

Satish and Another Vs. State Election Commission, Bhopal and Others

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Court : Madhya Pradesh

Decided On : Apr-27-2015

Judge : Prakash Shrivastava

Appeal No. : WP No. 869 of 2015

Appellant : Satish and Another

Respondent : State Election Commission, Bhopal and Others

Judgement :

1. Heard finally with consent.
2. This writ petition has been filed by the petitioners challenging the order of MP State Election Commission dated 16/1/2015 countermanding the election to the post of Sarpanch for Gram Panchayat Kansrod, Tehsil Pachore, District Rajgarh.
3. The case of petitioners is that the elections were notified under Rule 28 of MP Panchayat Nirvachan Niyam, 1995 (for short Rules, 1995) and nomination forms for the seat of Sarpanch for Gram Panchayat Kansrod Tehsil Pachore were invited from 1/1/2015 to 7/1/2015. The scrutiny of nomination paper was scheduled for 8/1/15 and the polling was to take place on 22/2/2015. Further case of petitioners is that petitioner No. 2 had submitted the nomination paper and after its scrutiny the nomination paper of petitioner No. 2 was accepted. Petitioner No. 1 had objected to the inclusion of name of respondents No. 5 and 6 in the voter list and after enquiry name was deleted from voter list by the order of Sub Divisional

Officer dated 7/1/15 and nomination paper of respondent No. 6 was rejected by Returning Officer on 8/1/15. The respondents No. 5 and 6 had challenged the order of rejection of Nomination form before respondent No. 2 State Election Commission and State Election Commission vide order dated 16/1/15 has cancelled the election. An issue has been raised before this court that the State Election Commission was not competent to cancel the election.

4. Learned counsel for petitioners submits that State Election Commission had no jurisdiction to cancel the election. He further submits that name of respondents No. 5 and 6 was not in the provisional list and in the final list it was incorrectly included therefore, the Sub Divisional officer by order dated 7/1/15 had rightly deleted the name and no error was committed by the Returning Officer in rejecting the nomination form of respondent No.6. He further submits that the impugned order has been passed by respondent No. 2 without giving any opportunity of hearing to the petitioner and it is without authority of law.

5. Learned counsel for respondent No. 1 and 2 has opposed the writ petition submitting that since the name of respondents No. 5 and 6 was deleted from the voter list in violation of the Rule 15 and 15A of Rules, 1995, therefore, the election Commission has rightly countermanded the election.

6. Learned counsel for respondents No. 5 and 6 has submitted that there was no material before the Sub Divisional Officer while passing the order dated 7/1/15 to hold that name of respondents No. 5 and 6 was included in the voter list on account of clerical error. He further submits that against this order an appeal was preferred before the Additional Commissioner and Additional Commissioner had granted stay in favour of respondents No. 5 and 6 on 8/1/15, therefore, Returning Officer could not have rejected the nomination form of respondents No. 5 and 6.

7. Having heard the learned counsel for parties and on perusal of the record, it is noticed that respondent No. 2 while passing the impugned order dated 16/1/15 has failed to disclose under which provision of MP Panchayat Raj Adhiniyam, 1995 or the Rules of 1995 he has countermanded or cancelled the election to the post of Sarpanch of Gram Panchayat. The only reason which has been assigned by respondent No. 2 to countermand the election is that name of respondents No.

5 and 6 was deleted from the voter list in contravention of certain rules of Rules, 1995 such as Rule 15 and 15-A etc.

8. In the reply before this court also the respondents No. 1 and 2 have failed to disclose the provisions of law under which respondent No. 2 has countermanded the election.

9. Under Article 243-O of the Constitution of India, there is bar to interfere in election matters and in terms of Article 243-O (b) no election to any Panchayat can 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. The remedy of election petition has been provided under Section 122 of Panchayat Election Rules and Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification For Membership) Rules, 1995 have been framed in this regard. Rule 21(1)(c) specifically provides for declaring the election to be void on the ground of improper rejection of the nomination paper.

10. The Division Bench of this court in the matter of State Election Commission MP v. Ras Bihari Raghuwanshi and others, reported in 1995 J LJ 651 in reference to the earlier Rules of 1994 framed under the Act of 1993 has examined the extent of power of Election Commission to countermand the election. The Division Bench after taking note of the judgments of the Supreme court in the matter of N.P. Ponnuswami v. Returning Officer, Namakkal reported in AIR 1952 SC 64, in the matter of Mohinder Singh Gill and another v. The Chief Election Commissioner and others, reported in AIR 1978 SC 851, in the matter of A.C. Jose v. Sivan Pillai reported in AIR 1984 SC 921, Kanhiya Lal Omar v. R.K. Trivedi and others, reported in (1985) 4 SCC 628, S.R. Bommni and others v. Union of India and others, reported in (1994) 3 SCC 1 as also bar contained in Article 243-O of the Constitution has held that the Commission is not empowered to countermand the election on the ground of improper acceptance or rejection of nomination paper. The Division Bench in the matter of Ras Bihari (supra) has held as under:

