

(2017) 05 RAJ CK 0086
In the Rajasthan High Court
Case No : 18196 of 2016

Smt. Jannati W/o Abdul Rouf

APPELLANT

Vs

Smt. Saroj W/o Virendra Singh

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

[Rajasthan Panchayat Raj \(Election\) Rules, 1994](#), Rule 81

Citation : (2017) 05 RAJ CK 0086

Hon'ble Judges : Alok Sharma

Bench : SINGLE BENCH

Advocate : Vijay Chaudhary, Nikhlesh Katara, Paresh Chaudhary

Final Decision : Dismissed

Judgement

1. The matter comes up on an application at the instance of the respondent election petitioner (hereinafter `the EP") for vacation of the interim order dated 11-1-2017.
2. With the consent of counsel for the parties the matter is taken up for final hearing.
3. Under challenge is the judgment dated 16-12-2016 passed by Senior Civil Judge, Deeg, District Bharatpur allowing the election petition filed at the instance of the EP and setting aside the election of the petitioner-returned candidate (hereinafter "the RC") on the post of Sarpanch, Gram Panchayat Kakda, Panchayat Samiti Deeg, District Bharatpur.
4. Counsel for the RC has confined his arguments to the election petition not being maintainable having been presented by the EP's

counsel.

5. Heard. Considered.

63. The issue of maintainability of an election petition being presented by a counsel authorised by the election petitioner has been the subject matter of consideration in DB Civil Reference No.1/2017 decided on 20-4-2017. Therein the Division Bench answered the reference as under:-

"An election petition presented by a Lawyer on the strength of a Vakalatnama would be deemed to have been duly presented if the language of the Vakalatnama expressly records that the Lawyer is authorised to present the election petition. It would then be a question of fact to be determined by the Tribunal keeping in view the language of the Vakalatnama. If the language of the Vakalatnama expressly records that the Lawyer is authorised to present the election petition, it would be a case of valid presentation of the election petition."

7. It is thus evident that an election petition can be filed by a counsel of the election petitioner on the strength of vakalatnama

authorising him to present it. As to whether the vakalatnama signed by the election petitioner authorised the counsel to present the election petition is a question of fact. A perusal of the judgment dated 16-12-2016 indicates that even an issue with regard to the counsel being not authorised by the EP to present the election petition on her behalf was struck before the trial court. Even otherwise counsel for the RC has not been able to show that any evidence to establish that the counsel for the EP was not authorised to present the election petition obtained before the trial court. It is in place to note that the burden of proving that the election petition was not laid as per Rule 81 of the Rajasthan Panchayat Raj (Election) Rules, 1994 was on the RC and to be discharged by her. That burden has not been at all discharged by the RC.

8. In the circumstances, I find no force in the petition. It is accordingly dismissed.

9. In view of aforesaid, the application for vacation of the interim

order stands disposed of as infructuous.