

Pukhraj Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-07-1995

Reported in : 1995(3)WLC734; 1995(1)WLN238

Judge : N.K. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 5399 of 1994

Appellant : Pukhraj

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Mr. Mehta

Disposition : Petition dismissed

Judgement :

N.K. Jain, J.

1. By this writ petition under Article 226 of the Constitution of India the petitioner seeks to quash the order (verbal) passed by the respondent No. 3 by which the nomination paper of the petitioner was rejected.

2. Briefly stated the facts of the case are that the petitioner is the member of Jodhpur Nagrik Sahakari Bank Ltd., Jodhpur (respondent No. 2), As the term of the Board of Directors has already expired, by notification dated 10.11.94 (Annex.

1) published in daily newspaper 'Rajasthan Patrika'. election of Board of Directors was declared. Pursuant to the election programme. the petitioner filed his nomination paper. After scrutiny, on 18.11.94, the nomination paper of the petitioner was rejected on the ground that in his account Rs. 500/- was not maintained for two years. This writ petition is directed against the rejection of the nomination paper.

3. This writ petition has been filed on 21.11.94. While issuing notice on 25.11.94, this Court ordered that in the meantime the petitioner would be permitted to contest and participate in the election, which was postponed to 29.11.94 instead of 26.11.94 subject to the result of the writ petition. It was also ordered that the result be not declared. In pursuance to the notice, the non-petitioner No. 1 filed reply on 3.12.94 along with Annex, Rule /1 declaration filed by the petitioner alongwith nomination form and Annex. Rule /2 petitioner's back-account. An application under Article 226(3) of the Constitution was also filed to vacate the stay order dt. 25.11.94. Rejoinder to the reply has also been filed on 5.12.1994. It was also ordered that this case will be heard along with S.B. Civil Writ Petition No. 5394/94 Devi Chand v. State of Raj. and Ors. and petition No. 5381/94 Nirmal Nahar v. State of Raj. and Ors.

4. As agreed by the learned Counsel for the parties, the matter is heard finally.

5. Mr. Mehta, learned Counsel for the petitioner has contended that the respondent No. 3 Election Officer has committed error in rejecting the nomination paper of the petitioner since the petitioner was having Rs. 500/- continuously for more than two years as required under the Bye-law No. 31.

6. Mr. Lodha, learned Counsel for the non-petitioner No. 1 has raised preliminary objection about the maintainability of the petition on the ground of availability of alternative remedy under Section 75 of the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as the Act of 1965). He has also submitted that the election process is in motion and the impugned order whereby petitioner's nomination form has been rejected has not been placed on record and it would not be proper to interfere under Articles 226 of the Constitution, He has further contended that the petitioner was not holding Rs. 500/- for continuous period of

two years whereas in the declaration form appended by him alongwith the nomination form he wrongly mentioned that he is having Rs. 500/- for continuous period of two years in his account No. 57. therefore, the Election Officer has rightly rejected the petitioner's nomination paper. In this respect, he placed reliance on the judgment rendered in Babulal v. State (1994(2) WLC 8) and Surinder Singh v. Central Government and Ors. : [1986]3SCR946 .

7. I have heard learned Counsel for the parties and perused the material on record as weell as the relevant provisions.

8. The relevant bye-law which deals with the eligibility for election as Director is Bye-law No. 31, which runs as under:

31. Eligibility for Election as Director:-A shareholder member shall not be eligible to be elected as director unless he is a shareholder member of the bank for at least two continuous years prior to the date of election and should have maintained a deposit account with the bank for a countinuous period of two years With a credit balance of not less than Rs. 500/-. subject to a bank has completed its 2 years working, To newly organised banks this clause will not be applicable.

9. It is clear from the said Bye-law No. 31 that one shall not be eligible to be elected as Director unless he is a share- holder member of the Bank for at least two continuous years prior to the date of election and should have maintained a deposit account with the bank for a continuous period of two years with the credit-balance of not less than Rs. 500/-. According to the respondents the petitioner was not having Rs. 500/- for continuous two years in his account No. 57 from the period 8.2.1993 to 19.2.93 and thereafter from 10.1.94 to 27.1.1994 which is clear from the document filed by respondent No. 1 and marked as Annex. Rule 1/2 mentioning that petitioner has Rs. 500/- in account on.57. which has not been disputed by the petitioner. Though it has been argued by Mr. Mehta that the petitioner was having Rs. 500/ - in Fixed deposit but according to Mr. Singhavi that does not come within the purview of credit balance of share-holder account, Be that as it may as admittedly this fact was not brought to the notice of the Election Officer at the point of time by the petitioner, therefore, it cannot be said that the Election Officer has erred in rejecting the nomination paper of the petitioner since

he was not fulfilling the conditions precedent for filing nomination paper Under these circumstances, now the petitioner cannot take any advantage out of the alleged fixed deposit and no relief can be granted to the petitioner in the exercise of extra- ordinary jurisdiction.

10. No other point has been pressed before me.

11. Consequently, the writ petition has no force and the same is hereby dismissed. The ad-interim order dt. 25.11.1994 stands discharged.

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