

(2016) 12 RAJ CK 0075
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14776 of 2016

Babita	Vs	APPELLANT
Nihaldei		RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Rajasthan Panchayati Raj Act, 1994 — Section 43
Rajasthan Panchayati Raj Rules, 1996 — Rule 80

Citation : (2017) 1 DNJ 94 : (2017) 2 WLC 275 : (2017) 1 WLN 107

Hon'ble Judges : Mr. Dinesh Chandra Somani, J.

Bench : Single Bench

Advocate : Mr. Manoj Bhardwaj, Advocate, for the Petitioner; Mr. Aatish Jain, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Dinesh Chandra Somani, J. - On 25/11/2016, the case was listed for admission. On that day, counsel for the respondent objected to the maintainability of this petition under Article 227 of the Constitution of India. Therefore, before proceeding further in the matter, arguments of learned counsel for both the parties were heard on maintainability of this petition.

2. Before dealing with the question of maintainability of the petition, we think it proper to narrate the facts of the case in brief. The general election of Gram Panchayat Masari, Panchayat Samiti Kathumar was held on 18/01/2015. The petitioner contested the election of Sarpanch against Nihaldei-respondent No. 1 and others. The petitioner was declared elected having scored a larger number of votes as against her opponent. Respondent No. 1, thereafter filed an Election Petition under Rule 80 of Rajasthan Panchayati Raj (Election) Rules, 1994 which will hereinafter be referred as the "Rules of 1994", before the Tribunal viz., District Judge, Alwar which was later on transferred to Senior Civil Judge, Laxmangarh, District Alwar under Section 43 of Rajasthan Panchayati Raj Act,

1994 which will hereinafter be referred as the "Act of 1994". The petitioner herein filed reply to the Election Petition. Thereafter, issues were framed. Parties to the Election Petition concluded their evidence and after hearing the parties, learned Senior Civil Judge, Laxmangarh allowed the Election Petition and declared the petitioner's election to be void vide impugned judgment. It is against this judgment dated 28.09.2016, the present petition is preferred.

3. Learned counsel for the respondent submitted that Senior Civil Judge, Laxmangarh hearing the Election Petition under Rule 80 is a "persona designata" and his action in dealing with Election Petition cannot be examined by this Court under Article 227 of the Constitution of India. Learned counsel also submits that only the remedy lies against the impugned judgment is writ of certiorari under Article 226 of the Constitution of India. In support of his contentions, learned counsel for the respondent placed reliance on :-

1. 1964 RLW 1 Keshav Devi v. Radhey Shyam (DB),
2. 1998 (1) WLC (Raj.) 81 Smt. Indira v. Smt. Prabha
3. 2002 (4) WLN 47 Santosh Kanwar v. Surgyan Kanwar & Ors.

4. Learned counsel also placed reliance on Article 243-O of the Constitution and on Section 117, 117A of Rajasthan Panchayati Raj Act, 1994.

5. On the other hand, learned counsel for the petitioner opposed the arguments of learned counsel for the respondent and submitted that Senior Civil Judge hearing Election Petition under Section 43 of the Act of 1994 read with Rule 80 of the Rules of 1994, is not "persona designata" but acts in the capacity of Court, therefore, this Court can exercise its superintending powers under Article 227 of the Constitution of India. In support of his arguments, learned counsel for the petitioner placed reliance on :-

1. 1997 (1) RLR 583 Narayan Dutt v. Ibrahim,
2. 2008 (6) WLC 174 Sheojilal v. District Judge, Bundi & Ors.
3. (1995) 5 SCC 5 Mukri Gopalan v. Cheppilat Puthanpurayil.

6. It will be useful to refer relevant statutory provisions. Article 227 and 243-O of the Constitution of India reads as follows :-

227. Power of superintendence over all courts by the High Court.- [(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

- (a) call for returns from such courts;
- (b) make and issue general rules and prescribe forms for regulating the practise

and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

1[***]

243-O. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.]

