

# RAJASTHAN HIGH COURT

Gopal Singh

Vs.

Election Tribunal-cum

C.W.P. No. 3 of 2008  
(Gopal Krishan Vyas, J.)

24.04.2008

## ORDER

**Gopal Krishan Vyas, J.**

1. In this writ petition, the petitioner is challenging the judgment and decree dated 3-1-2008 (Annex. 6) passed by the Election Tribunal-cum-Addl. Civil Judge (Sr. Divn.) No. 3, Jodhpur, whereby, the Tribunal has set aside the election of petitioner as *Sarpanch of Gram Panchayat, Anwana* and declared the post of Sarpanch as vacant.
2. The brief facts of the case are that an election petition was filed by the respondent-applicant challenging the election of the petitioner as Sarpanch of Gram Panchayat, Anwana under Section 43 of the Rajasthan Panchayati Raj Act, 1994 and under Rule 80 of the *Rajasthan Panchayat Raj (Election) Rules, 1994*. The petitioner filed his nomination form as per program of election on 30-1-2005. Thereby, scrutiny was made by the respondent-Returning Officer. Along with the nomination form, all the candidates were required to submit necessary details with regard to pendency of criminal case or conviction made against them. The candidates were also required to give declaration with regard to cognizance taken against them in any criminal case. Respondent Khinya Ram filed his nomination form and submitted all information and declaration including declaration to the effect that criminal case is pending against him under Sections 420, 466, 467, 468, 471, 474 and 120-B, IPC. In the declaration it is nowhere mentioned by the respondent-Khinya Ram-election petitioner that though cognizance has been taken against him for the abovementioned offences but the charges are not framed.
3. At the time of scrutiny of nomination papers, the Returning Officer after taking into consideration the declaration given by the respondent No. 2 Khinya Ram, arrived at

the conclusion that since cognizance has been taken against him on 5-9-2000 and he has not disclosed as to what further proceedings were held in the matter, therefore, on the basis of declaration given by him and objection taken by the petitioner, the Returning Officer rejected the nomination form of respondent No. 2 by making endorsement that criminal case is pending against Khinya Ram, wherein, charges have been framed. The said position was not controverted by the respondent-election petitioner before the Returning Officer, therefore, in view of the information supplied by the respondent No. 2, the Returning Officer was left with no option but to reject the nomination form of respondent No. 2. As per the petitioner, the intention in prescribing such declaration is to ascertain whether any criminal case is pending and cognizance has been taken against a candidate, who has submitted his nomination form because there is disqualification prescribed under Section 19(gg) of the Act of 1994, whereby, a person is disqualified against whom cognizance has been taken by the competent Court of criminal jurisdiction and against whom charges have been framed.

4. The contention of the petitioner is that upon reading of declaration form it is clearly established that the legislative intention that word "occurring" in Section 19(gg) "has taken cognizance of the offence and framed the charged against him" should be read as "has taken cognizance of the offence or framed the charges against him". If the word "and" occurring in Section 19(gg) is not read as "or" then the entire provision shall be rendered redundant. According to the petitioner, the declaration form does not prescribed any column with regard to framing of charge. It speaks of merely "taking of cognizance" and charges can be framed only after taking cognizance, therefore, word "cognizance" occurring in Section 19(gg) shall be rendered redundant if the word "or" is not read in place of "and" between the words cognizance and framing of charge.

5. The Returning Officer after scrutinizing the nomination forms and after considering the whole matter in four corners of law and guidelines issued by the Government of Rajasthan came to the conclusion that respondent-applicant is disqualified to contest the election and accordingly his nomination form was rejected. After rejection of nomination form, the elections were held on 31-1-2005 in which petitioner was declared elected as *Sarpanch*.

6. The respondent-applicant, thereafter, filed election petition on the ground that according to Section 19(gg), the applicant was not disqualified for election in question as the charges were not framed against him, therefore, his nomination form was wrongly rejected and prayed that the election held on 31-1-2005 in which petitioner

was declared elected as *Sarpanch* may be set aside. In the said election petition notices were issued.

