

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

CWP No. 9629 of 2025

Reserved on 7.4.2026

Date of Decision 17.04.2026

Basant Lal

...Petitioner.

Versus

State of H.P. & Others.

...Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner:

***M/s Mukul Sood and Het Ram Thakur,
Advocates.***

For the Respondents:

***Mr. Anup Rattan, Advocate General
with Mr.Ramakant Sharma, Additional
Advocate General for respondents No.
1 to 3.***

***Respondent No. 4 already ex-parte vide
order dated 29.7.2025.***

Vivek Singh Thakur, Judge

Petitioner, by invoking jurisdiction of this High Court under Article 226 of Constitution of India, has filed present petition for quashing and setting aside the order dated 3.2.2025 passed by the Deputy Commissioner, Mandi under Section 146(2) of the H.P.Panchayati Raj

¹*Whether the reporters of the local papers may be allowed to see the Judgment?*

Act, 1994 (hereinafter referred to as 'the Act') whereby petitioner has been disqualified from contesting the election for a period of 6 years and to be elected as office bearer of the Panchayat etc.; and also for declaring Section 146(2) of the Panchayati Raj Act as ultra vires to the Constitution of India being arbitrary and violative of Articles 14 and 21 of the Constitution of India.

2 Admitted facts are that petitioner was elected as Pardhan of Gram Panchayat Pangna, District Mandi in Panchayati Raj Institutions' elections held in November/December,2020. The said election was assailed by respondent No.4 by filing Election Petition on various grounds including that despite being well aware about pendency of Criminal Case No. 38 of 2018 titled as State of HP vs. Shanta Devi against him in the Court of Judicial Magistrate First Class, Karsog, in case FIR No. 114 of 2017, petitioner did not disclose this information in his Nomination Form on 17.2.2021. The Election Petition was allowed by the Sub Divisional Officer (Civil), Karsog on 25.4.2022 declaring election of petitioner as Pardhan, Gram Panchayat Pangna as null and void with finding that in his Nomination Form, petitioner had deliberately concealed his criminal antecedents especially information about pending criminal case against him involving punishment of 2 years imprisonment which attracted the provisions of Section 175(1((d)(iii) of the Act and willful concealment of

information by the petitioner attracted his disqualification under the provisions of the Section 122 (1)(n) of the Act providing disqualification of the candidate from contesting the future elections for making false declaration.

3 Appeal preferred by petitioner was dismissed by the Deputy Commissioner, Mandi vide order dated 1.5.2023.

4 CWP No. 2854 of 2023 preferred by petitioner under Article 226 of the Constitution of India against aforesaid orders and declaration, was dismissed by Single Bench on 16.10.2024.

5 LPA No. 361 of 2024 preferred by the petitioner was also dismissed by the Division Bench of this Court vide judgment dated 7.11.2024.

6 Vide impugned order dated 3.2.2025, Deputy Commissioner, Mandi by invoking provisions of Section 146(1)(a) and 146(2) read with Section 131(2) of the Act had disqualified the petitioner from being elected or continuing as office bearer of Panchayat for 6 years and had declared the post of Panchan of Gram Panchayat Pangna as vacant.

7 The petitioner approached the Apex Court by filing SLP(C) Dairy No. 1062 of 2025 wherein petitioner had also raised the issue of passing of order dated 3.2.2025 by the Deputy Commissioner declaring

him disqualified for 6 years with submission that it was harsh and disproportionate to the nature of non-declaration of the particulars. The Apex Court did not find any reason to interfere in the impugned judgment.

8 With respect to plea of petitioner that punishment imposed is harsh and disproportionate punishment, particularly keeping in view the nature of allegation attributed to him, the Apex Court had observed that prima facie it seem to be harsh and disproportionate punishment, however, issue was left open to be decided by the High Court if petitioner, so advised to assail the order before the High Court.

9 Learned counsel for petitioner submits that disqualification from contesting the elections for 6 years for non-disclosure of pendency of criminal case, wherein petitioner also stands acquitted later on, is not only harsh and disproportionate but also ultra vires to the Articles 14 and 21 of the Constitution of India. Further that Section 146(2) providing no discretion to the concerned competent Authority to impose proportionate punishment depending upon the nature of cause attracting disqualification to contest to the post of and to continue as, office bearer of the Panchayat is arbitrary as it leaves no room for imposing lesser penalty in appropriate cases and therefore, this provision also deserves to be struck down.

Panchayat, as the case may be after such enquiry as it may deem fit to make at any time, remove an office bearer.

(a) if he has incurred any disqualification under this Act;

(b)

(1-A) The State Government, the Divisional Commissioner or the Deputy Commissioner, as the case may be, may, on consideration of the enquiry report or if it thinks proper, for reasons to be recorded in writing, revoke the suspension order and instead of removing an office bearer, warn him to be vigilant in the discharge of his duties or may also debar him from taking part in any act or proceedings of the Panchayats for the period of six months.

