

(2009) 07 DEL CK 0244

In the Delhi High Court

Case No : Writ Petition (C) 7815 of 2009

A. Dayanand Chandela

APPELLANT

Vs

Chief Electoral Officer and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Constitution of India, 1950 — Article 324

Citation : (2010) 8 RCR(Civil) 3149

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Bahar U. Barqi and Maroof Ahmad, for the Appellant; Shoaib Haider, for Najmi Waziri, for R-1, 2 and 4, P.D. Gupta, Kamal Gupta and Abhishek Gupta for R-3, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner is an elected candidate from Rajouri Garden constituency. The result of the said election was declared on 13th December, 2008.

2. Mr. Avtar Singh Hit, the respondent No. 3 herein has filed an election petition challenging the result and election of the petitioner. The petitioner is defending the said election petition and has questioned locus standi of the respondent No. 3 to file the said election petition, on the ground that the nomination paper and the affidavit in support thereof filed by respondent No. 3 was factually incorrect. Counsel for the petitioner, in this regard, has drawn my attention to the information obtained by him under the Right to Information Act, 2005 from Delhi Police that 4 FIRs have been registered against the respondent No. 3.

3. The petitioner by way of the present writ petition has prayed for issue of writ of declaration that the nomination of respondent No. 3 should be declared to be void as he had failed to disclose and mention about the 4 FIRs in the nomination paper and the affidavit in support thereof. It is submitted that the respondent No. 3 had also failed to disclose his full assets including the assets of his wife, in the nomination paper/affidavit.

4. The Election Commission had issued directions dated 27th March, 2003. Paragraph 16 of the said directions read as under:

16. Now, therefore, the Election Commission, in pursuance of the above referred order dated 13th March, 2003, of the Hon''ble Supreme Court and in exercise of the powers conferred on it by Article 324 of the Constitution, of superintendence, direction and control, inter alia, of conduct of elections of Parliament and State Legislatures hereby issue, in supersession of its earlier order dated 28th June, 2002, its revised directions as follows:

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of People, Legislative Assembly of a State or

the Legislative Council of a State having such a council, shall furnish full and complete information in regard to the matters specified by the Hon''ble Supreme Court and quoted in paras 13 and 14 above. In an affidavit, the format whereof is annexed hereto as Annexure-1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First class (sic) or a Notary Public or a Commissioner of Oaths appointed by the High Court of the state concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon''ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(5) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidates shall also be disseminated along with the affidavit of the candidates concerned in the manner directed above.

(emphasis supplied)

5. It is clear from the aforesaid directions issued by the Election Commission that non-furnishing of the affidavit results in the rejection of the nomination paper at the time of scrutiny but the returning officer is not required to go into the contents and information mentioned in the affidavit. The rival candidates are at liberty to furnish information to the contrary.

6. Thus the returning officer could not have rejected the nomination paper on the basis that it was false or incorrect. The petitioner had not filed any affidavit to controvert the affidavit of the respondent No. 3. Deputy Chief Electoral Officer in his letter dated 27th February, 2009 has stated that no such complaint/

information was available till the end of election process. Counsel for the respondent No. 3, who is present on advance notice has drawn my attention to paragraph 10.1 of the handbook of returning officer issued by the Election Commission. In the said paragraph it is stated that if the prescribed affidavit has been filed, but is found to contain false information ,the nomination should not be rejected. The writ petition therefore has no merit and is dismissed.

7. The petitioner has also raised the aforesaid plea in his defense to the election petition filed by the respondent No. 3. It is clarified that any observation made in this order will not be binding on the Court deciding the election petition filed by respondent No. 3, challenging the election of the petitioner. The said Court will independently examine the contentions raised. It is also clarified that this order will not be construed as an order permitting the petitioner to raise the said contention in the election petition. No costs.