

(2006) 04 UK CK 0052

In the Uttarakhand High Court

Case No : Writ Petition No. 948 of 2005 (M/S)

Manoranjan Saini

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 243K, 243O
Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)

Citation : (2006) 3 AWC 2799 : (2006) 100 RD 188 : (2006) 1 RD 760

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Pankaj Miglani, for the Appellant;

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari, quashing the impugned order dated 2.8.2005/(Annexure-8 to the writ petition), whereby he has been removed from the post of "Pradhan" of village Hempur Ismail, by the District Magistrate, Udham Singh Nagar.

2. Brief facts of the case, as narrated in the writ petition, are that in the year 2003, election of Gram Pradhans took place in the State of Uttaranchal. The petitioner filed his nomination for the post of Pradhan of village Hempur Ismail, Tehsil Kashipur, District Udham Singh Nagar. It is alleged in the petition that petitioner complied with all the conditions as laid down in U.P. Panchayat Raj (Election of Members, Pradhans and Up-Pradhans) Rules, 1994. Under sub-rule (2) of Rule 15 of the aforesaid Rules, a person desirous to contest the elections from a reserved seat for Schedule Caste, Schedule Tribe or Backward Class, is required to make declaration to the effect that he belongs to that particular caste. The petitioner declared that he belongs to Saini community, i.e., backward class and filed an affidavit to that effect. In the elections, petitioner was declared elected as Pradhan. However, in the month of May, 2005, one Krishan Kumar of

village Hempur Ismail made a complaint to the State Government that the petitioner does not belong to Saini caste and the certificate issued in favour of his wife that she belongs to that caste is a fake one. In para 5 of the writ petition, it is alleged that on the receipt of said complaint, respondent No. 2? District Magistrate, got preliminary enquiry done, in compliance of which, Tehsildar asked vide letter dated 10.6.2005 (copy Annexure-4 to the writ petition) to the Revenue Inspector to make a report on the complaint. Vide letter dated 17.6.2005 (copy Annexure-5 to the writ petition), Tehsildar, Kashipur, made a report to the Block Development Officer that certificate issued at serial No. 765 dated 15.10.1996, pertains to one Smt. Tulsi Devi, W/o Sri Bishan Ram belonging to Shilpkar community and not to Smt. Laxmi Rani W/o Manoranjan (petitioner). After said preliminary enquiry, Annexure-6 (termed as show cause notice in the petition), was issued to the petitioner to which reply Annexure-7 was given by the petitioner alleging that he belongs to Saini caste, known as Kapali in West Bengal. It is further alleged in the petition that the petitioner is living in the village-Hempur Ismail for last 22 years. However, respondent No. 2 District Magistrate, exercising powers u/s 95(1)(g)(iii-a) of U.P. Panchayat Raj Act, 1947, removed the petitioner from the post of Pradhan. Annexure-8 is copy of said order dated 2.8.2005. The order has been challenged by the petitioner on the ground that the same has been passed in violation of U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997. It is alleged in the writ petition that neither any Inquiry Officer was appointed, nor the procedure prescribed under aforesaid Rules, was followed. It is also alleged by the petitioner that no reasonable opportunity was afforded to him to show cause or to defend himself.

3. A counter-affidavit has been filed on behalf of the respondents, wherein it has been admitted that petitioner did contest the election of Pradhan from village-Hempur Ismail against the seat reserved for Other Backward Caste, and won the election. However, the rest of the contents of the writ petition, as stated, are denied. It is stated in the counter-affidavit that Kapali caste is not Other Backward Caste, in the State of Uttaranchal. It is further alleged by the answering respondents that the impugned order, removing the petitioner from the post of Pradhan, u/s 95(1)(g)(iii-a) of U.P. Panchayat Raj Act, 1947, was passed in accordance with law. It is further stated in the counter-affidavit that due enquiry was conducted and reply of petitioner was also considered before the impugned order was passed and it is denied that the petitioner was not given an opportunity to defend himself.

4. I heard learned Counsel for the parties and perused the affidavit, counter-affidavit, rejoinder-affidavit and annexures annexed thereto.

5. Admittedly, the petitioner contested the election for the post of Pradhan against the reserved seat for Other Backward Caste, and won the same. The dispute relates to the facts : (i) that whether the petitioner won the election by making false declaration and submitted the false certificate, and (ii) whether the

respondent No. 2 complied the provisions of U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997, or not, before passing the impugned order, removing the petitioner from the post of Pradhan.

6. Annexure-1 to the writ petition is the copy of the affidavit/declaration made by the petitioner that he belongs to Other Backward Class. Para 2 of the said affidavit/declaration, shows that the petitioner has made declaration that he is Saint by caste. As such, Annexure-1 to the writ petition itself shows that the petitioner has made a false statement by making a declaration that he belongs to caste Saini while in the writ petition he says that he is Kapali by caste, i.e., Other Backward Caste in West Bengal. It has nowhere been stated by him that Kapali caste is a Backward Class in Uttaranchal. In support of his declaration, he has not filed caste certificate of his own instead he has filed Caste Certificate of his wife Smt. Laxmi Rani, a copy of which is Annexure-2 to the writ petition. In Annexure-2 it is certified that Smt. Laxmi Rani is Saini by caste. It is settled principle of law that caste refers to the birth not to the status obtained by matrimony. As such, even if the wife of petitioner is Saini by caste, the petitioner cannot be said to be of that caste, Therefore, it is evident from the record that the petitioner did contest the election, making a false declaration that he is Saini by caste.

