
(2019) 10 UK CK 0058

In the Uttarakhand High Court

Case No : Special Appeal No. 931 Of 2019, Writ Petition (M/S) No. 3045 Of 2019

Himanshu Bora & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Uttarakhand Panchayati Raj Act, 2016 — Section 8(1)(r), 53(1)(r)

Citation : (2019) 10 UK CK 0058

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : S.R.S. Gill, Amit Kapri, S.S. Chaudhary, Sanjay Bhatt, Anil Kumar Dabral

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. This Special Appeal is preferred by the intervener in Writ Petition (M/S) No. 3045 of 2019 aggrieved by the interlocutory order passed by the learned Single Judge dated 27.09.2019.

2. The respondent-writ petitioner had invoked the jurisdiction of this Court seeking a writ of mandamus to direct the fifth respondent not to reject his nomination, or to disqualify him from the post of Member, Kshetra Panchayat, on the ground that he had three children, since he had only two biological sons and one orphan girl under his guardianship.

3. The respondent-writ petitioner had contested for elections to the post of Member, Kshetra Panchayat; and, in terms of the disqualification, stipulated in Section 53(1)(r) of the Uttarakhand Panchayati Raj Act, 2016, a person, who has three or more living children, is ineligible to contest for the Kshetra Panchayat elections.

4. While it is true that an identical provision, in Section 8(1)(r) of the

Uttarakhand Panchayati Raj Act, 2016, was read down by us in our order in Writ Petition (M/S) No. 2302 of 2019 and batch dated 19.09.2019, the constitutional validity of Section 53(1)(r) of the Uttarakhand Panchayati Raj Act, 2016 was not under challenge in those Writ Petitions; and, since the said provision was subjected to challenge later after the election notification had been issued, we had merely admitted the Writ Petition(s) and had not passed any interim order therein. As a result, Section 53(1)(r) of the Uttarakhand Panchayati Raj Act, 2016 continues to remain in the Statute Book 5. Since there is a presumption regarding the constitutionality of Statutes, even if a, more or less identical, provision has been read down, as long as no such order is passed with respect to this provision, Section 53(1)(r) of the Uttarakhand Panchayati Raj Act, 2016 would remain in force, and, till this Court directs otherwise, would necessitate adherence. Consequently, the learned Single Judge may not have been justified in holding that a person having three or more children is eligible, as on date, to contest elections to the post of Member, Kshetra Panchayat.

6. The fact, however, remains that the respondent-writ petitioner claims that he has only two biological sons, and he had taken an orphan girl child under his guardianship. It is his case that he does not have a third child, and is not ineligible to contest elections to the post of Member, Kshetra Panchayat in terms of Section 53(1)(r) of the Uttarakhand Panchayati Raj Act, 2016.

7. While this fact is disputed by the appellant-intervener, these are all matters which the appellant-intervener can always agitate, by way of an Election Petition, post completion of the elections. Further the appellant-intervener has not even contested in these elections. We see no reason, in such circumstances, to interfere at the behest of the appellant-intervener, that too against an interlocutory order passed by the learned Single Judge.

8. Making it clear that the observations made in this order shall not disable the appellant-intervener, if he so chooses, to avail his remedy of filing an Election Petition later and, in case any such petition is filed, for the competent authority to examine the matter on its merits uninfluenced by the observations made either in the interlocutory order under appeal or the order now passed by us, the Special Appeal fails and is, accordingly, dismissed. No costs.

Writ Petition (M/S) No. 3045 of 2019 :

9. Mr. Anil Kumar Dabral, learned counsel for the petitioner, Mr. Sanjay Bhatt, learned Standing Counsel for the State Election Commission and Mr. S.R.S. Gill, learned counsel for the intervener, agree that, in the light of the interim order passed by the learned Single Judge and the order now passed in the Special Appeal, nothing survives in this Writ Petition; and the Writ Petition be disposed of.

10. The Writ Petition is, accordingly, disposed of. No costs.