
(2011) 11 AHC CK 0038
In the Allahabad High Court
Case No : Writ - C. No. - 21731 of 2011

Jokhan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 243(O)
Uttar Pradesh Panchayat Raj (Election of Members, Pradhans and Up-Pradhans) Rules, 1994 — Rule 14, 14(1), 14(2), 59
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C

Citation : (2011) 11 AHC CK 0038

Hon'ble Judges : Bharati Sapru, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble Ashok Bhushan, J.—Heard Sri P.S. Baghel, learned Senior Advocate assisted by Sri R.V. Chaudhary for the petitioner, Sri B.D. Mandhyan and Sri K.N. Tripathi, learned Senior Advocates, appearing for newly impleaded respondent and Sri S.K. Singh, learned Counsel appearing for the respondent no. 2 and learned Standing Counsel.

2. By these writ petitions, the petitioners have prayed for the issuance of a writ of mandamus, commanding the District Election Officer/ District Magistrate to accept the nomination form of the petitioners and allow them to participate in the by-election. The petitioners have further prayed for the quashing of the notification dated 7.4.2011 and public notice dated 8.4.2011, issued by the District Magistrate as well as to declare the entire election held in pursuance of the said notices as illegal and void. It has been also prayed that the election of Gram Panchayat Bagesoti, Block Chopan, District Sonbhadra be not given effect to. Counter and rejoinder affidavits have been exchanged between the parties. The writ petition No. 2173 of 2011 is being treated as leading writ petition and reference to pleadings in leading petition is sufficient for deciding all the writ petitions.

3. The brief facts of the case, as they emerge from the pleadings of the parties are; that the Pradhan of Gram Panchayat Bagesoti, Block Chopan, District Sonbhadra namely; Brij Bhushan died on 22.3.2011 thereby causing a vacancy in the office of the Pradhan. The State Election Commission vide notification dated 6.4.2011 directed the District Election Officer to hold a by-election in their respective districts. The District Magistrate on 7.4.2011 issued a notification in pursuance of the order of the Election Commission to hold a by-election. The notification of the District Magistrate was published in the news paper on 8.4.2011 and notice by beat of drum was also given in the village in question on 8.4.2011. 9.4.2011 was date fixed for nominations, 10.4.2011 was fixed for scrutiny of nominations, 11.4.2011 was fixed for withdrawal of nominations, 17.4.2011 was fixed for polling and 18.4.2011 was fixed for counting of votes. The petitioners claim to be residents of village Bagesoti and have purchased the nomination papers for contesting the election. The petitioners' case is that after obtaining necessary caste certificate and affidavit, they went to Block Chopan to submit their nomination papers. It is claimed that they reached at 3:45 p.m. However, the returning officer refused to accept the nomination papers saying that time was over. It is to be noted that time for filing nomination on 9.4.2011 was from 10 a.m. to 4 p.m. The petitioners have come up with the case that the notice of election gave very short time which was not reasonable. The petitioner's case further is that they came to know about last date of nomination as 9.4.2011 only in the late evening of 8.4.2011. The petitioners claim to have sent a representation on 11.4.2011 to the District Magistrate praying that their nominations be accepted and they be permitted to participate in the election. Copy of the representation dated 11.4.2011 has been filed as Annexure-7 to the writ petition. With the aforesaid pleadings, the petitioners filed this writ petition initially with the prayer to accept the nomination. The petitioners were subsequently permitted to amend the prayer. This Court entertained the writ petition and passed an interim order on 18.4.2011 to the effect that result of the election be declared but the same shall not be given effect to.

4. Counter affidavit has been filed on behalf of State Election Commission, refuting the case of the petitioners. It has been stated that appropriate notice was given and three candidates filed nominations. There is no requirement of giving any particular days' notice for by-election. The petitioners' case that they reached at 3:45 p.m. on 9.4.2011 is incorrect. The petitioners never presented their nominations and the case set up is an after thought. The fact that representation was submitted on 11.4.2011 at 5:13 p.m. itself indicates that petitioners were watching the entire proceedings. A counter affidavit has also been filed on behalf of Satendra, who claims to have obtained the maximum votes and was issued certificate of declaration. It is pleaded that in fact the petitioners never presented their nominations. The notice was published in the newspaper on 6.4.2011 and petitioners obtained their caste certificates on 8.4.2011, which itself indicates that they were well aware of the notifications and the election programme. It is further submitted that Satendra having secured

highest votes, have been elected as Pradhan, and has also been issued certificate to the same effect on 18.4.2011. It is further submitted that remedy, if any available to the petitioners was to file an election petition u/s 12-C of the U.P. Panchayat Raj Act, 1947. The writ petition is also barred by provisions of Article 243-O of the Constitution of India.

