
(2009) 08 UK CK 0025
In the Uttarakhand High Court

Smt. Pooja Rajput

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Constitution of India, 1950 — Article 243(O), 243O(b)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 95(1)(g)(iia)

Citation : AIR 2010 Utt 24 : (2009) 3 UC 1937 : (2009) 2 UD 366

Hon'ble Judges : V.K. Gupta, C.J.; V.K. Bist, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—Present writ petition has been filed by the petitioner for declaring Sub-clause (iii-a) of Clause (g) of Sub-section (1) of Section 95 of U.P. Panchayat Raj Act, 1947 adapted by Uttaranchal Adaptation and Modification Order, 2001 (hereinafter referred to as "Panchayat Raj Act") ultra vires to Article 243(O) of the Constitution of India and also for quashing show cause notice dated 18-10-2008 issued by the District Magistrate, Dehradun.

2. Brief facts of the case are that the petitioner is the daughter of Shri Satya Prakash Tanwar who belongs to cast "Tanwar". "Tanwar" along with "Singharia" is shown in the category of Other Backward Class (for short O.B.C.) specified in the Uttarakhand State. "Tanwar" and "Singharia" are two different Backward Classes and both are notified at SI. No. 69 and separated by a disjunctive. The parents of the petitioner were the residents of Delhi and she normally resided with them before her marriage. She was born and brought up in Delhi and completed her education in Delhi. In the year 1997 she married with Manoj Rajput S/o Sher Singh Rajput, resident of village Jonk Patti, Udaipur Talla, Post Office Swargashram, Tahsil Yamkeshwar, district Pauri Garhwal, Uttarakhand. After the marriage, the petitioner became permanent and bona fide resident of her matrimonial house situated in Uttarakhand State. Subsequently her husband Manoj Rajput constructed his house in Rishikesh Town. As she was interested in

contesting the Panchayat Elections, she submitted an application before the Tehsildar Rishikesh, who conducted an enquiry to verify the facts mentioned in the affidavit and Lekhpal submitted his report. After verification, the Tehsildar Rishikesh issued O.B.C. Certificate to the petitioner. One Shri Narayan Singh Rawat preferred with petition No. 1541/2008 (M/S) challenging the petitioner's nomination. The same was dismissed on 3-9-2008 with an observation that petitioner therein may avail the remedy of filing an Election Petition. The petitioner contested election and was elected as "Gram Pradhan" and a certificate to this effect was issued to her. Thereafter, the District Magistrate, Dehradun issued letter dated 27-8-2008 to the petitioner stating therein that Shri Narayan Singh Rawat had lodged a complaint, wherein he had challenged the caste certificate issued in favour of the petitioner and on the basis of the complaint the petitioner was asked to submit her reply to the said complaint. The petitioner filed an application asking for the copy of the complaint as well as alleged Govt. Notification on whose basis caste certificate could not be issued in favour of the petitioner. Thereafter the petitioner came to know from "Hindustan Times" dated 29-9-2008 that the caste certificate of the petitioner has been cancelled by the District Magistrate, Dehradun. The petitioner preferred representation before the District Magistrate, Dehradun wherein it was stated that the petitioner was not provided proper opportunity of hearing nor she was provided copy of the alleged complaint and Notification. The petitioner also submitted a list of O.B.C. (U.P.) and Central List of O.B.C. wherein the caste "Tanwar" and "Singhariya" are shown separately. The order of cancellation passed by the District Magistrate, Dehradun dated 27-9-2008 was challenged by the petitioner before this Court by way of filing writ petition No. 1842/2008 Smt. Pooja Rajput v. District Magistrate, Dehradun and Ors. in which time for filing counter-affidavit was granted to the State. Same is pending. In the meantime the respondents started proceeding further in the matter and on 18-10-2008 the District Magistrate, Dehradun issued a show cause notice to the petitioner seeking petitioner's explanation as to why she may not be removed from the post of "Gram Pradhan" on the ground of submission of false declaration and also on the ground that she had furnished her caste certificate which was obtained by her by playing fraud. The respondents propounded a case that the petitioner is not a bona fide resident of State of Uttarakhand, therefore she is not entitled for the benefit of reservation. Aggrieved by the show cause notice dated 18-10-2008 the present petition was filed.

