
(2010) 03 RAJ CK 0030
In the Rajasthan High Court

Raghuveer Singh

APPELLANT

Vs

The Chief Personal Officer (Administration) and Returning
Officer and Others

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 2 WLN 260

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioner has challenged the rejection of his nomination paper vide order dated 22.02.2010 for election of JACKSON Cooperative Credit Society of the Employees of the Western Railway Ltd. He has also challenged the letter dated 24.02.2010 whereby he was informed by the Assistant Returning Officer that his nomination paper has been rejected ostensibly on the ground that he failed to repay the loan taken by him for buying a Laptop.

2. Mr. A.K. Pareek, the learned Counsel for the respondents, has raised a preliminary objection about the maintainability of the writ petition. According to Mr. Pareek, Section 84 of the Multi-State Co-Operative Societies Act, 2002 ("the Act", for short), clearly stipulates that in case of a dispute arising in connection with the election of any officer of a Multi State Co-operative Society, the dispute should be referred to an Arbitrator. Since the present dispute is in connection with the election of the Co-operative Society, the petitioner should have requested that the dispute be referred to an Arbitrator. Since the petitioner has an efficacious alternative remedy available to him, this writ petition is not maintainable.

3. On the other hand Mr. Suresh Charan, the learned Counsel for the petitioner, has contended that according to Section 85 of the Act, a dispute can be referred to an Arbitrator only after completion of one month from the date of declaration

of the result of the election. Thus, according to the learned counsel, the dispute cannot be referred when the election process is in progress. Moreover, According to the decision of the Hon"ble Madras High Court in the case of P.B.K. Raja Chidambaram Vs. R.P. Rathna Sarma and Others, , until and unless the jurisdiction of the High Court under Article 226 of the Constitution of India is explicitly ousted, the High Court would be within its writ jurisdiction to interfere with the election process. Thus, according to the learned counsel, this Court has ample power to interfere in the election process especially when it is obvious that the nomination paper has been rejected in an illegal manner. According to the learned counsel, although the respondents claim that the nomination paper was rejected on the ground that the petitioner did not repay the loan, the fact remains that the loan was already repaid by him. Thus, the very ground for rejecting the petitioner's nomination paper is non-existent. Hence, his nomination paper has been rejected illegally.

4. Heard the learned Counsel for the parties and perused the case law cited at the bar.

5. Undoubtedly, it is true that until and unless the writ jurisdiction is debarred from being exercised, a writ petition would be maintainable before the Court challenging the election process. However, there are certain self-imposed restrictions which have been created by the High Courts while exercising its writ jurisdiction. One of the self-imposed restrictions is that in case an alternative remedy exists, then the writ jurisdiction should not generally be exercised. In the present case, according to Section 84 of the Act, a dispute arising in connection with election should be referred to the Arbitrator. Thus, the Act itself provides an alternative remedy to the petitioner. Section 85 of the Act, which prescribes the limitation, does not lay down that a dispute can be referred only within a period of one month after the completion of the election. In fact, according to the said Section, a dispute can be referred to an Arbitrator upto the period of one month from the date of declaration of the election result. Thus, the Section prescribes the maximum period of limitation. Hence, there is nothing in Section 85 of the Act which debars or which prevents the petitioner from requesting that the dispute arising in connection with the election should be referred to an Arbitrator during the pendency of the election proceedings itself.

6. Admittedly, under the Arbitration and Conciliation Act, 1996, the Arbitrator is empowered to grant an interim stay. Hence, the petitioner has an efficacious alternative remedy provided under the Act. Since an efficacious alternative remedy does exist, this Court would not exercise the writ jurisdiction.

7. In this view of the matter, the writ petition is, hereby, dismissed on the ground of existence of an. alternative remedy.