

Sohan Lal Vs. the Distt. and Sessions Judge and ors.

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Court : Rajasthan

Decided On : Mar-17-1997

Reported in : 1997WLC(Raj)UC584; 1997(1)WLN393

Judge : P.P. Naolekar, J.

Appeal No. : S.B. Civil Writ Petition No. 1247 of 1996

Appellant : Sohan Lal

Respondent : The Distt. and Sessions Judge and ors.

Disposition : Petition allowed

Judgement :

P.P. Naolekar, J.

1. On 23.12.94, election-petition was presented before the Election Tribunal (District & Sessions Judge, Bikaner-respondent No. 1) under Section 36 of the Rajasthan Municipalities Act, 1959 (in short, to be called 'the Act' hereinafter) challenging the election of Ward-Member of the Municipal Council, Bikaner. On the election-petition, stamp of Rs. 11/-was affixed. On verification, the office made the report: 'proper payment of court-fee and case be registered'. By order dated 03.01.95, the Election Tribunal registered the case and directed issuance of notices to the respondents. On 18.05.95, application was moved by respondent

No. 2 Kana Ram - returned candidate - that the election petition as filed is not maintainable as affixture of the court-fee of Rs. 11/- is not in accordance with law as under the Rajasthan Court-Fee & Suit Valuation Act, 1961 Schedule - II vide Article 11(E) it is required that every election petition questioning the election of a person to the office of Member of the local-authority should carry the court fee of Rs. 50/- and, therefore, the election petition be dismissed. On 11.07.95 petitioner filed application that he is ready and willing to pay the deficit court-fee. On 11.03.96, by the impugned order, the election petition was dismissed on the preliminary submission of insufficient payment of court-fee. The petitioner has challenged the impugned order before this Court.

2. It is submitted by the counsel appearing for the respective parties that no court fee is prescribed on election-petition under the Act and the court-fee required to be paid on the election-petition challenging the election of a member of any local-authority is provided under the Rajasthan Court-Fee & Suit Valuation Act, 1961 (in short, to be called the Act of 1961' hereinafter). When the Court-fee is required to be paid under the Act of 1961, the provisions of the Act of 1961 are attracted for consideration and the manner in which the court-fee is required to be paid, Sub-section (1) of Section 11 lays down that the Court-fee payable shall be decided by the Court on the basis of the materials and allegations contained in the plaint and on the material contained in the statement. This decision, however, is subject to further review and correction in the manner provided under Sub-section (2). Sub-section (2) of Section 11 provides that the defendant may plead that subject-matter of the suit has not been properly valued or that the fee paid is not sufficient and the Court shall decide that question as a preliminary issue. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a day before which the plaint shall be amended in accordance with the Court's decision and the: deficit, fee shall be paid. If the plaint is not amended or the deficit-fee is not paid within the time allowed the plaint shall be rejected and the Court shall pass order as it deems fit regarding cost of the suit.

3. Therefore, it is incumbent upon the Court if it reaches the conclusion that proper court-fee is not paid to give opportunity to the party to pay the deficit court-fee

within the time mentioned in the order and, if that order is not complied with, then the Court gets the jurisdiction to reject the petition for non-payment of the deficit court-fee. It is apparent from the impugned order that no such opportunity had been given to the petitioner, although prayed for, before the decision of the case, for payment of the deficit court-fee. As the petitioner had not been given any opportunity to rectify the mistake and pay the deficit court-fee within the time fixed by the Court, the rejection of the election-petition of the petitioner by the Election Tribunal is against the provisions of law and cannot be sustained.

4. Accordingly, the writ petition is allowed. The order impugned dated 11.03.96 Annexures-5 is set aside. The election petition stands restored and the Election Tribunal is directed to proceed with the matter in accordance with law. As the matter is pending consideration since 1994, both the parties are directed to remain present before the Election Tribunal (District & Sessions Judge, Bikaner) on April 21, 1997. The petitioner shall make an application for amendment of the election petition so far as the payment of court-fee is concerned and shall pay the deficit court-fee of Rs. 39/- within a period of 7 days from 21.04.97.