5. Learned counsel for the petitioners in support of the writ petition contended that reasonable time was required to be given for holding the election and by notice dated 6.4.2011 only two days time was given for filing nomination which notice was published on 8.4.2011 in the newspaper and programme was also announced by beat of drum on 8.4.2011 at 7:00 a.m. He submits that even if the Rules namely; U.P. Panchayat Raj (Election of Members, Pradhans and Uppradhans) Rules, 1994 does not prescribe any period for notice, reasonable time was required to be given in the notice for holding the elections which having not been done, the entire election proceedings are vitiated and deserve to be set aside. It is further submitted that even if Rule 14 of the 1994 Rules, do not provide for any time limit, the principle as contained in Representation of Peoples Act, 1951 ought to have been adopted.

6. Refuting the submissions of the learned counsel for the petitioners, it is contended that election is to be conducted according to 1994 Rules, which do not prescribe any time for notice. It is submitted that according to Rule 59, the by-election is to be conducted in accordance with Rule 14 and there is no violation of any statutory Rules in giving notice of the elections. Further the petitioners were well aware of the entire process which is proved from the fact that they obtained caste certificate on 8.4.2011 itself reference of caste certificate has been given at page 70 of the writ petition. It has been further submitted that in view of the allegations of the petitioners that their nomination papers which were tendered on 9.4.2011 at 3:45 p.m. were not accepted, the same can be agitated by filing election petition u/s 12-C of U.P. Panchayat Raj Act, 1947 and the writ petition cannot be entertained. Learned counsel for the parties also referred to and relied on various judgments of this Court and apex Court which shall be referred to, while considering the respective submissions.

7. The first submissions of learned counsel for the petitioners is that reasonable time was required to be given in the election notice. Reliance has been placed on the judgments of the apex Court in *The State of Gujarat Vs. Patil Raghav Natha and Others*, *Mansaram Vs. S.P. Pathak and Others*, and *Veerayee Ammal Vs. Seeni Ammal*,

8. The election of Pradhan is to be conducted in accordance with 1994 Rules and Rule 14 of the said Rules provides for notice of election and fixing of dates. By virtue of Rule 59 for by election also, the Rule 14 is to be complied with. Rule 14 provides as follows:

14. Notice of election and fixing of dates.-

(1) Whenever a general election is to be held the District Magistrate shall, in

accordance, with the directions from the State Election Commission, call upon all the constituencies of a Gram Panchayat to elect members of the Gram Panchayat before such date as may be fixed by the State Election Commission.

Provided that nothing in this rule shall prevent the District Magistrate from issuing one notice for all the Gram Panchayat or a group of Gram Panchayats in the District.

(2) The District Magistrate shall, subject to such directions as may be issued by the State Election Commission, also appoint,

(a) the date, place and hours for making nominations;

(b) the date, time and place for scrutiny of nominations;

(c) the date, place and hours for withdrawal of candidature; and

(d) the date or dates on which and the hours during which a poll shall, if necessary, be taken.

(3) The Nirvachan Adhikari shall give public notice of the dates, places and hours appointed under sub-rules (1) and (2) in such manner as may be specified by the District Magistrate.

9. A perusal of Rule 14 clearly indicates that no period is prescribed for issuing notice. The Apex Court in *Jyoti Basu and Others Vs. Debi Ghosal and Others*, laid down following:-

A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be

questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute....

