
(2013) 05 RAJ CK 0109

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 562 of 2013

Smt. Bhagwati Devi

APPELLANT

Vs

Smt. Komal Devi and Others

RESPONDENT

Date of Decision : 29-05-2013

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 25, 80

Citation : (2013) 3 WLN 140

Hon'ble Judges : Amitava Roy, C.J.;Veerendr Singh Siradhana, J

Bench : Division Bench

Advocate : R.K. Agarwal, Assisted by Mr. Kamlesh Kumar Sharma, for the Appellant; Biri Singh Sinsinwar, Assisted by Mr. Dhruv Atri, (caveator) and Mr. Sanjeev Prakash Sharma, Assisted by Mr. Abhishek Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. The present appeal witness is a challenge, in particular, to the direction contained in the order dated 24.05.2013 passed in S.B. Civil Writ Petition No. 8379/2013 (Smt. Komal Devi vs. Smt. Bhagwati Devi & Others) permitting the respondent No. 1 to remain in charge of the office of Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar subject to the final decision in the writ proceedings. Heard Mr. R.K. Agarwal, learned Senior Counsel with Mr. Kamlesh Kumar Sharma, for the appellant, Mr. Biri Singh Sinsinwar, learned Senior Counsel with Mr. Rajesh Choudhary, for respondent No. 1 and Mr. Sanjeev Prakash Sharma, learned Senior Counsel with Mr. Abhishek Sharma, for respondent No. 4.

2. The facts, in short, leading to the filing of the instant appeal are that the respondent No. 1 was elected in an election conducted under the Rajasthan Panchayati Raj (Election) Act, 1994 (for short, hereinafter referred to as the "Act") to the aforementioned post. It was a multi corner contest, in which, amongst others, the appellant and the respondent No. 4 also did partake in the electoral process. Contending that the respondent No. 1 was, under the relevant

law, disqualified to be elected to the post and election petition was filed by the appellant u/s 43 of the Act read with Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 (in short, hereinafter referred to as the "Rules") assailing her election. The respondent No. 1 and other respondents entered appearance and contested the trial, on the culmination whereof the learned Election Tribunal by its judgment and order dated 08.05.2013 declared the election of the respondent No. 1 void and did set aside the same. It, however, declared the appellant to be the elected Sarpanch for the reason that she (appellant) had polled the second highest votes. Consequent to this determination, the charge of the office of Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar was handed over to the appellant on 15.05.2013 and according to her, she is holding the said post as on date. Being aggrieved by the annulment of her election, the respondent No. 1 invoked the writ jurisdiction of this Court in S.B. Civil Writ Petition No. 8379/2013.

3. In the order impugned, the learned Single Judge observed, inter alia, by taking note of the decision of this Court in Smt. Ummed Kanwar Vs. Prabhu Singh and Others, and of the Supreme Court, amongst others, in Vishwanatha Reddy Vs. Konappa Rudrappa Nadgouda and Another that in a multi corner contest, a candidate, who had secured second highest votes, cannot be declared the elected candidate, in case the election of the returned candidate is interfered with. The learned Single Judge next on hearing the learned counsel for the parties present being of the view that the matter requires further consideration issued notice to the respondents, other than respondent No. 1, making it returnable by four weeks. In the interim, however, the operation of the impugned order dated 08.05.2013 of the learned Election Tribunal was stayed and the charge of the office of Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar was directed to remain with the respondent No. 1 subject to final decision of the writ petition. Being dissatisfied with the interim arrangement, in particular, the appellant seeks remedial intervention in the appeal.

4. Mr. Agarwal has argued with reference to section 25 of the Act that whenever the election of the Member or Deputy Chairman of the Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar is declared to be void on any one or more grounds as enumerated therein, the person concerned has to forthwith hand over the charge of his/her office in the mode prescribed and that therefore, in the face of the determination made by the Election Tribunal under the Rules that the election of the respondent No. 1 to the office of Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar was void, by no means the charge of the said office could be allowed to be with her as done by the interim direction. While admitting that in view of the decision of this Court in Smt. Ummed Kanwar (supra), the appellant cannot claim as a matter of right, even if, she has polled second highest votes, to be given the charge of the office of Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar to be vacated by the respondent No. 1, the learned Senior Counsel has urged that in view of the disqualification of the respondent No. 1, as recorded by the learned

Election Tribunal after a detailed trial, she in any view of the matter could not have been reinstalled in the office concerned. According to him, the only permissible manner of handing over charge of the office of Sarpanch is as contemplated by section 25 of the Act. The order, by which the impugned arrangement has been made, in the facts and circumstances of the case has all the attributes of a final determination of the issue and thus, interference therewith in this appeal is called for, he urged.

