
(2001) 05 RAJ CK 0063
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2051 of 2001

Kaptan Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 23

Citation : (2002) 1 RLW 142 : (2001) WLC 590 : (2001) 4 WLN 127

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : Hanuman Choudhary, for the Appellant;

Final Decision : Dismissed

Judgement

Parihar, J.

(1). While challenging the show cause notice dated 10.4.2001 in regard to disqualification of the petitioner for holding the post of Sarpanch, the petitioner has also challenged the validity of Rule 23 of the Rajasthan Panchayat Raj Rules, 1996.

(2). Mr. Hanuman Choudhary, learned counsel for the petitioner, while relying upon a judgment of this court in the case of Mohan Lal v. State of Rajasthan (1), has submitted that disqualifications of the Sarpanch can only be decided in an Election Petition and since no Election Petition has been filed against the petitioner, the State Government cannot take any action against the petitioner.

(3). There is no dispute that the Election Petition under the Rajasthan Panchayati Raj Election Rules, 1994 can be filed only by a contesting candidate. Rule 23 of the Rajasthan Panchayal Raj Rules, 1996 is in a different context, wherein on a representation or otherwise, if it is brought to the notice of the State Government that member of the Panchayat Raj Institution is otherwise disqualified for holding the post, the State Government, after following the procedure as provided under the Rules, can pass necessary orders. Rule 23 is reproduced here as under:-

"23. Procedure for removal in case of disqualification.--(1) Whenever it is represented to, or otherwise brought to the notice of the Chief Executive Officer in case of Panch/Sarpanch and to the State Government in case of Pradhan/Up-Pradhan, Pramukh/Up-Pramukh or Member of a Panchayati Raj Institution, who has been declared to be duly elected as such or who has been appointed as such under any provision of the Act, was not qualified, or was disqualified, for such election or appointment at the time when he was so elected or appointed or has thereafter become disqualified for continuing as such Member, the competent authority shall draw up clearly and precisely the alleged disqualification or disqualifications forming the subject of the representation made to it, or otherwise brought to its notice, and shall forthwith issue a notice to such Member, which shall

- (i) Set out the gist of the allegations against him,
- (ii) Fix a date, not less than fifteen days after the date of issue of the notice, on which the inquiry shall be made,
- (iii) Require him to show cause, for personal appearance or in writing, why his seat should not be declared by the State Government to be or to have become vacant on the ground of his having been not qualified or disqualified, as alleged,
- (iv) Call upon him to produce, in denial of the allegation, such documentary or other evidence as may be in the possession, and
- (v) Invite him to appear personally, if he so desires, on the date fixed by the notice, and a copy of the notice shall be sent also to the informant, if any.

(2) On the date fixed by the notice, the Chief Executive Officer or the State Govt., as the case may be, shall hear the informant, if any, as well as the member if he appears before him and requests for a personal hearing, shall consider the document and other evidence produced by them in proof or disproof of the allegation or allegations, shall make such further inquiry as he may think necessary, shall record a finding as to the alleged disqualification or disqualifications and shall either order the proceedings to be dropped or declare the seat of such member to have become vacant or make such other order as may be proper in the circumstances of the case u/s 39 of the Act."

(4). Since proper opportunity has been given to a person before passing any order, in my opinion, the above Rule 23 cannot be held to be ultra vires of the Constitution.

(5). So far as the judgment of this Court in the case of Mohan Lal (supra) is concerned, the facts of that case are entirely different. In that case, an Election Petition had already been filed and during the pendency of the Election Petition, the State Government also sought action against the elected member and in that context, the Court held that the directions of the State Government were not proper and justified, since the matter was subjudice before the Election Tribunal.

(6). In the present case, no Election Petition has been filed against the petitioner. As such, if any representation has been submitted or been brought to the notice of the State Government, the State Government is competent to take necessary action in accordance with law against the petitioner. Moreso, even otherwise, no interference is called for by this Court in such matters at this stage when only show cause notice has been issued to the petitioner.

(7). Accordingly, I find no merit in the writ petition and the same is dismissed.