

(2002) 02 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2439 of 2001

Nanhe Bhai Singh and another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Constitution of India, 1950 — Article 122, 173, 226, 243, 243K

Representation of the People Act, 1950 — Section 5

Representation of the People Act, 1951 — Section 122

Citation : (2002) 4 MPLJ 161

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : L.S. Baghel, with Madan Singh, for the Appellant; B.N. Mishra, Government Advocate For respondents Nos. 1, 2 and 4 and K.C. Ghildiyal, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In this writ petition the petitioners have prayed for issue of a writ of certiorari for quashing of election of respondent No. 3 as the Vice-President of Zila Panchayat, Damoh.

The facts as have been depicted are that the petitioner No. 1 was elected as a member of Zila Panchayat, Damoh on 29-1-2000. The petitioner No. 2 was also elected as member of said Zila Panchayat. It is putforth that a meeting of elected members was convened by the competent authority, the respondent No. 2 herein, on 1-3-2000 for the election of President and Vice President of Zila Panchayat. The programme for the said meeting was published vide Annexure-P-2. As per the said programme the nomination papers of the president were to be filed between 11 a.m. to 12 "o'clock and the result of the same was to be declared by 2.30 p.m. After declaration of the result for the post of President the nomination papers for the post of Vice-President were to be filed between 2.30

p.m. to 3.00 p.m. and the result was to be published by 5 p.m. It is put forth that the meeting was held as per the programme and the result for the post of President was declared and the petitioner No. 2 was elected as the President. When the nomination papers of the Vice-President were to be received by the respondent No. 2 the meeting in question was disturbed by the miscreants as a result of which the respondent No. 2 was compelled to postpone the same. After the election of the President was declared the defeated candidate, Rao Khet Singh, filed an election petition u/s 122 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "the Act"). He had moved an application for stay of notification of the election. The Additional Commissioner-cum-Prescribed Authority on 6-3-2000 took cognizance of the election petition and stayed the notification of President, Zila Panchayat and also further proceedings of the election of Vice-President. The said authority by order dated 30-3-2000 set aside the election of the petitioner No. 2 as President of Zila Panchayat and declared Rao Khet Singh to be the duly elected President of Zila Panchayat. In addition to the same the prescribed Authority directed that steps for election of Vice President be taken up after opening the sealed envelopes which were processed on the date fixed for meeting i.e. 1-3-2000. In pursuance of the aforesaid order of the Prescribed Authority, the respondent No. 2 held the election for the post of Vice President on 10-4-2000. On that day the petitioner filed his nomination papers before the respondent No. 2 praying therein that as he could not file his nomination papers on 1-3-2000 due to adjournment of the meeting, his nomination should be accepted. The application which was filed by the petitioner has been brought on record as Annexure-P-7. On the said date the respondent No. 3, Smt. Monika Seth, was declared elected as Vice-President of Zila Panchayat.

According to the writ petitioners the order of the Prescribed Authority declaring Rao Khet Singh to have been elected as President of Zila Panchayat was assailed before this Court in W.P. No. 2349/2000. This Court by order dated 9-4-2001 quashed the order passed by the Prescribed Authority as the same was non est in law. After the order was passed by this Court the result of petitioner No. 2 was notified and he was declared to have been elected President of Zila Panchayat. Thereafter, he submitted an application to the Collector on 11-4-2000 requiring him to hold the election for the post of Vice-President and the Statutory Committee. The Collector, Damoh, the respondent No. 4 herein, after receipt of the said application submitted a memorandum dated 14-4-2001 to the respondent No. 1 seeking certain clarification, but nothing happened in respect of such action being taken by the respondent No. 4.

It is averred in the petition that as the entire proceeding in the election petition filed by said Rao Khet Singh has been quashed by this Court and declared as nullity and the Prescribed Authority has stayed the election of the Vice-President vide order dated 6-3-2001 and later on in pursuance of his order the election had taken place, it should be declared that the election of respondent No. 3 as the Vice President is wholly without jurisdiction. It is urged that there has been

violation of the procedure and the petitioner was deprived to participate in the election and, therefore, the whole thing should be annulled.

I have heard Mr. L.S. Baghel, learned senior counsel along with Mr. Madan Singh for the petitioners Mr. B.N. Mishra, learned Government Advocate for the State, and Mr. K.C. Ghildiyal, learned counsel for the respondent No. 3.

