
(2009) 06 RAJ CK 0009
In the Rajasthan High Court

Babu Lal Losania	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 243ZG

Citation : (2009) 3 RLW 2418

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—The State Election Commission, Rajasthan is found to have decided to fill in the vacancy of the President of Municipal Council Kishangarh and Beawar, the Chairman of Municipal Board, Kekri, Mangrol, Gangapur (Bhilwara), Rawatbhata, Ramgarh Shekhawati, Bhawani Mandi, Merta City, the vice-Chairman of Municipal Board, Pratapgarh and the Deputy Mayor of Municipal Corporation, Jaipur, by holding bye-election on 8th (eight) June, 2009, Monday. Notice period of seven days was given. An action in accordance with the provisions of Rule 95 read with Rule 78 to 90, of Rajasthan Municipalities (Election) Rules, 1994 whichever is applicable, has been directed to be taken. It is also directed to be ensured that there was no stay order from the courts against holding the bye elections. The election of vacancies of Chair Persons of Municipal council Kishangarh, Municipal Board Kekri, Mangrol, Gangapur (Bhilwara), Rawatbhata, Ramgarh Shekhawati, Merta City has been notified to be held subject to the outcome of decision of the Court.

2. The notification seems to have been issued vide No. F.4 (7)(1) ME/SEC/1521 Jaipur dated 28.05.2009.

3. By way of this instant petition, the petitioner Babulal Losania presently functioning as acting Chairman of Municipal Board, Ramgarh Shekhawati District Sikar (Rajasthan) has sought the following reliefs:

(i) by issuing an appropriate writ, order or direction in the nature thereof thereby the respondents may be directed to withdraw the election notification dated 28.05.2009 (Annexure-1) so far as the election of the Chairman of Municipal Board of Ramgarh Shekhawati District Sikar is concerned;

(ii) by issuing an appropriate writ, order or direction in the nature thereof thereby the respondents may further be directed to stay the bye election of the post of Chairman of Municipal Board, Ramgarh Shekhawati District Sikar scheduled to be held on 8-6-2009 with immediate effect.

(iii) Any other appropriate order or direction which this Hon'ble Court deems fit and proper in favour of the petitioners may kindly be passed.

(iv) Cost of the writ petition may kindly be provided to the petitioner.

4. Inter alia, the petitioner has also sought the interim relief to the effect that the respondents may be restrained to hold the bye-election of the post of Chairman of Ramgarh Shekhawati scheduled to be held on 8-6-2009 by staying the operation of the impugned election notification dated 28-5-2009 Annexure-1 so far as Election of Chairman of Municipal Board Ramgarh Shekhawati, District Sikar is concerned.

5. Heard the learned Counsel for the parties at length and carefully scanned the relevant material on record including the relevant provisions of law.

6. Learned Counsel for the petitioner at the very outset took me to the reply filed by the respondents in S.B. Civil Writ Petition No. 946/2007 filed by the petitioner Mohd. Farook S/o. Shri Ameen Vyapari and has canvassed that the respondents had already conceded in their reply that if the High Court had taken a cognizance in the writ petition filed by the Chair Person or Vice-Chair Person whose seat was vacant for the one reason or the other reason, the State Commission shall defer the elections to avoid further complications and litigation. Learned Counsel has further contended that the validity and legality of no confidence motion dated 23.5.2006 against Kanhaiya Lal Chotia has already been under challenge in the High Court and many writ petitions have been filed with regard thereto. In one of the writ petitions the High Court has stayed the bye elections. In spite of that, the respondent No. 1 has issued the notification dated 28th May, 2009 for holding bye-elections of the Chair Person of Municipal Council of Ramgarh Shekhawati which is in utter disregard and disobedience of the stay order rendered by the High Court (but no such stay order has been shown to the Court). The petitioner is an aggrieved party and as such, the respondents may be restrained from holding the bye-election of the post of Chair Person of Municipal Council Ramgarh Shekhawati.

7. Learned Counsel appearing for respondent No. 1 and 3 have vehemently opposed the contentions advanced by the learned Counsel for the petitioner and in contra canvassed that the process of holding bye-election of Municipal Council Ramgarh Shekhawati has commenced vide notification dated 28th May, 2009 and

the bye-elections are to be held on 8th June, 2009. The Hon''ble Apex Court has pronounced aloud in umpteen cases that the election process in the impugned election commenced cannot be stayed or withheld or in any way interrupted on the ground of any infirmity in the formation of a delimitation of the wards, reservation of the reserved wards or publication of the electoral role by filing a writ petition under Article 226 of the Constitution because the bar of Article 243ZG operates. He has cited WLC Rajasthan 1995 (3) page 580 and Election Commission of India Vs. Shivaji and Others, in support thereof.

8. In this regard it seems apt to quote Article 243ZG(b) of the Constitution of India which reads as under:

No election to any Municipality 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.

9. In the case of Anugrah Narain Singh and Another Vs. State of U.P. and Others, and in the case of Jaspal Singh Arora Vs. State of M.P. and Others, the Hon''ble Apex Court has held that no election to a municipality can be questioned except by an election petition. Moreover, if the election is imminent or well under way, the Court should not intervene to stop the election process.

10. In the result, the instant writ petition stands dismissed in limine.