
(2013) 06 MP CK 0085

Madhya Pradesh High Court

Case No: Writ Petition No. 14597 of 2012

Savitri Panika (Smt.)

APPELLANT

Vs

State of M.P. and
Others

RESPONDENT

Date of Decision: June 20, 2013

Citation: (2013) ILR (MP) 2370

Hon'ble Judges: Sanjay Yadav, J

Bench: Single Bench

Advocate: Praveen Dubey, for the Appellant; Vandana Shrivastava, for the Respondents No. 1 to 3 and Brahmendra Pathak for the Respondent No. 5, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sanjay Yadav, J.

With consent of the parties, matter is heard finally.

1. Order-dated 21.8.2012 passed by the Prescribed Officer, Sidhi is being assailed vide this petition. Vide impugned order, the election of the petitioner as President, Janpad Panchayat, Kusmi, Distt. Sidhi has been set aside.

2. The seat of President, Janpad Panchayat, Kusmi being reserved for Scheduled Tribe, the petitioner contested the same and declared elected on 21.2.2010.

3. The election of the petitioner was challenged by respondent No. 5 vide election petition u/s 122 of the Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 and the rules made thereunder viz. M.P. Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995, filed on 15.3.2010.

4. The election was challenged on the ground that the petitioner does not belong to the Scheduled Tribe Category but belongs to Other Backward Class i.e. Sahu.

5. Petitioner denied the allegations and contested the challenge on the ground that she being Panika by birth and married to Panika is a Scheduled Tribe. Besides, petitioner also raised the objection as to maintainability of election petition on the ground that the petition was not maintainable as the same was not presented in the manner as prescribed under Rule 3 of 1995 Rules i.e. it was not presented by the petitioner but by learned counsel and that the petition was not presented before the Prescribed Officer but before an authority subordinate to him.

6. Prescribed Officer, after considering the rival contentions and the material evidence on record, upheld the challenge that the petitioner did not belong to the Scheduled Tribe Category and was, therefore, not eligible to contest election of President, Janpad Panchayat, Kusmi. Accordingly, by impugned order-dated 21.8.2012, set aside the petitioner's election and declared the seat of President, Janpad Panchayat, Kusmi as vacant.

7. Prescribed Officer, besides taking into consideration the proceedings in Complaint Case No. 1698/06 before Judicial Magistrate First Class, Sidhi, also considered the caste certificate issued by Sub-Divisional Officer, Deosar in Case No. 1737 -121/1997-98, in arriving at a conclusion that the petitioner is not a member of Scheduled Tribe but of Other Backward Class.

8. The petitioner vide this petition besides challenging the findings arrived at by the Prescribed Officer regarding caste, also questions the order on the ground that the presentation of election petition being not in consonance with Rule 3 of 1995 Rules was not entertainable by an officer other than Prescribed Officer.

9 The respondent No. 5 on its turn has supported the order.

Issues which emanate for adjudication are:--

(i) Whether the Prescribed Officer was justified in his finding that the petitioner does not belong to the Scheduled Tribe Category and belongs to Other Backward Class?

(ii) Whether the election petition was not presented in the manner prescribed under Rule 3 of 1995 Rules?

(iii) Whether the election petition was not maintainable as the same was presented before the Joint Collector, Sidhi instead of Collector, who is a prescribed officer?

10. Parties are referred as they were before the Prescribed Officer.

11. As to issue No. (i), the election petitioner in the election petition has raised a specific plea that the respondent No. 1 (petitioner herein) is a resident of Village Dhanwahi Tehsil Deosar and is a daughter of Ramlakhan Teli. That she was married to one Surendra Kumar, son of Bhagwat Teli of Village Nigari Tehsil Deosar and that she left her husband and since 1.9.1989 vide notarized affidavit has started residing with Ramkhelawan Sahu, son of Suryalal Sahu of Village Kusmi as concubine. That, her actual name is Suparkha. It was further contended that she has started living with Shivilal Panika, who is married to Rajmania Panika. It was stated that having born as Teli (Sahu) as Other Backward Class by giving wrong declaration that she belongs to Scheduled Tribe (the Panika's being Scheduled Tribe) contested the election for President, Janpad Panchayat, Kusmi, which was reserved for Scheduled Tribe.

12. The election petitioner, besides examining herself, also examined Devsharan Panika who, as per respondent No. 1 (the petitioner in present writ petition) being her father (in reply to the election petition, the respondent No. 1 in paragraph 6- had stated:

13. Devsharan Panika, in his statement, has categorically stated:

14. Besides examining Devsharan Panika, the election petitioner also examined Surendra Kumar son of Bhagwat Teli and Ramkhelawan Sahu.

15. The election petitioner (respondent No. 1 in the present case) has also filed copy of two writ petitions viz. W.P. No. 12873/2010 and W.P. No. 11177/2012) preferred by respondent No. 1 (petitioner in present case).

16. Writ Petition No. 12873/2010 was directed against the order by Prescribed Officer rejecting the claim against maintainability of the election petition. This petition was disposed of on 5.7.2011 with the direction to Prescribed Officer to decide the issue as preliminary issue. Second writ petition i.e. W.P. No. 11177/2012 was directed against the order-dated 26.6.2012 whereby the objection as to maintainability of the election petition on the ground that the election petition against election as President, Janpad Panchayat, Kusmi is not maintainable because her election as to member of Ward No. 10 as Scheduled Tribe candidate was not questioned, was negatived by the Prescribed Officer by his order-dated 26.6.2012 which was upheld in W.P. No. 11177/2012 dismissed on 30.7.2012.

