
(1999) 03 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 707 of 1999

Smt. Vandana

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 17-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 2 RLW 1011 : (1999) 1 WLN 476

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner who is the Ex-Chairperson of Zila Parishad, Udaipur respondent No. 3, has filed this petition and challenged the meeting held on 23.2.1999 to debate the motion of no confidence and the no confidence motion passed against her and it is also prayed that the nomination of Smt. Sajan Katara - respondent No. 4 on the post of Zila Pramukh of Zila parishad, Udaipur in her place made on 27.2.1999 be declared illegal. When this petition had come up for hearing of admission before me on 9.3.1999, I was not much impressed by other arguments advanced by learned Counsel Shri Jasmatia for the petitioner. However, only one argument, which was emphathetically argued by learned Counsel Shri Jasmatia, appealed to me. It was submitted by learned Counsel Shri Jasmatia that the post of Zila Pramukh cannot be filled up by nomination. It can be filled up only by election. In para No. 15 of the petition as well as ground (V), this specific contention was raised. Repeatedly, Mr. Jasmatia was asked to be sure about this and Mr. Jasmatia asserted that there is no such provision under the Act. It was only because of this that I ordered to issue notice to the respondents and also passed the interim order restraining the respondent No. 4 Smt. Sajan Katara nominated by the State Government as Zila Pramukh of Zila Parishad, Udaipur from discharging functions as Zila Pramukh.

2. The respondents are duly served of the notice of this petition. Notice was to be

heard on 5.4.1999. However, today this petition is heard on account of separate applications under Article 226(3) of the Constitution of India filed by the respondents No. 1 to 3 through their counsel Shri Vijay Bishnoi and Shri Mahendra Singhvi for the respondent No. 4. In fact, detail reply is also filed on behalf of the respondents No. 1 to 3 and the reply is also filed by the respondent No. 4. In the reply as well as the applications made under Article 226(3) of the Constitution it has been specifically contended that the petitioner has misled this Court and obtain interim order as there is a clear provision u/s 25 of the Rajasthan Panchayati Raj Act, 1995. Section 25 of the Act reads as under-

25. Handing over of charge - (1) Whenever the election of a member or Chairperson or Deputy Chairperson of a Panchayati Raj Institution has been declared to be void, or whenever such member or Chairperson or Deputy Chairperson-

i)....

(ii) ceases to be so under the provisions of this Act, or

(iii)....

(iv)....

(v)....

whenever a motion of no-confidence is passed against the Chairperson or the Deputy Chairperson of a Panchayati Raj Institution u/s 37, or....

3. Mr. Jasmatia, learned Counsel for the petitioner had no answer to this. Today, he has tried to qualify his statement by submitting that nomination could have been made only by the competent authority and not the State Government. He tried to distinguish the "Government" and the "Competent Authority" by relying upon the definition of "Competent Authority" defined u/s 2(vii) and the "Government" u/s 2(xii) of the Act. This submission is made half heartedly and it is without substance. The Officer or the authority duly appointed by the State Government by notification in the official gazetteer would be the competent authority. But ultimately the State Government is the sovereign. The orders have to be passed by the officers of the Government. Thus, this submission made by Mr. Jasmatia has to be rejected.

4. In view of the above, this petition itself is required to be dismissed on the ground that this Court was mis-led and false statement was made by the petitioner in this petition with a special cost. It is well settled law that if the persons do not come before the Court with clean hands then their petitions will have to be dismissed even though there may be some merits in the case. In this case, as stated earlier, there is no substance or merits in this case.

5. Before parting, I must state that this petition was filed by learned Counsel Shri Jasmatia, who remained as an Additional Advocate General for last several year till 1998, hence it was not expected at least from him to file such petitions with

this type of averments to obtain such ex-parte interim order. The duty of the Advocate is not only towards his client but also towards the Court as well as to the other side as well. I am of the humble opinion that the Advocate should not try to identify himself with the litigants.

6. In view of the above, this petition is dismissed with a special cost of Rs. 10,000/-, which shall be deposited by the petitioner with the Registrar General of this Court within one month from today. The said amount being deposited, the same shall be used for legal aid purpose by the Registrar General. The interim order granted earlier stands vacated, forthwith.

7. As the main petition is dismissed and the interim order is vacated, the applications filed under Article 226(3) of the Constitution of India by the respective respondents are also disposed of.