7. The petitioner filed his reply in which it was stated that the nomination form of respondent No. 2 was rightly rejected by the Returning Officer because admittedly challan for offences under Sections 420, 467, 468, 471, 474 and 120-B, Indian Penal Code was filed and cognizance was taken against respondent No. 2 on 5-9-2000 for committing offence in which punishment for more than 5 years is provided. It is further submitted that according to the declaration Schedule-I of the nomination form, there was no occasion even to raise objection and in a routine manner nomination form of the respondent-applicant was rejected and it is wrong to say that petitioner influenced or pressurized the Returning Officer as alleged by the respondent No. 2 in the election petition. The Returning Officer has rightly held that respondent-applicant was not qualified to contest the election in question, therefore, the election petition filed by the respondent Khinya Ram deserves to be dismissed with special cost. Some additional pleas were also taken by the petitioner and it was specifically stated that even affidavit was not verified and attested in accordance with law and such defect was in existence, therefore, according to the Rules the election petition deserves to be dismissed.

8. The respondent Nos. 3 and 4 jointly filed reply to the election petition and submitted that nomination form has rightly been rejected as provided under the provisions of Law as well as directions issued under the Instruction Book of *Panchayati Raj* Institutions Election-2005.

9. After filing of reply, the learned Election Tribunal framed issues and additional issues after impleading Durag Singh as a party to the petition and both the parties adduced their respective evidence. Later on, in the writ petition filed by Gopal Singh, Durag Singh was deleted from the array of parties to the petition. On behalf of Khinya Ram-election petitioner, his statements were recorded and five documents were exhibited. On behalf of petitioner-respondent, statements of D.W. 1 Gopal Singh, D.W. 2 Banshi Singh, D.W. 3 Nathu Singh, D.W. 4 Durag Singh, D.W. 5 Mehtab Singh, D.W. 6 Devi Lal and D.W. 7 Shambhoo Singh were recorded. For the purpose of deciding the election petition, three main issues and two additional issues were framed, which are as follows:

(Vernacular matter omitted . . . . . Ed.)

10. After taking evidence on record, the learned Tribunal decided issue No. 2 in favor

of respondent-applicant and against the petitioner and held that nomination form of Khinya Ram - election petitioner for the post of *Sarpanch*, Gram Panchayat, Anwana was rejected illegally by the Returning Officer and for issue Nos. 4 and 5 it is held that these issues are not required to be decided because the burden of proof for these issues was on Durag Singh, whose name was deleted as per the direction of this Court.

11. With regard to issue No. 1, learned Election Tribunal decided the same in favor of respondent-applicant and against the petitioner because the learned Tribunal came to the conclusion that applicant-respondent has proved its case. Similarly, issue No. 3 with regard to relief was also decided in favour of applicant-respondent. While doing so, the learned Election Tribunal set aside the election of *Sarpanch* held on 31-1-2005 in which petitioner was elected as *Sarpanch* for *Gram Panchayat, Anwana*.

12. The petitioner has Challenged the validity of the judgment passed by Election Tribunal on various grounds but more specifically issue No. 2, which is the basis for deciding the election petition, therefore, while attacking upon the adjudication made by the Election Tribunal, it is vehemently argued by learned Counsel for the petitioner Shri J. P. Joshi that the judgment passed by the Election Tribunal is erroneous because according to Section 19(gg) of the Act of 1994, the Returning Officer can reject the nomination form in the event of taking cognizance by the Criminal Court against the candidate for offences in which punishment of more than five years is provided. For this purpose, it is argued that Section 19(gg) of the Act of 1994 is required to be interpreted in the manner that in between the lines "has taken cognizance of the offence and framed the charges" the word "and" should be read as "or". Further it is argued that the scheme of the Act of 1994 is clear to prevent criminalization in the political institution and legislature was also conscious of the fact that in no case charges can be framed without taking cognizance. Therefore, as per the learned counsel for the petitioner word "cognizance" used in the Section 19(gg) is not superfluous and in the context it has to be read as either taking cognizance or framed charges against the petitioner. For this proposition of law, he has invited attention of this Court to certain judgments, reported in (*Ishwar Singh Bindra v. State of U.P.*); <sup>1</sup> (*Joint Director of Mines Safety v. M/s. Tandur* <sup>2</sup> and *Nayandgi Stone Quarries (P) Ltd.*); (*Fakir Mohd. (Dead) by L.Rs. v. Sita Ram*)<sup>3</sup> and (*Samee Khan v. Bindu Khan*). <sup>4</sup> Learned counsel for the petitioner further argued that while submitting declaration along with the nomination form, candidate is required to submit requisite information before the Returning Officer. According to him, in the declaration form Ex. 2/4 at page 71 submitted by the respondent-election petitioner it is clearly disclosed that a