17. Reasons for making mention of these two writ petitions are that in these writ petitions, the respondent No. 1 (the petitioner herein) filed these petitions as Savitri Sahu @ Suparkha, D/o. Shri Ramlakhan Sahu w/o Shri Shivilal Panika. An affidavit to that effect was also sworn by her which is reproduced here below:

IN THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

W.P. No. /2012

Savitri

Petitioner

Versus

State of M.P. and others

Respondents

Affidavit

I. Savitri Shahu @ Suparnakha, D/o. Shri Ram Lakhan Sahu W/o Shri Shiv Lal Panika Aged about 37 years, occupation Janpad Adhyaksha of Janpad Panchayat Kusmi, R/o - Village Bhuimad, Block Kusmi District Sidhi (M.P.) do hereby solemnly affirm and state on oath as under -

1. That, I am petitioner has filed instant Writ Petition as such fully conversant with the facts thereof.
2. That, contents of writ petition from Para 1 to 10 are correct and true as per my personal knowledge.
3. That, the contents of aforesaid petition have been drafted on my instructions and the same have been translated in Hindi.

DEPONENT

VERIFICATION

I, above named deponent do hereby verify that the contents from Para 1 to 3 of this affidavit are true to my personal knowledge and belief.

Verified and signed on this 01st July, 2012 at Jabalpur.

DEPONENT

18. Though, an explanation has been tendered by learned counsel that it was the mistake of the counsel, who represented in W.P. No. 12873/2010 and W.P. No. 11177/2012 that a wrong affidavit was filed. However, there is no material on record to establish that any action has been taken against the respective counsel for their alleged mistake in allegedly changing the identity of the petitioner. In absence whereof, it has to be accepted that Savitri Panika and Savitri Sahu @ Suparnakha are one and same.

19. The contention by learned counsel for the petitioner is that the Prescribed Officer erred in relying on the proceedings in a complaint case as the same was later on dismissed, even if accepted, the affidavits filed in W.P. No. 12873/2010 and W.P. No. 11177/2012 by the petitioner does not belie the fact that Savitri Panika and Savitri Sahu @ Suparnakha are one and same. In view whereof, findings arrived at by the Prescribed Officer as to identity of the petitioner having been as Sahu and thus was not eligible to contest the election of President. Janpad Panchayat, Kusmi, which was reserved in favour of Scheduled Tribe cannot be faulted with.

20. In respect of second issue as to whether the election petition was presented by the petitioner (respondent No. 1) in consonance with Rule 3 of 1995 Rules, it is seen that the election petition was presented on 15.3.2010. That the election petitioner had engaged a counsel who along with her had presented the petition to the authority who on receiving the same had put an endorsement and the order of presentation of election petition was recorded in the following terms:

(Emphasis supplied)

21. The order sheet thus clearly records and . Thus, it is the petitioner who has presented the election petition through counsel. It cannot therefore be said that the election petitioner did not present the election petition nor that she was present when the election petition was presented. The presentation of the election petition being by the petitioner herself in the considered opinion of this Court, it did not suffer any discrepancy as would have warranted its dismissal under Rule 8 of Rules 1995.

22. The decision in [Suman Santosh Kumar Patel Vs. Bhanwati Mahesh Pratap Patel and Another](#), relied by the present petitioner turns on its own fact. The fact therein as apparent from paragraph 8 is that the petition therein was presented to the Office Superintendent on 23.7.1994; whereas, the proceedings before Sub-Divisional Officer was drawn on 26.7.1994 i.e. after four days from the date of presentation which was by the counsel. The said is not in the present case wherein presentation is done on 15.3.2010 by the petitioner () through the counsel (). Thus, the decision in Suman Santosh Kumar Patel (supra) is of no assistance to the petitioner. Another decision, [Tara Vs. Dabla alias Lalita and Others](#), turns on the aspect of authorization vide Vakalatnama which is not the case as the present one, therefore, the decision in Tara v. Dabla alias Lalita and Ors. (supra) is also of no assistance to the present petitioner. This leads to irretrievable conclusion that the presentation of the election petition being in consonance with Rule 3 was rightly entertained by the prescribed officer as would warrant any interference.

23. The last contention that the election petition was filed before Joint Collector who, being not the Prescribed Officer and therefore, the petition was liable to be dismissed, has an answer implicit in the order-dated 15.3.2010 wherein it is specifically mentioned that the Collector/Prescribed Officer was on leave on 15.3.2010 and no material has been

commended at to establish that Additional Collector and not Joint Collector was given the charge. In absence whereof, presumption has to be drawn that the Joint Collector was in-charge Collector in absence of Collector on 15.3.2010. In view whereof, the third contention also fails.

24. Having thus considered, this Court does not perceive any illegality in the impugned order as would warrant any interference.

25. In the result, the petition fails and is dismissed. No costs. Consequently, the interim order-dated 5.9.2012 stands vacated.