5. Mr. Biri Singh has seriously questioned the maintainability of the appeal with reference to Rule 134 of the Rules of the High Court of Judicature for Rajasthan, 1952 (for short, hereinafter referred to as the "High Court Rules") contending that the order sought to be impugned being apparently an interlocutory one, the appeal ought to be dismissed in limine. Without prejudice to this, the learned Senior Counsel has further argued that not only the election petition filed by the appellant under the Rules suffered from incurable defects rendering it not maintainable, the trial based thereon was, thus, vitiated and consequently, the judgment and order dated 08.05.2013 is patently illegal. According to Mr. Singh, the learned Single Judge, amongst others, taking note of this vitiating illegality, did rightly stay the operation of the impugned judgment and order dated 08.05.2013 and temporarily permitted the respondent No. 1 to continue in the office of Sarpanch. According to him, it being open from the appellant, if so advised, to file his reply and seek modification of this interim arrangement, the instant appeal ought not to be entertained.

6. Mr. Sharma, while generally reiterating the submissions advanced on behalf of the respondent No. 1, however, has fairly pleaded that the interim arrangement of permitting the respondent No. 1 to continue in the office of Sarpanch is not warranted in the facts and circumstances of the case.

7. We have heard learned counsel for the parties and considered the pleadings on record. As the facts, narrated hereinabove, would reveal, as on date, the election of the respondent No. 1 to the office of the Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar stands annulled by the judgment and order dated 08.05.2003 passed in the Election Petition No. 38/01/2011 by the learned Election Tribunal constituted under the Rules. There is no wrangle at Bar as to the applicability of section 25 of the Act in the eventualities as contemplated therein. We are, prima facie, of the view that the mode of transfer of charge, as envisaged in section 25, is applicable to the facts and circumstances of the present case.

8. To reiterate, the assailment of the determination made by the learned Election Tribunal is subjudice before the learned Single Judge. The order impugned also does not disclose in clear terms as to the grounds of challenge to the findings recorded in the election petition. For obvious reasons, we do not wish to respond to the submission made on behalf of the respondent No. 1 vis-?-vis the maintainability of the election petition on the ground at this stage. Suffice it to mention that pending scrutiny of the grounds of challenge to the judgment and

order dated 08.05.2013 as raised in the writ petition, we are of the considered opinion that the respondent No. 1, who had been declared disqualified thereby, ought not to be allowed to continue in the office of the Sarpanch, Gram Panchayat Vijayapura, Tehsil Thanagali District Alwar. This, per se, is also the unequivocal mandate of section 25 of the Act. To this extent, the impugned arrangement made by the order dated 24.05.2013, in our comprehension, is opposed to the letter and spirit of this legal provision.

9. Qua the aspect of maintainability of the appeal in the context to Rule 134 of the High Court Rules, we have been led, amongst others, to the decision rendered by the Hon'ble Apex Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, as well as of this Court in Jaipur Metro Rail Corporation Limited Vs. Alok Kotahwala and Ors. [2013 (2) WLC (Raj.) 381]. Their Lordships of the Hon'ble Apex court in Shah Babulal Khimji (supra) while dwelling on the scope, ambit and purport of the word Judgment appearing in Clause 15 of the Letters Patent of the Bombay High Court and after a detailed survey of the legal propositions pertaining thereto observed in paragraph 119(2) as hereunder:

Para 119(1)....

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceedings or in the suit itself or in a part of the proceedings.

This observation, ipso facto, is suggestive of the fact that an interlocutory order, in such eventualities, as mentioned can be construed to be a "judgment".

10. A coordinate Bench of this Court in Jaipur Metro Rail Corporation (supra) had held an appeal from an order of the learned Single Judge staying land acquisition proceedings and giving liberty to the State to restart the proceedings maintainable holding that such an order amounted to a "judgment" or a "final order". Their Lordships in reaching this conclusion, amongst others, had also taken note of the decision of the Apex Court in Shah Babulal Khimji (supra) In the decision of Jaipur Metro Rail Corporation (supra), reference was also made to the judgment in Jugal Kishore Paliwal Vs. S. Sat Jit Singh and Another, where the order of the learned Single Judge refusing amendment of the written statement at the time of framing issues held to be appealable.

11. In the background of the facts leading to the filing of the appeal and on a consideration of the judicial pronouncements as above, we are of the view that the interim direction passed by the learned Single Judge permitting the respondent No. 1 to remain, inspite of her declared disqualification by the Election Tribunal, in the office of the Sarpanch is one of moment affecting the rights of the parties besides not countenanced by section 25 of the Act and thus, can be considered to be a final order for the purpose of appeal under Rule 134 of the High Court Rules. This is also deductible from the fact that the arrangement, which has been made, is not limited by time but had been made subject to the

final decision of the writ petition. We are, thus, not inclined to sustain the plea against the maintainability of the appeal. In the result, the appeal is allowed. The direction of the learned Single Judge to permit the respondent No. 1 to continue in the office of the Sarpanch, Gram Panchayat Vijaypura, Tehsil Thanagali District Alwar is interfered with. The charge of the said office would now be handed over by strictly following the process with regard thereto as contemplated u/s 25 of the Act. This would be done within a period of one week from today.