
(2016) 01 AHC CK 0074
In the Allahabad High Court
Case No : Writ C. No. 174 of 2016

Harendra Kumar Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 243(O)(b)

Citation : (2016) 01 AHC CK 0074

Hon'ble Judges : Dilip Gupta and Mukhtar Ahmad, JJ.

Bench : Division Bench

Advocate : Vijay Kumar Singh and Durgesh Kumar Singh, for the Appellant;
C.S.C. and Saiful Islam Siddiqui, for the Respondent

Final Decision : Dismissed

Judgement

1. This petition has been filed for quashing the order dated 1 January 2016 (Annexure No. 1 to the writ petition) passed by the District Magistrate, Ghazipur/ Returning Officer for rejecting the nomination paper submitted by the petitioner for election of Adhyaksh of the Zila Panchayat, Ghazipur and to permit the petitioner to contest the election scheduled to be held on 7 January 2016. A further relief that has been claimed is that the respondents should not declare Dr. Virendra Yadav-Respondent No. 5 as the Adhyaksh of the Zila Parishad during pendency of the writ petition.

2. It is stated that the petitioner was elected as a member of the Zila Panchayat, Ghazipur. He filed his nomination for the post of Adhyaksh of the Zila Parishad. The District Magistrate, Ghazipur, however, rejected the nomination paper of the petitioner by order dated 1 January 2016. The said order mentions that the nomination paper was being rejected for the reason that the petitioner had not enclosed the receipt of the security amount with the nomination papers.

3. Learned counsel for the petitioner has submitted that the petitioner had not only deposited the security amount in the Treasury but has also enclosed the

receipt with the nomination paper and, therefore, the finding recorded to the contrary in the impugned order is incorrect. In this connection learned counsel for the petitioner has placed before the Court the treasury challan as also the representation dated 1 January 2016 that was filed by the petitioner before the State Election Commission.

4. Sri Ravi Kant, learned Senior Counsel assisted by Sri Saiful Islam Siddiqui appearing for the State Election Commission has, however, submitted that it was necessary for the petitioner to have enclosed with the nomination papers the receipt of the security amount deposited by him but as the petitioner failed to do so, the nomination of the petitioner was rightly rejected.

5. Sri K.S. Yadav, learned Additional Advocate General appearing for the State has also submitted that no error was committed by the Returning Officer in rejecting the nomination paper of the petitioner.

6. We have considered the submissions advanced by the learned counsel for the parties.

7. In order to appreciate the contentions advanced by the learned counsel for the parties it would be appropriate to first consider the provisions of the Uttar Pradesh Zila Panchayats (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Disputes) Rules, 1994. Chapter II deals with Conduct of election of Adhyaksha. Rule-7 deals with Nominations and Rule-8 deals with Deposits. Rules 7 and 8 are reproduced below-

"7. Nominations. (1) Any person who desires to be nominated as a candidate at an election to the office of Adhyaksha of a Zila Panchayat shall deliver in person or through his proposer and seconder, a nomination paper duly completed in Form II to the Returning Officer within the hours of 11 O'clock in the forenoon and 3 O'clock in the afternoon on the date and place specified in the notice under Rule 5.

(2) The nomination paper shall be signed by the candidate himself assenting to the nomination and also by one member as proposer and another member as seconder.

(3) Where a candidate seeks election to a seat reserved for the Scheduled Castes or the Backward Classes, there shall accompany with the nomination paper a declaration subscribed by him stating that he is a member of the Scheduled Castes or the Backward Classes, as the case may be, specifying the particular caste to which he belongs.

(4) A nomination paper filed after the last hour mentioned in sub-rule (1) shall forthwith be rejected by the Returning Officer.

