

(2008) 11 CAL CK 0031

Calcutta High Court

Case No: Writ Petition No. 10843 (W) of 2008 with, C.A.N. No. 7912 of 2008

Raj Kumar Saha

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Nov. 26, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 243O
- West Bengal Panchayat Election Act, 2003 - Section 23, 23(2)

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Tapan Mukherjee and Aninda Lahiri, for the Appellant; L.C. Behani and N.C. Behani for the Election Commission Kallol Bose for the Respondent No. 3 Dipankar Mondal for the Respondent No. 5, for the Respondent

Final Decision: Dismissed

Judgement

Debasish Kar Gupta, J.

The Judgment of the Court was as follows:

1. This writ application is taken up for final disposal along with the C.A.N. No. 7912 of 2008 with consent of the respective parties.
2. Let the affidavit-in-reply filed by the petitioner be kept on the record.
3. The subject-matter of challenge in this writ application is the order dated May 22, 2008 passed by the respondent No. 3 cancelling the certificate issued by the counting officer of the Auxiliary Table in respect of the Election of writ petitioner.
4. A preliminary objection with regard of the maintainability of this writ application under Article 226 of the Constitution of India in view of the subject-matter in this writ application is raised on behalf of the respondent No. 4.

5. That preliminary objection is taken up at the very outset.

6. Appearing on behalf of the respondent No. 4 Mr. L.C. Behani learned Senior Advocate submits that in accordance with the provisions of Clause (b) to Article 243-O of the Constitution of India no Election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided by and under any law made by the legislature of State. Drawing attention of the Court towards the provisions of Section 79 of the Panchayat Election Act, 2003 Mr. Behani submits that in accordance with the above provision the legislature of the State of West Bengal provides that if any dispute arises as to the validity of an election under this Act, any person entitled to vote at such Election may, within 30 days after the date of declaration of the result of such Election, may file a petition, calling in question such Election on one or more of the grounds specified in sub-section (1) of Section 93. Drawing further attention of this Court towards Clause IV(d) of Section 93 of the Panchayat Election Act, 2003 it is submitted on behalf of the respondent No. 4 that by any non-compliance with the provision of the Act, or of any rules made under this Act, the Court shall declare the election of the returned candidate to be void. It is further submitted by the learned Counsel appearing by the respondent No. 4 that the term Court mentioned in the above provision means and includes the Court as described in Section 79 of the above Act. Drawing attention of this Court towards the provision of sub-rule (5) of Rule 92 of the West Bengal Panchayat Election Rules, 2006 it is submitted on behalf of the respondent No. 4 that the Panchayat Returning Officer is the only authorised officer to issue certificate of Election in Form 24. By the impugned order dated May 22, 2008 the respondent No. 3, namely the Panchayat Returning Officer cancelled the certificate of Election in Form 24 as the same had been issued by the counting officer of the Auxiliary Table in violation of subsection (2) of Section 23 of the West Bengal Panchayat Act, 2003 read with Rule 107 of the West Bengal Panchayat Election Rules, 2006.

7. The sum and substance of the submissions made on behalf of the respondent No. 4 is this in view of the above the only forum before which the petitioner can agitate her grievance is the forum prescribed u/s 79 of the Panchayat Election Act, 2003 and not a Court exercising the jurisdiction under Article 226 of the Constitution of India.

8. While opposing the above submissions made on behalf of the respondent No. 4, it is submitted on behalf of the petitioner that the election of anybody is not under challenge in this writ proceeding. The impugned order dated May 22, 2008 of the respondent No. 3 is under challenge in this writ proceeding. According to the petitioner, the certificate of election under Form 24 was issued by the respondent No. 3; therefore, he had no power to review such decision by way of cancellation of the above certificate of election, which had been issued under Form 24 by himself.

9. In support of the submission made on behalf of the writ petitioner reliance is placed on the decision of [Election Commission of India Through Secretary Vs. Ashok](#)

[Kumar and Others](#), to submit that the writ Court has the power to interfere with the dispute relating to election after the election process is over.

10. Reliance on the decision of [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), it is submitted on behalf of the petitioner that no additional ground can be taken on behalf of any of the parties before a Court of law to examine the validity of the impugned order which is not appearing in that order. Relying on the decision of [A.R. Antulay Vs. R.S. Nayak and Another](#), it is submitted on behalf of the writ petitioner that the respondent No. 3 exercised the power of cancelling the certificate of Election which had been issued under Form 24 without any statutory provision in support of exercising such power.

11. I have heard the learned Counsel appearing for the respective parties at length and I have given my anxious consideration to the facts and circumstances of this case. In order to adjudicate the point of law involved in this matter, the impugned order is quoted below:-

This is to notify that a certificate in Form and a declaration of result in Form 23 have inadvertently been issued to Shikha Rani Biswas a contesting candidate of Khishma/VI-8 seat, as a winning candidate by the counting officer of Polling Station No. RGT-1/22 Ka (Auxiliary Booth of RGT-I/22). This has been issued in contravention with the provision of Section 23(2) of West Bengal Panchayat Election Act, 2003 and Rule 107 of West Bengal Panchayat Election Rules, 2006. Whereas in terms of Notification No. SEC 1343 (17) SEC dated 24.04.2008 vide para 4 Vii(c) the certificate in Form 24 is supposed to be issued by the counting officer of the main table where the counting of the main polling station is assigned by compiling the counting sheet of the auxiliary table.