(2) A person who has been removed under sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member, such person shall also be disqualified for a period of six years to be elected as office bearer of a Panchayat under this Act.”

13 Though, learned counsel for petitioner, to substantiate his plea with regard to harshness and disproportionate punishment provided under Section 146 of the Act with reference to the nature of omission committed by the petitioner, has referred the observations made by the Apex Court but his such attempt is based upon the picking up of two lines from the entire relevant paragraph whereas in totality, though prima facie opinion has been expressed by the Apex Court but with clarification that,

Apex Court had not expressed any final opinion on the merit of order. The relevant paragraphs of order passed by the Apex Court are as under:-

“9. Having perused the submissions supplemented with the record, we fail to find any merit as far as the petitioner’s challenge to the impugned order(s) and judgment(s) of the High Court are concerned. We say so for the reason that the Regulations framed by the State Election Commission have rightly been held by the High Court to be a piece of subordinate legislation and, thus, the candidates contesting the Panchayat election were obligated to comply with the provisions of the same.

10. In any case, the misconduct attributed to the petitioner does not require reference to any provision of the Act, Rules or Regulations. It is a case where he deliberately filed a false affidavit/undertaking concealing the factum of pendency of criminal case against him. The concealment of that material fact per se was a valid ground to annul his election.

11. Turning lastly to the order dated 02.02.2025, by way of which the petitioner has been precluded from contesting any elections for the next 6 years, we do not want to express any opinion on this order’s merits as it is a subsequent event which was not subject matter of the challenge before the High Court. That being said, in light of the fact that the petitioner is stated to have been acquitted in the subject-criminal case, it seems to us that barring him for 6 years from contesting elections is prima facie harsh and

disproportionate punishment to the nature of allegations attributed to him. We hasten to clarify that these are only prima facie observations at this stage. The petitioner, if so advised, may challenge that order before the High Court in the appropriate proceedings. Since we have not expressed any final opinion on merits of that order, we wholly leave it to the High Court's discretion to take an appropriate view of the matter.”

14 It would also apt to refer pronouncement of the Apex Court in ***Poonam vs. Dule Singh and others*** reported in ***AIR 2025 SC 5497***, relevant paragraphs whereof are as under:-

“15. It is an admitted position that, the petitioner failed to disclose her conviction for the offence punishable under Section 138 of the Act of 1881 and that she had been sentenced to imprisonment for a period of one year. It is also not disputed that on 09.09.2022 when the petitioner submitted her affidavit as required by Rule 24-A (1) of the Rules of 1994, her conviction was in force. The petitioner was therefore obligated to furnish information about her conviction and consequently being sentenced to imprisonment for a period of one year. She however failed to do so. Pertinently, Rule 24-A (1) requires a declaration to be made of an order or conviction, irrespective of the quantum of sentence imposed. In other words, the material information to be furnished is the fact of any conviction suffered by a candidate. It is therefore clear that by failing to

disclose her previous conviction, the petitioner furnished false and incorrect information as regards her criminal antecedents. As a result the verification of her affidavit was false and incorrect despite the fact that the petitioner had full knowledge of her conviction which she had subjected to further challenge. As a consequence, the ground under Section 22 (1) (d) (iii) of the Act of 1961 became available for declaring her election to be void. Further, as a result of such false information being furnished by the petitioner in her affidavit filed under Rule 24-A (1) of the Rules of 1994, her nomination paper was improperly accepted.

These factual aspects have been considered by the trial Court and thereafter affirmed by the High Court in exercise of its revisional jurisdiction. This factual position was not contested by the learned Senior Advocate for the petitioner. It is thus clear that by failing to disclose her conviction and consequent sentence of imprisonment for a period of one year, a ground for declaring her election as Councillor became available to the first respondent.

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19. It is now necessary to deal with the contention raised on behalf of the petitioner that notwithstanding her conviction, the same was not for committing a serious offence or one touching upon moral turpitude. The conviction being under Section 138 of the Act of 1881, the petitioner was not liable to be unseated for her conviction for a minor offence.

We are unable to accept this contention which seeks to dilute the fact of non-disclosure of the petitioner's conviction in the nomination form. Rule 24A-(1) requires a candidate to disclose any order of conviction suffered by him by filing an affidavit along with the relevant information before the Returning Officer. The format of the affidavit prescribed under the Rules of 1994 requires a disclosure as regards conviction and sentence of imprisonment for a duration of one year and more. The validity of Rule 24-A(1) of the Rules of 1994 has not been subjected to any challenge. It would therefore have to be treated as valid. Its compliance has been made mandatory as failure to furnish such information along with an affidavit as prescribed visits a candidate with the consequence of non-compliance of the provisions of the Rules of 1994. This in turn is a ground to challenge the election of the returned candidate. In absence of any provision in the Rules of 1994 that would enable the Court to condone such non-compliance or exempt its compliance on the ground that the conviction was for a non-serious offence or one not involving moral turpitude, adopting such course as urged would do violence to the Act of 1961 and the Rules of 1994.

