

(2000) 01 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 863 and 582 of 1995

Shripal Jain and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Constitution of India, 1950 — Article 243 , 243K
Rajasthan Panchayat (Election) Raj Rules, 1994 — Rule 59, 61
Rajasthan Panchayati Raj Act, 1994 — Section 102, 17(2), 28, 29, 5

Citation : AIR 2000 Raj 222 : (2000) 3 RLW 1714

Hon'ble Judges : P.P. Naolekar, J;G.S. Misra, J

Bench : Division Bench

Advocate : Jagdeep Dhankar, Sr, Praveen Balwadar, Pushpendra Pal Singh and G.S. Bapna, for the Appellant; R.N. Mathur, Addl. Adv General, for the Respondent

Final Decision : Allowed

Judgement

Naolekar, J.—In these two petitions the petitioners have sought directions from the Court to the State Election Commission to discharge its constitutional obligations under Article 243-K of the Constitution of India and for declaration that the provisions of Sections 28 and 29 of the Rajasthan Panchayat Raj Act, 1994 and Rules 59 and 61 of the Rajasthan Panchayati Raj Rules, 1994 be declared ultra vires being violative of Article 243-K of the Constitution of India.

2. Submission of the learned counsel for the petitioners is that under Article 243-K of the Constitution of India the superintendence, direction and control for preparation of electoral rolls for and the conduct of, all elections to Panchayats shall be vested in the State Election Commission. Thus it is constitutional duty of the State Election Commission to prepare the electoral rolls for the purposes of elections of the panchayats and to conduct all elections of the panchayats. The State Election Commission cannot leave these functions to be performed by any other authority. The State Government under Sections 28 and 29 of the Act read

with Rules 59 and 61 of the Rules usurp all powers to itself, which is contrary to the spirit and mandate of the Article 243-K of the Constitution and the same be declared ultra vires of the Constitution.

3. To better appreciate the arguments advanced by the learned counsel for the petitioners, we may refer to the scheme of constitution of panchayats and the election to panchayat raj institutions under the Rajasthan Panchayati Raj Act, 1994 and the Rajasthan Panchayati Raj (Election) Rules, 1994 (for short "the Act of 1994" and "the Rules of 1994"). The panchayats are being constituted in Rajasthan at three levels; the panchayat at village level, the panchayat at intermediary level and the panchayat at district level. The panchayat at village level is called "panchayat" which shall consist of a sarpanch and directly elected panchas from as many wards as are determined under Sub-section (2) of Section 12 of the Act. The sarpanch shall be elected by the electors of the whole panchayat circle. The panchayat shall also have an up-sarpanch who shall be elected by elected panchas. The panchayat at intermediary level is called "panchayat samiti" which shall consist of directly elected members from as many territorial constituencies as are determined under Sub-section (2) of Section 13 and all members of the Legislative Assembly of the State, representing constituencies which comprise wholly or partly the panchayat samiti area. The elected members of the panchayat samiti shall elect two members from amongst themselves to be the "pradhan and up-pradhan". The panchayat at district level is called "zila parishad" which shall consist of directly elected members from as many territorial constituencies as are determined under Sub-section (2) of Section 14 and all members of the Lok Sabha and of the State Legislative Assembly representing constituencies which comprise wholly or partly the Zila Parishad area and all members of the Rajya Sabha registered as electors within the Zila Parishad area. The elected members of the Zila Parishad shall elect two members from amongst themselves to be "pramukh" and up-pramukh". Section 28 provides for election of pradhan and up-pradhan by elected members of the panchayat samiti. Sub-section (2) of Section 28 lays down that the election of pradhan and up-pradhan and the filling up of the vacancies in the said offices shall be in accordance with such rules as may be made. Section 29 is in regard to the election of pramukh and up-pramukh of zila parishad by the elected members of the zila parishad. Sub-section (2) of Section 29 lays down that the election of the pramukh of the up-pramukh of a zila parishad and the filling up of vacancies in the said offices shall be in accordance with such rules as may be made. Sections 28 (2) and 29 (2) of the Act authorise the State Government to frame Rules for the election of pradhan or up-pradhan and pramukh or up-pramukh respectively. Subsection (2) of Section 17 of the Act of 1994 provides that the superintendence, direction and control of preparation of electoral rolls for, and the conduct of, all elections to the Panchayat Raj Institutions are vested in the State Election Commission.