Therefore, the certificate issued from the counting officer of the auxiliary table is declared null and void and stands cancelled.

All concerned are hereby informed to treat the aforementioned declaration in Form-23 and subsequently issued certificate in Form 24 as cancelled.

Panchayat Returning Officer (GP & PS) & Block Development Officer,

Ranaghat-I Dev. Block

Dated 22.05.2008.

12. From the above order dated May 22, 2008 it is an admitted position that the respondent No. 3 passed the impugned order for cancellation of the result of election Which had been issued to the writ petitioner as winning candidate Khishma/VI-8 Seat, by the Counting Officer, of an auxiliary booth. It is also not in dispute that in passing the impugned order the respondent No. 3 invoked the provisions of sub-section (2) of Section 23 of the West Bengal Panchayat Election Act, 2003 and Rule 107 of West Bengal Panchayat Election Rules, 2006. Therefore, it is

not in doubt or dispute that the cancellation of the election of the winning candidate in connection with the election of a Gram Panchayat is the issue involved in this case. In order to adjudicate the point of law involved in this case, the provisions of Clause (b) of Article 243-O of the Constitution of India are quoted below:-

243 -ONotwithstanding..

(a)

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as it provided for by or under any Law made by the Legislature of a State.

13. Therefore, in order to examine the impugned order on its merit the validity of the election certificate which had been issued in Form -24 in favour of the petitioner is to be examined by this Court. In view of the provisions of the Constitution of India, this Court cannot interfere with the above subject-matter provided the Legislature of the State of West Bengal made any law for the above purpose. In this regard the relevant provisions of sub-section (1) of Section 79 of the Panchayat Election Act, 2003 are quoted below:-

79. Disputes as to elections.-1 If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of declaration of the results of such election, file a petition, calling in question such election on one or more of the grounds specified in sub-section (1) of Section 94-

(a) before the Civil Judge having Jurisdiction where such election is in respect of a Gram Panchayat or a Panchayat Samiti,

(b) before the District Judge of the district, where such election is in respect of a Zilla Parishad or the Siliguri Mahakuma Parishad.

14. Now for proper adjudication of this matter the provisions of Clause (d) (IV) of sub-section 1 of Section 93 of the Panchayat Election Act, 2003 are quoted below:-

93. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the Court is of opinion-

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected:

(iv) by any non-compliance with the provisions of this Act, or of any rules made under this Act, the Court shall declare the election of the returned candidate to be void.

15. Therefore, in view of the above provisions, the allegation of the petitioner for non-compliance of the provisions of the Panchayat Election Act, 2003 read with the West Bengal Election Rules, 2006 in passing the impugned order for cancellation of

the issuing of certificate of election in Form-24 cannot be examined by a Court sitting in a jurisdiction conferred by Article 226 of the Constitution of India.

16. I do not find any substance in the submissions made on behalf of the petitioner that the election is not under challenge in this writ application but the impugned order is under challenge. Because in examining the impugned order the validity of cancellation of the certificate issued in Form-24 in favour of the writ petitioner has to be gone into by this Court.

17. The decision of Election Commission of India vs. Ashok Kumar (supra) has no manner of application in this case because after examining the provisions of Article 243(O) of the Constitution of India, different provisions of the Panchayat Election Act, 2003 as also different provisions of the West Bengal Panchayat Election Rules, 2006, the point of maintainability of this writ application is decided as discussed hereinabove. But the above case was decided on the basis of the facts and circumstances of that case to the effect that the High Court was not entitled to intervene into the process of election during the progress of such election.

18. I do not find that the decision of Mahindra Singh (supra) has any manner of application in this case because No. additional ground apart from ground shown in the impugned order is relied upon by the learned Counsel appearing on behalf of the respondent No. 4 to challenge the maintainability of this writ application.

19. I do not find any substances in the submissions made on behalf of the petitioner so far as the decision of A.R. Antuley (Supra) is concerned. In that case it was decided that it was not permissible for the authority to exercise any power unless authorised by law. As discussed hereinabove, the maintainability of this writ application before a Court sitting in writ jurisdiction has been examined in the instant case while the above case was decided on the basis of the complete different facts and circumstances altogether.

20. In view of the above discussions and observations, this writ application is dismissed. The application being C.A.N. No. 7912 of 2008 is disposed of without passing further order on it.

21. There will be an order of cost of Rs. 5,000/- to be paid towards the Advocates' fees of the respondent No. 4 by the writ petitioner within four weeks from the date of communication of this order.

22. Urgent xerox certified copy of this order, if applied for, be given to the parties on priority basis.