

(1971) 08 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 106 of 1970

Ramgopal	Vs	APPELLANT
Election Officer and five others		RESPONDENT

Date of Decision : 19-08-1971

Acts Referred:

Madhya Pradesh Panchayat Act, 1962 — Section 11(7), 357

Citation : (1971) JLJ 887

Hon'ble Judges : Bishambhar Dayal, C.J.; S.M.N. Raina, J

Bench : Division Bench

Advocate : H.G. Mishra, for the Appellant; G.P. Patankar, for the Respondent

Final Decision : Allowed

Judgement

Bisbambhar Dayal, C.J.—This is a petition by Ramgopal who was nominated as one of the candidates in the panchayat elections. His nomination-paper had been accepted on 21st April 1970. But on 24th April 1970 the proposer of the petitioner informed the Returning Officer that he did not want to continue as the proposer and that he may be permitted to withdraw. On the same day the Returning Officer passed an order that since the proposer wanted to withdraw from the nomination paper of the petitioner, the nomination paper was deemed to have been withdrawn. Since for that ward the petitioner was the only candidate whose nomination paper had been accepted, the result was that no person was elected from that ward. As a consequence of this, the Collector appointed respondent No. 3 Har Naryan u/s 11 (7) of the M. P. Panchayats Act to fill the vacancy. The present writ petition has been filed challenging the order of the Returning Officer dated 24th April 1970 holding that the nomination paper of the petitioner had been withdrawn.

2. A preliminary objection has been raised by Learned Counsel appearing for respondent No. 3 that the matter should have been agitated in an election petition and not by way of a writ petition in this Court.

3. We have heard Learned Counsel for both the parties. The provision in section 357 of the M. P. Panchayats Act is as follows : -

357 (i) No election...notified under.

Section 20...shall be called into question except by a petition presented to the prescribed authority.

In the present case, the position of respondent No. 3 is not based upon any election or co-option but is based upon appointment. u/s 20 of the Act every election, co-option and appointment has to be notified. But that does not mean that by virtue of section 20 an appointment because an election within the meaning of section 357 and could be challenged by way of an election petition. The argument of Learned Counsel for respondent No. 3 is that u/s 11 (7) of the act a person who has been appointed shall be deemed to have been duly elected. This deeming fiction cannot be extended so as to make an appointment equal to an election and to make the provisions of section 357 applicable. This intention is made clear by section 20 under which the appointment of a Panch has to be published as such and is distinct from the publication of those who have been elected or co-opted. We are, therefore, satisfied that in this case no election petition u/s 357 could be filed.

4. Coming to the merits, when the nomination paper of the petitioner had been accepted by the Returning Officer under rule 27 (6) of the M. P. Grampanchayat Election and Co-option Rules, the acceptance was final and he had no power thereafter to say that the acceptance was invalid. Under rule 23 a definite procedure for withdrawal is laid down where the candidate himself has to make an application for withdrawal. In the present case, no such application had been made and nomination paper cannot be held to be withdrawn merely on the request of the proposer. This was wholly illegal and without jurisdiction.

5. The result, therefore, is that this writ petition is allowed. The order of the Returning Officer dated 24th April 1970 is quashed and as a direct consequence of it the appointment of respondent No. 3 is also quashed as there was no vacancy available in which respondent No. 3 could be appointed. Parties will bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.