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HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition (C) No.1368 of 2008

Dharam Das Gautam

Versus

State of Chhattisgarh & Others ✓

And

Writ Petition (C) No.1597 of 2008

Radhe Shyam Sharma

Versus

State of Chhattisgarh & Others

Post for pronouncement of the judgment and order on 14-11-2008

Sd/-
Satish K. Agnihotri
Judge



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HIGH COURT OF CHHATTISGARH AT BILASPUR
Writ Petition (C) No. 1368 of 2008

PETITIONER : Dharam Das Gautam, son of late Suklu Ram Gautam, age 37 years, Director, District Sahakari Krishi Evam Gramin Bank Mydt. Raipur (CG), resident of Village Majitiha, Block Arang, District Raipur (CG).

VERSUS

RESPONDENTS : 1. State of Chhattisgarh, through Secretary, Department of Cooperative (Sahakarita), Mantralaya, DKS Bhawan, Raipur (CG).
2. Registrar, Cooperative Societies, Telibandha, Raipur (CG).
3. Collector, Raipur, Collectorate, Raipur (CG).
4. Election Officer, Jila Sahakari Krishi Evam Gramin Bank Maryadit, Raipur (CG).

Present : Shri S.S. Rajput, Advocate for the petitioner.
Shri A.S. Gaharwar, Additional Advocate General with Shri Alok Bakhshi, Govt. Advocate for the State.
None for the respondent No. 4.

And

Writ Petition (C) No. 1597 of 2008

PETITIONER : Radhe Shyam Sharma aged about 64 years, S/o late Pt. Rameshwar Prasad Sharma R/o C-1, Samta Colony, Raipur (CG).

VERSUS

RESPONDENTS : 1. State of Chhattisgarh, through Secretary, Department of Cooperative (Sahakarita), DKS Bhawan Mantralaya, Raipur (CG).
2. Registrar, Co-Operative Societies, Telibandha, Raipur (CG).
3. Collector, Raipur, Collectorate, Raipur (CG).
4. Election Officer, Jila Sahakari Krishi Evam Gramin Bank Maryadit, Raipur (CG).
5. Jila Sahakari Krishi Evam Gramin Bank Maryadit, Raipur (CG).

(WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

(SB: Hon'ble Mr. Satish K. Agnihotri, J.)

Present : Shri Anand Kumar Tiwari, Advocate for the petitioner.
Shri A.S. Gaharwar, Additional Advocate General with Shri Alok Bakhshi, Govt. Advocate for the State.
None for the respondent No. 4 & 5.

JUDGEMENT

(Passed on ...14th day of November, 2008)

1. Both the petitions involve the same question of law, and as such both the petitions are being disposed of by a common order.
2. In W.P.(C) No. 1368/08, the petitioner seeks a writ of certiorari to quash the impugned notices dated 20.02.08 (Annexure P/1) and 26.02.08 (Annexure P/2), on the ground that the same are defective and contrary to the provisions contained in Rule 43 of the Chhattisgarh Cooperative Society Rule, 1962 (for short 'the Rule, 1962). The petitioner, in W.P. (C) No. 1597/08, seeks a writ of Mandamus or directions to complete the election pursuant to notifications dated 24.01.08 and 15.02.08.
3. The indisputable facts, in nutshell, are that the election schedule for election of office bearers of the Jila Sahakari Kendriaya Gramin Vikas Bank Maryadit, Raipur, was declared on 24.01.08. Thereafter, first meeting was held on 15.02.08 (Annexure P/3) wherein the date for filing of nomination papers and holding the elections was declared as on 19.02.08. One Shri P.K. Mishra, Senior Branch Manager was authorized to receive the nomination papers. Thereafter, amended notification dated 20.02.08 was issued on the ground that the election scheduled to be held on 19.02.08 could not be conducted. Therefore, the elections are rescheduled to be held on 03.03.08.



4. Shri S.S. Rajput, learned counsel appearing for the petitioner, in W.P.(C) No.1368/08 would submit that the earlier notification dated 15.02.08 was not accordance with law as no returning officer was notified for conducting the election, thus, subsequent amended election schedule dated 20.02.08 was required to be issued. Thus, the amended notification be cancelled as in the second notification also no returning officer was notified for conducting the election, which is contrary to the provisions of Rule 43 of the Rule, 1962.
5. Per contra, Shri Tiwari, learned counsel appearing for the petitioner in W.P.(C) No. 1597/08, would submit that the election should be held as per first notification, as the election authorities cannot curtail or stop holding of election once the election has been initiated after declaring the election programme. Thus, the respondent authorities be directed to hold the election as per initial notifications dated 24.01.08 and 15.02.08.
6. Shri A.S. Gaharwar, learned Additional Advocate General, appearing for the State/respondent No. 1 to 3 would submit that the election should not be hold on account of certain unavoidable reasons. However, time schedule be given. The authorities undertake to hold election as expeditiously as possible.
7. Despite notice, none appeared for Election Officer and Jila Sahakari Krishi Evam Gramin Bank Maryadit, Raipur.
8. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the notifications dated 24.01.08 and 15.02.08, election schedule dated 19.02.08 as amended dated 20.02.08 could not be taken to its logical conclusion and



the election could not be held. The office bearers could not be elected in Jila Sahakari Krishi Evam Gramin Bank Maryadit, Raipur .

9. The Hon'ble Supreme Court, in the matter of **Election Commission of India through Secretary Vs. Ashok Kumar and Others**¹ held that without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.
10. Subsequently, in the matter of **Special Reference No. 1 of 2002 (Gujarat Assembly Election Matter)**², a Constitution Bench of the Supreme Court observed that democracy is a part of the basic structure of the constitution and periodical, free and fair election is the substratum of democracy. If there is no free and fair periodic election, it is end of democracy.
11. In view of foregoing, holding of free and fair election is the basic structure of the democracy. In the facts of the case, election could not be held because of one or other reasons. Despite declaration of election schedule, the concerned authority could not complete holding election of office bearers. The government ought to have concluded the election without any interruption for furtherance of basic concept of democracy at the earliest.
12. Without going into the merits of the case, as to whether the first notification and further whether first schedule and/or whether second amended schedule were just, legal and proper, since about 11 months have passed, it would

¹ 2000 (8) SCC 216

² 2002 (8) SCC 237



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not be just and proper to direct holding election on the basis of first election schedule wherein, nomination papers filed by the contesting parties, were also accepted. It is directed that the State respondent shall comply with the undertaking given by the Additional Advocate General.

13. Learned Additional Advocate General, on instruction, undertakes on behalf of the State that the process of election for the office bearers of Jila Sahakari Krishi Evam Gramin Bank Maryadit, Raipur shall commence from 16.12.2008 and the same shall be concluded as early as possible, preferably within a period of one month.

14. In view of foregoing, the respondent authorities are directed to initiate process to hold free and fair election for office bearers of Jila Sahakari Krishi Evam Gramin Bank Maryadit, Raipur, on 16.12.2008 and the same shall be concluded within a period of one month.

15. In view of foregoing, these petitions stand disposed of with the above stated direction.

Sd/-
Satish K. Agnihotri
Judge

Sahu