
(2001) 04 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 183 and 184 of 2001

Ajab Rao Chadokar and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Constitution of India, 1950 — Article 243

Madhya Pradesh Panchayat Nirvachan Niyam, 1995 — Rule 17, 21, 90

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 122, 20, 357(1)

Citation : AIR 2001 MP 296 : (2001) 4 MPHT 461 : (2001) 3 MPLJ 251

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.K. Verma, for the Appellant; R.S. Jha, Dy. A.G. and Sanjay Dwivedi, Penal Lawyer and P.S. Das, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Similar questions of law being involved in these two writ petitions they were heard analogously and are disposed of by this common order. The facts in each case shall be separately set out for the sake of clarity.

In W.P. No. 183/2001 the facts as have been unfolded are that in the month of January, 2000 an election for the post of Sarpanch of Gram Panchayat, Gunkhed was to be held. The respondent No. 2, Smt. Gangabai, submitted her nomination form to contest the election of Sarpanch of the said Gram Panchayat. The said seat of the Sarpanch was reserved for Scheduled Tribe candidate. The respondent No. 2 belongs to Other Backward Class and, therefore, objection was raised by the petitioners before the Returning Officer seeking rejection of her nomination papers. The respondent No. 2 was given an opportunity of hearing by the Returning Officer. It has been put forth that the respondent No. 2 submitted certain documents in support of her submission that she belongs to Scheduled Tribe. After due enquiry the Returning Officer rejected the nomination papers of

the respondent No. 2. Feeling aggrieved by the aforesaid order of rejection of nomination form the respondent No. 2 preferred an election petition u/s 122 of M.P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as "the Act") before the Sub-Divisional Officer, Bhaisdehi, District Betul, Specified Officer under the Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as "1995 Rules"). It was contended in the election petition that her husband was granted a lease of land in which it was shown that he belongs to Scheduled Tribe. It was also stated by her she is a Gayaki which is covered under Scheduled Tribe Category. It was pleaded no opportunity was afforded to her by the Returning Officer and, therefore, her nomination papers were erroneously rejected. The petitioners submitted a reply before the Specified Officer and also filed some documents in order to show that the respondent No. 2 by caste in Ahir and, therefore, she could not have contested the election for the post of Sarpanch which was reserved for Scheduled Tribe community. Certain documents were brought before the Specified Officer. The Specified Officer on consideration of the material brought on record allowed the election petition and set aside the order of the Returning Officer rejecting the nomination paper of the respondent No. 2. The said order has been criticised on number of grounds. It has been urged that the present petitioners though were objectors before the Returning Officer they were not made parties to the election petition. It is also urged that u/s 122 of the Act the election petition can be entertained by the Specified Officer if it is presented within thirty days from the date on which election in question is notified and hence, the respondent No. 2 could not have filed the election petition as no election was notified and, therefore, the Specified Officer could not have entertained the election petition and declared the respondent No. 2 as the elected Sarpanch of the Gram Panchayat.

In W.P. No. 184/2001 the respondent No. 2 submitted his nomination papers to contest the election for the post of Panch from the Ward No. 9 of Gunkhed Gram Panchayat. The aforesaid Ward was reserved for a Scheduled Tribe candidate. As the respondent No. 2 belongs to Other Backward Class the petitioners filed an objection before the Returning Officer challenging his nomination. The said authority after affording an opportunity of hearing to the respondent No. 2 rejected his nomination papers. Feeling aggrieved the said respondent preferred an election petition u/s 122 of the Act and the Specified Officer. By the impugned order dated 15-12-2000 the Election Tribunal allowed the election petition and set aside the order passed by the Returning Officer and declared the respondent No. 2 as a Panch of the Gram Panchayat. The main averment in the writ petition is that the proceeding before the Election Tribunal was not maintainable in law.

I have heard Mr. R.K. Verma, learned counsel for the petitioner and Mr. R.S. Jha, learned Deputy Advocate General and Mr. Sanjay Dwivedi learned Panel Lawyer for the respondent Nos. 1 and 3 to 5 and Mr. P.S. Das, learned counsel for the respondent No. 2 in both cases.

Mr. R.K. Verma, has raised a singular contention that the respondent No. 2 in each case was the sole person who had filed the nomination papers and the same was rejected and, therefore, there was no returned candidate whose election could be challenged u/s 122 of the Act and, hence, the proceeding before the Specified Officer was not maintainable which consequentially makes the findings recorded by him absolutely vulnerable.

Mr. Jha, learned Deputy Advocate General for the State appearing for the respondent Nos. 1 and 3 to 5 submitted that rejection of nomination form can be challenged in a proceeding u/s 122 of the Act and as that has been done no fault can be found with the impugned order.

