

Manju Devi Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-04-2008

Reported in : 2008(3)AWC2257

Judge : Sunil Ambwani, J.

Appellant : Manju Devi

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Shri. Shashi Nandan

Judgement :

Sunil Ambwani, J.

1. Heard Shrl Shashi Nandan, senior advocate assisted by Shrl Namit Srivastava for the petitioner and Shrl A.K. Singh and Shri S.P. Singh for the contesting respondent. Learned standing Counsel appeared for the State respondents.

2. Smt. Manju Devi was elected as Pradhan of Village Jungal Aktaha, Nyay Panchayat Chhapauli Tappa Nagwa Tikar, Pargana Silhat, Vikas Khand Gauri Bazar Tehsil Rudrapur, district Deoria. Shri Surendra Pratap Singh filed an election petition under Section 12C(2) of U.P. Panchayat Raj Act, 1947 (in short, the Act), challenging the elections on the ground that his nomination paper was wrongly rejected a day before elections as he had resigned from the post of

Chairman of the Cooperative Cane Development Union Limited Gauri Bazar, before filing the nominations. The District Magistrate did not have the authority to cancel his candidature and to put a cross mark on the ballots, on his name and election symbol. The election petition was allowed and the elections were set aside by the Sub-Divisional Magistrate, Rudrapur on 9.8.2007, with the directions to hold fresh elections. A revision, under Section 12C(6) of the Act arising out of order of the Prescribed Authority, was dismissed by the Special Judge, (E.C. Act) Court No. 5, Deoria, on October 4, 2007.

3. The petitioner has challenged the order of the Election Tribunal and the judgment in revision in Writ Petition No. 51042 of 2007. The Court has, by its order dated 15.11.2007, stayed the fresh elections of the Pradhan till the next date of listing. The interim order was extended on 20.12.2007. 8.1.2008 and thereafter on 5.2.2008 till 31.3.2008.

4. In the meanwhile, the District Magistrate made a temporary arrangement under Section 12J(2) of the Act by nominating one Shri Lal Bihari Pandey to officiate as Pradhan of the village. This temporary arrangement was challenged in Writ Petition No. 4945 of 2008. By an interim order dated 28.1.2008, both the writ petitions were connected. With the consent of parties, both the writ petitions were heard and are being finally decided.

5. The short question, which calls for consideration of the Court in both these writ petitions, is whether the nomination of Shri Surendra Pratap Singh could be rejected by the District Magistrate on the basis of some clarification Issued by the State Election Commission on 8.8.2005, without giving him any opportunity of hearing, and that whether Shri Surendra Pratap Singh had in fact resigned from the post of Chairman of the Cooperative Cane Development Union Ltd., Gauri Bazar on 2.8.2005 and the resignation was accepted on 16.8.2005.

6. The election programmes, notified by the State Election Commission for the elections of Pradhan for the year 2005, provided:

Date of filing nomination papers - 2.8.2005 to 4.8.2005 Scrutiny of nomination papers - 5.8.2005 to 6.8.2005 Return of nomination paper - 7.8.2005 to 8.8.2005

Date of allotment of election symbols - 8.8.2005 Date of polling - 20.8.2005 Date of counting - 28.8.2005 & 29.8.2005

7. Shri Surendra Pratap Singh, election petitioner alleged that he had filed his nomination paper with the election officer on 4.8.2005. It was scrutinized and found to be valid and that on 8.8.2005 he was allotted Camera' as election symbol. There were eight candidates in the elections in which his name was shown at serial No. 8 in the ballot paper. The father-in-law of Smt. Manju Devi, Shri Anugrah Narain Singh alias Khokha was the Member of Legislative Assembly of the ruling party and was not in good terms with the election petitioner. A criminal case is pending between them and that since the father-in-law of opposite party realized that the petitioner is a very popular person and is likely to win the elections, he put pressure upon the District Magistrate/District Election Officer on which on 19.8.2005, a day before polling a cross mark was put on the ballot papers against the name and election symbol of the petitioner. In spite of this fact, some of the electors put their seal on the election symbol given to the petitioner. The elections were affected by an illegal act done on undue pressure. The petitioner's nomination paper was wrongly rejected a day before the polling, affecting the entire elections.