I may at the outset state that the facts were not disputed and the learned counsel addressed this Court only on pure question of law. It is assiduously urged by Mr. Baghel that the election of respondent No. 3 was founded on the order passed by the Prescribed Authority and the same having been put to naught the election should be declared as invalid in law and she should not be allowed to remain in the post of Vice President.

Mr. B.N. Mishra, learned Government Advocate and Mr. K.C. Ghildiyal, learned counsel for respondent No. 3, have submitted that the action relating to the election of respondent No. 3 might have taken place on the basis of the order passed by the Prescribed Authority but once election has been held and notified the same has to be challenged in the manner prescribed under the Act and the same cannot be called in question by way of writ petition, more so, after such long lapse of time solely on the basis of the order passed by this Court in W.P. No. 2349/2000.

To appreciate the rival submissions raised at the Bar it is apposite to refer to the order passed in W.P. No. 2349/2000, Chandra Bhan Singh vs. State of M.P. and others decided on 9-4-2001 (since reported in 2002(1) MPLJ 58). In the said case this Court in paragraphs 12 and 13 came to held as under:--

"12. In view of the aforesaid the application before the Specified officer was incompetent and could not have been taken up for consideration. Submission of Mr. Tiwari is that as findings have been recorded on proper scrutiny of the material on record this Court should not exercise its extraordinary jurisdiction under Article 226 of the Constitution. As has been indicated hereinbefore he has referred to certain decisions. In the case of P.L. Lakhanpal (supra) that Full Bench of Delhi High Court was concerned with the concept of futile writ. The Full Bench held that as the senior Judges had resigned Justice A.N. Ray had become the senior most puisne Judge and not only he can be reappointed but would be entitled to be reappointed as the Chief Justice of India. In view of this backdrop their Lordships dealt with the concept of futile writ. In the case at hand the said principle cannot be made applicable as the respondent cannot say the same result would flow after the matter is re-adjudicated. In any case the facts being totally dissimilar the concept of issuance of futile writ does not arise in the present case. In the case of Sukhad Raj Singh (supra) the Apex Court was dealing with the recounting of disputed votes on the basis of concession given by the parties that the result of election as per the recount would be final. Such a situation is not in existence in the present case. Therefore, the ratio laid down in the aforesaid case is totally distinguishable. In the case of Mahender Singh

(supra) an order of recounting was passed on the basis of agreement by the parties. On that ground the learned Judge came to hold the parties cannot be permitted to approbate and reprobate. The factual matrix in the instant case is totally different and hence, the ratio of the aforesaid case is not attracted. In the case of K. Venkatachalan (supra) the Apex Court came to hold that High Court can exercise jurisdiction under Article 226 of the Constitution and declare that election was illegal inasmuch as elector did not possess the basic constitutional and statutory qualification. Their Lordships in the said case took note of the fact that the appellant therein was not an elector in electoral roll for Assembly constituency for general election and he filed his nomination on affidavit impersonating himself for another person of the same name in the electoral roll and hence, lacked the basic qualification under Clause (c) of the Article 173 of the Constitution read with section 5 of the Representation of People Act, 1951. There cannot be any analogy between the case at hand and the aforesaid decision and, therefore, the ratio laid down therein is not at all applicable.

As the decisions cited by Mr. Tiwari are not of any assistance to the respondent No. 4 the core question that arises for consideration whether the findings recorded by the specified officer should be given the stamp of approval by this Court. As has been held by the Full Bench the presentation before the specified officer was incompetent. He had no jurisdiction at that juncture to entertain the application. If findings are recorded in a proceeding which is not entertainable, I am of the considered view the said findings cannot be approved by the higher forum as that would tantamount to perpetuation of illegality. Hence, the order passed by the specified officer is liable to be quashed and accordingly I so direct."

After so holding this Court in paragraph 15 directed that the result of the election of the petitioner should be notified.

On a perusal of the aforesaid order it is quite clear that the Prescribed Authority had no jurisdiction, at the time it entertained the election petition, to deal with the same. This Court has also expressed the opinion that the findings recorded by the Prescribed Authority would tantamount to perpetuation of illegality. Mr. Baghel, learned senior counsel, has urged with vehemence that once the whole proceeding is declared as void, being without jurisdiction, the direction given by the Prescribed Authority to hold election of Vice President also has to be collapsed and as a logical corollary the election of respondent No. 3 should be declared as non est in law. The aforesaid submission on a first flush appears quite attractive but on a deeper probe and detailed scrutiny melts into insignification. It is well settled in law that in a democratic set up right to contest in an election is fundamental but right to elect or to be elected is neither a fundamental right nor a common law right. It is a statutory right and governed by the parameters of the statute. There cannot be any additional right. It is conferred by the statute and controlled by the statute. Any person who intends to contest may announce that his right to contest in election is an immutable or abiding but the same is restricted and confined by the law laid down in the

statute. In this context it is apposite to refer to Article 243-O of the Constitution of India. It reads as under:--

243-O

Notwithstanding anything in this constitution.--

Bar to interfere by Courts in electoral matters

a) the validity of any law relating to the determination 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 provided for by or under any law made by the Legislature of a State.?