8. Deposits.--(1) A candidate shall not be deemed to be duly nominated for the election to the office of a Adhyaksha or a Up-Adhyaksha Zila Panchat unless he deposits or causes to be deposited such sum as may be fixed by the State

Election Commission from time to time in consultation with the State Government as security. For the candidates of the reserved categories such deposit shall be half of the sum fixed for the candidates of unreserved categories:

Provided that where a candidate has been nominated by more than one nomination papers for the same election, not more than one deposit shall be required under this sub-rule.

(2) Any sum required to be deposited under sub-rule (1) shall not be deemed to have been deposited under that sub-rule unless at the time of delivery of nomination paper under Rule 7 the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in a Government Treasury or in the State Bank of India."

8. Rule 10 deal with the Scrutiny of Nominations and is reproduced below-

"10. Scrutiny of nominations-(1) At the scrutiny of nominations, the candidates, their proposer and seconders but no other persons, may attend. The Returning Officer shall give them all reasonable facilities of examining the duly received nomination papers.

(2) The Returning Officer shall examine the nomination papers and decide all objections which may be made at any nomination, and may, either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds-

(a) that the candidate is not qualified to be chosen to the office under the Act;

(b) that the candidate is disqualified for being chosen to the office under the Act;

(c) that there has been any failure to comply with any of the provisions of Rules 7 and 8;

(d) that the signature of the candidate or the proposer or seconder is not genuine or has been obtained by fraud;

(e) that the candidate is not a member of the Zila Panchayat;

(f) that the proposer or the seconder is not a member.

(3) Nothing contained in clauses (c), (d) or (f) of sub-rule 2 shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any technical defect or other error which is not of a substantial character and may for the purpose of removing any such defect or error allow any entry to be corrected in the nomination paper including an entry relating to name or number

on the election roll.

(5) The order of the Returning Officer allowing any correction to be made under sub-rule (4) shall be final and shall not be questioned in any Court of law.

(6) The Returning Officer shall hold the scrutiny on the date and time appointed in this behalf under Rule 5 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by causes beyond his control.

(7) The Returning Officer shall endorse on each nominated paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(8) For the purpose of this rule the existence of the name of a person in the list of members prepared under the Rule 6 shall be conclusive evidence of the fact that he is eligible for election to the office of Adhyaksha."

9. Sub-rule (1) of Rule-8 clearly provides that a candidate shall not be deemed to be duly nominated in the election to the office of a Adhyaksha or a Up-Adhyaksha Zila Panchat unless he deposits or causes to be deposited such sum as may be fixed by the State Election Commission from time to time in consultation with the State Government as security.

10. Sub-rule (2) of Rule-8 provides for the sum required to be deposited under the sub-rule, unless at the time of delivery of the nomination paper under Rule 7, the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in a Government Treasury or in the State Bank of India.

11. The reason why the nomination paper of the petitioner has been rejected is that the petitioner did not enclose with the nomination paper the receipt of the security amount deposited by him in the Treasury.

12. The petitioner did not deposit the amount of security with the Returning Officer. He claims to have deposited the amount in the Treasury. In that event it was absolutely necessary for the petitioner, as provided for under sub-rule (2) of Rule 8, to have enclosed with the nomination paper the receipt showing that the sum had been deposited by him in the Government Treasury. The order of the District Magistrate that has been placed before us mentions that the nomination paper of the petitioner contains only ten pages and none of the ten pages contain the receipt of the sum said to have been deposited by the petitioner in the Government Treasury.

13. Even in the representation dated 1 January 2016 which the petitioner immediately filed before the State Election Commission after having come to know that his nomination papers had been rejected for the reason that he had not enclosed with the nomination paper the receipt of the Government Treasury

showing that the security amount had been deposited, the petitioner had not stated that the receipt had been enclosed with the nomination. All that has been stated in the representation is that the nomination form had been presented lawfully before the Returning Officer and that security amount had been deposited in the Treasury Challan. What has also been stated in paragraph 12 and 16 of the writ petition by the petitioner are reproduced below-

"12. That the petitioner has already annexed herein above the Photostat copy of treasury challan submitted by him with the nomination paper and the petitioner was duly given the receipt by the Returning Officer on the same date. In view of this, it is absolutely clear that the nomination papers of the petitioner were rejected on wrong grounds.

