
(2008) 07 UK CK 0047
In the Uttarakhand High Court

Shabir

APPELLANT

Vs

District Magistrate/District Election Officer and Others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 324, 34
Representation of the People Act, 1951 — Section 123

Citation : (2008) 07 UK CK 0047

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Sri M.S. Tyagi and Sri Arvind Kumar Sharma, learned Counsel for the petitioner and Sri K.P. Upadhyay, learned Additional Chief Standing Counsel for the State-respondents No. 1 to 3.

2. Learned Counsel for the petitioner filed supplementary affidavit. The same is taken on record.

3. Heard learned Counsel for the parties.

4. By means of this writ petition, the petitioner prays for to issue a writ, order or direction in the nature of certiorari to quash the order dated 28-6-2008 (Annexure No. 3 to the writ petition) passed by the third respondent, whereby the nomination paper of respondent No. 4 was accepted.

5. The petitioner has filed objection before the Election Officer, Kisan Sewa Sahkari Samiti Munda Khara Kala, District Haridwar on 28-6-2008 alleging therein that the fourth respondent is a convicted person and he had been convicted u/s 324 read with Section 34 of the Indian Penal Code by the Civil Judge (Junior Division)/Judicial Magistrate, Laksar, vide order dated 20-8-2005 in Complaint Case No. 219 of 2004, Som Datt v. Vinod and three Ors., whereby the fourth respondent was sentenced to pay a fine of Rs. 1000/- each along with

other accused persons and in default to undergo simple imprisonment for six months. Against the conviction order, Criminal Appeal No. 45 of 2005, Vinod and Ors. v. State and Ors. has been preferred before the District and Sessions Judge, Haridwar. According to the petitioner, in appeal an order was passed to the effect that on depositing 50% of the amount, the realization of rest of the amount of fine shall remain stayed till the disposal of appeal.

6. Learned Counsel for the petitioner vehemently contended that despite the objection filed by the petitioner that the fourth respondent is a convicted person, his nomination paper was accepted on the ground that appeal was filed by Shiv Prasad, ignoring the mandatory provision of Rule 473(i) of the Uttaranchal Co-operative Societies Rules, 2004 (for short the Rules), which provides that if a person had been convicted of any offence under the Act or the Rules, unless a period of 5 years has elapsed from the date of the conviction, such person would not be eligible to be or to continue as a member of the Committee of Management of any Co-operative Society.

7. Learned Counsel for the petitioner in support of his contention has relied upon the Division Bench judgment of this Court in the case of Krishi Yantra Vipran Sehkari Samiti Ltd. Roorkee v. Registrar, Co-operative Societies, Uttaranchal and Ors. 2005(1) U.D. 316. In paragraph No. 16, following observations were made:

16. However, the question would still be as to whether we should, at this stage, tinker with or interfere with the election programme because it is, indeed, a settled law that the High Court doesn't interfere in its jurisdiction under Article 226 of the Constitution of India once the election programme has commenced. The election programme, indeed, has commenced. However, there is one caveat to all this. Once the High Court comes to the conclusion that the election programme was not a bonafide programme at all and was full with illegalities so that the general public was deprived of its right because of that election programme, there would be nothing in the way of the High Court from interfering with the election programme. What we see here is the patent illegality in breaching the mandatory provision of Rule 451 of the Rules, wherein 15 days clear notice was required. If we take this thing lightly then a day might come when the electing authorities may not provide any notice to anybody at all and we cannot visualize of that situation.

8. The controversy before the Division Bench of this Court was altogether different. In the cited case, mandatory notice of 15 days was not issued prior to conducting the election. On that ground the writ petition was entertained by the Division Bench. The said case law does not help to the petitioner. In the case at hand, there is dispute of acceptance/rejection of nomination paper of fourth respondent. Whether the nomination paper was rightly accepted or not by the Election Officer as per provision of Rule 473(i) of the Rules, the remedy open to the petitioner is that of Election Petition as per provision of Clause (b) of Sub-rule (1) of Rule 457 of the Rules. Rule 457 reads as under:

457. (1) The election in a co-operative society shall not be called in question either by arbitration or otherwise except on the ground that-

(a) the election has not been a fair election by reasons that corrupt practice, bribery or undue influence has extensively prevailed at the election, or

(b) the result of the election has been materially affected-

(i) by improper acceptance or rejection of any nomination, or

(ii) by improper reception, refusal or rejection of votes, or

(iii) by gross failure to comply with the provisions of the Act, the Rules or the Byelaws of the Society.

Explanation- For the purpose of this rule corruption, bribery or undue influence shall have the meaning assigned to each u/s 123 of the Representation of People Act, 1951.

(2) A dispute relating to election shall be referred by the aggrieved party within 45 days of the declaration of the result.

9. Since the petitioner can challenge the acceptance of the nomination paper of fourth respondent by filing the election petition, I am not inclined to entertain the writ petition, which is liable to be dismissed outright at the threshold.

10. The writ petition is dismissed in limine.

11. All pending applications stand disposed of.