Mr. P.S. Das, learned counsel appearing for the respondent No. 2 has contended that if the nomination paper is rejected the same can only be challenged in an election petition and not in any other manner and therefore, the Specified Officer is justified in entertaining the election petition. He has referred to Rule 21 of the 1995 Rules in support of his contention. The learned counsel has also placed reliance on the decision rendered in the case of Laxman Singh v. State of Madhya Pradesh and Ors. 1978 MPLJ 715.

The moot question that falls for determination is whether the election petition filed by the respondent No. 2 in each case before the Specified Officer was maintainable in law. In this context it is appropriate to refer to Section 122 of the Act. It reads as under :--

"122. Election Petition.-- (1) An election under this Act shall be called in question only by a petition presented in the prescribed manner:--

(i) in case of Gram Panchayat to the Sub-Divisional Officer (Revenue);

(ii) in case of Janpad Panchayat to the Collector; and (iii) in case of Zila Panchayat to the Divisional Commissioner and not otherwise.

(2) No such petition shall be admitted unless it is presented within thirty days from the date on which the election in question was notified.

(3) Such petition shall be enquired into or disposed of according to such procedures as may be prescribed." The aforesaid provision has to be read conjointly with Rule 21 of 1995 Rules.

On a fair reading of the aforesaid provision it is plain as noon day that an election petition can only be filed only when there is a notification in respect of the returned candidate. The notification takes place under Rule 90 of M.P. Panchayat Nirvachan Niyam, 1995. In this context I may usefully refer to a Division Bench decision of this Court rendered in the case of Tundilal v. Returning Officer, Lalbarra 1965 MPLJ 252, wherein this Court held as under:-- "Where the nomination papers of all the candidates are rejected, no election petition can be filed u/s 357 (1) of the Act. An election petition is competent only when an election or co-option has been notified u/s 20 in the manner prescribed in Rule

80. Where the nomination papers of all the candidates seeking election are rejected, there is no occasion for notifying the election and, as such, no election petition can lie. Section 357 (1) comes into play only when the election is notified."

(quoted from the placitum)

Recently in the case of Chandra Bhan Singh v. The State of M.P. and Ors. (W.P. No. 2349/2000) = 2001(2) M.P.H.T. 242 (FB), the Full Bench speaking through the Honourable the Chief Justice head as under :--

"..... Therefore, applying the principle laid down in Taylor v. Taylor (supra) and approved by the Apex Court in decisions mentioned in the preceding part of the judgment and well known principles of statutory interpretation that where statute is clear and explicit, no other meaning can be given, election petition filed before issuance of notification would be incompetent and cannot be taken up for consideration."

The Full Bench further proceeded to state as under :--

"Election dispute can not be raised before the Election Tribunal on the basis of the certificate granted under Rule 17 of the Rules of 1995. Election Petition can be filed before the Election Tribunal after the notification has been published under Rule 22 of the Rules of 1995."

In view of the aforesaid enunciation of law the election petition filed before the notification comes into existence is incompetent and not maintainable before the Specified Officer. In the cases at hand the respondent No. 2 in each case was the sole candidate. I think at this juncture it is appropriate to mention that the petition in W.P. No. 183/2001 is silent that the respondent No. 2 was the sole candidate who filled up the nomination form but the said fact is apparent from the last paragraph of the impugned order contained in Annexure P-9 where the Specified Officer has clearly mentioned that the election petitioner was the only person who had filed the nomination form. It is not disputed at the Bar that in W.P. No. 184/2001 the respondent No. 2 was the sole candidate. It is not in dispute that their respective nomination papers were rejected. Once the nomination papers were rejected there was no election and there was no returned candidate. In absence of returned candidate there could not have been declaration of the result and as a consequence thereof there could not have been notification as envisaged under Rule 90 of Madhya Pradesh Panchayat Nirvachan Niyam, 1995. In absence of the notification as per law laid down in the case of Chandra Bhan Singh (supra) the application before the Specified Officer was incompetent. It is well settled in law when a proceeding is incompetent and not maintainable before the authority the findings given by him are totally inconsequential and have no sanctity in law. Therefore, the directions given by the Specified Officer declaring the respondent No. 2 in each case as the elected person is contrary to law.

At this juncture it is apposite to state that an election in respect of Gram Panchayat as stipulated under Article 243-O (b) can only be questioned by way of an election petition in the manner prescribed by the State Legislature. The State Legislature has prescribed the law u/s 122 of the Act. The Act does not permit or allow filing of an election petition when there is no notification for election. True it is, rejection of the nomination form can be a ground in the election petition as contemplated under Rule 21 of 1995 Rules but the said Rule has to succumb to the letter and spirits of language employed u/s 122 of the Act. When the Act does not permit filing of an election petition of this nature the Rule renders no assistance to the person aggrieved.

Resultantly, the writ petitions are allowed and the impugned orders contained in Annexure P-9 in each case are quashed. However, in the peculiar facts and circumstances of the cases there shall be no order as to costs.

Writ Petitions allowed.