8. In paragraph 2 of the written statement Smt. Manju Devi the petitioner alleged, by way of special statement that Shri Surendra Pratap Singh was not eligible to contest the elections. He had full knowledge of the fact that he was Chairman of the Cooperative Cane Development Union Ltd., Gauri Bazar and was not qualified to contest the elections of Pradhan. He withheld this fact in his nomination paper and got the election symbol allotted to him. When the District Election Officer came to know about this fact, he cancelled the nomination. The elections were held in accordance with the law, and that she was validly elected. She denied any enmity between her father-in-law and the father of the election petitioner.

9. The Election Tribunal framed issues including issue No. 1, as to whether after acceptance of nomination papers and allotment of election symbols by the election officer/returning officer, they had a right to put a cross mark on his ballots against his election symbol and the effect thereof. The Sub Divisional Magistrate,

Rudrapur, Deoria, acting as Election Tribunal found that Shri Surendra Pratap Singh had resigned as Chairman of the Cooperative Cane Union on 2.8.2005 and the resignation was accepted on 16.8.2005. If the returning officer had given notice to Shri Surendra Pratap, he would have certainly produced the evidence of resignation before him. The returning officer was not careful and that his order dated 19.8.2005 is invalid. The nomination of Shri Surendra Pratap was accepted and he was allotted election symbol and as such he has right to file the election petition. In dismissing the revision, the Special Judge (E.C. Act) Court No. 5, Deoria held that Shri Surendra Pratap was holding a honorary post. In Tula Ram v. State of U.P. 1965 ALJ 341, it was held by the Division Bench of this Court that the resignation given on the honorary post is effective on the day, when it was given and that since Shri Surendra Pratap Singh had resigned on 2.8.2005, he should have been given an opportunity to explain the fact. The order rejecting his candidature was illegal.

10. Shri Shashi Nandan, learned Counsel for the petitioner submits that Shri Surendra Pratap Singh-the contesting respondents had withheld the fact of his disqualification under Section 11J of the Act. He was not eligible to contest the elections as he was holding office of profit, and falls in the category of Section 11J of the Act. The State Election Commission had clarified this fact. As soon as the District Magistrate came to know about this fact, he cancelled the candidature of Shri Surendra Pratap Singh-the election petitioner. Shri Shashi Nandan would submit that Shri Surendra Pratap Singh concealed this fact from the Election Tribunal as well. He did not state anything in his pleadings that he was holding the post of Chairman of the Cooperative Cane Union and had resigned on 2.8.2005. The election petition is silent on this aspect. The elections are held in accordance with the law, and that a person, who conceals relevant facts of his eligibility to contest, has no right to seek any remedy from the Court. Shri Surendra Pratap was fully aware of the legal position that he is not eligible to contest the elections. If he had resigned from the post on 2.8.2005, he should have stated this fact and produced the evidence himself along with the nomination paper. He did not file, replication and did not reply to paragraph 2 of the written statement. He tried to lead evidence of his resignation without making any clear and categorical pleadings in that regard. He had no right to urge that he should have been given

an opportunity to prove that he had resigned. It is submitted that the story of resignation was set up during the course of proceedings of the election petition to prejudice the Election Tribunal. The issue, whether the petitioner had resigned or his resignation was effective from the date when he resigned, is not material as Shri Surendra Pratap Singh had withheld the fact of holding office of the Chairman of the Cooperative Cane Union at the time of filing nomination papers. The election officer followed the directions of the State Election Commission, which supervises the entire elections under Section 12BB of the Act. The election officer was bound to follow the decisions of the State Election Commission and that as soon as he received information, he had to cancel the nomination of Shri Surendra Pratap Singh, failing which the entire election would have been affected.

11. Shri Shashi Nandan also submits that the District Magistrate was not impleaded in the election petition deliberately so that the correct facts may not be disclosed to the Court. In the present case in view of the allegations made against the election officer, it was necessary to implead him and that the election petition was liable to be dismissed for misjoinder of parties. He submits that in this case the failure to implead the District Magistrate should have resulted in dismissing the election petition.

12. Learned Counsel for Surendra Pratap Singh, on the other hand, submits that the resignation from an honorary post for which a person has not received pecuniary benefits from the State Government, is effective from the date when it was tendered. The acceptance of resignation is a mere formality. The Election Tribunal had framed an issue in this regard and had rightly accepted evidence, which was relevant and was admissible on record. The letter of the District Magistrate dated 19.8.2005 was not produced on record. Shri Surendra Pratap Singh was eligible to contest the elections. The cancellation of his nomination and the cross mark put against the election symbol was in gross violation of the right to contest the elections. The source, by which the District Magistrate received information about his candidature, was not disclosed and that the District Magistrate should have given a minimal hearing to the petitioner before cancelling his nomination paper.

