

(2016) 02 AHC CK 0205
In the Allahabad High Court
Case No : Misc. Bench No. 1816 of 2016

Rajendra Kumar Rawat and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 243-K

Citation : (2016) 3 ADJ 277 : (2016) AIR(Allahabad) 35 : (2016) 2 AllWC 2134 : (2016) 131 RD 218

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Laltaprasad Misra, for the Appellant; C.S.C. and Aprajita Bansal, for the Respondent

Final Decision : Allowed

Judgement

1. The law of conduct of elections of the Parliament, Assemblies and other public bodies, as declared and interpreted, generally mandates that once the election process has commenced, it should not be interfered with as it would tantamount to impeding a democratic march constitutionally envisaged for establishing governance. The embargo was placed on judicial interference by several pronouncements of the apex court, and without burdening this judgement with a plethora of rulings, it would suffice to mention that celebrated decision in the case of Mohinder Singh Gill v. Chief Election Commissioner, , (1978) 1 SCC 405.

2. This petition unfolds a case where the State Government of U.P. has under its orders, that has been executed by the State Election Commission without visible resistance, unilaterally postponed the notified elections of Pramukhs of Kshettra Panchayat until further orders resulting in a state of indefiniteness. The grounds, as per the original records disclosed by the State Government, are absolutely vague and opaque with no material to demonstrate any real existing difficulty. There is no element of vis major or force majeure, much less any legal or real reason actually in existence on record to justify the impugned action except for

the wish expressed by a cabinet minister about difficulties to be faced that have no foundation. This wish, even though confined for the district of Faizabad, has been converted into a reason for postponing the elections in two other districts of Muzaffarnagar and Saharanpur as well. The question is can the State Government in such circumstances, without the participation of the State Election Commission, unilaterally subvert the scheduled elections bypassing the constitutional and statutory provisions.

3. We have heard Dr. L.P. Misra, learned counsel for the petitioner, learned Addl. Chief Standing Counsel Sri H.P. Srivastava for the State respondents No. 1 and 4 and Sri J.N. Mathur, learned Senior Counsel for the State Election Commission respondents No. 2 and 3 alongwith Ms. Aprajita Bansal.

4. This writ petition raises a challenge to the notification issued by the Election Commission dated 21.1.2016, Annexure-1 to the writ petition, whereby the Election Commission has notified that the elections of Pramukhs of Kshettra Panchayats in the districts of Faizabad, Saharanpur and Muzaffarnagar shall remain stayed until further orders.

5. An amendment application has been filed that has been separately allowed by us today whereby the order of the State Government dated 20.1.2016 has also been formally challenged and a prayer has been made for quashing the same.

6. This writ petition came up on 29.1.2016 before a Division Bench when the following order was passed:

"Put up on Monday i.e. 1 February 2016 as fresh.

Learned Standing Counsel as well as learned counsel appearing for the State Election Commission shall obtain specific instructions on the compelling circumstances which have led to the deferment of election until further orders. It is made clear that the Court shall proceed to hear the matter on the basis of instructions made so available by the learned counsel for the respondents."

7. Today before lunch, we had passed the following order:

"Heard Dr. L.P. Misra, learned counsel for the petitioner, Sri Jaideep Narain Mathur, learned Senior Counsel for the State Commission alongwith Ms. Aparajita Bansal and the learned Addl. Chief Standing Counsel for the State.

This writ petition has been filed questioning the legality and validity of the notification issued by the State Election Commission dated 21.1.2016 on the ground that there was no decipherable reason or rationale appearing for adjournment or postponement of the election process which has been duly notified for the post of Pramukh, Kshettra Panchayat scheduled to be held on 7.2.2016.

The matter had been taken up taken up on 29.1.2016 by a Division Bench where directions were issued that the matter shall be heard on the basis of instructions to be made available by the learned counsel for the respondents.

Today, Sri Jaideep Narain Mathur for the State Election Commission has produced the order of the State Government dated 20.1.2016 on the basis whereof the elections were sought to be deferred and which in turn recites that since the assembly elections and the elections of the Pramukh at three places are going to be simultaneously held, therefore, the same might create problems, as such the elections of the Pramukh, Kshettra Panchayat is being deferred.

