
(2015) 12 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13067/2015

Ladu Kanwar

APPELLANT

Vs

District Judge, Jodhpur Metropolitan and Others

RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 24
Constitution of India, 1950 — Article 226, 227
Rajasthan Panchayati Raj Act, 1994 — Section 117(b), 43

Citation : (2015) 12 RAJ CK 0028

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : Bharat Boob, for the Appellant; B.S. Tanwar, for the Respondent

Final Decision : Allowed

Judgement

Pratap Krishna Lohra, J.—Petitioner, an elected Sarpanch of Gram Panchayat Nandri, Panchayat Samit Mandore, Jodhpur has laid this writ petition under Article 226 & 227 of the Constitution of India to challenge impugned order dated 24th February, 2015 passed by learned District Judge, Jodhpur Metropolitan, Jodhpur whereby the learned Court below has transferred the election petition to Additional District Judge No. 2, Jodhpur Metropolitan, Jodhpur.

2. Succinctly stated the facts of the case are that second respondent filed an election petition against the petitioner under Section 43 of the Rajasthan Panchayati Raj Act 1994 (for short, "Act of 1994") to question her election as Sarpanch, Gram Panchayat Nandri, Panchayat Samit Mandore, Jodhpur before the District Judge, Jodhpur Metropolitan, Jodhpur. The learned District Judge, while exercising powers under proviso to sub-section (1) of Section 43 of the Act of 1994, transferred the Election Petition of the second respondent to Additional District Judge No. 2, Jodhpur Metropolitan, Jodhpur.

3. Mr. Bharat Boob, learned counsel for the petitioner, submits that the legislature in its wisdom has conferred power on the District Judge to transfer an

election petition but the said power is required to be exercised as mandated by the legislature. Learned counsel for the petitioner would contend that proviso to sub-section (1) of Section 43 of the Act of 1994 envisages with clarity and precision that the District Judge hearing and disposing of election petition may transfer it to a Civil Judge or Additional Civil Judge (Senior Division) subordinate to him by recording reasons in writing and as such an election petition cannot be transferred to a Court of Additional District Judge. Lastly, learned counsel has urged that as per Section 43 of the Act of 1994, Additional District Judge is having no jurisdiction to act as an Election Tribunal for determining election disputes of any member including Chairperson or Deputy Chairperson of a Panchayati Raj Institution. In substance, learned counsel has urged that the order impugned is clearly vitiated in law. In support of his contention, learned counsel has placed reliance on a decision of this Court in case of Smt. Indira v. Smt. Prabha [1998 (1) WLC (Raj.) 81].

4. Per contra, learned counsel for the respondent, Mr. B.S. Tanwar, submits that there is no infirmity much less legal infirmity in the impugned order warranting interference under Article 227 of the Constitution of India. Lastly, learned counsel for the respondent submits that the transfer order has been passed by the District Judge by exercising its power under Section 43 of the Act of 1994.

5. I have heard learned counsel for the parties and perused the impugned order.

6. The Legislature in its wisdom has conferred power on the District Judge to transfer an election petition but with certain riders as per proviso to sub-section (1) of Section 43 of the Act of 1994. Therefore, the District Judge while acting as an Election Tribunal is clothed with the jurisdiction to transfer an election petition to Civil Judge or Additional Civil Judge (Senior Division), subordinate to him, after recording reasons in writing. For ready reference complete text of Section 43 of the Act of 1994 reads as under:

"43. Determination of dispute as to elections.--(1) An election under this Act or the rules made thereunder may be called in question by any candidate at such election by presenting in the prescribed manner to the District Judge having jurisdiction, a petition in this behalf on the prescribed grounds and within the prescribed period:

Provided that an election petition presented as aforesaid may, for the reasons to be recorded in writing, be transferred by the District Judge for hearing and disposal to a Civil Judge or Additional Civil Judge (Senior Division) subordinate to him.

(2) A petition presented under sub-section (1) shall be heard and disposed of in the prescribed manner and the decision of the Judge thereon shall be final."