3. Heard Shri Arvind Vashishtha, Advocate for the petitioner, Shri P. C. Bisht, Brief Holder for the State/respondent Nos. 1 to 4 and 6, Shri S. K. Mandal, Advocate for respondent No. 5 and perused the entire material available on record.

4. Shri Arvind Vashishtha, the learned Counsel for the petitioner submitted before the Court that the petitioner is socially backward and belongs to "Tanwar" caste which is a scheduled backward class. Entry-69 mentioned two different castes "Tanwar" and "Singhariya" but the Collector, Dehradun committed an

error in treating these two castes as one and same. According to Shri Arvind Vashishtha, the District Magistrate in his order dated 27-9-2008 wrongly recorded a finding that in Uttarakhand State, the caste "Tanwar" does not fall within O.B.C. and recorded a perverse finding that it is caste "Tanwar Singhariya" which falls within O.B.C. in Uttarakhand. According to him the District Magistrate failed to appreciate disjunctive (,) used between two nouns "Tanwar" and "Singharia" as a result of which both "Tanwar" and "Singharia" castes separately fall within O.B.C. and independently entitled to the benefit of O.B.C. This issue is not being decided by us as in this petition we are not examining Validity of the order dated 27-9-2008 by which caste certificate of the petitioner was cancelled. Same is subject-matter of another pending writ petition No. 1842/2008.

5. Learned Counsel for the petitioner further submitted that the petitioner is an elected "Pradhan" and no proceedings for her removal can, except by way of Election Petition, on the basis of a pre-election misconduct, be initiated by the Govt./District Magistrate and any, such action will violate Article 243-O(b) of the Constitution of India. According to him action u/s 95(1)(g) of the Panchayat Raj Act can be initiated on a post election misconduct viz. when the elected "Pradhan" acts in a manner which is prejudicial to the interest of Panchayat. He argued that the amended provision/impugned provision, Section 95(1)(g) Sub-clause (iii-a), thus runs contrary to the constitutional scheme which provides election to be challenged in a particular manner. Section 95(1)(g) Sub-clause (iii-a) violates provision of Article 243-O(b) of the Constitution of India and is, therefore, ultra vires Article 243 of the Constitution of India. He submitted that in view of this fact, the notice dated 18-10-2008 issued by respondent No. 2 in purported exercise of powers u/s 95(1)(g) Sub-clause (iii-a) and consequential proceeding therefrom are liable to be quashed. In support of his arguments Shri Arvind Vashishtha cited the judgments reported in State of Himachal Pradesh and Others Vs. Surinder Singh Banolta, , Hoti Lal Vs. State of U.P. and Others, Hoti Lal v. State of U.P.

6. On the other hand Shri S. K. Mandal, learned Counsel for, respondent No. 5 argued that at the time of declaration of Election Notification, the petitioner was not qualified for contesting election of "Gram Pradhan" under O.B.C. category as on that day she was not having valid certificate. He further submitted that Sub-clause (iii-a) of Clause (g) of Sub-section (1) of Section 95 of "Panchayat Raj Act" is not hit by Article 243(0) of the Constitution of India and the show cause notice dated 18-10-2008 was rightly issued to the petitioner.

7. For deciding the issue involved in the present petition the Sub-clause (iii-a) of Clause (g) of Sub-section (1) of Section 95 of "Panchayat Raj Act", Article 243-0 of The Constitution of India and enacted Section 12-C of "Panchayat Raj Act" are being quoted hereunder:

Sub-clause (iii-a) of Clause (g) of Sub-section (1) of Section 95 of U.P. Panchayat Raj Act (as inserted by Amending Act No. XXI of 1998).

95 (1) The State Government may:

(a) to (f)....

(g) remove a Pradhan, Up-Pradhan or member of a Gram Panchayat or a Joint Committee or Bhumi Prabandhak Samiti, or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he:

(i) to (iii)....

