

S.B.CIVIL WRIT PETITION NO.5314/2011**Shurtan Singh****Vs.****Vikram Singh & Anr.**Date of Order: 29th July 2011**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Dr.Pushpendra Singh for the petitioner

BY THE COURT:

Having heard the learned counsel for the petitioner and having perused the material placed on record, while this Court is unable to find any reason to consider interference in the writ jurisdiction in this matter, it appears rather necessary to dismiss this writ petition with observations for proper progress of the trial of the election petition.

The petitioner, who is said to be elected as Ward Member of the Municipal Board, Barmer, is defending an election petition filed by the respondent No.1. In the election petition (Annex.1), the averments have been taken about the elections having taken place on 23.11.2009 pursuant to the election notification and result having been declared on 26.11.2009. The contentions of the election petitioner (respondent herein), inter alia, had been that the present petitioner, who was declared elected, was not eligible to contest the election for suffering from disqualification per Section 24 and read with Section 21 of the Rajasthan Municipalities Act, 2009 ('the Act of 2009'); and his having been involved in several criminal cases and having concealed the material facts. The petitioner has filed the reply contesting the election petition. It appears from the record that on the earlier occasion, the petitioner moved an application under Order VII Rule 11 CPC that was dismissed on 30.04.2010. The petitioner also moved other applications under Order XIII Rule 10

CPC and under Order XIV Rule 5 CPC that were decided from time to time.

At the stage when the election-petitioner (respondent No.1 herein) had filed his affidavit and the matter was to be proceeded in evidence, the petitioner moved further an application under Order VIII Rule 1-A (3) read with Section 151 CPC seeking to produce certain notifications relating to elections and another application under Order VII Rule 11 read with Section 151 CPC for rejection of the election petition. In the application under Order VII Rule 11 CPC, the petitioner contended that the elections were declared on 09.07.2009 under the Rajasthan Municipalities Act, 1959 ('the Act of 1959'); that the qualification of the candidates was considered under the said Act of 1959; and that in the elections in question, only the provisions of the Act of 1959 were applicable and election petition could not be maintained under the provisions of the Act of 2009.

By the order dated 17.05.2011, the learned Additional District Judge, Barmer though allowed the application under Order VIII Rule 1-A (3) CPC and accepted the documents lately filed on record, however, in the same order, the learned Judge also considered the application under Order VII Rule 11 CPC and proceeded to reject the same with the following observations:-

“इस चुनाव याचिका के अवलोकन से यह प्रकट होता है कि विप्रार्थी सं.1 द्वारा मूल याचिका का जवाब देने के पश्चात् प्रकरण में विवाद्यक भी विरचित हो रखे हैं और प्रार्थी की ओर से मुख्य परीक्षण में शपथ पत्र भी पेश किया जा चुका है। पूर्व में भी विप्रार्थी सं. 1 की ओर से आदेश 7 नियम 11 सीपीसी के तहत अन्य आधारों पर भी प्रार्थना पत्र पेश किया गया था जो दिनांक 30-4-10 के आदेश द्वारा खारिज किया गया था और इस प्रार्थना पत्र में मूल रूप से विप्रार्थी सं. 1 का कहना है कि राजस्थान नगरपालिका चुनाव की घोषणा दिनांक 09-07-09 को की गई थी और उस समय राजस्थान नगरपालिका अधिनियम 1959 के प्रावधान लागू होने की बात कही थी लेकिन इसके खंडन में प्रार्थी के अधिवक्ता की ओर से राज्य निर्वाचन आयोग की विज्ञप्ति की जो सत्यापित प्रति पेश की गई है उसके अवलोकन से यह प्रकट होता है कि चुनाव कार्यक्रम की घोषणा दिनांक 23-10-09 को करते हुए इसकी लोक सूचना दिनांक 7-11-2009 को जारी की गई थी और राजस्थान नगरपालिका अधिनियम 2009 दिनांक 15-09-09 से लागू हो चुका था

ऐसी स्थिति में पूर्व के राजस्थान नगरपालिका अधिनियम 1959 को निरसित कर दिया गया था। ऐसी स्थिति में इस स्टेज पर यह अंतिम निष्कर्ष नहीं निकाला जा सकता कि प्रार्थी की ओर से जो चुनाव याचिका राजस्थान नगरपालिका अधि. 2009 के तहत पेश की गई है वह ग्रहण किए जाने योग्य न हो परिणामस्वरूप विप्रार्थी सं. 1 की ओर से प्रस्तुत उक्त प्रार्थना पत्र अस्वीकार कर खारिज किया जाता है।"

The petitioner has filed this writ petition seeking to question the order so passed in rejection of the application under Order VII Rule 11 CPC. It is contended that the elections having been declared on 09.07.2009, all the proceedings took place with reference to the Act of 1959 only; and the Act of 2009, that came into effect only on 15.09.2009, has no application to the present case. Thus, according to the petitioner, election petition under the Act of 2009 cannot be maintained. It is submitted that the elections once notified are required to be conducted under the existing law and the Act of 2009 cannot be said to be having retrospective effect so as to cover the election of the petitioner. It is, thus, contended that the election petition is required to be rejected being not maintainable.

The submissions as made on behalf of the petitioner remain bereft of substance and do not make out a case for interference in the writ jurisdiction.

As noticed, the learned Trial Court has specifically taken note of all the submissions of the petitioner and found that the election programme was declared on 23.10.2009 and public notice therefor was issued on 07.11.2009. It is not in dispute that the elections were held on 23.11.2009 and the result was declared on 26.11.2009. The Act of 2009 came into force from 15.09.2009 and thereby, the earlier existing Rajasthan Municipalities Act, 1959 was specifically repealed from the date of commencement of the Act of 2009.

The election in question having taken place after coming into force of the Act of 2009, challenge thereto could have only been

taken up under the Act of 2009 and election petition could not have been filed under the Act of 1959.

Apart from the above, relevant it is to notice that the petitioner sought rejection of the election petition on the aforesaid grounds but such grounds could only be treated to be his plea in opposition to the election petition. Such grounds, in any event, do not make out a case for rejection of the election petition under Order VII Rule 11 CPC. The application has rightly been rejected and no case for interference is made out.

Before parting, this Court is constrained to observe that a perusal of order-sheets as placed on record makes it clear that in the concerned election petition, the petitioner has repeatedly moved several applications resulting in unnecessary delay of trial of the election petition. Lastly such a frivolous application was moved under Order VII Rule 11 CPC that has been rejected by the order dated 17.05.2011. In the circumstances of the case, it does appear appropriate to observe that it shall be expected of the Trial Court now to proceed expeditiously in the matter and if necessary to pass requisite orders so as to ensure proper progress of the matter curbing against unnecessary delay; and if the petitioner is found further attempting to delay the proceedings, to pass appropriate stern orders for curbing such attempts.

With the observations foregoing, the petition stands dismissed.

A copy of this order be forwarded to the Additional District Judge, Barmer.

(DINESH MAHESHWARI), J.

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