
(2015) 08 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petition No. 11316/2015 and Civil Misc. Stay Application
No. 9911 of 2015

Manak Chand Nogia

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 243O, 243ZG, 329(b)

Citation : (2015) 08 RAJ CK 0021

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Girraj Bardhar, for the Appellant

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J—This writ petition has been filed by the petitioner being aggrieved by wrongful rejection of his nomination for contesting election of the Municipal Council, Jobner Wart No. 1 to 15.

2. Brief facts of the case are that Respondent No. 2 issued a public notice of election under Rule 11 of the Rajasthan Municipalities (Election) Rules, 1994 (for short "the Rules of 1994") for election to the Municipal Council, Jobner, Ward No. 1 to 15. As per the said notification, last date of submission of nomination forms was 05.08.2015 and 06.08.2015 was fixed for scrutiny of nomination forms and the election poll is scheduled to held on 17.08.2015. The petitioner, as per Rule 12 of the Rules of 1994 and in the requisite form, submitted his candidature before Respondent No. 3 on 05.08.2015 along with his Prathma Certificate issued by Hindi Sahitya Sammelan Allahabad (Hindi University). However, Respondent No. 3, on 06.08.2015, illegally and arbitrarily rejected nomination form of the petitioner. Hence, this writ petition has been filed by the petitioner.

3. Learned counsel for the petitioner has submitted that Prathma Certificate of the petitioner is a recognised course and equivalent to matriculation as held by

Delhi High Court in *Yudhvir Singh v. Indian Oil Corporation* (W.P. No. 7523/2010); *Oriental Bank of Commerce v. Subhash Chand* (LPA No. 646/2005) and by this Court in *Sandhya Bhatnagar (Miss.) Vs. State of Rajasthan and Others*, (2004) 2 RLW 974 : (2003) 4 WLC 295 . It is argued that a notification has also been issued recognising Prathma equivalent to matriculation qualification. Nomination of the petitioner has been rejected on the ground that Prathma is not recognised in the list issued by Respondent No. 2. As a matter of fact, said list is arbitrary and wrong because it shows the list of courses and their equivalence to the degree. The bone of contention in the present case is that Prathma certificate issued by Hindi Sahitya Sammelan Allahabad (Hindi University) was given requisite recognition by the Government of India from time to time treating it to be equivalent to matriculation qualification. Hence, rejection of nomination of the petitioner on the basis of an arbitrary list is totally unreasonable and unjust. If it is presumed that Prathma Certificate of the petitioner is not recognised, even then as per the guidelines contained in the letter dated 27.07.2015, the petitioner is eligible for participation in the Election of Nagarpalika, 2015. As per Circular No. F.24-4/2001-TS.III, on the recommendations of High Level Committee for recognition of Educational Qualifications, the Government of India has decided to recognise the Prathma Examination being conducted by Hindi Sahitya Sammelan, Allahabad for the purpose of employment under the Central Government for the post for which the desired qualification is matriculation.

4. I have given my anxious consideration to submissions made by learned counsel for the petitioner and perused the material on record.

5. The question whether the qualification possessed by the petitioner, i.e. Prathma, is equivalent to Matriculation is a question of fact which cannot be gone into by this Court in the writ jurisdiction. Besides, in view of the bar contained in Article 243ZG of the Constitution of India, no interference can be made by this Court as the process of election has already been started. The right to elect or to be elected or to challenge an election, is neither a fundamental right nor a common law right, but a statutory right and, therefore, disputes relating to such right would be regulated by the conditions prescribed in the enactment in which such right is created. This Court in *Kedar Nath Gupta, Harish Sangtani and Dinesh Kumar Vs. State and Others*, AIR 2010 Raj 40 : (2009) 2 RLW 1618 , while dealing with scope of the Court in writ petition when process of election had already started, has held that Article 243ZG of the Constitution of India in its clause (b) provides that no election to any Municipality 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 Legislature of State. Therefore, remedy of writ petition under Article 226 of the Constitution of India would not be available, if process of election had commenced. This Court, while considering the number of judgments of the Hon'ble Supreme Court on the subject, has held as under:

