

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU.**

**OWP No. 122/2006 Date of decision: 19.07.2011
CMP No. 111/2007 & 166/2006**

Zaffar Ullah Rather. v. State of J&K and ors.

MR. JUSTICE J.P. SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : M/s. S.D. Sharma & M. P. Gupta,
Advocates.

For Respondent(s) : Mr. K. S. Johal, Sr. Advocate with
Ms. Deepshikha Gupta, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes |
| ii) | Whether to be reported
in Digest | : Yes |
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Petitioner-Zaffar Ullah Rather's election as Councillor Ward No. 13 Municipal Committee, Doda was questioned by Ghulam Nabi Shah, respondent No.2 before the Authorized Officer, who, allowing respondent No. 2's Election Petition, in ex-parte, set aside the petitioner's election vide order dated 10.2.2006.

The petitioner has filed this Writ Petition questioning the Authorized Officer's Order on various grounds, *inter alia*, urging that the findings recorded by the Authorized Officer that the petitioner was disqualified to seek election under Section 16(1) (d) of the Municipal

Act, 2000, as he had encroached upon 9 marlas of the State land comprised under Khara Nos. 185 and 138 situated at Doda, were illegal, in that, the findings were recorded without following the procedure prescribed under Section 289 of the Municipal Act, which the Authorized Officer was under a statutory obligation so to do.

Mr. K. S. Johal, learned Senior counsel appearing for the contesting respondent, submitted that the petitioner's Writ Petition may not be maintainable, as he had straightway approached this Court without availing of the statutory remedy of appeal against the authorized Officer's order, which was available to him under Section 303 of the Municipal Act. It was further submitted by the learned Senior counsel that as the petitioner had opted not to contest the Election Petition, so he was disentitled to question the decision of the Authorized Officer, which he had taken on the information appearing from the reports obtained by him from the concerned Revenue Officer, to examine the respondent's plea as to whether or not the petitioner was disqualified to seek election as Councillor.

I have considered the submissions of learned counsel for the parties and perused the provisions of Sections 289 and 303 of the Municipal Act, which were referred to by the learned counsel for the parties to support their respective submissions.

So far as the objection of respondent's learned counsel as to the maintainability of the petitioner's Writ Petition was concerned, I do not find any merit therein, in that, the Authorized Officer, being himself the prescribed Appellate Authority, the petitioner had no forum available to him where he could exercise his Right of Appeal under Section 303 of the Municipal Act and in this view of the matter, the petitioner's Writ Petition cannot be held non-maintainable. Even otherwise, the availability of alternative remedy may not always operate as bar to the exercise of Extra Ordinary Writ Jurisdiction, if the Court was, otherwise satisfied that the facts and circumstances of the case warranted exercise of such jurisdiction, to advance the cause of justice.

Perusal of the order passed by the Authorized Officer reveals that after setting the petitioner ex-parte, he did not take any steps to deal with the Election

petition in accordance with the procedure prescribed in the Civil Procedure Code for trial of suits, which he was required so to do, in terms of provisions of Section 289 of the Municipal Act.

Without calling upon the respondent to lead evidence in support of his pleas in support of the Election Petition, the Authorized Officer, chose to rely upon the reports of the Revenue Officers in coming to the conclusion that the petitioner was in un-authorized occupation of the State land and thus disqualified to contest election and that too without recording the statements of the Revenue Officers.

The Authorized Officer's reliance on the reports of the Revenue Officers, without recording their statements, is unwarranted, in that, the reports, being inadmissible in evidence, could not be relied upon by the Authorized Officer, unless proof in support thereof, had been adduced by the respondent.

Therefore, there being no legal evidence on records justifying the finding that the petitioner was in un-authorized occupation of the State land, the Authorized Officer's finding that the petitioner was disqualified

under Section 16 (1) (d) of the Municipal Act to seek election as Municipal Councillor, cannot be sustained.

The order passed by the Authorized Officer on the respondent's Election Petition, declaring the petitioner disqualified under Section 16 (1) (d) of the Municipal Act, as Councillor, without following the procedure prescribed under Section 289 of the Municipal Act and in the absence of any evidence of any type whatsoever on records justifying the disqualification, cannot, therefore, be sustained.

This Writ Petition, therefore, succeeds and is, accordingly, allowed setting aside Authorized Officer's order dated 10.2.2006 whereby he had set aside the petitioner's election as Councillor Ward No.13, Municipal Committee, Doda declaring him disqualified under Section 16 (1)(d) of the Municipal Act.

The petitioner is held entitled to his remuneration, honorarium/sitting fee etc., as admissible under Rules.

(J.P. Singh)
Judge

Jammu :
19.07.2011.
Tilak, Secy.