"17. In the present cases, nomination papers of all but one of the candidates have been rejected on the ground that there are unauthorised over-writings in nomination papers. Election Commission took the view that these over-writings

were made by one of the Election Officer who tampered with the same. It was on this ground that the Election Commission interfered. It is true that Article 243-K(1) of the Constitution and section 42 of the Act vest in the Commission, superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, election and Rule 27(3) of the Rules confers on the Commission power to issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections. Rule 33(6) declares that the order accepting or rejecting the nomination paper passed by the Returning Officer shall be final. As observed in N.P. Ponnuswami's case (AIR 1952 SC 64) the only significance which the rejection of a nomination paper has, consists in the fact that it can be used as a ground to call the election in question. As in the case of Article 329(b), so also in the case of Article 243 O(b), it can be said that the provision is enacted to prescribe manner in which and the stage in which this ground and other grounds which may be raised in law to call the election in question could be raised. As observed in N.P. Ponnuswami's case (AIR 1952 SC 64), by necessary implication, it follows from the language of the provision that these grounds cannot be urged in any other manner or any other stage and before any other court. The scheme of Article 243 O(b) read in the light of Rule 33(6) is that the decision of the Returning Officer shall be final, subject to review only by the Election Tribunal in a duly filed Election Petition. The order passed by the Returning Officer accepting or rejecting the nomination paper is not susceptible to review at any other stage or by any other authority other than Election Tribunal. It is significant to note that the rules do not provide an appeal to the commission or revision suo-motu or otherwise to the commission against the order of the Returning Officer. These circumstances make it clear that whatever be the amplitude of the power vested in the Commission under Article 243-K and section 42 of the Act, it does not take in the power of up-setting the final decision arrived at by the Returning Officer accepting or rejecting the nomination paper. The Election Commission has no jurisdiction to interfere at that stage in that matter.

18 x x

19 x x

21. The last argument advanced by the learned counsel for the appellants is based on Rule 17(3) of the Rules, according to which the Commission has power to issue special or general orders or directions not inconsistent with the provisions of the act to ensure free and fair elections. Learned counsel contended that this power would take in the power to countermand elections on account of wrongful rejection of nomination papers. We have already indicated that the scheme of the provisions relevant for the purpose is to treat the decision of the Returning Officer as final subject only to review by the Election Tribunal. The intervention of the Election Commission on account of wrongful rejection or acceptance of nomination papers would throw the entire election machinery out of gear and is against the scheme of the provisions. Learned counsel for the appellants tried to present a horrendous picture of large number of Returning Officers wrongfully rejecting or accepting nomination papers on account of political or other motives. An equally horrendous picture can be presented of the Election Commission unnecessarily interfering and upsetting the entire process of election. We think that either of the views is only on extreme view which cannot be taken cognisance by the court. Illegal rejection or acceptance of nomination papers, even illegal rejection of nomination papers leading to the only one candidate being left in the field is capable of correction by the Election Tribunal, thereby safeguarding the legality and purity of election. Rule 17(3) of the Rules cannot be regarded as empowering the commission to interfere with the order passed by the Returning Officer accepting or rejecting the nomination papers. Wrongful acceptance or rejection of nomination paper is a ground which could be urged in Election Petition under the M.P. Panchayats (Election Petitions, Corrupt practices and Disqualification for Membership Rules, 1991)."

11. Though the present case is in respect of Rule, 1995 but these Rules also do not empower the Election Commission to countermand the election on the ground of improper rejection of the nomination paper. The Commission's power to issue general or special orders or direction is contained in Rule 18 of Rules, 1995 but this provision is similar to the power which was available to the commission under Rule 17(3) of MP Panchayat Election Rules, 1994 which has already been

examined by the Division Bench in the matter of Ras Bihari (supra) by holding that such a provision does not empower commission to interfere with the order of returning officer accepting or rejecting the nomination paper.

12. Thus, I am of the opinion that the respondent No.2 had no jurisdiction to pass impugned order dated 16/1/15 countermanding the election of the post of Sarpanch.

13. Learned counsel for the parties have also raised an issue in respect of compliance of provisions of Rules 14, 15 etc. of Rules of 1995 in respect of preparation of voter list and correctness of the deletion of name of respondents No. 5 and 6 from the voter list as also the legality of the order dated 7/1/15 passed by the Sub Divisional Officer, but this court need not go into these issues because these issues do not arise for consideration before this court at this stage nor the order of SDO is under challenge before this court. The limited question which is being examined by this court is in respect of the correctness of the order dated 16/1/15 passed by the respondent No. 2 countermanding the election.

14. In these circumstances, the impugned order dated 16/1/15 passed by respondent No. 2 cannot be sustained and is hereby set aside with a direction to respondent No. 2 to hold the election without any delay in accordance with the Rules.

C.C. As per rules.

Petition allowed.

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