criminal case is pending trial, wherein, cognizance was taken against him for offences under Sections 420, 466, 467, 468, 471, 474 and 120-B, IPC. Therefore, in view of the declaration given by the respondent-election petitioner, the Returning Officer has rightly rejected the nomination form. Learned counsel for the petitioner vehemently argued that on the basis of authoritative pronouncement of Hon'ble Supreme Court, the Returning Officer has right to decide the eligibility of the candidate at the time of scrutiny of the nomination papers. Since the respondent-election petitioner has filed declaration along with nomination form and admitted that criminal case is pending against him in which cognizance has been taken by the competent Court then Returning Officer has rightly rejected the nomination form of respondent election petitioner.

13. Learned counsel for the petitioner has invited the attention of the Court towards the judgment of Hon'ble Apex Court in case of *Biradmal Singhvi v. Anand Purohit, reported in* <sup>5</sup> in which Hon'ble Apex Court has held that Returning Officer is under no obligation to make amends for the omission of a candidate specially when the omission relates to a mandatory requirement. The law does not require the returning officer to see for the electoral roll of a different constituency for the purpose of verifying the eligibility of a candidate. Therefore, in view of the law laid down by the Hon'ble Apex Court, the respondent having represented to the Returning Officer that criminal case is pending against him, cannot take benefit of his misrepresentation and the election petition filed by the respondent No. 2 was liable to be dismissed on this ground alone.

14. According to learned counsel for the petitioner pendency of criminal case has been interpreted by this Court to mean the pendency of trial starts from taking cognizance. Therefore, this writ petition deserves to be allowed and the judgment passed by the Election Tribunal is liable to be set aside.

15. On the other hand, learned counsel for the respondent No. 2 argued that scope of Article 227 of the Constitution is very limited, so also while supporting the conclusion of Election Tribunal with regard to issue No. 2 it is submitted that mere taking cognizance would not render any candidate disqualified under Section 19(gg) and learned Tribunal has rightly allowed the election petition. Further it is submitted that conclusion arrived at by the Election Tribunal is well supported by the judgment of this Court rendered in *Bhiva Ram v. State* <sup>6</sup> therefore, no interference is required in this writ petition and same deserves to be dismissed.

16. Learned counsel for the respondent No. 2 vehemently argued that question of reading word "and" in between lines of Section 19(gg) as "or" does not arise in view of judgments rendered by Apex Court in case of *Paras Ram v. State of Haryana* <sup>7</sup> and *Nasiruddin v. State Transport Appellate Tribunal* <sup>8</sup> so also this point was considered in case of *Bhiva Ram* (supra). Learned counsel for the respondent vehemently argued that judgment of learned Tribunal is in consonance with the provisions of law under Section 19(gg) and the Tribunal has rightly arrived at the finding that mere pendency of criminal case does not constitute disqualification for contesting election of *Sarpanch*, therefore, judgment of learned Election Tribunal is perfectly legal.

