
(2005) 02 RAJ CK 0066
In the Rajasthan High Court
Case No : Civil Writ Petition No. 828 of 2005

Shariff Khan

APPELLANT

Vs

Rajasthan State Election Commission and Others

RESPONDENT

Date of Decision : 07-02-2005

Acts Referred:

Constitution of India, 1950 — Article 213O, 226, 243K, 243O, 324
Rajasthan Panchayati Raj (Election) Rules, 1994 — Rule 29, 48, 48(2), 48(B)(2)(1), 48A

Citation : (2005) 2 RLW 1022

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : B.L. Sharma and C.S. Sharma, for the Appellant; G.S. Gill, AAG and Manish Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—By this writ petition, the petitioner seeks direction to declare the Rule 48-C and 49-B as invalid and void. Besides this, the petitioner also prayed to quash the notification dated 25.1.1995 issued by the State Election Commission as being invalid and void and to quash the order dated 1.2.2005 issued by the District Election Officer (Panchayat) being without jurisdiction, illegal, improper and void and further seeks direction directing the respondents to count the votes of the poll for office of Sarpanch, Gram Panchayat, Garhajan of the poll held on 31.1.2005.

2. Learned counsel for the petitioner submitted that at about 8 p.m. The Deputy Superintendent of Police, Kaman informed that as per the directions of the District Collector, Bharatpur, counting would not be held at Tehsil Office, Kaman. At about 10.00 p.m. The SDM, Kaman informed that the Collector, Bharatpur has ordered not to conduct the counting as the re-poll will be held. The order has been passed by the District Election Officer (Panchayat) purporting to act under Rule 48 (B) (2) (1) and 48(C) the Rajasthan Panchayati Raj (Election) Rules,

1994.

3. The petitioner has challenged the validity of the aforesaid rules on the ground that as per Section 120 of the Panchayat Act, the functions of the State Election Commission under this Act or the rules or orders issued thereunder, subject to such general or special directions, if any, as may be given by the State Election Commission in this behalf, be performed also by a Deputy Election Commissioner, if any, or by the Secretary to the State Election Commission.

4. Whereas, as per Rule 48 of the Rajasthan Panchayati Raj Rules, 1996, the Returning Officer may, in emergencies such as a likely disturbance of the public peace, close the poll and announce and adjournment thereof to a subsequent day to be notified by District Election Officer (Panchayats) or on Officer nominated by him. And as per Sub-rule 2 of Rule 48, the circumstances leading to such closure and adjournment shall be reported by the Returning Officer forthwith to the district election officer (Panchayats) or Officer nominated by him.

5. Learned senior counsel submits that Rule 48-C and 49-B provides delegation of powers of Election Commission to District Election Officer (Panchayat) or to any other officer subordinate to the Election Commission whereas Section 120 provides two authorities i.e., District Election Officer (Panchayat) and Collector to whom the functions of the Election Commission can be delegated, therefore, being contrary to the provisions of Section 120, Rule 48, 48-A, 48-B & 48-C are invalid and void and be declared ultra vires.

6. In support of his submissions, learned senior counsel placed reliance on the judgment rendered in case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein the Hon'ble Supreme Court in para 50 has held "Article 324, on the face of it, vests vast functions which may be powers or duties, essentially administrative and marginally even judicative or legislative. We are not fascinated by the logo-machic exercise suggested by Sri P.P. Rao, reading "functions" in contra- distinction to "powers" nor by the trichotomy of diversion of power, fundamentally sound but flawsome in several situations if rigidly applied. These submission merely serve to draw the red-herring across the trial. We will now zero-in on the crucial issue of natural justice vis-a-vis Article 324 where the function is so exercised that a candidate is substantially prejudiced even if he has not acquired a legal right nor suffered "civil consequences", whatever that may mean."

7. Mr. B.L. Sharma, learned senior counsel also referred Article 324(1) & (4) which read as under:-

324. Superintendence, direction and control of elections to be vested in an Election Commission.

(1) the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-president held

under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2).....

(3)

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by Clause (1).

8. Learned counsel further submits that Hon"ble Supreme Court in case of Mahendra Singh (supra), while dealing with Article 324(1) has observed that Article 324(1) vests in the Election Commission the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to Parliament and to the Legislature of every State and the elections to the offices of the President and the Vice- President held under the Constitution. Article 329(b) provides that notwithstanding anything in the Constitution, no election to either House of Parliament or to the House or either of the Houses of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature.

