

(2014) 11 RAJ CK 0091
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6165/2014

Prem Singh

APPELLANT

Vs

Narendra Singh

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Rajasthan Municipalities Act, 2009 — Section 11, 24(xvii), 31, 31(d)(iv)

Citation : (2014) 11 RAJ CK 0091

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Abdul Hameed Khan, Advocate for the Appellant

Judgement

Alok Sharma, J.—This petition purported to be under Article 226/ 227 of the Constitution of India has been filed against the judgment dated 28-3-2014 passed by the Civil Judge (Senior Division) Dholpur, whereunder the election petition filed by the respondent-election petitioner (hereinafter the applicant") challenging the election of the petitioner-turned candidate (hereinafter "the non applicant") was allowed. The election of non applicant as a member from Ward No. 1 in Municipality Dholpur having been set aside a direction was correspondingly issued to the Returning Officer to conduct an election in the said ward afresh.

2. The elections to Municipality Dholpur under Section 11 of the Rajasthan Municipalities Act, 2009 (hereinafter "the 2009 Act") were called in 2010. The 2009 Act inter alia sets out disqualifications for being elected a member of ward. Under Section 24(xvii) and proviso (e) thereof, a person having more than two children on the date of election is disqualified if in spite of having more than two children as on 27-11-1995, he were to sire another child subsequent thereto.

3. The non applicant in pursuance of the notification for elections to various wards within the Municipality Dholpur filled his nomination form and on scrutiny was apparently found to be eligible. He thereon contested for the post of

member held on 18-8-2010. Result was declared on the same day. The non applicant was declared elected.

4. The applicant resorting to Section 31 of the 2009 Act filed an election petition before the District Judge impugning the non-applicant's election primarily on the ground that on the date of nomination of election of the non applicant, the returned candidate was disqualified to contest and be elected as member of a Municipal ward in view of the fact that he had sired a 8 child one Devesh on 5-10-1998 i.e. after the cut off date of 27-11-1995. On notice on the election petition, the non applicant filed reply of denial stating that all his 8 children were born before the cut off date 27-11-1995. Specific to the allegation that the 8 child Devesh was born on 5-10-1998 after the cut off date 27-11-1995, it was stated that in the nomination form and the declaration form in support thereof under Rule 81 of the governing Rules was erroneously stated that Devesh had been born on 5-10-1998. The mistake had been bonafide made for the reason that the nomination form and declaration were filed by Devendra Singh Rana, Advocate, albeit signed by him. In support of the contention that Devesh was born on 5-10-1995 and not on 5-10-1998 i.e. after the cut off dated 27-11-1995, a horoscope indicating Devesh's birth as asserted in the reply was filed.

5. On the basis of pleadings of the parties, the trial court framed two issues. The first related obviously to the question as to whether for the reasons stated in the election petition i.e. the non applicant having sired a 8th child after the cut off date 27-11-1995, the election in issue was liable to be set aside in view of the statutory disability. The other issue related to the relief in the election petition.

6. In support of the election petition, the applicant examined himself as Aw-1. The non-applicant examined himself as NAW-1 and also examined Ram Narayan (Astrologer) NAW-2 and Devendra Singh Rana (Advocate) as NAW-3. On consideration of the evidence before him, more particularly Exhibit-1 i.e. the non-applicant's own declaration before the Returning Officer stating Devesh's date of birth as 5-10-1998 and the admission of the non applicant, that the declaration form was signed by him. The testimony of NAW-3 Devendra Singh was that he had filled the declaration as directed by the non-applicant and the non-applicants further admission in his cross examination that 5-10-1998 was indeed the date of birth of Devesh recorded in his school from Class 1 to 9 in respect of which no corrective steps were ever taken. The learned trial court held that Devesh s birth on 5-10-1998 as the 8th child of the non applicant was proved. Hence the non applicant was evidently disqualified to contest the election for the post of member of Ward No. 1 of Municipality Dholpur. The learned trial court consequently set aside the election of the non applicant and directed the Returning Officer to recommence the process of election for member of Ward No. 1 of Municipality Dholpur afresh. Hence this petition.