4. In exercise of the powers conferred by Section 102 read with Section 17(5) of the Act of 1994 and of all other power enabling it in this behalf, the State

Government framed Rules called as "the Rajasthan Panchayati Raj (Election) Rules, 1994. Rule 59 is in relation to the election of pradhan and Rule 61 is in relation to election of pramukh.

5. Under Rule 59 the pradhan of a panchayat samiti shall be chosen by the elected members of the panchayat samiti from amongst themselves in the first meeting of the panchayat samiti fixed by the Collector. The meeting shall be presided over by the officer appointed by the collector and shall be held at the date and time fixed by the Collector. If there is no election, the officer appointed by the Collector shall declare the unopposed candidate as elected pradhan. The manner of voting would be by secret ballot. In an election the officer appointed by the Collector shall assign symbol to each contesting candidate and the decision of the said officer in the allotment of symbol shall be final. Immediately after the allotment of the symbol the officer appointed by the collector shall announce the name of the contesting candidate on the basis of the list of the contesting candidates prepared by him. The ballot papers for the election shall be in such form as the Commission may direct. Only the members present in the meeting shall be entitled to vote by secret ballot and no member shall be allowed to vote by post or by proxy. The officer appointed by the Collector shall cause the place of polling to be closed till the time fixed by him for completion of poll. The counting of votes shall be held immediately as far as possible after the close of the polls. The vote shall be counted under the supervision of the officer appointed by the collector in the meeting itself in the presence of candidates. The officer appointed by the collector shall scrutinise the ballot papers and reject the invalid votes while recording the reasons of rejection on the back portion of such ballot paper. In case of equality of votes, the result shall be declared by drawing of lot by the officer conducting such elections. Under Rule 60 after the completion of counting of votes the officer appointed by the collector shall declare elected candidate in whose favour largest number of votes were cast. Rule 61 is in regard to election of pramukh. Under the rule the Chief Executive Officer of the zila parishad at the headquarters of the zila parishad is being authorised to conduct the elections of the pramukh in the first meeting of zila parishad fixed by him in accordance with the procedure laid down in Sub-rules (2) to (14) of Rule 59 and Rule 60 of the Rules of 1994.

6. Now we come to the relevant constitutional provisions contained in Part IX of the Constitution regarding the panchayats. Article 243-B of the Constitution of India says that there shall be constituted in every State, panchayats at the village, intermediate and district levels in accordance with the provisions of Part IX of the Constitution of India. Article 243-C is in regard to the composition of panchayats which authorises the legislature of the State by law to make provisions with respect to the composition of panchayats. All the seats of such panchayat shall be filled by persons chosen by direct election from territorial constituencies in the panchayat area. State Legislature has been authorised to make a law providing for representation - of the Chair persons of the panchayats at village level, in the panchayats at the intermediate level or, in the case of a

State not having panchayats at the intermediate level, in the panchayats at the district level; of the chairpersons at the intermediate level, In the panchayats at the district level; of the members of the House of People and the members of the Legislative Assembly of the State. Sub-clause 5 (a) of Article 243C provides that the Chairperson of a Panchayat at the village level shall be elected in such manner as the Legislature of a State may by law provide. Sub-clause 5 (b) lays down that a chairperson at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof. Sub-clause 5 (a) of Article 243-C authorises the State Government to frame a law to provide the manner in which the chairperson of a panchayat at village level shall be elected whereas Sub-clause 5 (b) provides for collegium for election of the chairperson of a panchayat at intermediate level or at district level i.e. the elected members of the panchayats at Intermediate level or district level. Thus under this Article the pradhan and pramukh of panchayat samiti and zila parishad respectively shall be elected by the members elected to panchayat samiti and zila parishad. Article 243D is in regard to the reservation of seats for the scheduled castes and scheduled tribes. Article 243E lays down duration of panchayats that every panchayat shall have term of five years from the date appointed for its first meeting unless sooner dissolved under any law for the time being in force.

