
(2010) 03 RAJ CK 0056
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3479 of 2010

Hari Kishan

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Rajasthan Panchayati Raj (Election) Rules, 1994 — Rule 86
Rajasthan Panchayati Raj Act, 1994 — Section 19(L)

Citation : (2010) 2 WLN 632

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition has been filed by petitioner assailing Rule 86 of Rajasthan Panchayati Raj [Election] Rules, 1994 and it has been further prayed that pending election petition preferred by him, the respondent No. 3 may be restrained from discharging duties of Sarpanch who has been elected for Gram Panchayat, Saradhana, District Ajmer.

2. Petitioner & respondent No. 3 both contested election of Sarpanch for Gram Panchayat, Saradhana, District Ajmer which was held on 22nd January, 2010. However, respondent No. 3 was elected as Sarpanch. It has not been disputed that the petitioner has filed election petition before the competent Court of jurisdiction assailing his election on various grounds including pre-disqualification referred to u/s 19(L) of Rajasthan Panchayati Raj Act, 1994.

3. Counsel for petitioner submits that election petition has been preferred, but it will take its own time, but the plea of pre-disqualification, which has been raised in the election petition, is duly supported by cogent material on record and still if the respondent No. 3 is allowed to continue as Sarpanch, is causing great prejudice to him and Rule 86 of Rules, 1994 restrains the competent Court to grant injunction and grant of interim relief cannot be curtailed by the rule making

authority, which is wholly unjust & violative of Article 14 of the Constitution of India.

4. Submission made by Counsel is without substance for the reason that what has been averred by petitioner in election petition being a disputed question of fact, can be examined after the parties are permitted to lead evidence in the election petition, but no inference at the prima facie stage could be taken note of by learned Presiding Officer. Rule 86 of the Rules, 1994 certainly restrains the Presiding Officer from granting injunction or restraining a person whose election is in question from exercise of power and performing duties for the simple reason that once a person has been elected and is a public representative, should not be restrained from performing duties of the post held unless held to be guilty and in absence whereof, submission is without substance and accordingly, rejected.

5. Consequently, writ petition is without merit and stands dismissed.