7. Section 6 of the Rajasthan Civil Courts ordinance, 1950 reads as follows :-

6. Classes of Courts.- There shall be the following classes of Subordinate Civil Courts in the State of Rajasthan], namely :-

(1) the Court of the District Judge,

(2) [the Special Civil Court],

(3) the Court of the Civil Judge/Additional Civil Judge (Senior Division); and

(4) the Court of the Civil Judge/Additional Civil Judge (Junior Division].
Rajasthan Panchayati Raj Act, 1994

8. Section 43. Determination of dispute as to elections.- (1) An election under this Act or the rules made thereunder may be called in question by any candidate at such election by presenting in the prescribed manner to the District Judge having jurisdiction, a petition in this behalf on the prescribed grounds and within the prescribed period.:

Provided that an election petition presented as aforesaid may, for the reasons to be recorded in writing, be transferred by the District Judge for hearing and

disposal to a Civil Judge or Additional Civil Judge (Senior Division) subordinate to him.

(2) A petition presented under sub-Section (1) shall be heard and disposed of in the prescribed manner and the decision of the Judge thereon shall be final.

117. Bar to interference by Courts in certain matters.-

Notwithstanding anything contained in this Act-

(a) the validity of any law relating to the delimitation of constituencies or wards or the allotment of seats to such constituencies or wards made or purporting to be made under this Act, shall not be called in question in any Court, and

(b) no election to any Panchayati Raj Institution shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under this Act.

[117-A. Jurisdiction of Civil Courts barred.- No Civil Court shall have jurisdiction-

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for an constituency; or

(b) to question the legality of any action taken by or under the authority of an electoral registration officer, or any decision given by any authority appointed under this Act for the revision of such roll; or

(c) to question the legality of any action taken or of any decision given by the returning officer or by any other person appointed under this Act in connection with an election.]

Rajasthan Panchayati Raj (Election) Rules, 1994 :-

Rule - 80. Manner of challenging an election under the Act. - An election under the Act or under the rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared, on any one or more of the following grounds-

(a) that on the date of election a returned candidate was not qualified or was disqualified for such election, or

(b) that any corrupt practise was committed by a candidate or by any other person with the consent or connivance of the candidate, or

(c) that any nomination was improperly rejected, or

(d) that the result of the election in so far as it concerns the returned candidate was materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practise committed in the interest of the candidate by a

person other than that candidate or by a person acting with the consent or connivance of such candidate, or

(iii) by improper reception, refusal or rejection of any vote or the reception of any vote which was void, or

(iv) by any non-compliance with the provision of the Act or of these rules, or

(e) that in fact the petitioner or some other candidate received a majority of the valid votes, or

(f) that but for votes obtained by the returned candidate by corrupt practices, the petitioner or some other candidate would have obtained a majority of the valid votes.

9. In *Keshav Dev v. Radhey Shyam* (supra), the question for consideration was whether the District Judge had any jurisdiction to transfer the election petition pending before one Munsiff to another Munsiff or Civil Judge. Hon''ble Division Bench of this Court held that the Munsiff while hearing the election petition may have all the trappings of a Court but he cannot be deemed to function as an ordinary Civil Court and the Munsiff while hearing the election petition is a "persona designata". Therefore, the District Judge had no jurisdiction to transfer the election petition from one Munsiff to another Munsiff or from one Munsiff to another Civil Judge.

10. In *Smt. Indira v. Smt. Prabha* (supra), the question for consideration was whether the Judge acting under Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 is a persona designata and can his action in dealing with Election Petitions be revised by the High Court under Section 115 of the Code of Civil Procedure. The Coordinate Bench of this Court while dealing with the provisions of Section 115 of CPC and Rule 80, 85, 86, 87 of Rajasthan Panchayati Raj (Election) Rules, 1994, various judgments of this Court and Hon''ble Apex court, was of opinion that District Judge having jurisdiction to hear the Election Petition under Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 is an "authority" according to Section 117(b) of the Rajasthan Panchayati Raj Act, 1994. The decision of this "authority" cannot be called in question by way of appeal. Provisions contained in CPC in respect of Civil Regular First Appeal or Miscellaneous Appeal have been excluded and there is nothing in "Rules, 1994" or "Act, 1994" to indicate that the Judge at the time of hearing the Election Petition functions as a " Election Tribunal". The Judge is not made identical with the Civil Court.