10. Thus, Rule 1994 having not prescribed any time limit, we are not persuaded to accept the submission that provisions of Representation of Peoples Act, 1951 have to be complied with. There cannot be any dispute to the proposition laid down by the apex Court in the aforesaid judgments referred by learned counsel for the petitioners that when no period of limitation is prescribed for doing an act, the said power is to be exercised in reasonable time. In State of Gujrat (supra) following was laid down in paragraph 11:

(11). The question arises whether the Commissioner can revise an order made under s. 65 at any time. It is true that there is no period of limitation prescribed under s. 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

11. In the present case, from the pleadings of the petitioners, it is clear that petitioners were aware of the election programme on 8.4.2011 at 7:00 a.m. itself. In synopsis/written submission given by the petitioners' counsel following has been specifically stated in paragraph 4:

The petitioner's case is that in pursuance of the notice dated 7th April, 2011 (Annexure-1 to the writ petition), notice was published in newspaper "Dainik Jagran", Varanasi edition dated 8th April, 2011. The publicity with regard to the election programme was also made by beat of drums on 8th April (at 7 A.M.) (Annexure-2 to the writ petition).

12. From the above averments, it is clear that petitioners admit that on 8.4.2011 at 7:00 p.m. a munadi was made and notice was also published in the newspaper on 8.4.2011. The fact that according to the petitioners, they obtained all relevant certificates and purchased nomination papers clearly indicate that they had reasonable time to submit their nominations. The case of the petitioners is that they went to submit nominations at 3:45 pm. which nominations were not accepted. The aforesaid submission has been specifically disputed by respondents in their counter affidavit and there is no material on the record placed by the petitioners to accept their case that they presented their nominations at 3:45 p.m. and even the fax message which is claimed by way of the representation was sent on 11.4.2011 at 5:13 p.m. The judgment of the apex Court relied by learned counsel for the petitioners in Surinder Kaur Vs. State of Punjab and others, do supports the petitioners' case that writ court under Article 226 of the Constitution of India, can in appropriate cases entertain the writ petition. In the said case, the nomination papers were torn by 7th respondent and complaint was submitted by the candidate at 4:30 p.m. to Sub Divisional Magistrate which was entered in the logbook of the Magistrate. Further

in the said case, before the poll was closed, the High Court granted stay order and inspite of that Returning Officer declared the 7th respondent as elected. In such circumstances, the apex Court set aside the election. It is well settled that any action taken by the Authority in violation of the interim order of the Court, can be set aside in exercise of writ jurisdiction. The said case is thus, clearly distinguishable. The judgment relied by learned counsel for the respondents in Kurapati Maria Das Vs. Dr. Ambedkar Seva Samajan and Others, fully supports the contention of the respondents that for challenging the elections, the statutory remedy of the petitioners is election petition, which has to be taken recourse of. A Division Bench of this Court in 2011 (6) ADJ 319 Khem Singh Pachhara vs State of U.P. and others also took the same view that remedy of the petitioners was to challenge the election by means of election petition and the writ petition challenging the election was not entertained.

13. Learned counsel for the petitioners submits that petitioners cannot file an election petition u/s 12-C since the case of the petitioners is not covered by any of the grounds mentioned u/s 12-C, whereas learned counsel for the respondents submits that the petitioners can very well file election petition and raise their ground since their allegation is that Returning Officer did not permit them to submit their nominations. Thus, allegations are being made against the Election Officer, which can be gone into in the election petition. We are not called upon to express any opinion on the above issue, which can be examined in a case when election petition is filed by the petitioners. Any expression of opinion by us at this stage, may prejudice the case of either of the parties. In the present case, on 18.4.2011 this Court passed an order permitting declaration of the result. However, there was restraint order that same shall not be given effect to. In view of the interim order the result of the election was declared but has not been given effect to.

14. In view of the aforesaid, we are of the view that the petitioners are entitled to avail remedy of election petition within the time as prescribed for filing election petition from today. In view of the foregoing conclusions, we are of the view that the writ petition cannot be entertained. The petitioners may seek their remedy against the election of Pradhan in accordance with the statutory provisions of Section 12-C of the U.P. Panchayat Raj Act, 1947.

15. The writ petition No. 21731 of 2011 is dismissed. The interim orders stand discharged.

16. In other two writ petitions, no interim order was passed and the issues raised are same as have been raised in writ petition No. 21731 of 2011. The aforesaid two writ petitions stand dismissed.