
(2016) 08 RAJ CK 0029
In the Rajasthan High Court
Case No : Civil Writ (CW) No. 1260 of 2016

Sohan Lal

APPELLANT

Vs

Jagdish

RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayati Raj (Election) Rules, 1994 — Rule 80
Rajasthan Panchayati Raj Act, 1994 — Section 43

Citation : (2016) 2 WLCRajUC 475

Hon'ble Judges : Mr. Vijay Bishnoi, J.

Bench : Single Bench

Advocate : Mr. S.L. Jain, Advocate, for the Petitioner; Mr. A.K. Rajvanshy, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Mr. Vijay Bishnoi, J.—The controversy involved in this writ petition is to the effect that whether a District Judge can transfer the election petition filed before him under Section 43 of the Rajasthan Panchayati Raj Act, 1994 (hereinafter to be referred to as the "Act of 1994") read with Rule 80 of the Rajasthan Panchayati Raj Election Rules, 1994 to any subordinate court.

2. Learned counsel for the petitioner has submitted that as per proviso to Section 43 of the Act of 1994 the District Judge can only transfer a election petition preferred under Section 43 of the Act of 1994 to a Civil Judge or Additional Civil Judge (Senior Division) subordinate to him and not to any other subordinate court.

3. It is argued that in the present case the respondent No. 1 has filed election petition under Section 43 of the Act of 1994 while challenging the election of the petitioner to the post of Sarpanch of Gram Panchayat, Eyaran before the District Judge, Churu, however, the District Judge has transferred the election petition to the Additional District Judge, Sujangarh and the said action of the District Judge,

Churu is in contravention of the proviso to Section 43 of the Act of 1994.

4. Learned counsel for the petitioner has placed reliance on the judgment of this Court rendered in Smt. Ladu Kanwar v. District Judge, Jodhpur Metropolitan & Ors., 1997(1) WLC (Raj.) UC 391, Smt. Manju Saini v. Smt. Parbhati, 1997(1) WLC (Raj.) 466, Smt. Ganga Devi v. District Judge, Bharatpur, 2006 WLC (Raj.) UC 287 & Smt. Indira v. Smt. Prabha, Mukesh v. Dulal Dhali & Ram Kishore v. Badri Prasad, 1998(1) WLC (Raj.) 81.

5. Learned counsel for the respondent No. 1 has frankly admitted that as per the proviso to Section 43 of the Act of 1994 and as per the law laid down by this Hon"ble Court in the above referred judgments the action of the District Judge, Churu of transferring the election petition filed under Section 43 of the Act of 1994 to the Additional District Judge, Sujangarh cannot be sustained.

6. In view of the above, the writ petition filed by the petitioner is allowed.

7. The action of the District Judge, Churu of transferring the election petition to the Additional District Judge, Sujangarh is hereby set aside.

8. The Additional District Judge, Sujangarh is directed to sent the record of the election petition filed by the respondent No. 2 to the District Judge, Churu forthwith. The District Judge, Churu is further directed to try the said election petition by himself or transfer it to any subordinate court as per proviso to Section 43 of the Act of 1994.

9. Stay petition is disposed of.