2005(1) RCR (Rent) 218 (SC) : (2005)2 SCC 271, Lalit Mohan Pandey v. Pooran Singh & Ors., (2004)6 SCC 626, Indian Handicrafts Emporium & Ors. v. Union of India & Ors., (2003)7 SCC 589 and Balram Kumawat v. Union of India & Ors., (2003)7 SCC 628]*

*21. It is also well-settled that the entire statute must be read as a whole. The relevant provisions of the Constitution as also those in the statute must, thus, be read harmoniously. [See*

*Bombay Dyeing (supra) and Secretary, Department of Excise & Commercial Taxes and Others v. Sun Bright Marketing (P) Ltd., Chhattisgarh and Another, [(2004)3 SCC 185]. So read, we are of the opinion that the Division Bench of the High Court was correct in its view. The matter might have been different if Respondent No. 1 was declared to be an encroacher after the election process was over and, thus, becoming disqualified to continue to be an office bearer of Panchayat or Zilla Parishad.*

*22. For the reasons aforementioned, no fault can be found in the impugned judgment. It is, therefore, affirmed. The appeals are dismissed with costs. Counsel's fee assessed at Rs.10,000/-. Appeal dismissed."*

20. Keeping in view the above discussion, it can safely be held that the election of the appellant could have been questioned either by filing an election petition under Section 176 of the 1994 Act or by submitting a complaint to the concerned authority under Section 51 of the 1994 Act; therefore, Issue no.(iii) is decided accordingly.

21. Considering the totality of circumstances, we find no reason to interfere in the order passed by the learned Single Judge and the same is, accordingly, affirmed. Resultantly, the instant appeal fails and the same is, hereby, dismissed.

**(SUDHIR SINGH)**  
**JUDGE**

**(HARSH BUNGER)**  
**JUDGE**

**May 03, 2025**  
gurpreet

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No