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21. The plea raised by the petitioner that her election could not be set aside in the absence of it being proved that the result of the election had been materially affected on account of the improper acceptance of her nomination form need not detain us. Once it is found that there has been

non-disclosure of a previous conviction by a candidate, it creates an impediment in the free exercise of electoral right by a voter. A voter is thus deprived of making an informed and advised choice. It would be a case of suppression/non-disclosure by such candidate, which renders the election void.

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25. We may now indicate why discretion under Article 136 of the Constitution of India does not deserve to be exercised in the present case. The Constitution Bench in *Pritam Singh vs. State* (AIR 1950 SC 169) while explaining the scope and powers of the Court under Article 136 has held that:

“Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.”

Having considered the entire matter, we are not persuaded to hold that the petitioner has made out an exceptional case for this Court to hold that notwithstanding the failure on the part of the petitioner to disclose her conviction leading to the sentence of imprisonment of one year, such lapse should be condoned. The information furnished in her affidavit filed under Rule 24-A(1) of the Rules of 1994 has been found to be incorrect and false. The petitioner rests on her subsequent acquittal in appeal, which

event occurred after her election. She did not step into the witness box to explain her inadvertence, which is now sought to be put forward. The plain reading of Rule 24-A(1) and its requirement does not admit of any doubt whatsoever. Moreover, both the Courts have concurrently found that the petitioner failed to disclose her conviction without any justifiable reason. In these facts therefore, no special or exceptional case has been made out by the petitioner for this Court to exercise jurisdiction under Article 136 of the Constitution of India. In the passing, we may observe that the petitioner had contested the bye election that had occasioned by her removal and she lost the same.”

15 In present case, it is apparent from the observations made by the Apex Court that no merit was found in petitioner’s challenge to the impugned order concerned, and that candidate contesting the Panchayat elections is obligated to comply with provisions of regulations framed by the Election Commission and further that it is a case where petitioner deliberately filed a false affidavit undertaking concealing the pendency of criminal case pending against him and concealment of that material fact *per se* was a valid ground to annul his elections.

16 We are not in agreement with plea of petitioner that punishment is harsh and disproportionate and thus Section 146(2) of the Act is liable to be struck down being arbitrary for not providing any room

for exercise of discretion by competent Authority depending upon the nature of ground for which Panchayat Officer suffers disqualification, for the reason that 6 years' disqualification has been provided with a purpose because any punishment provided for a period less than 5 years may render the disqualification to contest the elections redundant because in the Panchayati Raj Institutions, elections are held after completion of 5 years tenure and in case of disqualifying a person for a period less than 5 years, such person despite having suffered such disqualification to contest the elections, shall be able to contest the next Panchayat elections and there shall be no elections, which would not be contested by him.

17 In our considered opinion, the intent of Legislature is very clear that person disqualified from contesting the elections must, at least, suffer disqualification for next Panchayat elections. The candidate offering him for public service is expected to act honestly and disclose all particulars carefully with responsibility and also having due regard to the sanctity of declaration to be made in Nomination Form. It is not a case where information required to be disclosed was so remotely connected with the petitioner that there was possibility of ignorance of such fact, but it is a case where he himself was facing the trial in a case pending before the Judicial Magistrate First Class. A candidate desirous to be Head of

the Panchayat as Pardhan is expected to disclose everything honestly. It is irrelevant that such declaration would not have rendered him disqualified to contest the elections or would not have resulted into rejection of Nomination Form. He has been declared disqualified not for the nature of offence involved in criminal case pending against him or for conviction or gravity of offence, but he has been declared disqualified for false declaration made in Nomination Form which must be taken seriously.

18 Based on 10th Century Common Era, inscriptions found at Uthiramerur in District Kanchipuram, Tamil Nadu, the Chola Kingdom implemented a strict electoral system known as *Kudavolai* that included rigorous disqualification for candidates and their families to ensure accountability. If an elected member (member of a village committee) was found guilty of corruption, theft, incest, or failing to submit accounts, he was disqualified and in some interpretations of the inscriptions, their relatives were also barred from contesting elections. Various reports indicate that the restrictions extended to a wide range of family members, including siblings, parents, children and in-laws of the offender. Records show that those who served on committees were barred from contesting for the next three generations or in some cases, the disqualification of kin

was for seven generations. The village assembly could recall representatives if they failed in their duties.

19 In fact, for corrupt practices in the election process, punishment should be harsher and therefore, we are of the opinion that such disqualification as provided under Section 146(2) of the Act is not harsh or disproportionate.

In view of above discussion, we find no merit in petition and accordingly, petition is dismissed. All pending miscellaneous application(s) also stand disposed of accordingly.

***(Vivek Singh Thakur),
Judge.***

***(Ranjan Sharma),
Judge.***

***17th April, 2026
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