13. On the admitted facts Shri Surendra Pratap Singh the election petitioner was the Chairman of the Cooperative Cane Union up to 2.8.2005. He filed his nomination without disclosing the fact that he was Chairman of the Cooperative Cane Union and had become eligible to contest, on the date of nomination, as he had resigned on 2.8.2008. The nomination papers provide for a disclosure as to whether the petitioner holds any post which may disqualify him from contesting the elections of the Pradhan. In order to clear the doubts, Shri Surendra Pratap Singh was obliged in law to have disclosed that he had resigned so that election officer could have verified this fact. The question of giving him an opportunity of hearing would have arisen only if Shri Surendra Pratap Singh had disclosed the correct facts. It is only then that Shri Surendra Pratap Singh may have complained that his nomination paper could not be rejected either on the day of scrutiny or a day before the polling had taken place. The sequence of events would show that Shri Surendra Pratap Singh did not implead the election officer so that Election Tribunal may not discover correct facts with regard to his resignation. The source, from which the election officer came to know the facts that he was holding office which disqualified him, was not material as it is admitted that he was not eligible to contest elections up to the day he filled the nomination papers. The election officer did not commit any illegality in rejecting his nomination. If he was allowed to contest, the entire elections were affected and results had to be cancelled. In the circumstances, the District Magistrate had no option but to cancel the nomination of Shri Surendra Pratap Singh.

14. Section 11E of the U.P. Panchayat Raj Act, 1947 provides that a person shall be disqualified for being elected to or holding the office of Pradhan or member of Gram Panchayat or a Panchayat or a Nyay Panchayat, if he is - (a) member of Parliament or of the State Legislature ; or (b) member, Pramukh or Uppramukh of a Kshettra Panchayat ; or (c) member, Adhyaksha or Upadhyaksha of a Zila Panchayat ; or (d) Adhyaksha or Upadhyaksha of any co-operative society.

15. Section 11E was added to the U.P. Panchayat Raj Act by U.P. Act No. 9 of 1994. The State Election Commission, by its letter dated 8.8.2005, issued a clarification to all the District Magistrates that the disqualification under Section 11E of the Act, does not allow persons holding the offices given under Section HE

to contest the elections, and if their nominations have been accepted earlier, they shall be treated to be rejected. A clarification was issued on October 9, 2005 that the mistake in the letter dated October 8th 2005 of misspelling 'Sahkari', as 'sarkari' should be corrected. The elections of the Gram Panchayats, under the U.P. Panchayat Raj Act, 1947, are held under the supervisions of the State Election Commission. Section 12BB vests the superintendence of the elections in the State Election Commission. Section 12BB provides:

12BB Superintendence etc. of the election.--(1) The superintendence, direction and control of the conduct of the election to the office of Pradhan, Up-Pradhan or a member of a Gram Panchayat shall be vested in the State Election Commission ;

(2) Subject to the superintendence, direction and control of the State Election Commission the Mukhya Nirvachan Adhikari (Panchayat) shall supervise and perform all functions relating to the conduct of the election to the office of Pradhan, Up-Pradhan or a member of a Gram Panchayat in the State.

(3) The State Government shall, in consultations with the State Election Commissions, by notification, appoint the date or dates for general election or bye-elections of the Pradhan, Up-Pradhan or members of a Gram Panchayat.

16. It is admitted by Shri Surendra Pratap Singh that he was Chairman of the Cooperative Cane Development Committee, Gauri Bazar, and before his alleged resignation he was not eligible to contest the elections. He did not disclose this fact in his nomination paper to be filed between 2nd August to 4th August, that he was holding the post of Chairman of the Cooperative Cane Development Committee and that he had resigned on 2.8.2005. By the time this fact came to the notice of the District Magistrate, the election symbols were allotted and that the elections were announced and polling had to take place on 20.8.2005. The District Magistrate received directions of the State Election Commission on 9.10.2005. By the time the ballots were printed. In the circumstances, the District Magistrate proceeded to cancel the candidature of Shri Surendra Pratap Singh by putting a cross against his election symbols and thus disqualifying him from contesting the elections.

