
(2007) 02 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 28 of 2007

Prem Swaroop Upadhyay and Others	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 65

Citation : (2007) 1 WLN 422

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Judgement

Ashok Parihar, J.—After no confidence motion been carried against respondent No. 5, who was working as Chairman of Municipal Board Dausa on 08.12.2006 and the seat falling vacant, the notification for by-election was issued by the State Election Commission on 21st December, 2006. The by- election for Chairman of the Municipal Board, Dausa was to be held on 29.12.2006. However, just a day before the State Election Commission issued an order on 28th December, 2006 staying the election process for the Chairman of the Municipal Board Dausa.

2. It has been alleged that the process of election once initiated cannot be stopped by the State Election Commission and in the present case the same has been done for absolutely irrelevant considerations at the behest of the State Government or Minister concerned. Mr. Bhandari, learned Counsel appearing on behalf of the State Election Commission submitted that a policy decision has been taken not to initiate or proposed with the by-election for particular posts in local bodies during pendency of litigation before any Court.

3. After hearing learned Counsel for the parties, I have carefully gone through the material on record as also the relevant provisions of the Rajasthan Municipalities Act and the Rules made thereunder. Admittedly, there is no interim order passed by any Court in regard to holding by-elections for Chairman of the Municipal Board, Dausa. The seat fell vacant on 08.12.2006 in view of no

confidence motion been carried against the respondent No. 5. The notification had also been issued for holding by-election on 21.12.2006. Twenty three petitioners, who are members of the Board and are in majority, are seeking directions of this Court to complete the process of by-election to the post of Chairman of the Board which is a public office.

4. Section 65 of Rajasthan Municipalities Act provides that every Board shall have a Chairman and a Vice-Chairman. The Chairman shall be elected in accordance with the Rules made by the State Government in that behalf by the elected members of the Board from amongst themselves. The above Section further provides that every Chairman or Vice-Chairman of a Board shall forthwith be deemed to have vacated his office if a resolution expressing vote of no confidence in him is passed in accordance with the procedure prescribed. Section 69-A further contemplates that whenever a Chairman resigns or ceases to be such or is removed from or vacates the office of Chairman, or is placed under suspension or his election as a member or Chairman is declared to be void, the charge shall be handed over to the Vice-Chairman or if there is no Vice-Chairman, to such member as the State Government may direct. However, as per proviso a member to whom such charge has been handed over under Clause (a) and (b) of the Section shall hold charge for a period, not exceeding one month, or till taking over the charge by the Chairman or Vice-Chairman, as the case may be, whichever may be earlier. Rule 79 as also Rule 95 make procedure for holding election to the post of Chairman or Vice-Chairman.

5. A bare reading of the provisions as referred above, would show that there has been a clear intention of the legislature to hold the by-election for the post of the Chairman or the Vice-Chairman immediately after the seat is vacated for any reason whatsoever as provided under the Act and the Rules. The by-election cannot be postponed for indefinite period. If the by-elections are allowed to be postponed and not held immediately, there may be chances of misusing the office by any political party in power. It is only in this context that the elections and the by-elections are conducted by the State Election Commission which is an independent body not under the control of the State Government.

6. Having considered entire facts and circumstances, I find no justification whatsoever for the Election Commission to take a policy decision for not holding by-elections only on the ground of some litigation pending before any Court, moreover, in absence of any interim order staying holding the by-elections. Mr. Bhandari could not show any provision under the Rules/ Regulations of the Commission for taking such decision which on the face of it appears to be contrary to the relevant provisions of the Act and the Rules and may result in lot of frustration among the elected members what to say of public at large and may also hamper the image of the Commission itself.

7. Accordingly, the writ petition is allowed. The respondent State Election Commission is directed to hold the by-election for Chairman of Municipal Board Dausa for which the fresh notification be issued within two weeks from the date

of receipt of certified copy of this order.