

(1979) 01 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 297 of 1978

Ram Rattan

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 08-01-1979

Acts Referred:

Himachal Pradesh Gram Panchayat (Election) Rules, 1978 — Rule 11, 15

Citation : AIR 1979 HP 50 : (1979) ShimLC 141

Hon'ble Judges : T.U. Mehta, C.J.; T.R. Handa, J

Bench : Division Bench

Advocate : Kamlesh Sharma and O.P. Thakur, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—The petitioner wanted to contest the election as Pradhan of Gram Panchayat, Sauri. The respondent No. 3 was his rival candidate for the same post. The petitioner and the respondent No. 3 both filed nominations but it is said that with a view to achieve unanimity the petitioner was brought under pressure to agree to the system of drawing lots, and as a result of that, the petitioner lost, and the respondent No. 3 was the only candidate remaining in the field. This happened on 27-10-1978. The nominations were to be withdrawn on 28-10-1978 by 12 noon. Since the petitioner lost in the drawal of the lots, respondent No. 3 remained the only candidate in the field and, therefore, the petitioner withdrew his nomination paper on 27-10-1978 with the result that the respondent No. 3 was declared as elected.

2. Being aggrieved by the system of drawing lots the petitioner filed an objection petition before the Deputy Commissioner, Solan u/s 186 of the Himachal Pradesh Panchayati Raj Act, The Deputy Commissioner, Solan, however, fixed a longer date for the disposal of that petition. Being aggrieved by that the petitioner approached this Court in C.W.P. No. 247 of 1978 in which on 10-11-1978 this Court passed the following order :

"Under the circumstances, we direct the respondent No. 2, the Deputy Commissioner, Solan, to dispose of the application filed by the petitioner u/s 186 of the Act, latest by 14th Nov. 1978."

2A. The Deputy Commissioner, Solan thereafter recorded the evidence offered by the parties and disposed of the application filed by the petitioner by his order found at Annexure P. 6 which is dated 14-11-1978. He has come to the conclusion that the petitioner had withdrawn voluntarily as a result of consensus arrived at by the concerned parties, that the Assistant Returning Officer was not a party to this consensus, and that the withdrawal of his nomination by the petitioner on 27-10-1978, that is, a day prior to the last date of withdrawal, was proper,

3. Being aggrieved by this decision of the Deputy Commissioner the petitioner, has filed this writ petition.

4. It was contended on behalf of the petitioner that according to Rule 11 of the Himachal Pradesh Gram Panchayat (Election) Rules, 1978, it was not open to the petitioner to withdraw his nomination before 28th of October, and it was also not open to the Returning Officer to accept that withdrawal on 27th of October. In this connection our attention was drawn to Sub-rule (1) of Rule 11 which says that as soon as the notification u/s 49 of the Act, calling upon the Gram Sabha to elect the Gram Panchayat is issued by the Government, the Deputy Commissioner shall frame a programme for election in a Gram Sabha specifying the date, time and place for the withdrawal of candidatures. Sub-rule (4) of this rule is in the following terms;

"The filing and scrutiny of nomination papers as also the withdrawal of candidature shall be done in accordance with the programme notified by the Deputy Commissioner under Sub-rule (1):

Provided that the nomination paper and withdrawal application shall be delivered on the day and hours fixed for the purpose:

Provided further that no nomination paper and notice of withdrawal shall be delivered on a public holiday or on any other day and time which is not specified in the election programme;

Provided also that no nomination paper and notice of withdrawal shall be delivered by any person other than the candidate or his proposer to the Returning Officer."

5. It was pointed out that the second proviso attached to Sub-rule (4) specifically says that no notice of withdrawal shall be delivered on public holiday or on any other day and time which is not specified in the election programme. The argument was that if the 28th of October was the day which was fixed in the election programme for withdrawal, the Returning Officer could not have accepted the withdrawal of the petitioner's nomination on a day prior to 28th of October,

6. We find ourselves unable to accept this interpretation of Rule 11 because Rule 11 has to be read along with Rule 15 which is in the following terms:

15. Withdrawal of candidature-

(1) Any candidate may withdraw his nomination by a notice in writing in form VI or VII, as may be appropriate, which shall be subscribed by him and delivered in person by the candidate or his proposer duly authorised by the candidate in writing to the Returning Officer before the expiry of the time allowed for the withdrawal of candidatures,

(2) No person who has given a notice of withdrawal under Sub-rule (1) shall be allowed to cancel the withdrawal." Sub-rule (1) of Rule 15 clearly shows that it would be open to a candidate to withdraw his nomination "before the expiry of the time allowed for the withdrawal of candidatures". According to Rule 15, therefore, withdrawals could be made before the expiry of time allowed for withdrawal. In other words, if the time allowed for withdrawal was 28th of Oct., 12 noon, then withdrawal could be made at any time before that. The purpose of fixing the time of withdrawal is to fix the outer limit beyond which the withdrawal cannot be allowed, but that does not mean that before that time arrives it would not be legal for a party, to withdraw, and for the Returning Officer, to accept the said withdrawal. Rule 11, therefore, if read with Rule 15 would only mean that notice of withdrawal cannot be delivered beyond the time fixed in the election programme but can be delivered at any time prior to it. We, therefore, see no point in this contention of the petitioner.

7. Miss Kamlesh Sharma then contended that it is clear from the findings recorded by the Deputy Commissioner that certain corrupt practices have been committed in inducing the petitioner to withdraw his nomination. We are not concerned with any such findings of the Deputy Commissioner in this writ petition for the simple reason that if the election of the respondent No. 2 is vitiated by any corrupt practices contemplated by law it was open to the petitioner to file an election petition as advised.

8. Under the circumstances this writ petition is dismissed without any order as to costs.