(iii-a) has taken the benefit of reservation under Sub-section (2) of Section 11-A or Sub-section (5) of Section 12, as the case may be, on the basis of a false declaration subscribed by him stating that he is a member of Scheduled Castes, the Scheduled Tribes or the backward classes, as the case may be.

Article 243-O of the Constitution of India

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 243-K, shall not be called in question in any Court;

(b) 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.

Section 12-C of the U.P. Panchayat Raj Act. 1947:

12-C, Application for questioning the elections - (1) The election of a person as Pradhan or as member of a Gram Panchayat including the election of a person appointed as the Panch of the Nyaya Panchayat u/s 43 shall not be called in question except by an application, presented, to such authority within such time and in such manner as may be prescribed on the ground that:

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

(b) that the result of the election has been materially affected:

(i) by the improper acceptance or rejection of any nomination or;

(ii) by gross failure to comply with the provisions of this Act or the rules framed thereunder:

2. to 5....

6. Any party aggrieved by an order of the prescribed authority upon an application under Sub-section (1) may, within thirty days from the date of the order, apply to the District Judge for revision of such order on any one or more of the following grounds, namely:

(a) that the prescribed authority has exercised a jurisdiction not vested in it by

law;

(b) that the prescribed authority has failed to exercise a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercise of its jurisdiction illegally or with material irregularity.

8. No doubt, the Panchayats are elevated to the Constitutional status by Part IX of the Constitution introduced by Constitution (73rd Amendment) Act. There is no ambiguity either under Article 243-O(b) of the Constitution of India or u/s 12-C of "Panchayat Raj Act" whereby the jurisdiction of Court or any authority to call in question the declaration of result of an elected office bearer of Panchayat by Returning Officer is expressly excluded. The aforesaid provision of the Constitution of India and "Panchayat Raj Act" contain express provision to that effect. The State Legislature, keeping in view the mandate of Article 243-O(b) of the Constitution of India, enacted Section 12-C of "Panchayat Raj Act", providing therein that election of a person as "Pradhan" shall not be called in question except by way of an election petition, presented to such an Authority within such time and in such manner as may be prescribed. Thus there is no scope of creating a different forum for adjudicating the same issue arising out of same cause of action before Administrative Functionaries which is capable to be adjudicated before Election Tribunal alone subject to judicial control under Sub-section (6) of Section 12-C of "Panchayat Raj Act" by way of revision.

9. In our considered view the provisions of the Constitution are supreme under which every enactment is to be passed. Article 243-O(b) of the Constitution of India is a mandatory and totally binding provision and any provision made by State Legislature in contravention of the aforesaid provisions is patently illegal too. In fact, this Article of the Constitution has prohibited the State Legislature from enacting any law for settling the election disputes of elected "Gram Pradhan" except by way of filing an election petition before the Election Tribunal. Therefore, no Court or Authority is entitled to call in question the declaration of result of an elected "Pradhan" except by way of election petition. We are convinced that Section 95(1)(g) Sub-clause (iii-a) of the "Panchayat Raj Act" violates the Constitutional provision contained in Article 243-O(b) of the Constitution of India and therefore is ultra vires the same. Case law cited by Shri Vashishtha fully covers the question involved in the writ petition. We are also convinced with the arguments of Shri Arvind Vashishtha that action u/s 95(1)(g) of the "Panchayat Raj Act" can be initiated against a "Pradhan" on a post election misconduct viz. when the elected "Pradhan" acts in a manner which is prejudicial to the interest of Panchayat. According to us the question as to whether a person stood disqualified due to his not having a valid caste certificate at the time of his election can only be raised by way of an election petition u/s 12-C of the "Panchayat Raj Act".

10. In view of the forgoing discussion the writ petition is allowed. Sub-clause (iii-a) of Clause (g) of Sub-section (1) of Section 95 of U.P. Panchayat Raj Act, 1947

adapted by Uttaranchal Adaptation and Modification Order, 2001 is declared as ultra vires Article 243(0) of the Constitution of India and the same is accordingly hereby struck down. Consequently, the show cause notice dated 18-10-2008 issued by District Magistrate, Dehradun against the petitioner is hereby quashed with all the consequences., ,

11. No order as to costs.