

RAJASTHAN HIGH COURT

Idrish Khan

Vs.

Prahladi

S. B. C. W. P. No. 2152 of 2008

(Prem Shanker Asopa, J.)

10.03.2008

ORDER

Prem Shanker Asopa, J.

1. By this writ petition, the petitioners have challenged the order dated 20-2-2008 whereby the Distt. Judge, Bharatpur before whom the election petition was filed by the respondent No. 1, while transferring the petition to the Addl. Distt. Judge No. 1, *Bharatpur* passed order of maintaining status quo by the parties.

2. Facts in brief of the case are that in the month of February, 2005, election was held to the post of Member, Panchayat Samiti Nagar, Distt. Bharatpur in which all the petitioners were elected from their respective Wards by good margin of votes. The respondent No. 1 who was loser filed an election petition against the petitioners under Section 40 of the Rajasthan Panchayati Raj Act with the averments that the petitioners were not eligible as Ward Member of the Panchayat Samiti because they have more than two children after the cut-off date 27-11-1985, therefore, the petitioners become disqualified. The respondent No. 1 filed a stay petition under Section 151, Civil Procedure Code in the election petition with the averments that the petitioners may be restrained from participating in the election process of *Panchayat Samiti*. On the said application the aforesaid impugned order was passed.

3. Submission of counsel for the petitioners is that as per Rule 85 of the *Rajasthan Panchayati Raj* (Election) Rules, 1994 (in short 'the Rules of 1994') the procedure provided in the Civil Procedure Code in regard to suits shall in so far as it relates to can be made applicable be followed in the hearing of the petition and further u/R. 86 the Court hearing the election petition will have the same powers as of a Judge of the Civil Court. A conjoint reading of both the aforesaid rules would reveal that it relates

to the procedural part and not for substantive provision. Otherwise also, the provisions have been made applicable so far as it can be made applicable. He further submits that in normal course in election petition no stay petition is filed for the reason that the proviso to Rule 86 clearly prohibits injunction or stay order restraining a person whose election is questioned from exercising his power and performing the duties can be passed.

4. Submission of Mr. Yadav is that except the proviso part, the Court is competent to pass the status quo order under the provisions of the Civil Procedure Code i.e. under Order 39, Rules 1 and 2, Civil Procedure Code.

5. I have gone through contents of the writ petition and further considered rival submission of the parties.

6. Rules 85 and 86 of the *Rajasthan Panchayati Raj (Election) Rules, 1994* are as under:

"85. Hearing of petition :- The procedure provided in the Civil Procedure Code, 1908 (Central Act V of 1908) in regard to suits, shall, in so far as it can be made applicable, be followed in the hearing of the petition :

Provided that -

(a) Any two or more petitions relating to the election of the same person shall be heard together;

(b) The Judge shall not be required to record evidence in full but shall only make a memorandum thereof sufficient in the opinion for the purpose of deciding the petition;

(c) The petitioner may, at any stage of the proceeding be asked to give further security for the payment of the costs likely to be incurred by any respondent;

(d) the Judge, shall only be bound to require the production of, or to receive so much evidence, oral or documentary as he considers necessary; and

(e) no witness or other person shall be required to state for whom he has voted at an election.

86. Powers of Court hearing petition :- The Judge hearing a petition shall have the same powers and privileges as a Judge of a Civil Court when trying a suit and may for the purpose of serving any notice or issuing any process of doing any other thing employ an officer, clerk or peon attached to his Court :

Provided that no injunction or stay order shall be issued restraining the person, whose election is questioned, from exercising the power and performing the

duties under the Act and rule made there under."

(Emphasis supplied)

7. In my view, all provisions of Civil Procedure Code have not been made applicable by the aforesaid Rules 85 and 86 and only the provisions which are in so far as it can be made applicable and further the injunction part is prohibited under Rule 86, therefore, no injunction application is maintainable. Contention of Mr. Sogarwal has some force and that of Mr. Yadav has no force.

8. The writ petition is allowed, the order dated 20-2-2008 so far as it relates to maintaining status quo is quashed and set aside.

Petition allowed.