7. Thus, the power of transfer conferred on the District judge is not unfettered and it is circumscribed by making it clear that such transfer can be made to a Civil Judge or Additional Civil Judge (Senior Division) subordinate to him. In that

background, the legislature has not intended that power of transfer can be exercised by District Judge to transfer an election petition to any court subordinate to it other than Civil Judge or Additional Civil Judge (Senior Division). The very fact that legislature has specified the Court to which an election petition can be transferred, pre-supposes that transfer of election petition to any other Court is not intended by the legislature.

8. My this view is fully fortified by a judgment of co-ordinate Bench in case of Smt. Indira (supra) on which learned counsel for the petitioner has placed reliance. In this verdict, after discussing the provisions under Section 43 of the Act of 1994 and under Rule 80 of the Rajasthan Panchayati Raj Rules, 1994 threadbare, the Court held that an election petition cannot be transferred to the Court of an Additional District Judge which is subordinate to the District Judge. The Court held:

"It is thus evident that District Judge having jurisdiction to hear the election petition under Rule 80 of the Rajasthan Panchayati Raj (Election) Rules 1994 is an "authority" according to section 117(b) of the Rajasthan Panchayati Raj Act 1994. The decision of this "authority" cannot be called in question by way of appeal. Provisions contained in Code of Civil Procedure in respect of civil regular first appeal or misc. appeal, have been excluded and this is nothing in the "Rules 1994" or "Act 1994" to indicate that the Judge at the time of hearing the election petition functions as an ordinary court of civil jurisdiction, subordinate to the High Court. The term "court" used in various headings of the Rules 1994 is meant only to show that while hearing the election petition the Judge functions as a "judicial tribunal" and that it is only in that sense that the word seems to have been used. The Judge is not made identical with the civil court, otherwise it would have the same powers and privileged as a civil court powers to transfer cases provided to the District Judge under section 24 of the Code of Civil Procedure, has been curtailed and according to proviso appended to sub-section (1) of section 43 of the Act 1994 the District Judge can transfer election petition to only Civil Judge or Additional Civil Judge (Senior Division) subordinate to him. Election petition cannot be transferred to the Additional District Judge, who is subordinate to the District Judge for the purposes of transfer of cases under section 24 CPC. It is therefore apparent that intention of the Legislature in enacting above noted provisions in the Act 1994 and Rules 1994 was to create "Election Tribunal" and not the "civil court". Thus the Judge acting under Rule 80 of the Rajasthan Panchayati Raj Election Rules 1994 is a persona designate and his action in dealing with the election petition cannot be revised by the High Court under Section 115 of the Code of Civil Procedure. Definition of "Persona designata" as laid down in Central Talkies case (supra) is not applicable to the "authority" appointed to hear the election petition under the Act 1994 and the Rules 1994. In Narain Dutt v. Ibrahim (supra) this court did not properly construe the provisions of the Act 1994 as well as Rules 1994 and the case of Moti Ram v. Mali Ram (supra) was distinguished overlooking the decision of Division bench of this court in Keshav Dev v. Radhey Shyam (supra). Therefore

Bench of this court in Keshav Dev v. Radhey Shyam (supra). Therefore, I am unable to follow the views expressed in Narain Dutt v. Ibrahim (supra)."

9. The decision in Smt. Indira's case (supra) is further followed by learned Single Judge of this Court in case of Smt. Ganga Devi v. District Judge, Bharatpur [2006 WLC (Raj.) (UC) 287].

10. That being the position of law, the order passed by the District Judge whereby election petition of the second respondent is transferred to Additional District Judge No. 2, Jodhpur Metropolitan cannot be sustained and the said order (Annex.2) is, therefore, set aside. The learned Additional District Judge No. 2, Jodhpur Metropolitan, Jodhpur is directed to send back file to the District Judge, Jodhpur Metropolitan, Jodhpur for doing needful in the matter. Learned Additional District Judge No. 2 must ensure compliance of the directions forthwith.

11. It is needless to observe here that the learned District Judge, Jodhpur Metropolitan, Jodhpur shall be at liberty to exercise power of transferring the election petition before appropriate court, strictly in accordance with law. The parties with their respective counsel shall appear before the District Judge, Jodhpur Metropolitan, Jodhpur on 13th of January, 2016.

12. Accordingly, writ petition is allowed with the observations made supra.