"Constitution Bench of Supreme Court in *N.P. Ponnuswami Vs. Returning Officer*,

Namakkal Constituency and Others, AIR 1952 SC 64 : (1952) 1 SCR 218 while interpreting the word "election" as used in Part XV of the Constitution while considering a similar argument held "that the word "election" has been used in Part XV of the Constitution in a wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature." Their Lordships held that this word has got a wider meaning and may be taken to embrace the whole procedure which consists of several stages and embraces many steps whereby an "elected member" is returned, whether or not it be found necessary to take poll. It was held that word "election" has not been used in a narrow sense. While interpreting the phraseology "no election shall be called in question", it was held that the law of elections in this country does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on, by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution, the ordinary jurisdiction of the Courts having been expressly excluded and another, after they have been completed, by means of an election petition. Where a right or liability is created by a Statute, which gives a special remedy for enforcing it, the remedy provided by that Statute only must be availed of.

This issue again engaged attention of the Supreme Court in Nanhoo Mal and Others Vs. Hira Mal and Others, AIR 1975 SC 2140 : (1976) 3 SCC 211 : (1976) 1 SCR 809 : (1975) 7 UJ 805 wherein the Supreme Court while relying on its earlier judgement in N.P. Ponnuswami, supra, held that challenge to an election through a writ petition before the High Court is not permissible even on the ground of non compliance of statutory provisions, if the Statute provides for exclusive jurisdiction to the District Judge empowered to determine the material effect of such non-compliance. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 , the Supreme Court again reiterated the same view by holding that no litigative enterprise in the High Court or other Court should be allowed to held up the on-going electoral process. It was held that Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result. Election in this context is a very wide connotation commencing from the notification calling upon a electoral to elect and culminating into final determination of the returned candidate.

The Supreme Court in S.T. Muthusami Vs. K. Natarajan and Others, AIR 1988 SC 616 : (1988) 1 JT 159 : (1988) 1 SCALE 149 : (1988) 1 SCC 572 : (1988) 2 SCR 759 : (1988) 1 UJ 531 while dealing with the question whether it was appropriate for the High Court to interfere with the election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election to the office of the Chairman of a Panchayat Union under the provisions of the Tamil Nadu Panchayats Act, 1958 on the ground that there was an error in the matter of allotment of symbols to the candidates contesting such election. Reversing the judgment of High Court, the Supreme

Court while relying on its Constitution Bench judgement in N.P. Ponnuswami, supra, held that the interference in exercise of its jurisdiction by the High Court under Article 226 of the Constitution was not justified. The parties who are aggrieved by the result of the election, can question validity of election by an election petition, which is an effective alternative remedy. It may be noted that the bar similar to the one contained in Article 243ZG regarding election disputes to the Municipalities, is also created in Article 243O of the Constitution for such disputes concerning elections to Panchayati Raj Institutions, which are both in pari materia with the provisions contained in Article 329(b), supra. In subsequent judgements of Jaspal Singh Arora Vs. State of M.P. and Others, (1998) 9 SCC 594 and Gurdeep Singh Dhillon v. Satpal & Ors.- (2006) 10 SCC 616 and of this Court in Shanti Lal & Anr. v. State of Rajasthan & Ors.- 1995 (3) WLC (Raj.) 580 also it was held that the election to the office of President of Municipal Corporation is not open to challenge in the writ petition as the same is barred by Article 243ZG of the Constitution.

It is trite law that right to elect or to be elected or to challenge an election, is neither a fundamental right nor a common law right but a statutory right and therefore disputes relating to such right would be regulated by the conditions prescribed in the enactment in which such right is created. Reference in this connection may be usefully made to the judgement of the Supreme Court in C. Narayanaswamy Vs. C.K. Jaffer Sharief and Others, (1994) 5 JT 136 : (1994) 3 SCALE 674 : (1994) 3 SCC 170 Supp : (1994) 2 SCR 463 Supp and Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, AIR 1995 SC 2284 : (1995) 5 JT 410 : (1995) 4 SCALE 469 : (1995) 5 SCC 347 : (1995) 2 SCR 186 Supp ."

6. In view of aforesaid discussion, I do not deem it appropriate to make interference in this writ petition as the process of election has already commenced. However, it would be open for the petitioner to assail the ground of rejection of his nomination to further contest the future elections, if he is able to satisfy the returning officer about his eligibility on the premise that the qualification of Prathma held by him is equivalent to matriculation. Writ petition is dismissed, however, with the aforesaid observation.

7. Stay application also stands dismissed.