16. That it is also submitted that the petitioner had annexed all the requisite documents along with the representation and therefore he had expected the State Election Commission shall act swiftly on the representation of the petitioner."

14. In these two paragraphs there is no statement that Treasury Challan had been actually submitted by the petitioner with the nomination paper. All that has been stated is that the petitioner had enclosed a photostat of the treasury challan submitted by him with the nomination paper.

15. Learned counsel for respondents have also stated that as there was only one nomination, respondent No. 5 has been declared elected under Rule 13 of the 1994 Rules.

16. The said Rule 13 is reproduced below-

"13. Unopposed candidate to be declared elected- If there is only one duly nominated candidate, the Returning Officer shall forthwith declare such candidate to be duly elected to the office of Adhyaksha and cause a copy of such declaration to be affixed at the Notice Board of the Zila Panchayat and also report the result to the State Election Commission."

17. A certificate in Form-5 has also been issued by the Returning Officer on 4 January 2016 and a copy of the same has also been placed before the Court along with the order dated 4 January 2016 passed by the Returning Officer. It is therefore, clear that respondent No. 5 has been declared unopposed under Rule 13 of the 1994 Rules.

18. The issue that arises for consideration is that whether this Court should interfere in the matter in proceedings under Article 226 of the Constitution, particularly when even in the representation dated 1 January 2016 which was filed by the petitioner immediately after rejection of the nomination paper petitioner did not state that he had enclosed copy of the receipt of deposit of security amount with the nomination paper. Rule 8, as noticed above, clearly requires a candidate submitting nomination paper for Adhyaksh of the Zila Panchayat to enclose copy of the receipt of deposit of security amount with the

nomination paper. Rule 10(2)(c) provides that the Returning Officer shall reject any nomination on the ground that there has been a failure to comply with any of the provisions of Rules 7 and

19. What also needs to be pointed out is that Section 27 of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam 1961 provides for resolution of disputes. Sub-section (2) provides that if a dispute arises as to whether a person has been lawfully chosen member of Zila Panchayat under Section 18 the dispute shall be referred in a manner prescribed to the Judge whose decision shall be final and binding. Rule 33 of the Rules also provides that an election petition calling in question the election of an Adhyaksha or Up-Adhyaksha may be presented to the Judge at any time within thirty days from the date of declaration of the result under Rule 13 or Rule 28, as the case may be.

20. Article 243(O)(b) of the Constitution also provides that notwithstanding anything in this Constitution, 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.

21. In view of the aforesaid provisions, the factual position that emerges from the writ petition and instructions that have been placed before the Court, it will not be appropriate for this Court to entertain this petition. The petitioner can prefer an election petition as contemplated under the Act and Rules.

22. Learned counsel for the petitioner has, however, submitted that as one question that has been referred to the Full Bench of this Court is as to whether the High Court in exercise of powers under Article 226 of the Constitution can interfere in the election process if the elections are not held in accordance with the Constitution or there is an inherent defect/breach in the election making the entire election a mockery or false, this matter should await a decision of the Full Bench.

23. In the present case, as noticed above, respondent No. 5 has already been declared elected as Adhyaksha of Zila Panchayat and a certificate to that effect had already been issued. The petitioner would, therefore, not be justified in asserting that the election process is still on.

24. Thus, for all the reasons stated above, we decline to entertain this petition as the petitioner has statutory alternative remedy of preferring an election petition under Section 27 of the Act.

25. It is, however, made clear that any observation made by this Court in regard to the factual aspect will not be binding upon the Judge deciding the election petition and the election petition shall be decided on its own merits.

26. The petition is, accordingly, dismissed.

1Rules 2Act