9. Learned counsel also submits that polling was more than 80% cannot be a ground for re-poll and as per Section Rule 48-B adjournment of poll or countermanding of election can only be made on the ground of booth capturing and such allegations have not been made by the respondents while taking decision for re- polling.

10. Per contra, learned counsel for the State as well as Election Commission have controverted the facts. Mr. G.S. Gill, learned Addl. Advocate General at the outset referred that the present writ petition is not maintainable as this Court while exercising power under Article 226 of the Constitution of India cannot entertain and interfere in such matters as there is a bar under Article 243-O. Article 243-O is reproduced hereunder:-

243-O. Bar to interfere by courts in electoral matters.- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority an in such manner as is provided for by or

under any Law made by the Legislature of a State.

11. Mr. G.S. Gill also drawn my attention towards several documents annexed alongwith the reply to show that at about 6.30 am the Zonal Magistrate has reported that there is probability of hindrance in conducting the fair election. Thereafter, the Election Officer also informed the District Election Officer at about 10 am about the threat to villagers not to caste the votes. To this effect, three FIRs at different times have also been lodged in the Police Station Kaman. One Fir is lodged by the Polling Officer at about 2.30 p.m., one is lodged by the Police official and another one is lodged by some voters. In the FIRs, the time of incidence is referred as 1.15 p.m.

12. Mr. Manish Bhandari, learned counsel for the Election Commission submits that power vested under Rule 86(1) is with the District Election Officer i.e., the Collector whereas as per Section 120 functions of the State Election Commission has only be delegated so it cannot be said the provisions of Rule 48, 48-A, 48-B & 48-C are ultra vires.

13. Heard rival submissions of the respective parties and perused the material available on record as well as the judgment referred before me.

14. As per Article 243-O, there is bar to interference by courts in electoral matter and the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court. As per Sub-clause 2 of Article 243O, no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

15. Under Rule 80, there is a specific provision for challenging an election under the Act. An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared.

16. So far as maintainability of this writ petition against the decision of the District Election Officer is concerned, in view of provisions of Article 243-O and Section 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994, this writ petition is not maintainable as there is bar under Article 213-O and there is specific provision made in the status for challenging such disputes by way of filing election petition. Therefore, the writ petition so far as quashing the notification dated 25.1.1995 & order dated 1.2.2005 and direction to the respondents to count the votes of poll held on 31.1.2005 is not tenable and the writ petition with regard to the aforesaid prayer stands dismissed.

17. Now the question remains with regard to validity of Rule 48, 48-A, 48-B & 48-C of the Rajasthan Panchayati Raj (Election) Rules, 1994.

18. I have carefully perused the aforesaid rules. By Rule 48, the District Election

Officer (Panchayats) has been authorised to adjourn the poll in emergencies such as a likely disturbance of the public peace. Now the question arise whether the District Election Officer (Panchayats) without non-mentioning of Rule 29 can exercise the power as District Election Officer or not.

19. By bare perusal of Section 120, it reveals that function of the State Election Commission under this Act or the rules or orders issued thereunder, subject to such general or special directions, if any as may be given by the State Election Commission in this behalf, be performed also by a Deputy Election Commissioner, if any, or by the Secretary to the State Election Commission. Whereas Rule 48 specifically provides power to Returning Officer to adjourn the poll and the District Election Officer (Panchayats) is fully competent to discharge his duties for adjournment of poll.

20. Looking to the facts and circumstances of the case, in my considered opinion, the ratio decided in the case of Mahendra Singh Gill (*supra*), is not applicable to the instant case as their Lordship of Supreme Court while dealing with Article 324(1) has categorically observed that such question should not be entertained for which the remedy is available and this dispute can only be adjudicated by an election petition presented to such authority and in such manner as may be prescribed by the statutes.

21. In view of the discussions made hereinabove, I am of the considered view that the provisions of Rule 48, 48-A, 48-B & 48-C are not illegal and void to the act and in contravention of the Act, but are intra-vires. I am not impressed with the submissions made on behalf of the petitioner. So far as declaring Rule 48, 48-A, 48-B & 48-C as invalid and void, to this effect, the writ petition also stands rejected. Consequently, the writ petition fails and the same is herewith dismissed.