

(1962) 01 AHC CK 0004

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 362 of 1961

Sheo Baran

APPELLANT

Vs

Bindeshwari Prashad
and Others

RESPONDENT

Date of Decision: Jan. 23, 1962

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Panchayat Raj Act, 1947 - Section 12, 5A

Citation: AIR 1963 All 607

Hon'ble Judges: S.S. Dhavan, J

Bench: Single Bench

Advocate: Mohd. Ayub, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.S. Dhavan, J.

This is a petition under Article 226 of the Constitution of India impugning the legality of an order passed by the Sub-Divisional Officer, Tanda allowing the election petition u/s 12(c) of the U. P. Panchayat Raj Act. In 1961 there was an election held for the office of the Pradhan of the Gaon Sabha, Baskhari in the District of Faizabad. The petitioner Sheo Baran was not a candidate but only a voter. The rival candidates were the first and the second respondents Bindeshwari Prasad and Dudhnath. Bindeshwari Prasad was elected. Dudhnath filed a petition challenging the election of the winner on the ground that he was holding an office of profit under the Government at the time of his nomination and, therefore, disqualified for election. Dudhnath prayed that the election of Bindeshwari Prasad be set aside, and further that he be elected as the sole candidate after the rejection of Bindeshwari Prasad's nomination papers.

Bindeshwari Prasad contested the petition and filed a written objection in which he denied that he held any office of profit under the Government. In his evidence before the tribunal, he admitted that he was employed as a temporary mate in the P. W.D. department on a daily wage. It appears from the record that the parties compromised their dispute and Bindeshwari Prasad conceded that he held an office of profit and was, therefore, not entitled to contest the election. The parties filed a joint application before the tribunal praying that the election petition be allowed and the parties directed to bear their own costs.

2. The Sub-Divisional Officer in his order allowing the petition found that Bindeshwari Prasad held an office of profit under the Government and was, therefore, disqualified for election. He also held that Dudhnath being the only surviving candidate after Bindeshwari Prasad was disqualified, was entitled to be declared elected. Accordingly, he allowed the petition, set aside the election of Bindeshwari Prasad and declared Dudhnath elected for the post of Pradhan. Aggrieved by this order Sheo Baran has come to this Court for a relief Under Article 226 of the Constitution of India.

3. As stated above, Sheo Baran has no direct interest in the election, but I think he is entitled to move the Court as a voter interested in the result of the election and its propriety. The petitioner's case is that parties cannot decide the result of election by private compromise and there-by deprive the voters of their right to elect a candidate of their choice. The learned counsel for the petitioner argued that the Sub Divisional Officer should not have given effect to the compromise as an election petition is not like a civil suit in, which a compromise decree can be passed on the application of the parties. The learned counsel submitted that the order of the Sub-Divisional Officer is wholly without jurisdiction.

4. I quite agree that an election tribunal should decide a petition on merits and has no power to declare a person elected merely on the strength of a compromise agreement between the contesting parties. If the Sub-Divisional Officer had declared Dudhnath elected on the basis of the alleged compromise, this Court would have interfered. But the order makes it clear that the petition was decided on merits and not on the basis of the alleged compromise. Dudhnath filed an election petition which was contested by Bindeshwari Prasad. During the pendency of the case, the parties compromised their dispute and an application was filed before the tribunal which clearly indicated that the respondent in the petition did not want to contest and in fact, conceded that he was a Government servant and, therefore, disentitled to stand for election. Faced with this situation, the only course open to the Sub-Divisional Officer was to go ahead with the petition and decide it on merits. This is precisely what he did. He examined the evidence in support of the petition and held that the petitioner's case that Bindeshwari Prasad held an office of profit was established.

Accordingly he set aside the election and declared the petitioning candidate elected. All these decisions were made on merits and not necessarily because the parties had

compromised the dispute. It was open to the Sub-Divisional Officer to decide the allegation which was the foundation of the petition namely whether Bindeshwari Prasad held an office of profit. He took the view that he did, but I have no doubt in my mind that he was uninfluenced in his finding by any compromise between the parties. If he had taken a contrary view he would have given a different finding in spite of the compromise.

5. Learned counsel for the petitioner then argued that the finding of the Sub Divisional Officer that Bindeshwari held an office of profit is erroneous on the face of it. The learned counsel conceded that Bindeshwari Prasad was employed as a Temporary mate by the P. W. D. department and that his wage was Re. 1/- per day, but he argued that a temporary mate receiving a daily wage cannot be the holder of "any office of profit under State Government" within the meaning of Section 5A of the Panchayat Raj Act. I cannot agree. The words "any office of profit" must be given an interpretation wide enough to uphold the principle on which this particular disqualification is based. The Panchayat Raj Act introduced the system of local self-government at the village level for the first time in the State after a lapse of centuries.

The Legislature was anxious that the persons who are elected to the office of Pradhan and other positions of responsibility should discharge their duties fearlessly and independently, and for this reason disqualified all persons who were dependent for their livelihood on Government service. A person who is employed as a mate on daily wage is as much a holder of an office of profit within the meaning of Section 5A as a Government servant on a monthly salary. The terms of employment are immaterial if the candidate holds any office of profit under the State Government or the Central Government or a local authority. I am of the opinion that Bindeshwari Prasad held an office of profit all the time of his nomination and his election was rightly set aside.

6. The learned Junior Standing Counsel has pointed out that the Sub Divisional Officer has found that Bindeshwari Prasad was employed on a salary of Rs. 40/- per month and, therefore, the argument advanced on behalf of the petitioner does not arise. This is quite correct, but in view of the importance of the point, I preferred to dispose all the arguments on merits. This petition is without substance and rejected.