HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

WP(C) No. 4556/2019
CM Nos. 9654/2019,
733/2020, 5819/2020
c/w
WP(C) No. 1765/2020

(Through video conferencing)

Reserved on : 16.12.2020
Pronounced on : 22.12.2020

Zarina Begum .....Petitioner(s)

Through :- Mr. Zulker Nain Sheikh, Advocate

V/s

Deputy Commissioner, District Panchayat Election Officer, Doda and others .....Respondent(s)

Through :- Mr. H.A. Siddiqui, Sr.AAG for respondent Nos. 1 to 4
Mr. Dheeraj Choudhary, Advocate with Mr. M.I. Sherkhan, Advocate for respondent No. 5

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

WP(C) No. 4556/2019

1. This is the petition under Article 226 of the Constitution of India seeking quashing of order dated 21.12.2019 passed by the court of learned Additional Deputy Commissioner, Doda in appeal filed by the appellant/respondent No. 5 herein under Section 43 of the J&K Panchayati Raj Act, 1989, whereby the entry of Zarina Begum in voter list of Panchayat Bathri has been expunged ab initio making her candidature for Sarpanch as invalid and subsequently her election as Sarpanch has been set aside.

2. The factual matrix of the case in hand is that the result of election of Panchayat Bathri was declared on 24.11.2018 and the petitioner was

declared elected as Sarpanch against respondent No. 5. Subsequently, the respondent No. 5 filed an appeal challenging the election of the petitioner as Sarpanch.

3. Learned counsel for the petitioner submits that the petitioner appeared before the Appellate authority and filed detailed objections to the appeal, but the order impugned dated 21.12.2019 annulling the election of the petitioner as Sarpanch was passed in a mechanical manner and without appreciating the legality as well as factual position of the matter.

4. It is submitted that the petitioner was married in Village/Panchayat Bathri in the year 2007 and since then she is residing there. It is further submitted that she had approached the concerned authority for obtaining the voter list prior to the elections and after obtaining the same it was found that there was a typographical mistake as the name of one Saira Begum was entered in place of Zarina Begum, aggrieved of which she approached the concerned authority for rectification in the voter list and the same was rectified on 30.10.2018. Learned counsel for the petitioner further submits that all this was done much before the filing of the nomination papers and the respondent No. 5 never objected the candidature of the petitioner at that point of time and it was only after the declaration of the result her election was challenged just to harass her.

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5. It is submitted that the court of learned Additional Deputy Commissioner, Doda has failed to appreciate that the election card bearing No. FQW0371856 was issued in favour of the petitioner bears her photograph, however, inadvertently the name of Saira Begum who

happens to be first wife of husband of the petitioner was entered in the voter list.

6. Objections to the writ petition was filed by the respondent No. 5 stating therein that the petitioner was not enrolled in Panchayat Halqa Bathri at the time of filing of nomination papers form for the post of Sarpanch and therefore was ineligible to contest the election of Sarpanch in terms of Section 6, sub-section (2) of the J&K Panchayati Raj Act.

7. Learned counsel for the respondent No. 5 would submit that it is not the typographical mistake but is the actual name of first wife of Mohd. Aslam (the husband of the petitioner herein) who later got divorced and it was her name only which was in the voter list of Panchayat Halqa Bathri figuring at serial No. 19, election card No. FQW0371856 and the same was not deleted. He further submits that if the petitioner had ever registered as a voter in Panchayat Bathri, then the new serial No. would have been allotted to her and moreover the contention of the petitioner that she got her name rectified from the concerned authorities is not valid because there is no provision of rectification under the Panchayati Raj Act and two persons cannot be enrolled against one serial number in the same voter list. Learned counsel for the petitioner has raised various disputed questions of facts in the petition. It is argued that election card No. FQW0371856 has been allotted in her favour on which petitioner's photograph has been pasted, whereas the name of petitioner has wrongly been mentioned on the said election card. This aspect of the facts has not been considered by the Appellate court.

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8. Mr. H.A. Siddiqui, learned Sr. AAG appearing for the official respondents submits that he has adopted the objections filed by the respondent No. 5, has defended the order impugned herein and argued that the petitioner herein has a right to apply for inclusion or deletion of her name from the voter list, however, the petitioner did not sought for inclusion of her name in the voter list and the returning officer without ascertaining the fact that the petitioner is not enrolled as a voter of Panchayat Halqa Bathri has wrongly accepted the candidature of the petitioner by fraud. It is also argued that one Saira Begum, first wife of Mohd Aslam husband of the petitioner, who has been divorced, but her name has still existed in the voter list of Bathri figuring at serial No. 19 having election card No. FQW0371856. Mr. Siddiqui, learned Sr. AAG further argued that admittedly, the petitioner is the second wife of Mohd. Aslam, however, the petitioner never approached to the concerned authority for deleting the name of Saira Begum from the electoral roll of Panchayat Halqa Bathri and had tried to seek the correction of serial No. 19, election card No. FQW0371856 in the voter list. Further stated that Saira Begum after divorce from Mohd. Aslam married one Liaqat Ali and presently she has been enrolled in the voter list of Panchayat Halqa Dhadkai-A of Block Bhalessa, District Doda, wherein her name figured at serial No. 23 bearing no. CQR0342428.

