
(2015) 09 MP CK 0004
In the Madhya Pradesh High Court
Case No : W.A. No. 54 of 2015

Kallo Adiwasi

APPELLANT

Vs

State Election Commission, Bhopal and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Constitution of India, 1950 — Article 191, 193, 226, 243K, 243O
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)

Citation : (2016) 1 JLJ 236 : (2015) 4 MPLJ 687

Hon'ble Judges : Ravi Shankar Jha and B.D. Rathi, JJ.

Bench : Division Bench

Advocate : Anil Kumar Mishra, for the Appellant

Final Decision : Dismissed

Judgement

Ravi Shankar Jha, J.—This appeal has been filed by the appellant under section 2(1) of the Madhya Pradesh Uchcha Nyalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, being aggrieved by order dated 20-2-2015 passed by the learned Single Judge in W.P. No. 417/2005, whereby the petition filed by the appellant/petitioner challenging rejection of her nomination and the election and certificate issued to the respondent No. 5 as Sarpanch. The learned counsel appearing for the appellant submits that the learned single Judge has erred in law in dismissing the petition filed by the petitioner/appellant against rejection of her nomination papers which have been filed for the purposes of contesting election for the post of Sarpanch of Gram Panchayat, Naraiya Khedi, Tahsil Pohri, District Shivpuri, on the ground that the petition was barred in view of the provisions of Article 243O of the Constitution of India.

2. The learned counsel for the appellant submits that in the instant case the petitioner had filed her nomination papers on 7-1-2015 and the nomination papers were required to be scrutinized on 8-1-2015 as per the election programme published by the authorities, However, the returning officer by

wrongly taking up the matter on 9-1-2015 rejecting the nomination papers of the petitioner, being aggrieved by which the petitioner had filed a petition before this Court. It is stated that on account of fraud and manipulation by the returning officer, the entire election process was vitiated and in such circumstances the learned single Judge has erred in not exercising its jurisdiction under Article 226 of the Constitution of India.

3. The learned counsel, relying on the decisions rendered in the cases of Ranvir Singh Vs. State of M.P. and Another, , Anjana Mulkalwar Vs. State of M.P. and Others, , K. Venkatachalam Vs. A Swamickan and Another, and State Election Commission, Bhopal Vs. Ras Bihari Raghuwanshi and Others, , submits that the jurisdiction of this Court under Article 226 of the Constitution of India can be exercised in extraordinary cases in election disputes also and, therefore, the dismissal of the petition by the learned single Judge by stating that the only remedy available to the petitioner was an election petition is not in accordance with law.

4. We have heard the learned counsel for the appellant and perused the record. From a perusal thereof it is luminescently clear that the present case is one of rejection of the nomination paper for which a remedy of filing an election petition has been provided to the aggrieved person in accordance with the procedure prescribed by law.

5. Apparently and admittedly, the present case relates to wrongful rejection of the nomination papers filed under the provisions of section 122 of the M. P, Panchayatraj Adhiniyam, 1993 and the election petition under the provisions of M.P. Panchayat Election Rules with the specific provisions for assailing the election on the ground of rejection of nomination papers. In the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, this was the very issue before the Supreme Court and in that case the Supreme Court after taking into consideration the provisions of Article 329B which is pari materia and similarly worded as Article 243-O(b) has held that a writ petition cannot be filed assailing such rejection of nomination papers in view of the constitutional bar and that the remedy of filing an election petition has to be availed.

6. Similar view has been taken by the Supreme Court in the cases of State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., ; Anugrah Narain Singh and Another Vs. State of U.P. and Others, ; Jaspal Singh Arora Vs. State of M.P. and Others, .

7. In the case of Ras Bihari Raghuwanshi (supra) relied on by the learned counsel for the appellant the Election Commission had assailed the order passed by the learned single Judge setting aside the order passed by the Election Commission countermanding an election on the ground of mass rejection of nomination papers by stating that the Election Commission had no power to countermand an election and the only way that the person elected could have been ousted was by way of filing an election petition under the provisions of section 122 of the M.P.

Panchayatraj Adhiniyam, 1993. The Division Bench of this Court in that case has taken into consideration the provisions of Articles 243K and 243-O of the Constitution of India and thereafter gone on to analyze the law in paragraphs 10 to 15 and after relying on the decisions rendered in the cases of N.P. Ponnuswami v. Returning Officer, Namakkal, AIR 1952 SC 54 , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Kanhiya Lal Omar Vs. R.K. Trivedi and Others, and S.R. Bommai and others Vs. Union of India and others etc. etc., has held that all election disputes can be resolved only in accordance with the procedure prescribed by law by filing an election petition and even the Election Commission has no authority to set aside a election. The judgment is clearly against the contention raised by the learned counsel for the appellant.

8. The reliance placed by the learned counsel for the appellant in the case of Ranvir Singh (supra) is misplaced as in that decision the learned single Judge did not take into consideration the decision of the Constitution Bench of the Supreme Court rendered in the case of N.P. Ponnuswami (supra) or the other decision on this point while deciding the matter.

9. The reliance placed by the learned counsel for the appellant on the decision rendered by this Court in the case of Anjana (supra) is also misconceived as much as in that case the order under challenge was an order passed by the District Electoral Registration Officer, whereby the name of the petitioner therein was deleted from voter list subsequent to her election and thereafter the Chief Election Officer of the Jila Panchayat taking recourse to the provisions of section 34(2) of the Panchayat Raj Adhiniyam, 1993 declared the office of the President of Jila Panchayat vacant. The dispute in that case does not relate to an election petition at all.

10. In the case of K. Venkatachalam (supra), relied upon by the learned counsel for the appellant the Supreme Court was dealing with a case where the issue regarding disqualification of an elected person was involved. In the aforesaid decision of the Supreme Court has held that the bar contained in Article 329K would not come into play when the case falls under Articles 191 and 193 of the Constitution of India and the High Court can/may entertain a petition if the person holding the elected post was apparently disqualified to do so. The facts of the present case are totally different and the present case is squarely covered by the decision of the Supreme Court in the case of N.P. Ponnuswami (supra). The cases cited by the learned counsel for the appellant are therefore of no assistance to the appellant.

11. In view of the aforesaid discussion it is apparent that the learned single Judge has rightly dismissed the petition and relegated the petitioner to avail of the remedy of election petition. In view of the aforesaid, we do not find any ground to interfere in the impugned order passed by the learned Single Judge, The writ appeal, filed by the appellant being meritless is, accordingly, dismissed.