11. In *Santosh Kanwar & Ors. v. Surgyan Kanwar & Ors.* (supra), Coordinate Bench of this Court while dealing with Rule 80 of Rajasthan Panchayati Raj (Election) Rules, 1994 and Section 115 of CPC and Articles 226 and 227 of Constitution of India, was of view that a District Judge hearing an Election Petition under Rule 80 of the Rules of 1994 is a "persona designata" and not a Court subordinate to High Court, therefore, no revision is maintainable against

his order before the High Court.

12. In *Sheojilal v. District Judge, Bundi & Ors.* (supra), an Election Petition was filed before District Judge, Bundi questioning the validity of election of Sarpanch which was later on transferred to Additional District Judge. Coordinate Bench of this Court was of opinion that District Judge hearing a Election Petition under Section 40 of the Act is not "persona designata" but acts in the capacity of office of District Judge. Therefore, his court is subordinate to High Court and revision against his order, lies under Section 115 of CPC. Identical view was expressed by Coordinate Bench in *Narayan Dutt v. Ibrahim* (supra). It is pertinent to note that in *Keshav Dev v. Radhey Shyam* (supra), the judgment was delivered by Division Bench of this Court on 26th of August, 1963, which was not considered by the Coordinate Benches in *Sheojilal's* case (supra) and *Narayan Dutt's* case (supra).

13. In *Mukri Gopalan v. Cheppilat Puthanpurayil* (supra), while dealing with provisions of Kerala Rent Control Act, Hon"ble the Apex Court was of opinion that where District Judges appointed as Appellate Authority under provisions of statute, they constitute a class and cannot be regarded as "persona designata".

14. Section 20 of the Kerala Rent Control Act deals with revision, which lays down that in cases where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Judge and in other cases the High Court may at any time on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such "Authority" for the purpose of satisfying itself as to the legality, regularity or propriety of such other proceedings, and may pass such order in reference thereto as it thinks fit. Due to difference in facts and circumstances of the case, the law laid down by Hon"ble Apex Court in this case, is not of much help to the petitioner.

15. From the discussions made above, Article 243-O restricts the interference of Court in electoral matters of Panchayati Raj Institutions and provides that no election to any Panchayat shall be called in question except by an election petition presented to such "Authority" and in such manner as is provided for by or under any law made by the legislature of a State.

16. Similar provisions have been made in Section 117 and Section 117-A of Act, 1994 which provides that no Civil Court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.

17. The above provisions clearly restricts the interference of Civil Courts in the matters of elections of Panchayati Raj Institutions and provides for creation of Authority presided by District Judge. Section 43 of Act, 1994 provides that an election under this Act or the Rules made there under may be called in question by presenting a petition to the District Judge having jurisdiction which may be transferred by the District Judge for hearing and disposal to a Civil Judge or Additional Civil Judge (Senior Division), subordinate to him and the decision of

the Judge thereto shall be final.

18. The District Judge can transfer the Election Petition only to a Civil Judge or Additional Civil Judge (Senior Division), subordinate to him and cannot transfer to Additional District Judge. Therefore, the District Judge or Civil Judge or Additional Civil Judge (Senior Division) while hearing a Election Petition presented under the "Act, 1994" and "Rules, 1994" acts as "persona designata" and no appeal or revision lies against the orders/judgments passed by them and therefore, High Court in exercise of Article 227 of the Constitution of India cannot exercise superintending powers with regard to election disputes under the "Act, 1994" and "Rules, 1994".

19. Therefore, we are convinced with the submissions made by learned counsel for the respondent that Senior Civil Judge, Laxmangarh passed the impugned judgment after hearing the Election Petition under Rule 80 of "Rules,1994", is a "persona designata" and his action in dealing with Election Petition cannot be examined by this Court under Article 227 of the Constitution of India and the remedy lies against the impugned judgment is writ of "certiorari" under Article 226 of the Constitution of India.

20. As this Bench is hearing Civil Second Appeals, Civil Writs U/A 227 (from Civil Court Orders) and Civil Residue Matters only, entrusted by Hon''ble the Chief Justice, and this matter should have been listed before appropriate Bench having the roster. Therefore, office is directed to do the needful for listing this matter before appropriate Bench having the roster.