The letter, prima facie, does not disclose as to what is the difficulty which is likely to be faced in as much as the elections of the Pramukh, Kshettra Panchayat were notified to be held on 7.2.2016 whereas the assembly elections were to be held long thereafter on 13.2.2016. It is not understandable as to how and in what manner the elections which are scheduled on 7.2.2016 would create any impediment for any elections which are to be held in future on 13.2.2016. Consequently, the Court is unable to appreciate the aforesaid logic in the order dated 20.1.2016 on any legally permissible grounds and the order of the State Government as well as the indefinite stay of elections appears to be an interference with the election process.

However, since no instructions have been given to us till now as no instructions have been received on behalf of the State Government despite communication, we are posting the matter after lunch today itself for the Principal Secretary, Panchayati Raj, to instruct the Addl. Chief Standing Counsel in the matter or else, we may proceed to pass appropriate orders.

The orders shall be uploaded during lunch hours today."

8. In the post-lunch session, records relating to the deferment of elections including the impugned notifications were produced containing the file notings and the process which was adopted for postponing the elections, and staying the election process in respect of Kshettra Panchayats in the districts of Faizabad, Muzaffarnagar and Saharanpur.

9. The present writ petition is confined only to the district of Faizabad.

10. The records which have been produced and the arguments that have been advanced, reveal the government order dated 20.1.2016 issued by the Principal Secretary, Panchayati Raj, which recites that since the bye-elections of the Vidhan Sabha and the elections of Pramukh, Kshettra Panchayat are coinciding, therefore, difficulties would be faced in holding of the elections simultaneously and it is for this reason that a decision has been taken by the State Government to stay the elections of Pramukh, Kshettra Panchayat in the three districts of Faizabad, Saharanpur and Muzaffarnagar.

11. The constitutional and statutory provisions that govern notifications in relation to elections are contained in Article 243-K of the Constitution of India, read with Section 264-B of the Uttar Pradesh Kshettra Panchayat & Zila Panchayat Act, 1961, which provisions are extracted hereinunder:

"243K. Elections to the Panchayats.--(1) The superintendence, direction and

control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

"264-B. Manner and conduct of election. - (1) The election to the office of an Adhyaksha, Upadhyaksha or a member of a Zila Panchayat and Pramukh, Up-Parmukh or a member of a Kshettra Panchayat shall be held by secret ballot in the manner provided by rules which shall also provide for resolution of doubts and disputes relating to the election of such Adhyaksha, Upadhyaksha, Pramukh and Up-Parmukh.

(2) The superintendence, direction and control of the conduct of election of the office of an Adhyaksha, Upadhyaksha or a member of a Zila Panchayat and of a Pramukh, Up-Parmukh or a member of a Kshettra Panchayat shall vest in the State Election Commission.

[(3) Except as provided in sub-section (4), the State Government shall, in consultation with the State Election Commission, by notification, appoint the date or dates for general election of the Adhyaksha, Upadhyaksha or members of a Zila Panchayat or the Pramukh, the Senior Up-Parmukh, the Junior Up-Parmukh or members of a Kshettra Panchayat.

(4) The State Election Commission shall, in consultation with the State Government, by notification, appoint date or dates for bye election of the Adhyaksha, Upadhyaksha or members of a Zila Panchayat or Pramukh, Senior Up-Parmukh, Junior-Parmukh or members of a Kshettra Panchayat."

12. There is no dispute between the parties that the tenure of the existing Kshettra Panchayats is to terminate on 16.3.2016 and, therefore, under the constitutional provisions as also the statutory provisions in relation thereto, the elections have to be held prior to the aforesaid date for the constitution and functioning of the Kshettra Panchayat with its Chairman (Pramukh).

