

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 3061/2019

District Election Officer, Churu Sub Divisional Officer, Churu,
Through Ratan Kumar S/o Shri Girdhari Lal Ji, Aged About 48
Years By Caste Swami, Presently Posted As Sdo, Sujangarh,
District Churu, Rajasthan.

----Appellant

Versus

Ushman Ali S/o Kherdin, Aged About 70 Years, B/c Luhar,
Presently Residing At Ward No. 51, Churu, Tehsil And District
Churu (Rajasthan).

----Respondent



For Appellant(s) : Mr. Dinesh Pal Singh.
For Respondent(s) : Mr. S.G. Ojha.

HON'BLE MR. JUSTICE SANDEEP MEHTA

Judgment

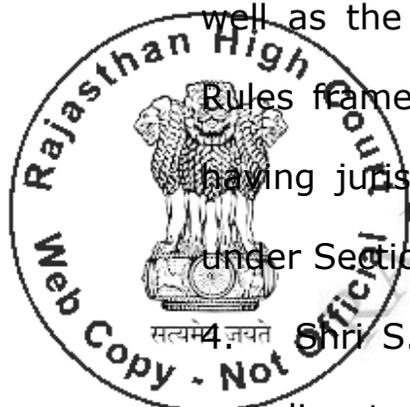
27/11/2019

1. The instant misc. appeal has been preferred by the petitioner District Election Officer-cum-Sub Divisional Officer, Churu for assailing the order dated 13.11.2019 passed by the learned District Judge, Churu in Case No.35/2019 whereby, the order dated 06.11.2019 passed by the District Election Officer, SDO, was set aside and the nomination filed by the respondent Usman Ali for contesting the election in the Ward No.51, Municipality, Churu was declared to be valid.

2. I have heard and considered the submissions advanced at bar and have gone through the impugned order as well as the material available on record.

3. Learned counsel Shri Dinesh Pal Singh, representing the appellant fervently contended that the District Judge, Churu had

no jurisdiction to entertain the petition filed by the respondent under Section 31(1) of the Rajasthan Municipalities Act, 2009 because the controversy posed was a pre-election dispute. He referred to the Article 243ZG of the Constitution of India and Rule 30 of the Rajasthan Municipalities Act, 2009 and urged that jurisdiction of Civil Courts has been barred by the Constitution as well as the provisions of the Municipalities Act and the Election Rules framed thereunder and as such, the District Judge was not having jurisdiction to entertain the plea filed by the respondent under Section 31(c) of the Rajasthan Municipalities Act, 2009.



4. Shri S.G. Ojha, Advocate representing the respondent does not dispute this contention of the appellant's counsel and urges that the respondent may be given liberty to challenge the election of Shri Ghanshyam (since declared elected) by filing an election petition.

5. The relevant provisions which are applicable to the controversy being Article 243ZG of the Constitution of India and Sections 30 and 31 of the Rajasthan Municipalities Act, 2009 are quoted herein below for the sake of ready reference:

"Article 243ZG of the Constitution of India-

243ZG-Bar to interference by Courts in electoral matters.- Notwithstanding anything in this Constitution, -

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made [under] Article 243ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

"Section 30 & 31 of the Rajasthan Municipalities Act, 2009-

30. Jurisdiction of civil courts in electoral matters.- (1)

No civil Court shall have jurisdiction to entertain or adjudicate upon any question relating to the delimitation of wards, the allotment of seats to such wards, preparation of electoral rolls or conduct of election.

(2) No election to any Municipality shall be called in question except by an election petition presented in accordance with the provisions of this Act.

31. Election Petition.- (1) The election of any person as a member of a Municipality may be questioned by an election petition filed within one month from the date of election before the District Judge having territorial jurisdiction over the municipal area on one or more of the following grounds, namely;

(a) that on the date of election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act, or

(b) that any corrupt practice specified in Section 29 has been committed by a returned candidate or his election agent or by any other person, with the consent of a returned candidate or his election agent, or

(c) that any nomination has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a returned candidate has been materially affected

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

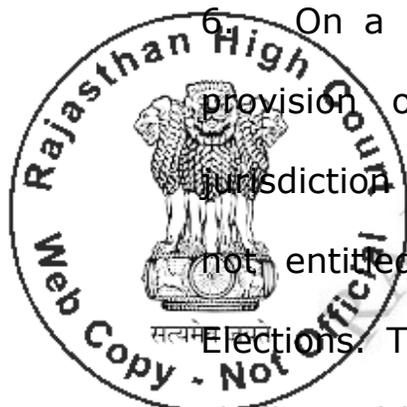
(iv) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder, or

(e) that in fact the appellant or some other candidate received a majority of the valid votes, or



(f) that, but for the votes obtained by the returned candidate by corrupt practices, the appellant or some other candidate would have obtained a majority of the valid votes.

(2) In hearing the election petition, the District Judge shall follow such procedure and exercise such powers as may be prescribed."



6. On a plain reading of the Constitutional provision and the provision of Statutory Election Rules, it is clear that the jurisdiction of the Civil Courts is specifically barred and they are not entitled to entertain any dispute pertaining to Municipal Elections. The election of an elected Ward Member can only be challenged by filing an election petition as per Rule 7 of the Rules of 2009. The District Judge was not authorised to entertain the application as the jurisdiction is exclusively conferred upon an Election Tribunal constituted under the Rules of 2009.

7. In this view of the matter, the impugned order is absolutely without jurisdiction and cannot be sustained.

8. Hence, the appeal deserves to be accepted. The impugned order dated 13.11.2019 passed by the learned District Judge, Churu in Case No.35/2019 is set aside leaving the respondent at liberty to challenge the result of the election before the Election Tribunal by filing an election petition if so desired.

9. The appeal is allowed in these terms. The stay application is disposed of. No order as to costs.

(SANDEEP MEHTA),J

56-Tikam/-