

Shiv Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-11-2009

Reported in : 2009(2)AWC1655

Judge : Vineet Saran, J.

Appellant : Shiv Kumar

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

Vineet Saran, J.

1. Heard learned Counsel for the petitioner as well as learned standing counsel appearing for the respondents and have perused the record.

2. An election petition was filed by the respondent No. 4, Rajendra Prasad challenging the election of respondent No. 5, Rekha (Kinner) to the post of Chairman, Nagar Palika Parishad. In the said petition, the petitioner, Shiv Kumar, who was also a candidate for the said post, was also impleaded as a party. He claims that he had secured the third highest votes in the election. From the record, it appears that notice on the petitioner was served on 16.12.2006. In response thereto, the petitioner appeared in the Court on 25.1.2007 but thereafter he did not

appear on any date. Then, on 7.11.2008 he filed an application that election petitioner may be required to provide a copy of the election petition and that he may be granted time to file his written statement. Such application of the petitioner has been rejected by an order dated 23.1.2009. Aggrieved by the said order, this writ petition has been filed..

3. Learned Counsel for the petitioner states that it was obligatory on the part of the Court to ensure that a copy of the election petition was given to the petitioner. In support thereof, he has placed reliance on the decision of the Apex Court in the case of Nahar Enterprises v. Hyderabad Allwyn Ltd. 2007 AIR SCW 6400 : 2007 (2) AWC 1901 (SC). In paragraph 8 of the said judgment, it has been held that when summon is sent calling upon a defendant to appear in the Court and file his written statement, it is obligatory on the part of the Court to send a copy of the plaint and other documents.

4. There is no dispute with regard to the said proposition of law. What has happened in the present case is that after having received notice in December, 2006 and having put in appearance in Court on 25th January, 2007, the petitioner did not make any complaint with regard to non-service of copy of the election petition for the next nearly two years. It was only on 7.11.2008 when for the first time he raised such objection of not having received the copy of the election petition.

5. Notice from the Court is always sent alongwith copy of the election petition and in case if no objection to that effect is raised, it is presumed that the same has been served. Had the same not been served on the petitioner alongwith the notice, he ought to have filed an application raising such objection on the date when he had put in appearance in the Court, which was on 25.1.2007. Having not done so, presumption can be drawn that the copy of the election petition, which is sent alongwith the notice, has been served on the petitioner.

6. In the facts of the present case, when the petitioner himself absented from appearing before the Court after January, 2007 and filed an application only on 7.11.2008, the presumption of the trial court that the petitioner is trying to delay the hearing and decision of the election petition is perfectly justified.

7. As such, no interference is called for with the order impugned in this petition. The endeavour of the Court should be to decide the election petition as expeditiously as possible. In this case the election petition had been filed in the year 2006, which is still pending. While dismissing this writ petition and upholding the order passed by the trial court, it is observed that the Election Petition No. 7 of 2006, Rajendra Prashad v. Rekha, be decided expeditiously, without granting any unnecessary adjournments to either of the parties.

8. With the aforesaid observation, this writ petition stands dismissed. No order as to costs.

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