13. The petitioner contends that the impugned government order dated 20.1.2016 and the consequential notification of the State Election Commission clearly amounts to impeding the said election process in as much as the Election Commission has already undertaken the exercise of notifying the elections of Pramukh, Kshettra Panchayat to be held on 7.2.2016, which cannot be annulled by the State Government unilaterally in the manner in which it has been done by staying the election process until further orders. It is urged that the very foundation of holding of election is to ensure that the elections are held timely, freely and fairly, as observed by the apex court in the case of *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad & Ors.*, (2006) 8 SCC 352.

14. It is undisputed that in the instant case, the bye-elections of the Legislative Assemblies were duly notified on 12.1.2016 and the election program was published on 13.1.2016 whereby the bye-elections of the Assembly are to be held on 13.2.2016.

15. The notification which was issued for the holding of elections of Pramukh, Kshettra Panchayat by the Election Commission on 17.1.2016 was published on 18.1.2016 i.e. after the elections of the Legislative Assemblies had been notified, as noted above.

16. It is, therefore, contended that the State Government was well aware of the bye-elections having already been notified and it is thereafter that a conscious decision was taken on 18.1.2016 in consultation with the State Election Commission to hold the elections of the Pramukh, Kshettra Panchayat on 7.2.2016.

17. The notification issued by the Government of Uttar Pradesh clearly indicating that the decision for holding the elections of Pramukh Kshettra Panchayat has been taken in consultation with the State Election Commission is extracted hereunder:

18. It is also undisputed, and which is evident from the records, that have been produced before us by the learned Addl. Chief Standing Counsel that the above quoted notification was preceded by a formal approval by none else than the Chief Minister himself, who had endorsed the proposal under the Rules of Business.

19. It appears that thereafter a letter was written by Mr. Gayatri Prasad Prajapati, the Mining Minister of the State Government on 18.1.2016 addressed to the Chief Minister requesting him to get the elections of Pramukh, Kshettra Panchayat held after the bye-elections are over. The aforesaid letter is contained in the record that has been produced before us. On the same day, it appears that the said letter was handed over to the Chief Secretary, Government of U.P. during a cabinet meeting and it was forwarded for being placed before the Chief Minister for appropriate action. From the note sheet it appears that that bureaucracy immediately swung into action and the file notings indicate that on the same day, a note was prepared citing that since both the elections are

proposed to be held simultaneously, therefore, a difficulty might be faced. The said proposal was immediately forwarded by the Minister of Panchayati Raj Mr. Kailash Yadav for being placed before the Chief Minister. The succeeding note on the file on 20.1.2016 bears a recital that the Chief Minister has approved the departmental proposal, but the said recital is signed by one G.S. Navin Kumar, Special Secretary to the Chief Minister. We mention this fact because the earlier directions that had been issued, had been signed by the Chief Minister himself, whereas this proposal only bears the signatures of his Special Secretary. We had pointedly asked the learned Standing Counsel to seek instructions on this issue but he has been unable to exactly inform the Court about the absence of the signatures of the Chief Minister on the noting of the file.

20. It is urged that not only the election process has been impeded for no valid reason but even the procedure prescribed in law has not been followed inasmuch as the consultative process, as required under the provisions quoted hereinabove, was not followed and the State Election Commission was not consulted prior to the issuance of the government order dated 20.1.2016.

21. We had made a specific query from Sri Mathur, learned counsel for the State Election Commission about the status of any such consultation, and on the basis of instructions received, he has stated that no such consultation was done with the State Election Commission nor any such record is available. In fact, Sri Mathur could not support the unilateral decision of the State Government.

22. The State Election Commission also appears to have unmindfully issued the amended impugned notification without any exercise to assess the projected difficulty. Thus, no independent decision was taken by the Election Commission. The Election Commission is not subordinate to the executive directions of the State once elections have been notified. The Constitution does not permit any subservience or surrender of authority by the Commission to reflect a State of loyalty to such wanton wishes of a minister. A sheer political inconvenience expressed by a minister without any corresponding difficulty should not have gone unnoticed by the Commission and it ought to have examined the issue independently so as to explore for any alternative. The stamping of the wishes of the government without consultation clearly defeats the constitutional purpose and the legal mandate discussed hereinabove. The impugned notification dated 21.1.2016, therefore, also gets vitiated.