17. It is interesting to note that the petitioner did not take up the ground of his resignation, and eligibility to contest the elections in the election petition. There are no such facts alleged in the entire election petition. In para 2 of the special statement, in written statement, clearly averred that the election petitioner was aware that he was not eligible to contest the elections as he was working as Chairman of the Cane Union, Gauri Bazar. He withheld this fact in filing the nominations and got an election symbol allotted. The District Election Officer cancelled his candidature. Shri Surendra Pratap Singh did not deny this averment. The substance in the contention of Shri Shashi Nandan is that election petition could not be allowed on the grounds, which were not taken in the pleadings. There was no issue framed on the point as to whether Shri Surendra Pratap Singh had resigned on 2.8.2005 and was eligible to contest the elections. It was at the stage of evidence that he filed documents of his resignation on 2.8.2005, its acceptance on 16.8.2005 and then relied upon on the decisions of the Court, that the resignation of the holder of officiating post is to be accepted on the same day. The Election Tribunal acted illegally and arbitrarily in allowing the documentary evidence beyond the pleadings. The letter of resignation and its acceptance were not proved by the oral evidence.

18. In the revision filed by the petitioner before the Special Judge, E.C. Act, Court No. 5, Deoria, the ground, that the evidence could not be accepted beyond pleadings, was not discussed. The revisional court proceeded on the basis, that Shri Surendra Pratap could have proved his resignation only if the Election Tribunal had given him an opportunity. The question of giving opportunity would have arisen only if the election petitioner had disclosed about the fact of his resignation either In the nomination paper or otherwise.

19. In the counter-affidavit, Shri Surendra Pratap has not denied that he did not take the ground of resignation in the election petition. It is stated in paragraph 8 of the election petition, that the petitioner did not know the reason on which he was disqualified. He was in dark about the fact and had no occasion to plead about it in the election petition. His candidature was rejected without assigning any reason. The disqualification could be provided under Section 5A of the Act.

20. The election petitioner had obtained a certificate of his resignation on 16.8.2005 (Annexure-9 to the writ petition) and a certificate, from the Secretary of the Cooperative Society that he had resigned on 2.8.2005, on 16.8.2005 (Annexure-8 to the writ petition). The election petition was filed on 11.11.2005. The written statement giving the grounds of disqualification was filed on 27.6.2006. The petitioner neither pleaded this fact nor amended the election petition or filed replication giving the date of his resignation. He did not insist on framing issue on this question, and led evidence only by way of surprise to the election petitioner. The right to contest the Sections and to file an election petition are statutory rights. The election petition to set aside the elections of a Gram Pradhan is regulated by the U.P. Panchayat Raj (Settlement of the Election Disputes) Rules, 1994. Rule 4 of these Rules provides that subject to the provision of the Act and the Rules every election petition shall be tried by the Sub-Divisional Officer as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 for the trial of the suits. Order XVIII. Rule 2 of Code of Civil Procedure provides that on the day fixed for hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the Issues, which he is bound to prove. Rule 3 provides that where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. The right to lead evidence does not provide to take any party by surprise. The evidence is to be led on the issues which the plaintiff or the defendant is required to prove. Where no issue has been framed, the party is not entitled to lead evidence and then to rely upon it in proving of his case. In the present case, the issue No. 1 framed by the Prescribed Authority namely whether the Election Tribunal/Returning Officer had authority to cancel election petitioner's nomination after it was allotted to him and issue No. 2 as to whether the election was affected by scoring out the nomination and election symbol of the election petitioner a day before elections, did not give any indication that the election petitioner would proceed to prove that his disqualification was removed by his resignation. The documents were admitted in evidence beyond the pleadings.

21. The Writ petition No. 4945 of 2008 and 51042 of 2007 are allowed. The judgments and orders passed by respondent No. 1 dated 4.10.2007, and the respondent No. 2 dated 8.9.2007 are set aside. The consequential orders dated 2.11.2007 and 13.11.2007 in Writ Petition No. 4945 of 2008 are also set aside. These orders shall not affect the elections and functioning of the petitioner as Pradhan of Village Jungal Aktaha, Nyay Panchayat Chhapaul Tappa Nagwa Tikar, Pargana Silhat, Vikas Khand Gauri Bazar Tehsil Rudrapur, district Deoria.

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