



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

S.B. Civil Writ Petition No. 962/2020

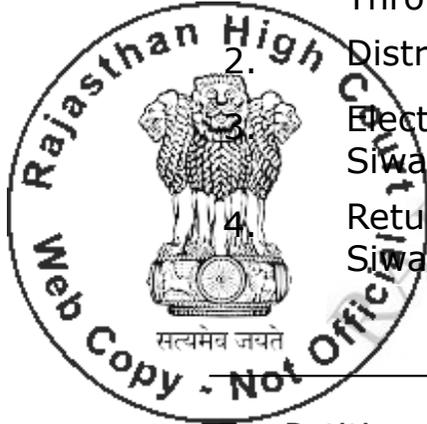
Mahendra Kumar S/o Shri Chhagan Raj Jain, Aged About 53
Years, R/o 3 Nimdi Ki Was, Siwana, Tehsil Siwana, District
Barmer.

----Petitioner

Versus

1. Election Commission Of Rajasthan, Secretariat, Jaipur
Through Chief Election Commissioner.
2. District Election Officer, Barmer.
3. Election Registration Officer Cum Sub Division Magistrate,
Siwana, District Barmer.
4. Returning Officer, (Panchayat Election), Gram Panchayat,
Siwana Through Sub Division Magistrate, Siwana.

----Respondents



For Petitioner(s) : Mr. Moti Singh.
For Respondent(s) : Mr. Vikas Balia.
Mr. Sunil Beniwal, AAG

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

28/01/2020

This writ petition has been filed by the petitioner aggrieved against rejection of the petitioner's nomination form for the post of Sarpanch, Gram Panchayat, Siwana.

Pursuant to the notification issued by the State Election Commission ('the Election Commission'), the petitioner filed nomination and on the date of scrutiny, the nomination form filed by the petitioner has been rejected by the Returning Officer, inter-alia, with the following observations :-

- "1. उपाबन्ध आई बी में बिन्दु संख्या 6 में अभ्यर्थी ने आपराधिक मामले में दोषसिद्ध बताया है।
2. इसी के साथ जुर्माने के रूप में 2000 रु का दण्ड अधिरोपित किया है।
3. दण्ड अधिरोपित करने का पूर्ण विवरण नहीं दिया है।"



It is submitted by learned counsel for the petitioner that in terms of the provisions of Section 19(g) of the Rajasthan Panchayati Raj Act, 1994 ('the Act'), the disqualification indicated is conviction of an offence by a competent Court and sentenced to imprisonment for six months or more, whereas, in the present case, the petitioner has been visited with a fine of Rs.2,000/- only and therefore, by no stretch of imagination, the petitioner was disqualified and therefore, rejection of petitioner's nomination is illegal.



Further submissions have been made that as per the original schedule, the polling for the election was to take place on 17.01.2020, however, on account of certain litigation, the said polling was postponed by the Election Commission by its direction dated 19.01.2020 (Annex.8) and now on account of further orders passed by the Hon'ble Supreme court, the Election Commission is going to hold the elections for the post of Sarpanch by way of a fresh notification and therefore, the Returning Officer be directed not to commit the same illegality again.

Learned counsel appearing for the respondent - Election Commission made submissions that at this stage, it cannot be said that as to whether in case of petitioner's Gram Panchayat, a fresh programme will be issued calling for fresh nomination forms etc., inasmuch as, the process may proceed forward from the present stage and only a polling date may be declared by the Election Commission, which would depend on the circumstances pertaining to the Gram Panchayat. The decision would be taken in due course and therefore, the plea raised by the petitioner / prayer made seeking a direction to the Returning Officer is based on assumptions.



Submissions have been made that once, the nomination form of the petitioner has been rejected, the remedy is by way of petition under Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 ('the Rules') and challenge by way of a writ petition is not envisaged / is barred under Article 243-O of the Constitution of India and on that count, the writ petition deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

In so far as, rejection of petitioner's nomination by the Returning Officer is concerned, prima-facie based on the indications made by the petitioner in the nomination form and the order passed by the Returning Officer read with provisions of Section 19(g) of the Act the same appears to be incorrect.

However, once the nomination form has been rejected, the challenge to the improper rejection of nomination form has to be laid in terms of provisions of the Rules as the interference is barred under Article 243-O(b) of the Constitution of India.

However, on account of extra-ordinary circumstances, which have emerged on account of postponement of the polling and certain orders have been passed by the Division Bench / Supreme Court of India, in case, a fresh procedure is adopted and fresh nominations are called by the Election Commission for the said Gram Panchayat, the mere fact that the nomination form of the petitioner was earlier rejected by the Returning Officer, would not be a ground for rejection of the petitioner's nomination form. The Returning Officer would be required to examine the circumstances afresh keeping in view the observations made by the Court herein-





before with regard to the grant of rejection indicated by him earlier.

In view of the above discussion, the writ petition filed by the petitioner is disposed of with a direction that in case, the respondent-Election Commission decides to go ahead with declaring the date of polling only for the post of Sarpanch, Gram

Panchayat Siwana, the petitioner would be required to take proceedings in accordance with law as noticed herein-before.

However, if a fresh programme including filing of nomination form is declared by the Election Commission for the said Gram

Panchayat, the Returning Officer shall keep in view the observations made herein-before qua the rejection of petitioner's nomination.

(ARUN BHANSALI),J

199-Rmathur/-

