
(2015) 06 JH CK 0002
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5796 of 2013

Ranjeet Toppo

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Jharkhand Panchayat Raj Act, 2001 — Section 120
Penal Code, 1860 (IPC) — Section 177
Representation of the People Act, 1951 — Section 125A

Citation : (2015) 06 JH CK 0002

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Sunil Kumar, for the Appellant; Debolina Sen Hirani, J.C. to AAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—The petitioner and respondent No. 5 along with other candidates contested election for the post of Member, Zila Parishad from sector No. 15, Kanke, Ranchi. The election was held in the year, 2010 and respondent No. 5 was declared elected. The petitioner secured second highest number of votes. From information revealed through application under RTI, the petitioner came to know that the respondent No. 5 had supplied wrong information in as much as, he gave false declaration that no criminal case was pending against him. Accordingly, the petitioner submitted an application on 24.08.2012 before the District Panchayat Raj Officer for termination of membership of respondent No. 5. A proceeding vide Misc. Case No. 2 of 2012-13 was initiated in which notice was issued to respondent No. 5. The District Election Officer-cum-Deputy Commissioner vide order dated 17.09.2012 held that respondent No. 5 had suppressed material information and thus, violated section 120 of the Jharkhand Panchayat Raj Act, 2001. Subsequently, the State Election Commissioner directed the Deputy Commissioner to take steps for lodging a criminal case for

offences under the Representation of the People Act, 1951 and the Indian Penal Code. Subsequently, Kanke P.S. Case No. 182 of 2012 was lodged on 06.12.2012 for offence under section 177 IPC r/w section 125A of the Representation of the People Act, 1951 r/w section 120 of the Jharkhand Panchayat Raj Act, 2001. In the said case, the trial court has taken cognizance of the offence on 27.08.2008. However, the respondents have not taken any action for termination of membership of the respondent No. 5 as member of Zila Parishad.

2. Sunil Kumar, the learned counsel for the petitioner submits that the misconduct committed by the respondent No. 5 would be covered under section 152 and 153 of the Jharkhand Panchayat Raj Act, 2001. After an enquiry when it was found that the respondent No. 5 indulged in corrupt practices and criminal case has been lodged against him, it is the duty of the State Election Commission to terminate the membership of respondent No. 5. The learned counsel for the petitioner refers to and relies on decision in "Vijay Kumar Chaudhary vs. State Election Commissioner" reported in Laws (Pats)-2009-9-25.

3. Sumeet Gadodia, the learned counsel for the State Election Commission-respondent No. 2 raises a preliminary objection as to the maintainability of the writ petition and submits that, State Election Commission has no power under the Jharkhand Panchayat Raj Act, 2001 to declare a returned candidate disqualified. The election of elected candidate can be challenged only by filing election petition. The Jharkhand Panchayat Raj Act, 2001 provides a forum for challenging the election of a candidate.

4. In the writ petition though, the petitioner has sought as many as 8 directions, the main grievance of the petitioner appears to be that inspite of an enquiry conducted by the Deputy Commissioner who found that the respondent No. 5 violated section 120 of the Jharkhand Panchayat Raj Act and a criminal case has been registered in which cognizance has been taken by the trial court, the membership of respondent No. 5 has not been cancelled/terminated by the respondents particularly, the State Election Commission.

5. To a pointed query what direction can be issued to the respondents, the learned counsel for the petitioner submits that a direction may be issued to the State Election Commissioner to terminate the membership of respondent No. 5. I am of the opinion that in view of specific provision under the Jharkhand Panchayat Raj Act, 2001, the State Election Commissioner has no power to pass an order terminating the membership of an elected candidate. The case relied upon by the learned counsel for the petitioner deals with election of Mukhiya. The State Election Commission-respondent No. 2 has taken a specific plea that under the Jharkhand Panchayat Raj Act, 2001 no enabling power has been conferred upon the State Election Commission though, power to disqualify an elected candidate under the Jharkhand Municipal Act can be exercised by the State Election Commission. I am of the opinion that since statutory remedy has been provided under the Act, the petitioner is required to challenge the election of respondent No. 5 by filing an election petition. The petitioner has not disclosed a

reason for not availing remedy under the Act.

6. The learned counsel for the petitioner submits that the power of this Court under Article 226 of the Constitution of India can be exercised for declaring the election of respondent No. 5 invalid.

7. Mr. Sumeet Gadodia, the learned counsel for the State Election Commission submits that in peculiar cases like the present one, the Commission also finds itself helpless. The learned counsel refers to judgment in K. Venkatachalam Vs. A Swamickan and Another, AIR 1999 SC 1723 : (1999) 3 JT 242 : (1999) 3 SCALE 12 : (1999) 4 SCC 526 : (1999) 2 SCR 857 : (1999) 2 UJ 1064 : (1999) AIRSCW 1353 : (1999) 4 Supreme 333 and submits that appropriate direction may be issued to the State Election Commission.

8. Considering the facts brought on record, pleadings and prayer in the writ petition and provisions under the Jharkhand Panchayat Raj Act, 2001, I am not inclined to issue direction to the State Election Commission to declare respondent No. 5, disqualified. In "K. Venkatachalam" case, the writ petition was filed seeking a declaration that the elected candidate of Tamil Nadu Legislative Assembly was not entitled to sit in the legislative assembly and for a restrain order restraining him from functioning as member of the Legislative Assembly. The facts in the said case are entirely different from the facts of the present case. I find no merit in the writ petition and accordingly, it is dismissed.