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Jamna Devi Vs. District Election Officer (District Collector), Sikar and Others

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Court : Rajasthan

Decided On : Dec-19-2000

Reported in : 2001(1)WLC389

Judge : Dr. Ar. Lakshmanan, CJ. and; A.K. Parihar, J.

Acts : Rajasthan Panchayati Raj Act, 1993 - Sections 243; Rajasthan Panchayati Raj Election Rules, 1994 - Rule 52; [Constitution of India](#) - Articles 226 and 243(3)

Appeal No. : D.B. Civil Special Appeal (Writ) No. 1029 of 2000

Appellant : Jamna Devi

Respondent : District Election Officer (District Collector), Sikar and Others

Advocate for Pet/Ap. : Sri Ram Yadav, Adv.

Judgement :

ORDER

Lakshmanan, CJ.

(1). The appellant filed a writ petition before this Court challenging the election of respondent No. 3 on the post of Sarpanch, Gram Panchayat, Hanspur, Panchayat Samiti Sri Madhopur, District - Sikar, on the ground of fundamental deficiencies in election procedure and the illegality committed by the Returning Officer. The writ petition was dismissed on 1.8.2000 by the learned Single Judge, on the ground

that it is not maintainable in terms of Section 243(O)(B) of the Rajasthan Panchayati Raj Act in as much as the election of the Sarpanch can only be challenged by filing an Election Petition and the same is also provided under Article 243(o)(B) of the [Constitution of India](#). Being aggrieved the appellant has filed this Special Appeal.

(2). We have heard Shri Sriram Yadav, learned counsel for the appellant.

(3). The learned counsel submitted that the election of the respondent No. 3 on the post of Sarpanch was challenged on the ground that the result of the election has not been declared in the proforma given under Rule 52 of the Panchayati Raj (Election) Rules, 1994. Our attention was invited to Annex. 7 filed along with the writ petition. According to the learned counsel, the said annexure would show that even the number of votes secured by the candidates have no been mentioned in the result sheet and no detail whatsoever was provided by the Returning Officer in regard to the number of candidates. Valid votes secured by the winning and defeated candidates as also the number of invalid votes have not been furnished in the result sheet. Since the mandatory provisions have not been complied with by not furnishing all such details in the result sheet, the election held is bad and illegal. It is further submitted by Shri Yadav that since the mandatory provisions of the Panchayati Raj Election Rules were not followed, the election under challenge has become void ab initio and, therefore, the appellant had every right to invoke extra ordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#).

(4). We are unable to countenance the submissions made by the learned counsel for the appellant. The Hon'ble Supreme Court in the case of N.P. Ponnuswami vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem (1) has held that where a right or liability is created by a statute which give a special remedy for enforcing it, the remedy provided by that statute only must be availed of. The same view was taken by a Division Bench of this court in the case of O.P. Gupta vs. Union of India and others (2) and the Division Bench held that a writ petition seeking directions against the Returning Officer in the matter of election of Associated Bank Officers Association is not maintainable since the Returning

Officer is not a statutory authority but an ordinary person. This Court further held that a writ petition questioning the election of an Association of the Bank Officer is a matter of internal management of the Association wherein no fundamental or legal right of the petitioner is involved and consequently, he cannot invoke the jurisdiction of the High Court under Article 226 of the [Constitution of India](#). This Court disposed of the above matter by following a recent ruling of the Supreme Court, which has interpreted the term 'election' to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result and that no election to either House of Parliament or either House of the Legislature of a State shall be called in question except by an Election Petition presented by such authority and in such manner as may be provided for by or under any law by the appropriate Legislature. The Supreme Court has further observed that if an election is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy by writ petition has to be postponed till after completing of proceedings in an election.

(5). In the instant case, it is contended that the mandatory provisions of the Panchayati Raj Election Rules 1994 were not followed and, therefore, the election under challenge became void ab initio. As such, the appellant had every right to invoke the extra ordinary jurisdiction of this Court under Article 226 of the [Constitution of India](#). In our opinion, this cannot be a ground for maintaining a writ petition in this Court. If there is any ground relating to non-compliance of the provisions of the Panchayati Raj Elections Rules on which the validity of an election process could be questioned, the appellant, who is also a candidate in the election, can question the same by filing an Election Petition. It is now represented that the election is over and the counting is also over so also the declaration of the names of successful candidates has also been made. Under such circumstances, the appellant cannot maintain the writ petition in this court and, he may raise an election dispute before the Election Tribunal as provided in the Panchayati Raj Elections Act and the Rules made thereunder. The result was declared on 31.1.2000. The writ petition was filed on 16.3.2000 and was disposed of by this court on 1.8.2000. The Special Appeal was filed on 2.9.2000. Therefore, the time taken by the appellant in filing the writ petition and the special appeal has to be

excluded while computing the period of limitation in filing the Election Petition. The appellant shall file an application for condonation of delay in filing the election petition by explaining the reasons and if the Election Petition alongwith such an application for condonation of delay is filed, the Election Tribunal shall consider the same and permit the appellant to prosecute the same.

(6). With the above observations/directions, the present Special Appeal is dismissed.

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