

Sushil Kumar Rawal Vs. State and ors.

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Court : Rajasthan

Decided On : Jan-11-2008

Reported in : RLW2008(2)Raj1825

Judge : M.N. Bhandari, J.

Appellant : Sushil Kumar Rawal

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

M.N. Bhandari, J.

1. The matter has come on the application moved by the intervener seeking vacation of the interim order passed by this Court on 30.9.2005.

2. It is stated by the learned Counsel for the intervener that petitioner has made a false declaration in the application regarding his caste and thereby indulged himself in the malpractice to contest the election of the panchayats. It was submitted that petitioner is not belonging to the S.C. Category for which the post was reserved hence, the election of the petitioner cannot be allowed to stand therefore the necessary action taken by the government, should not be withheld and, therefore, prayed for vacation of the interim order. During the course of

argument of the application, both the counsel for the parties agreed that matter may be decided finally as argument of the stay application as well as of the writ petition are one and the same. With the agreement of the parties, the matter was taken up for hearing.

3. Learned counsel for the petitioner submits that the very basis of the enquiry initiated by the government is that petitioner does not belong to S.C. whereas petitioner belongs to S.C. Category itself therefore, the enquiry at the instance of person interested is required to be quashed.

4. Learned counsel for the respondents submits that factually, the issue regarding caste of the petitioner can be determined only when the enquiry is allowed to proceed and not otherwise therefore, it was submitted that looking to the ground taken in the writ petition, the interim order as well as writ petition deserves to be dismissed.

5. While hearing the arguments, learned Counsel for the respondents was asked certain questions by this Court as to whether the government can initiate an enquiry s in the matter pertaining to election which includes even wrong acceptance of nomination. In that regard, learned Counsel for the respondents was asked to go through Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 as well as provision of Article 243-o of the Constitution of India. For ready reference, Rule 80 of the Rules of 1994 and provision of Article 243-o of Constitution of India are quoted hereunder:

Rule 80. Manner of challenging an election under the Act.- An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared, on any one or more of the following grounds-

(a) that on the date of election a returned candidate was not qualified or was disqualified for such election, or

(b) that any corrupt practice was committed by a candidate or by any other person with the consent or connivance of the candidate, or

(c) that any nomination was improperly rejected, or

(d) that the result of the election in so far as it concerns the returned candidate was materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the candidate by a person other than that candidate or by a person acting with the consent or connivance of such candidate, or

(iii) by improper reception, refusal or rejection of any vote or the reception of any vote which was void, or

(iv) by any non-compliance with the provisions of the Act or of these rules, or

(e) that in fact the petitioner or some other candidate received a majority of the valid votes, or

(f) that but for votes obtained by the returned candidate by corrupt practices, the petitioner or some other candidate would have obtained a majority of the valid votes.

Article 243-o, Bar to interference by courts in electoral matters, -Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall 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.

6. The aforesaid provisions were shown to the learned Counsel for the respondents to demonstrate that the matter of corrupt practice or improper acceptance of nomination in a election can be made subject-matter of challenge in election petition but the government cannot initiate any action in that regard because there is specific bar for challenge to the elections other then by way of election petition as is provided under Article 243-o of the Constitution of India. In reply to this, learned Counsel for the respondents submitted that in view of the provisions of Article 243F of the Constitution of India, the government is competent to take up the matter and complete the enquiry. In that regard, a reference of Section 39 of Panchayat Raj Act of 1994 was also made to show that as per provisions of Section 39(1)(A) of the Rajasthan Panchayati Raj Act, 1994, necessary enquiry can be conducted by the government. For ready reference, provisions of Article 243F as well as Section 39(1)(A) of the Act of 1994 are quoted hereunder:

243-F. Disqualification for membership.-(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat-

(a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;(b) If he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

Section 39. Cessation of membership.-(1) [A] member of a Panchayati Raj Institution shall not eligible to continue to be such member if he-

(a) is or becomes subject to any of the disqualifications specified in Section 19; or

(b) has absented himself from three consecutive meetings of the Panchayati Raj Institution concerned without giving information in writing to such Panchayati Raj Institution; or

(c) is removed from the membership; or

(d) resigns from the membership; or

(e) dies; or

(f) fails to make the prescribed oath or affirmation of the office of membership within three months from the date of election or appointment.

7. Perusal of Article 243 demonstrates that same is pertaining to the disqualification of a candidate for being chosen and does not pertain to corrupt practice adopted by a candidate in the election therefore, with no stretch of imagination, provisions of Article 243F can be applied in a matter where challenge to the election has been made due to adoption of corruption practice or improper acceptance of nomination. Perusal of Section 39(1)(A) also demonstrates that same is also in regard to the disqualifications specified under Section 19 and not in regard to the corrupt practice adopted by a candidate. Hence, both the provisions on which my attention has been drawn by the learned Counsel for the respondents have no application in view of the Full Bench judgment reported in 2007(2) WLC 526 : 2007(2) RLW 1674 wherein, referring to Article 243F and Section 39 of the Act of 1994, it was held that both provision applies on post election disqualifications only.

8. It was further submitted by the learned Counsel for the respondents that the matter otherwise decided by the Full Bench in a reported case in Smt. Sameera Bano v. State of Rajasthan and Ors. 2007(2) WLC 526 (supra) is not applicable.

9. Learned counsel for the petitioner adopted the query raised by the Court and submitted that though in specific term, this legal position has not been raised in the writ petition but looking to the fact that the aforesaid issue goes in the root of the case and otherwise is being a purely legal issue, petitioner should be permitted to raise such issue orally more so when a query in that regard has already been

raised by the Court, looking to the fact that ultimately matters are required to be decided after taking note of the provisions of law.

10. Looking to the aforesaid, the oral argument of the learned Counsel for the petitioner in the light of the query raised by the Court was permitted.

11. From the facts mentioned above, it is clear that in view of the specific bar in the Constitution regarding taking up all the matters pertaining to election other than by way of election petition, the government is not competent to initiate any action either under Section 38 or 39 and, therefore, in so far as all actions by the government by issuing notice or otherwise are hit by the provisions of the Constitution of India referred to in the judgment more so when in the Full Bench judgment *supra* it was already held that Article 243F and Section 39 applies only on post election disqualifications.

12. Hence, in my firm view, the action of the government is not sustainable. In the result, the writ petition succeeds and the same is allowed. All the actions of the government so initiated are held to be without authority of law being barred by Constitution.