17. After hearing both the parties, first of all it is required to be observed that in this case the learned Election Tribunal has allowed the election petition filed by respondent No. 2 on the ground that according to Section 19(gg) pendency of criminal case cannot constitute disqualification, therefore, Returning Officer wrongly rejected the nomination form filed by respondent-election petitioner and his valuable right to contest election was frustrated. Therefore, main issue which is to be decided by this Court is whether taking of cognizance and pendency of criminal case can be termed as disqualification to contest the election or framing of charge in criminal case is necessary.

18. Admittedly, for contesting election for the post of *Sarpanch*, nomination form was filed by petitioner so also by respondent No. 2. Along with nomination form candidates were required to fill-up the declaration form in which certain information's were to be given. Upon perusal of declaration form submitted by respondent No. 2, it is specifically stated by him that no charge has been framed against him by the criminal Court. The relevant part of said declaration reads as under:-

(Vernacular matter omitted . . . .Ed.)

19. Meaning thereby, the respondent No. 2 specifically denied that any charge has been framed against him in any of the criminal case but this fact was not taken into account by the Returning Officer at the time of scrutinizing the nomination form of respondent No. 2 - *Khinya Ram*. Similarly, the only information of pendency of case was given by the respondent No. 2 and according to Section 19(gg) which is interpreted in *Bhiva Ram's* case ( AIR 2000 Rajasthan 407) (supra) mere taking of cognizance cannot be defined as disqualification for contesting any election. The learned single Judge has considered the similar contention of petitioner that word "or" is not required to be read in place of "and" in between the lines of Section 19(gg) of

the Act, therefore, it does not require any further adjudication because in case of Bhiva Ram (supra) the learned single Judge has interpreted Section 19(gg) and held that taking cognizance would not render a candidate disqualified. At the time of adjudicating the matter of Bhiva Ram in para 23 of the judgment, the learned single Judge of this Court has taken note of judgments of Hon'ble Apex Court in which in place of word "and" word "or" was requested to be read. When this Court has specifically given its finding in case of Bhiva Ram (supra) that in the event of framing of charge in criminal case a candidate can be declared disqualified, therefore, it is not open for this Court to take different view and to hold that only on the basis of taking cognizance a person may be declared disqualified. Learned single Judge of this Court in the judgment rendered in Bhiva Ram's case (supra) in para 33 held that:

Thus, in view of the aforesaid discussion, I reach to the inescapable conclusion that as the legislature has purposely provided that disqualification would occur provided the charges had been framed after taking the cognizance, mere taking cognizance would not render the candidate disqualified."

20. Therefore, I am unable to take a different view than the view taken by coordinate Bench of this Court, so also it is not proper to accept the contention of learned counsel for the petitioner when admittedly no charges were framed against Khinya Ram-respondent No. 2 on the date of filing nomination form by him. Therefore, the finding of learned Election Tribunal does not require any interference by this Court in view of the judgment rendered by this Court in Bhiva Ram's case ( AIR 2000 Rajasthan 407) (supra).

21. Learned counsel for the petitioner, though, has invited attention of this Court towards some judgments in which interpretation of words "and" and "or" were made and requested to read word "or" in place of "and" appearing in Section 19(gg) but in view of judgment of this Court in Bhiva Ram's case (supra) in which as many as 51 cases were considered including the judgment of Hon'ble Apex Court and it is held that nomination form cannot be rejected in case charges are not framed in criminal case for offence in which punishment of five years is provided. In this view of the matter, I am not inclined to interfere with the finding of learned Election Tribunal while deciding the election petition filed by respondent No. 2.

22. Therefore, there is no force in the writ petition and the same is hereby dismissed with no order as to costs.

Petition dismissed.

## Cases Referred.

1. AIR 1968 SC 1450
2. 1987 (3) SCC 208: (AIR 1987 SC 1253)
3. 2002 (1) SCC 741: (AIR 2002 SC 433)
4. 1998 (7) SCC 59: (AIR 1998 SC 2765)
5. AIR 1988 Supreme Court 1796,
6. 2000 (3) (Raj) RLW 1667): (AIR 2000 Raj 407)
7. (AIR 1993 SC 1212)
8. (AIR 1976 SC 331)