

# RAJASTHAN HIGH COURT

Mohd.Akram

Vs.

State of Rajasthan

Civil Writ Petn. No. 7538/2004

(K.S. Rathore, J.)

09.11.2004

## ORDER

**K.S. Rathore, J.**

1. Brief facts giving rise to this case are that the petitioner was elected as Ward Member of Ward No. 3 of Municipality Council, Sikar in the general election held in Nov. 2004.
2. A report was lodged against the petitioner with the police station Kotwali, Sikar on 16-9-1999 and the FIR No. 391/99 was registered against the petitioner under Sections 147, 148, 332, 352 and 427, IPC.
3. On account of FIR lodged against the petitioner, he was placed under suspension by the respondents while exercising power under Section 63 of the Rajasthan Municipalities Act, 1959 (hereinafter to be referred as "the Act of 1959") vide order dated 25-9-1999.
4. The suspension order dated 25-9-1999 was challenged by the petitioner by way of filing writ petition before this Court and the same was registered as SB civil writ petition No. 5413/1999. After investigation in the matter, charge sheet was submitted against the petitioner for the offences under Section 147, 332 and 353, Indian Penal Code before the Court of Additional Chief Judicial Magistrate, Sikar on 13-6-2000.
5. The respondents after conducting the enquiry vide order dated 28-2-2001 declared the petitioner disqualified to contest the election for six years.
6. The order dated 28-2-2001 is challenged by the petitioner in this writ petition on the ground that as per Section 26(i-b) of the Act of 1959, a person shall be disqualified for

being chosen as a member of a board who 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. The petitioner has placed the order sheets on record to show that charges against the petitioner have not yet been framed.

7. Learned counsel for the petitioner submits that since 1999 to till date, charges have not been framed, therefore, in view of the provisions of Section 26(i-b), the respondents cannot disqualify the petitioner for contesting the election.

8. Learned counsel for the petitioner also referred Section 63 of the Act of 199 more particularly sub-section 1, 2 and 3 which are relevant for removal of members on the ground mentioned thereunder and give much emphasis on ground (c) and submits that the petitioner can be held disqualified if after election, the petitioner has incurred any of the disqualification mentioned in Section 18 or has ceased to fulfill the requirement of Section 24.

9. Since the charges have not been framed against the petitioner, so far, therefore, he has not acquired any disqualification. In support of his submissions, he placed reliance on judgment reported in AIR 1997 Supreme Court 1539.

10. Learned counsel further submits that the order of disqualification to contest the election for further six years has been passed under Section 63 read with 64 and provisions of Section can only be invoked in case the petitioner is declared disqualified under Section 63(1)(d), therefore, the disqualification order is contrary to the provisions of law.

11. Learned counsel for the petitioner placed reliance on the judgment rendered in case of *Jagdish Chandra v. The State of Rajasthan reported in* <sup>1</sup>wherein this Court has dealt with the scope of suspension of Sarpanch under Section 38(4) of the Rajasthan Panchayat Raj Act, 1994.

12. Upon careful perusal of the aforesaid judgment, I am of view that the ratio decided by this Court are not applicable to the instant case.

13. Learned counsel for the respondents Mr. ShyamArya submitted the original record for perusal of this Court which forfeited the submissions made on behalf of the petitioner that he has not given any opportunity of being heard. Upon perusal of the record, it reveals that the petitioner was not declared disqualified merely on account of pendency of criminal case. Separate charges were framed against the petitioner and

the petitioner was called upon to submit his explanation and Judicial Officer conducted the enquiry into the matter. While dealing with the case of the petitioner under Section 63, the petitioner was declared disqualified under Section 63(1)(d).

14. Learned counsel for the respondents further submits that earlier writ petition filed by the petitioner against the suspension order dated 25-9-1999 stands dismissed on 14-8-2002 on the ground that since the final order has been passed, the writ petition has become infructuous. Till then, the petitioner did not opt to challenge the disqualification order, which was passed on 28-2-2001. After lapse of more than 3 years, the petitioner has filed this writ petition without assigning any reason for delay in filing the writ petition.

15. Heard rival submissions of the respective parties and perused the original record as well as relevant provisions of law as well as the judgments referred before me.

16. As per Section 63 (i)(d), if a person is found guilty of misconduct in discharge of his duties, he can be removed from the membership. Here in the instant case, separate charges were framed against the petitioner that he obstructed in working of the Municipal Council. Sikar, man-handled the official and destroyed the property and documents. In the enquiry, adverse findings were recorded against the petitioner under Section 63 (a) and he was found guilty of the charges.

17. I have also considered the submissions made on behalf of the petitioner that until and unless, the charges are framed, the petitioner cannot be declared disqualified. I am of the considered opinion that the respondents are at liberty to initiate the enquiry simultaneously even in case they have lodged the FIR against the petitioner regarding same misconduct and disgraceful conduct. The respondents framed the charges against the petitioner and the petitioner was called upon to submit his explanation. The enquiry was conducted by the Judicial Officer. The petitioner was represented by the counsel, but the petitioner ultimately chose not to appear and participate in the enquiry to represent his case. Therefore, the respondents have no option other than to pass the order for disqualification under Section 63 (i) (d) and in view of provisions of Section 64 debarred the petitioner to contest the re-election for further six years.

18. I find no substance in the writ petition in view of the observations made hereinabove. The writ petition fails and the same is hereby dismissed with no order as to costs.

Petition dismissed.

Cases Referred.

1. 2004 (3) WLC (Raj) 363