

**Ramesh Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Dec-21-2006

**Reported in :** 2007(1)WLN245

**Judge :** Shiv Kumar Sharma and; Chatra Ram Jat, JJ.

**Appeal No. :** D.B. Civil Writ Petition No. 8037/2006

**Appellant :** Ramesh

**Respondent :** The State of Rajasthan

**Judgement :**

**Shiv Kumar Sharma, J.**

1. Validity of Section 19 (gg) of the Rajasthan Panchayati Raj Act, 1994 (for short '1994 Act') is under challenge in this writ petition.

2. Contextual facts depict that the petitioner was elected as Sarpanch of Gram Panchayat Dangarwada defeating respondent Sauji Ram by a margin of 872 votes. The election of the petitioner was called in question by Sauji Ram by filing election petition on the ground that the petitioner was facing criminal case wherein he was charged for the offence under Section 325/149 IPC that carries sentence upto 7 years imprisonment, therefore, in view of Section 19(gg) the petitioner could not have been elected. The petitioner during the pendency of election petition

moved an application praying therein that Section 19(gg) of 1994 Act was ultra vires and violative of Articles 14, 19 and 21 of the Constitution of India, therefore, reference be made to the High Court for deciding the validity of Section 19(gg) of 1994 Act. The application was dismissed on August 21, 1986. Hence this writ petition.

3. Section 19(gg) which provides qualifications for election as a Panch reads as under-

19. Qualification for election as a Panch or a Member-Every person registered as a voter in the list of voters of a Panchayati Raj Institution shall be qualified for election as a Panch or, as the case may be, a member of such Panchayati Raj Institution unless such person- (gg) is under trial in the competent Court which has taken cognizance of the offence and framed the charges against him of any offence punishable with imprisonment for five years or more.

4. Having heard the submissions, I find that attempt to declare Section 19 (gg) as ultra vires, was earlier made in Shiv Ram v. State of Rajasthan, 2000(4) WLC (Raj.) 412 wherein the Division Bench of this Court indicated that since the said section was introduced with an object to check criminalisation in politics and to warn people in public life not to indulge in criminal activities, it was not violative of Article 21 of the Constitution.

5. Again in Narayan Lal v. State of Rajasthan 2003 (2) DNJ (Raj.) 661 Full Bench of this Court held that where the competent Court had already taken cognizance of the offence and framed charge against the elected Sarpanch for the offence punishable with imprisonment for five years or more, such a Sarpanch could certainly be ousted from the office on the ground that he was disqualified to contest the election under Section 19 (gg) of 1994 Act. Even if he stood acquitted of such charge at the end of the trial, it could not be a ground not to upset his election.

6. Despite the afore quoted judicial pronouncements, learned Counsel for the petitioner canvassed that Section 19(gg) is arbitrary, unreasonable and violative of Article 14 of the Constitution since the trial for the offences which carries

imprisonment of five years or more may take ten years in its completion.

7. This argument of learned Counsel was considered in Shiv Ram v. State of Rajasthan (supra) and it was observed as under-

Thus, after the charge is framed, the accused cannot be heard to say outside the trial that he has been falsely implicated for certain ulterior motives. As regards the allegation of delay in trial, the experience shows that accused persons holding the public office or political office or a resourceful accused adopt dilatory tactics by plugging every possible loophole in the law through which the disposal of the case may be delayed. If a person is deprived to enter into the election fray after the charge is framed till he gets clean chit, his anxiety would be early conclusion of the trial. The co-operation of such accused will help the Courts in quick conclusion of the trial. A request can always be made to the trial Courts to take up the trial of case on priority in which the accused is holding a public or political office and has a chance of being entering into the election fray.

8. The petitioner cannot be permitted to re-agitate the controversy which has already been settled.

9. In the result, the writ petition being devoid of merit stands dismissed without any order as to costs.

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