23. Apart from this, what we find is that the records produced by the State Government also does not indicate the proposal having been sent or placed before the State Election Commission prior to the issuance of the Government Order dated 20.1.2016. There is no recital in any of the notings to indicate that such a consultative process was even attempted by the State Government before issuing the government order dated 20.1.2016.

24. A perusal of the government order dated 20.1.2016 also does not recite that it has been issued after consultation with the State Election Commission.

25. Thus, for all the aforesaid reasons recorded by us hereinabove, the only conclusion that can be drawn is that the impugned government order dated 20.1.2016 was a unilateral decision of the State Government, without any consultation with the State Election Commission and the notification by the Commission was equally erroneous for the same reasons.

26. In our considered opinion, the aforesaid conclusion drawn by us nails the entire arguments finally inasmuch as if the earlier notification for holding of elections on 7.2.2016 was after consultation with the State Election Commission, then the subsequent stay of the election could not have been notified one-sidedly without consultation with the State Election Commission as is evident from a clear recital of the provisions of Section 264-B of the 1961 Act read with constitutional provisions in support thereof.

27. The decision of the State Government was, therefore, totally bereft of legal authority and it appears to have been done only at the instance of a particular minister who had forwarded a letter to the Chief Minister for staying the election process, that too even for no real purpose. The wish of a cabinet minister nor the State Government are a substitute for the State Election Commission nor is the Commission subordinate to the State Government.

28. What we find is that the reason given even otherwise is that a simultaneous holding of elections of Pramukh, Kshettra Panchayat and Assembly bye-elections will create difficulty. Neither the notings in the file nor the impugned government order spell out even a single plausible or rational reason as to what difficulty would be faced in the holding of the Panchayat elections on 7.2.2016. Apart from this, what is surprising is that the bye-elections of the Assembly are to be held much after the date of the elections of Pramukh, Kshettra Panchayat. They are to be held on 13.2.2016 whereas all the elections of the Pramukh, Kshettra Panchayat are to be held one week earlier on 7.2.2016. There does not appear to be any reason or any impediment or any plausible cause on the basis whereof any reasonable or rational decision could have been taken for postponing the elections. In the absence of any material, as discussed hereinabove, the hasty unilateral decision of the State Government to postpone the elections until further orders does not countenance itself either in law or on any plausible logic. To the contrary, the entire decision making process amounts to an undemocratic and unconstitutional interference with the election process at the instance of a cabinet minister and, therefore, we do not find any justification to sustain the government order dated 20.1.2016 and the notification dated 21.1.2016. We have no hesitation to conclude that the State Government has overreached its power to interfere in the process of elections, which lies in the exclusive domain of the Election Commission, except for the fact that the State Government is to facilitate the conduct of free and fair elections by providing necessary staff and personnel as per the mandate of Article 243-K of the Constitution of India read with Section 264-B of the Act of 1961.

29. The State Election Commission has not taken any independent decision for

staying the election process and to the contrary, the State Election Commission does not appear to have sent any proposal to the State Government to postpone the elections for any plausible reason. In our opinion, this case clearly reflects interference with the election process and, therefore, on such peculiar facts, there is no legal embargo on this court to exercise its authority in coming to the aid of the election process under Article 226 of the Constitution of India.

30. Consequently, for the conclusions drawn hereinabove, the impugned Government Order dated 20.1.2016 cannot be sustained. It is hereby quashed. The consequential notification of the State Election Commission dated 21.1.2016 is also set aside. The State Election Commission and the State Government are both directed to hold the elections of the Pramukh, Kshettra Panchayat as already notified earlier, on 7.2.2016 after completing the entire process of elections beginning from the nominations on 5.2.2016 for which all arrangements shall be carried out forthwith.

31. The writ petition stands allowed with no order as to costs.

32. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

33. The amendment sought for, deserves to be allowed and is accordingly allowed.

34. Let necessary incorporation be made in the records by tomorrow.

35. The writ petition is allowed vide our orders of date on separate sheets.