7. On behalf of the petitioner, it is argued that no charge-sheet was given to the petitioner nor any enquiry was made in accordance with the U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997. Rule 3 of said Rules provides that a complaint must be accompanied by an affidavit. Rule 4 provides that preliminary enquiry shall be made before the formal enquiry. Rule 5 provides that the Enquiry Officer of a formal enquiry shall not be the same officer who conducted the preliminary enquiry. Rule 6 provides the procedure which requires the inquiry Officer to draw distinct charge relating to substance of imputations, made against the persons facing the enquiry. It further provides that the person against whom the charge-sheet is served, may file his written statement in his defence on the date specified in the charge-sheet. It further provides that if the charge is not admitted, the person facing the charge may inspect the record and if he applies, he shall be served with the copy of the statement of the witnesses. Rule 6 further provides that the oral and documentary evidence may be taken and recorded in support of the charge by the inquiry Officer before the person facing the enquiry is allowed to adduce his evidence in defence.

8. Annexure-6 to the writ petition is the copy of charge-sheet dated 13.7.2005 (which is referred as show cause notice by the petitioner in the writ petition). This document Annexure-6 to the writ petition, clearly shows that a specific charge has been framed against him that he contested the election and won it by making false declaration that he belongs to Other Backward Caste. It is categorically mentioned in this charge-sheet that even the certificate filed by the petitioner of his wife, was found to have not been issued by Tehsildar. Thirdly, it

is mentioned that u/s 95(1)(g)(iii-a) of U.P. Panchayat Raj Act, 1947, the petitioner can be removed on the aforesaid charge. Lastly, it is mentioned in the charge-sheet that within fifteen days from the service of the charge-sheet, the petitioner has to make his replies to the District Magistrate. At the end of the charge-sheet (Annexure-6 filed with the writ petition), it is mentioned that the petitioner can inspect the evidence proposed against him. As such, from the record it is clear that a charge-sheet was served on the petitioner. Not only this, Annexure-7 to the writ petition itself shows that the charge-sheet was replied by the petitioner on 27.7.2005, in which it was stated by the petitioner that in West Bengal, Saini caste is known by Kapali. In view of said fact that the reply was also given by the petitioner before the respondent No. 2, who passed the impugned order on 2.8.2005, it cannot be said that the petitioner was riot given any opportunity to defend himself or that the Rules contained in U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997, were not complied with. As to the preliminary enquiry initiated against the petitioner, annexures to supplementary counter-affidavit filed by respondents No. 2 and 3 are required to be read. Annexures-1 and 2 to the supplementary counter-affidavit dated 22.3.2006, show that statements of Manoranjan (petitioner) and his wife were recorded on oath. Annexwe-3 to said supplementary counter-affidavit is the copy of preliminary enquiry report dated 5.7.2005, submitted by Tehsildar, Kashipur to District Panchayat Raj Officer. Udham Singh Nagar in which it is mentioned that the petitioner and his wife are of Bengali community and they do not belong to Saini community.

9. Shri Pankaj Miglani, learned Counsel for the petitioner drew attention of this Court to the case law in Hoti Lal Vs. State of U.P. and Others, , in which it has been observed that newly inserted sub-clause (iii-a) to Section 95(1)(g) of U.P. Panchayat Raj Act, 1947, is ultra vires and contrary to Article 243-O of the Constitution. With due regard, view taken by the learned single Judge of Allahabad High Court in aforesaid case, this Court differs from the aforesaid observation. Article 243-O of the Constitution reads as under:

243-O. Bar to interference by Courts in electoral matters.? Notwithstanding anything in this Constitution :

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made, or purporting to be made under Article 243K, shall not be called in question in any Court;

(b) no election to any panchayat 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 the Legislature of a State.

10. In the opinion of this Court, what the aforesaid Article provides is this that delimitation of the constituencies for the purposes of Part-IX The panchayats" in the Constitution, and allotment of seats to such constituencies cannot be challenged in any court of law. The aforesaid Article further provides that an

election to any panchayat cannot be questioned except through an election petition presented to such authority and in the manner provided under the law made by said Legislature. If any voter or a candidate or any such person wants to challenge the election of Pradhan, he is required to file an election petition under the provisions of U.P. Panchayat Raj Act, 1947 and Rules framed there under. But Clause (b) of the aforesaid Article 243-O cannot be stretched to mean that the Returning Officer or the authorities who were responsible for holding elections are required to file the election petition, Not only this, grounds of misconduct for removal from the post of Pradhan, Up- Pradhan or Member u/s 95(1)(g) of the aforesaid Act cannot be said to be hit by Clause (b) of Article 243-O of the Constitution.

11. Attention of this Court was also drawn on behalf of the petitioner to the principle of law laid down in Smt. Sandhya Gupta Vs. District Magistrate and others, and Chunmun Vs. District, Magistrate and another, . I have gone through both the said case laws. In the case of Smt. Sandhya (supra), no preliminary enquiry was conducted nor the compliance of Rule 6 was made and the petitioner in that case was removed without serving the charge-sheet, while in the present case, it is not so. Similarly, in the case of Chunmun (supra), the enquiry was conducted by a Junior Engineer, who was not competent to hold preliminary enquiry under Rule 4. In said case, District Magistrate exercised powers under the proviso to Section 95(1)(g), merely on the basis of the report of Junior Engineer.

12. For the reasons as discussed above, this Court is of the view that since the substantial compliance of the provisions of U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997, has been made and it is clear from the record that the petitioner got elected to the post of Pradhan after making a false declaration that he belongs to Other Backward Class of Saini community, the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No order as to costs.