

(2005) 08 AHC CK 0122
In the Allahabad High Court
Case No : Writ Petition No. 5046 (M/B) of 2005

Bal Govind and Ors.

APPELLANT

Vs

State Election Commissioner (Panchayat), U.P., Lucknow

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Citation : (2005) 08 AHC CK 0122

Hon'ble Judges : K.S.Rakhra, J and Pradeep Kant, J

Final Decision : Allowed

Judgement

1. Notice on behalf of respondent No. 1 has been accepted by Sri Sanjay Sarin, while notice on behalf of respondents No. 2, 3, 4, 5 and 8 has been accepted by the learned Chief Standing Counsel.
2. Issue notice to respondent Nos. 6 and 7.
3. Learned Counsel for the petitioners says that he may be allowed to serve the respondents No. 6 and 7 outside the Court. Let him do so.
4. Office is directed to issue Dasti summons along with necessary duplicates forthwith for service upon the unserved respondents.
5. List this matter on 1782005, as fresh. The office shall indicate in the notice that the case is fixed in the Court on the aforesaid date.
6. Sri Gajendra Pal, District Magistrate, Barabanki, along with Assistant Returning Officer Sri Uma Kant Verma, is present in person.
7. Sri Gajendra Pal states that while considering the complaint of the petitioners and making enquiry, as directed by the State Election Commission, he did not give any opportunity to the petitioners, namely, the complainants, nor asked them to appear and explain their case. He further admits that the letters of withdrawal, on the basis of which their nominations were directed to be withdrawn by the Assistant Returning Officer, were also not thus shown to the

petitioners nor they were made aware about the contents there of. He says that withdrawals are to be made by filling up prescribed form, over which the signature of the candidates are affixed and there is no separate letter of withdrawal by the person. He further reiterated in his statement that he has given his report only on the basis of the report submitted by the Assistant Returning Officer. However, he said that he also got the signatures of the petitioners tallied of his own from the signatures put on the form for withdrawal of nominations and also on the nomination papers and the connected documents. He did not find any difference in the two signatures.

8. At this juncture, the learned Counsel for the petitioner stated that the fact that the District Magistrate has compared the signatures of the petitioners on the withdrawal form and on the nomination papers and other connected papers, does not find mention in the orders passed by him and, therefore, it appears to be an afterthought. This objection has been noted by us.

9. The District Magistrate also says that he was only to send the report to the Commission and, therefore, he was under no obligation to call the complaints, namely, the petitioners before submitting the report to the Commission. He says that he was having no option except to call for report of the Assistant Returning Officer and submit the same to the Commission, as he has no authority to take any decision in the matter and that there is no provision for calling the complainants.

10. The Assistant Returning Officer, Sri Uma Kant Verma first stated that he had allowed the withdrawal as the signatures of the petitioners on the withdrawal form were verified by the Secretary of the Gram Panchayat, Sri Ram Vijai Singh. Later on, he stated that he himself also got the signatures tallied from the signatures which are put by the petitioners on the nomination papers and the affidavits etc.

11. There are allegations by the petitioners about the mala fides against the Secretary and he has also been impleaded as an opposite party in the writ petition.

12. The petitioners, who are also present in person and whose identity has been verified by their Counsel Sri Aftab Ahmad, have been confronted with the alleged signatures on the withdrawal forms. They specifically deny their signatures or the thumbimpression, as the case may be.

13. After hearing the parties' Counsel and perusing the record, we are not satisfied with the explanation given by the District Magistrate as well as the Assistant Returning Officer. When the District Magistrate was entrusted with the task of enquiry by the State Election Commission, it was his duty to afford an opportunity to the complainants, namely, the petitioners before relying upon the report of the Assistant Returning Officer, who himself was the person charged of having made incorrect withdrawals. Calling for a report from a person charged and relying upon the same, that too without applying his own mind and without

giving any opportunity to the complainants, who specifically came forward with their case right from 5th August, 2005 that they had not submitted any withdrawal forms, was not in accordance with the principles of natural justice. The District Magistrate ought to have satisfied himself by not only calling the petitioners but also by confronting them with the withdrawal forms and also by making an effort to compare the signatures on the nomination papers, affidavits and the withdrawal forms of his own.

14. The District Magistrate felt contended by only relying upon the report submitted by the Assistant Returning Officer. However, he says that the Commission had not directed him to call the petitioners and time being short and that only report having been asked for, therefore, under this bona fide impression, he did not dwell upon the detailed enquiry but on the basis of the report of the Assistant Returning Officer, he submitted his report.

15. Be that as it may but the fact remains that the right to contest election is a statutory right, which cannot be taken away otherwise than in accordance with law. If a person incurs any disqualification or he is otherwise not qualified for contesting the elections, his nomination can be rejected. If he withdraws his nomination, for any reason whatsoever, then also he would have no right to contest the elections nor can he raise any grievance against the withdrawal but withdrawal cannot be made or announced if the candidate himself has not applied for withdrawal.

16. This is the question, which was to be seen by the Returning Officer, namely, District Magistrate as well as the Assistant Returning Officer. In case the District Magistrate or the Assistant Returning Officer had come to a conclusion that the withdrawal forms were filled in by the petitioners and they had put their signatures, there could not have been any exception to the view taken by the District Magistrate.

17. The statement of Assistant Returning Officer also does not indicate that he took proper care while making the enquiry and submitting his report regarding withdrawal of nominations and he relied upon the identification said to have been done by the Secretary. Even this did not absolve the liability of the Assistant Returning Officer to look into the papers correctly of his own and only after being satisfied about the authenticity and genuineness of the withdrawal forms, necessary orders could have been passed.

18. The manner in which the present enquiry has been conducted coupled by the fact that all 12 contestants have withdrawn their nominations, including the petitioners, leaving only one person in the fray, requires thorough enquiry on the complaint of the petitioners and if this withdrawal of the petitioners is the outcome of some concerted effort or design, wherein the petitioners have not applied for withdrawal then it would amount to fraud and the entire subsequent election process may stand vitiated.

19. We have not given our opinion on the outcome of the enquiry by making the

aforesaid observations or the effect of such an enquiry, as that is the matter to be considered in accordance with law. But we are of the view that this matter requires through probe and consideration to the State Election Commission itself and, therefore, as an interim measure, we refer this matter to the State Election Commissioner, who would himself look into the entire record and after giving opportunity to the petitioners and concerned parties, shall pass fresh orders in accordance with law.

20. This order has been passed in the presence of the Returning Officer, namely the District Magistrate Sri Gajendra Pal and the Assistant Returning Officer, Sri Uma Kant Verma and also the learned Counsel for State, Sri Vinay Jeet Lal Verma and Sri Sanjay Sarin, learned Counsel for the State Election Commission as well as the petitioners, who are present in person.

21. The Returning Officer and the Assistant Returning Officer shall forward the entire relevant record to the State Election Commission today itself and the petitioners shall appear before the State Election Commissioner today itself at 4.00 p.m., the State Election Commissioner shall reconsider the matter and shall take a decision in accordance with law within 24 hours. The Commissioner is at liberty to give opportunity to any other person, who may be effected by the order.

22. The parties shall proceed with the implementation of this order without waiting for certified copy of the same, pending its availability.

23. Learned Counsel for the parties assure that they would communicate the text of this order to the concerned authority for its compliance.