
(2010) 02 RAJ CK 0138
In the Rajasthan High Court

Jagdish Prasad Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Constitution of India, 1950 — Article 243K, 243O
Rajasthan Panchayati Raj (Election) Rules, 1994 — Rule 80
Rajasthan Panchayati Raj Act, 1994 — Section 117

Citation : (2010) 1 WLN 631

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioner is aggrieved by the order dated 06.01.2010 whereby the Deputy Commissioner (Enquiry), Panchayati Raj Department, the respondent No. 2 had issued a list of persons who were declared to be disqualified for contesting the Panchayat Elections which are presently going on.

2. It is the case of the petitioner that he was elected as Sarpanch and subsequently as Up-sarpanch of Gram Panchayat Malikpur in 2005. Even. today he continues to discharge his duties as the Up-sarpanch of the said Gram Panchayat. However, as a false complaint was filed against the petitioner, an inquiry was held against him. The case was inquired both by the Chief Executive Officer of Zila Parishad, Sikar and by the Dy. Secretary (Enquiry). Vide order dated 11.08.2008, the petitioner was exonerated from the charges. But notwithstanding his exoneration, still vide order dated 06.01.2010, his name has been included in the list of disqualified persons. Hence, this petition before this Court.

3. Mr. Ajay Gupta, the learned Counsel for the petitioner, has contended that since the petitioner was exonerated from the charges, there is nothing against him that would disqualify him from contesting the election. Moreover, the order dated 06.01,2010 is extremely cryptic order as it does not state any reason for

declaring the petitioner as disqualified.

4. Both Mr. R.B. Mathur and Mr. Jinesh Jain, the counsels for the respondents, have raised an preliminary objection about the maintainability of the present petition. According to Article 243O of the Constitution of India, no election to any Panchayat shall be called in question except by an election petition presented before the appropriate authority. Similarly, according to Section 117 of the Rajasthan Panchayati Raj Act, 1994 ("the Act for short"), no election to Panchayati Raj Institution shall be called in question except by an election petition presented before the competent authority. Moreover, under Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 ("the Election Rules", for short), if a person wants to challenge an election, he is required to file an election petition. These particular provisions of law try to prevent the needless meddling of the Court in the election process as the election process is an arduous process and faces grave logistical problems. In order to ensure the smoothness of the election process, these particular provisions of the Constitution of India, the Panchayati Raj Act and the Election Rules have been created. Hence, the petitioner has an alternate remedy of filing an election petition. Thus, the writ jurisdiction could not be invoked by him. In order to buttress this contention, the learned Counsels have relied upon the case of S.T. Muthusami Vs. K. Natarajan and Others, and on the case of Sundar Lal and Anr. v. State of Rajasthan and Ors. S.B Civil Writ Petition No. 2424/2009, decided on 30th April, 2009.

5. In rejoinder, the learned Counsel for that the petitioner has contended the impugned order was passed prior to the notification for the election being published. Therefore, his right to file the writ petition cannot be taken away by the mere fact that the election process is presently continuing.

6. Heard the learned Counsel for the parties on the preliminary objection.

7. Article 243O of the Constitution of India is as under:

243O. Bar to interference by courts in electoral matters.-Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243K, shall not be called in question in any court;

(b) 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.

8. Rule 80 of the Election Rules is as under:

80. Manner of challenging an election under the Act.- An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days

from the date on which the result of such election is declared, on any one or more of the following grounds:

(a) that on the date of election, a returned candidate was not qualified or was disqualified, for such election, or

(b) that my corrupt practice was committed by a candidate or by any other person with the consent or connivance of the candidate, or

(c) that any nomination was improperly rejected, or

(d) that the result of the election in so far as it concerns the returned candidate was materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the candidate by a person other than that candidate or by a person acting with the consent or connivance of such candidate, or

(iii) by improper reception, refusal or rejection of any vote or the reception of any vote which was void, or

(iv) by any non-compliance with the provisions of the Act or of these des, or

(e) that in fact the petitioner or some other candidate received a majority of the valid votes, or

(f) that, but for votes obtained by the returned candidate by corrupt practices, the petitioner or some other candidate would have obtained a majority of the valid votes.

8. Although it is true that the impugned order was passed on 06.01.2010 and the elections were declared on 07.01.2010, but the fact remains that the present petition was filed on 22.01.2010 i.e. after the election process had commenced. Therefore, according to the ratio of S.T. Muthusami and other case law, this petition is not maintainable as long as the election process to continue. According to the learned Counsel for the respondents; the election process has come to a grinding halt only on 11.02.2010. Since there is a partial ban on the maintainability of the petition during the election process, this petition is not maintainable at the present moment. However, it is clarified that the petitioner shall be free to avail the legal remedies which are permissible under the law after the election process ends on 11th February, 2010.

9. For the reason stated above, this petition is devoid of any merit. It is, hereby, dismissed.