7. Article 243K is in regard to elections of panchayats which says that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

8. Election of panchayat samitis and zila parishads covers the entire process from the issue of notification under Rule 58 of the Rules of 1994 to the declaration of results of the members of panchayat samitis and zila parishads and election of pradhan or up-pradhan and pramukh or up-pramukh. The Constitution contemplates a free and fair election and Vested comprehensive responsibilities of superintendence, direction and control of conduct of election in the State Election Commission. The responsibility cast upon the State Election Commission covers powers, duties and functions of many sorts -- administrative and other depending on the circumstances.

9. Article 243-K of the Constitution vests in the State Election Commission the superintendence, direction and control of preparation of electoral rolls for, and the conduct of, all elections to the Panchayats which includes panchayat samitis and zila parishads and their Chairpersons. Article 243-K is thus couched in wide terms. Article 243-K vests in the State Election Commission the superintendence, direction and control in order to ensure the elections of panchayats completely free from fear and pressure that may be brought through political interference in a democracy run on the party system. Conduct of election by State Election Commission of the panchayati raj Institutions is not only provided under Article 243-K of the Constitution but also by Section 17 (2) of the Act of 1994, whereas

Rules 59 and 61 of the Rules of 1994 vest the power in Collector and Chief Executive Officer of conducting elections of pradhan of panchayat samiti and pramukh of zila parishad respectively. Vesting of powers by rules, of conduct of elections of pradhan of panchayat samiti and pramukh of zila parishad in Collector and Chief Executive Officer respectively is contrary to the provisions of Article 243-K of the Constitution of India and Section 17 (2) of the Act of 1994. The election of pradhan and that of pramukh has to be conducted by State Election Commission and any rule framed divesting State Election Commission of those powers is contrary to the provisions of the Constitution and the Act of 1994 itself. Rules 59 and 61 of the Rules of 1994 create an alternative authority for conduct of elections by Collector and Chief Executive Officer which is in clear contravention of the Act and Article 243-K of the Constitution and thus cannot sustain. We may make it clear that it is perfectly competent for the State Election Commission to adopt the procedure laid down in Rule 59 for the conduct of election of pradhan of panchayat samiti and pramukh of zila parishad for conducting the election itself or under its direction, control or superintendence by some person or Authority.

10. In view of the aforesaid, the provisions of Rules 59 and 61 of the Rules of 1994, providing for conduct of election of Pradhan of panchayat samiti by Collector and pramukh of zila parishad by Chief Executive Officer are contrary to the constitutional provision and Section 17 (2) of the Act of 1994 and are declared ultra vires of the Constitution and the Act of 1994.

11. The provisions of Section 28 of the Act of 1994 whereby it has been provided that the elected members of panchayat samiti shall elect themselves pradhan and up-pradhan and of Section 29 which gives authority to the elected members of zila parishad to elect pramukh and up-pramukh, being in conformity of Article 243-C(5)(b) are in accordance with law.

12. The provision of Sub-section (2) of Sections 28 and 29 of the Act of 1994 authorising the State Government to frame rules for conduct of elections of pradhan or up-pradhan of panchayat samiti and pramukh or up-pramukh of zila parishad are not contrary to the provisions of the Constitution. The State has authority to frame rules under List-II Entry-V of Schedule-VII of the Constitution of India. So long rules give the State Election Commission powers of superintendence, direction and control of preparation of electoral rolls for, and the conduct of, all elections to the panchayati raj institutions. They are valid. Sections 28 and 29 are intra vires of the Constitution.

13. In the result of the aforesaid discussion, the writ petitions are allowed, it is directed that the State Election Commission shall conduct the election of pradhan of panchayat samiti and pramukh of zila parishad by itself or by any person or authority under its control, direction and superintendence. For the said purpose the State Election Commission may follow the procedure as laid down in Rules 59 and 61 of the Rules of 1994. The Rules 59 and 61 of the Rules, of 1994 are declared ultra vires of the Constitution and the provisions of Section 17 (2) of the

Act of 1994 and are hereby struck down. Sections 28 and 29 of the Act of 1994 does not contravene any provision of Part IX of the Constitution and are valid.