7. Learned counsel for the non applicant has submitted that the trial court committed a gross error and perversity in setting aside the election of the non applicant in spite of failure of the applicant to lead any evidence of probative

worth before it that Devesh 8th child of the non applicant was born on 5-10-1998 and not on 5-10-1995. He submitted that the burden of proving the disqualification of the returned candidate was on the applicant as the election petitioner. Such burden was not discharged by filing any document of clinching probative worth to establish that Devesh was born on 5-10-1998 i.e. after the cut off date 27-11-1995 even while the non applicant had 7 living children prior to the said cut off date. Counsel submitted that the election of a ward member of the Municipality is reflective of democratic choice and the trial court ought not to have interfered mere with and set aside the election of ward member without good cause and acceptable evidence. This has however been wrongly done by the trial court and in the circumstances, the impugned judgment is to be set aside, argued counsel for the non applicant.

8. Heard learned counsel for the non applicant and perused the impugned judgment dated 28-3-2014 passed by the trial court.

9. The judgment of the trial court is fundamentally based on Exhibit-1 i.e. the declaration form filed by the non applicant before the Returning Officer, whereunder the date of birth of Devesh was given out as 5-10-1998. Admittedly as per the declaration the non applicant had 7 living children as of 27-11-1995. Section 24(xvii) proviso (e), this fact by itself rendered the non applicant ineligible to contest and supplied a ground for setting aside the election of the non applicant. Section 31(d)(iv) of the 2009 Act provides that election of any person as a member of municipality may be challenged before the trial court having territorial jurisdiction over concerned Municipality on the ground that the result of election in so far as it concerns the returned candidate had been materially affected inter alia by non compliance with the provisions of the 2009 Act and the Rules made thereunder. Albeit the non applicant before the trial court had attempted to renege on the admission and declaration form on the specious ground on it being an error attributable to the Advocate who filled up the said declaration form, the Advocate Devendra Singh Rana, who appeared as NAW-3 purportedly in support of the non applicant in his testimony before the court stated that he had filled up the declaration form as instructed by the non applicant himself. Aside of aforesaid, even in his cross examination in the course of his testimony before the trial court, the non applicant admitted that Devesh's date of birth in the school, where he studied from class I to IX, had been indicated as 5-10-1998 and no attempts had been made for correction of the purportedly erroneous date of birth and its alteration to 5-10-1995. The trial court found that the say of Ram Narayan NAW-2 the astrologer, who prepared horoscope, stating Devesh's date of birth as 5-10-1995 was not worthy of credence for the reason that the statement was absolutely vague. In his cross examination NAW-2 stated that he prepared the said horoscope about ten days subsequent to the birth of Devesh, but no such endorsement was reflected in the horoscope. Further in any event a horoscope was not admissible in evidence easily capable of a friendly manipulation if not down right forgery for a price of course.

10. It is an admitted fact from the record of the case that first child of the non applicant Manju born on 30-5-1981, second Suman on 5-3-1983. Between them were born Pinky on 6-3-1986 (third), Savita on 4-7-1989 (Fourth), Udayveer on 15-7-1988 (Fifth), Ajay Singh on 20-5-1991 (Sixth), and Raju on 14-10-1992 (Seventh). As on 27-11-1995 the non applicant was proved to have seven children.

11. In my considered opinion the evidence before the trial court established beyond all preponderance of probability that the non applicant had sired a 8th child (Devesh) on 5-10-1998 i.e. to the cut off date 27-11-1995 even while he already had fathered 7 children. He was thus disqualified to contest the election of ward member of the Municipality Dholpur under Section 24(xvii) proviso (e) of the 2009 Act.

12. Aside of aforesaid, in a petition under Article 227 of the Constitution of India or for that matter one under Article 226 of the Constitution of India as the petition under consideration also purports to be, this court's powers are not appellate. For invoking the extraordinary jurisdiction of this court or for that matter its supervisory jurisdiction, the impugned judgment has to be established to be without jurisdiction, in violation of statutory provisions, misdirected in law and having entailed manifest injustice. None of the aforesaid situations is made out in the present case. The impugned judgment dated 28-3-2014 passed by the trial court is neither perverse nor suffer misdirection in law. The conclusions of the trial court of the non applicant being ineligible/disqualified to contest the election to the post of ward member are based on objective appreciation of evidence on record. The judgment of the trial court in the circumstances brooks no interference.

13. I therefore find no force in the petition and the same is dismissed.