Thus, from the aforesaid constitutional mandate it is discernible that an election can only be called in question in such manner as is provided for by or under any law made by Legislature of a State. Section 122 of the Act and the rules framed under the Act deal with how an election is to be assailed. True it is, the Prescribed Authority directed stay of further proceedings in the election and, thereafter, the election in respect of the Vice-President came to be held. It is worth noting here that order of stay passed as far as petitioner No. 2 is concerned was different inasmuch as the election had taken place and he was declared elected. This Court interpreting the language employed in sub-section (2) of section 122 of the Act came to hold that the election petition could not have been filed unless the election in question was notified, and as the election of Chandra Bhan Singh, the petitioner therein, was not notified the election petition could not have been filed. But, a pregnant one, the case of the petitioner No. 1 is quite different. It is stated in the petition that he could not file the nomination on the first date when the election was to be held as the meeting was disturbed by the miscreants and the meeting could not be held and the election of the Vice-President had not taken place. The Prescribed Authority stalled it by passing an order of stay and, thereafter, directed to convene the meeting. If he would not have granted stay, another meeting could have been held. As he passed an order of stay the meeting could not be held and after he directed in the order the meeting was held after issuing fresh election programme. As has been stated earlier, the meeting was held on 10-4-2001. The granting of stay of aforesaid election and later on directing to proceed with the election, in my considered view, have no signification inasmuch as without the intervention of the Prescribed Authority the same would have happened inasmuch as the election for the post of Vice-President had not taken place. To elucidate, though the order passed by the Prescribed Authority has been quashed being without jurisdiction, the stay order passed by him and the direction issued by him have no meaning inasmuch as by virtue of order of stay the things which were supposed to happen did not happen and time rolled by. No one assailed the said order of stay. As the said order stalled, the action which would have ordinarily

taken place, if I allow myself to say so, without his direction in the final order, another date would have been fixed to convene the meeting for holding the election for the post of Vice- President. That is what has precisely happened. The grievance of the petitioner No. 1 is that he could not contest in the election for the post of Vice-President as he had not filed the nomination papers on 1-3-2000. Whether he could have been permitted to file the nomination papers on 10-4-2000 or not is totally a different matter altogether. The case of the petitioner No. 1 may be it was not a continuation of the earlier meeting or it was not adjourned meeting but a fresh one and, therefore, he could have been permitted to file his nomination papers. Thus, in essence, the grievance is non acceptance of nomination papers. The act of refusal of nomination papers could have been agitated in an election proceeding instituted u/s 122 of the Act. The same could have been done by the petitioner No. 1 or any person who is eligible to assail after the election for the post of Vice President was notified. The cause of action for the same had arisen long before and should have been assailed by initiation of appropriate proceeding under the Act. As has been stated hereinbefore the Constitution lays down a postulate that any election has to be challenged as per law indicated by the State Legislature. It is not a case where a writ of quo warranto is sought to be issued in that event the matter would have been different. Here a declaration is sought assailing the election of respondent No. 3 on the ground that the said election was held in pursuance of the order passed by the Specified Officer which has been declared as illegal and without jurisdiction by this Court. I may repeat at the cost of repetition that the said election could have been held without such an order being passed by the Prescribed Authority and if such a direction was issued by him in the final order it may be regarded as a direction which only directs to do something which has to be done in any case. Even it cannot be regarded to have any kind of catalytic effect. The petitioner No. 2 might have joined the petitioner No. 1 to agitate his grievance but the edifice which has been built by the petitioner on the basis of the order passed by this Court on earlier occasion has really no force or potency to endure the weight of the structure it has to crumble. What the petitioner No. 1 could not have done individually having failed to file an election petition, cannot be permitted to do collectively, especially in the obtaining factual matrix of the case.

Consequently, the writ petition, being sans merit, deserves to be dismissed and is hereby dismissed. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.