9. I have heard learned counsel for parties at length and considered the matter.

10. Admittedly, the petitioner has married one Mohd. Aslam R/o Panchayat Halqa Bathri, Tehsil Kahra, District Doda and Saira Begum was the first

wife of Mohd. Aslam. Saira Begum after divorce from Mohd. Aslam got married to one Liaqat Ali and the name of Saira Begum has been enrolled in the voter list of Panchayat Halqa Dhadkai-A of Block Bhalessa, District Doda. The name of Saira Begum after her divorce from Mohd. Aslam has still existed in the voter list of Panchayat Halqa Bathri at serial No. 19, election card No. FQW0371856 and the petitioner herein has played a mischief and succeeded to enroll her name by seeking correction of the number allotted to Saira Begum and this fact subsequently came to the notice of the authorities. A perusal of Section 6, sub-section (2) of the J&K Panchayati Raj Act reveals that no person shall be qualified to be chosen as a member of Halqa Panchayat unless his name is included in the electoral roll of such Halqa Panchayat.

11. Learned counsel for the petitioner has vehemently argued that the Election Card bearing No.FQW0371856 at serial No.19 in the electoral roll has been allotted in her favour, however, the name of petitioner has wrongly been reflected as Saira Begum in the electoral roll and she, accordingly, approached the concerned authority for rectification of her name. Accordingly, the concerned authority after rectification has issued the amended voter list.

12. Sub-clause (4) of Rule 43 of Panchayati Raj Rules has also barred to adjudicate upon a final order passed by the Appellate authority. The petitioner is raising a disputed question of fact in the present writ petition and the Article 226 of the Constitution of India cannot be invoked to adjudicate a disputed question of fact. The law is well settled by the Supreme Court in ***AIR 2003 SC 4531, AIR 1963 SC 1723***.

13. The appellate Court has passed a reasoned and valid order on the basis of record produced by Assistant Electoral Registration Officer, Kahra, whereby in the voter list the name of Saira Begum, the first wife of Mohd. Aslam has been recorded at Sr. No.19, having election card No. FQW0371856. The first wife of Mohd. Aslam, namely, Saira Begum also appeared before the appellate court and produced the same election card bearing No. FQW0371856 allotted to her in Panchayat Bathri and stated that her name has not been deleted from the electoral roll of Panchayat Bathri. The election card so produced by Saira Begum was found true and correct and the same number matches with the name at Sr.No.19 in the voter list and at Sr.No.2 in the correction list of the electoral roll (Farist Tasihat). The appellate court in the order impugned, therefore, observed that the exercise of correction has been done by the petitioner to cover up her candidature for the election in question that too without following due procedure of law. The appellate court, however, observed that the petitioner herein instead of approaching the concerned authority for seeking deletion of the name of first wife of Mohd. Aslam had sought rectification for inclusion of her name in the voter list at Sr. No.19, whereas Sr.No.19 was allotted in the name of Saira Begum, who was the first wife of Mohd. Aslam and her name was still existing in the electoral roll bearing No. FQW0371856. Thus, the appellate court came to the conclusion that the petitioner herein has tried to mischief by pasting her photograph on the election card bearing No. FQW0371856, which, in fact, had been allotted to one Saira Begum, who happens to be the first wife of Mohd. Aslam.

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14. The impugned order passed by the Appellate court is a valid and reasoned order and I am not inclined to interfere into the same. Accordingly, this writ petition is dismissed along with connected CM(s). Interim direction, if any, shall stand vacated.

WP(C) No. 1765/2020

15. In view of the observations made by this Court in writ petition bearing WP(C) No. 4556/2019, the subsequent writ petition bearing WP(C) No. 1765/2020 also stands dismissed. Interim direction, if any, shall stand vacated.

(TASHI RABSTAN)
JUDGE

JAMMU
22.12.2020
Pawan Angotra

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Whether the order is speaking? : Yes/No

Whether the order is reportable? : Yes/No

PAWAN ANGOTRA
2020.12.23 12:28
I attest to the accuracy and
integrity of this document