

**Bahadur Nath vs State Of Rajasthan And Ors.**

Rajasthan High Court

22/01/2001

**Bench:** B chauhan

**Where Reported:** 2001 AIR (Raj) 251, 2001 (2) RAJLW 1237, 2001 (4) WLC 289,

**Legislation Cited:**

- The Compulsory Deposit Scheme Act, 1963
- Article 243O(b) in The Constitution Of India 1949
- Section 171A in The Indian Penal Code
- Statesman (Private) Ltd vs H. R. Deb & Ors on 2 April, 1968
- S.P Chengalvaraya Naidu vs Jagannath on 27 October, 1993

**Case Digest:**

**Summary:**

The petitioner was elected as Sarpanch of village Likhmadesar, Tehsil Sri Dungargarh, district Churu on 4.2.2000. Mukun Nath, the election runner up, filed an election petition, on the ground that the petitioner had more than two children and as the third child was born on 10.2.1999, which is after 27.11.1995, he wasn't qualified to contest the election. The respondents issued a notice dated 1.9.2000 asking the petitioner to answer as why action Under Section 39(1) (a) read of with Section 19(1) of the Act, 1994 should not be not taken against him on account of incurring the disqualification by having third child after the cut off date. Petitioner submitted his reply dated 26.9.2000, wherein he also contended that because of pendency of the election petition on the same ground, holding such as enquiry was not permissible. He had three daughters born on 2.8.1992, 7.3.1994 and 15.10.1995, respectively. The respondents impugned order(24.10.2000) as they were not satisfied by the petitioner's explanation.

**Issue:**

- whether it is open to the State Government to hold an enquiry on these issues during pendency of election petition.

**Judgement:**

Election of a person can be challenged before the competent Election Tribunal Under Sec 43 on the prescribed ground available to him and within the prescribed period which includes the ground of disqualification on the date of filing the nomination paper. There may be possibility that the person might have incurred disqualification but election petition could not be filed within the limitation or a person incurs disqualification after expiry of the limitation for filing the election petition or he might have become disqualified to continue in office by incurring disqualification which he had not incurred on the date of election.

This is permissible if election petition could not be filed within the limitation or the person, who could file the election petition, was not interested. As per clause (b) of Section 171-A, I.P.C., a person who has incurred disqualification and lost the right to stand in the election, if succeeds by

misrepresentation to contest the election and succeeds, commits an offence. A person may be disqualified from being elected on the ground of election petition but he may not have a right to continue in office.

Petitioner cannot be heard on veracity of the allegations made against him for the reason that it is a matter of inquiry. If the said allegations are taken to be true on its face value, it can be held that he has committed an offence Under Section 171-A I.P.C.

A person filing the nomination paper should be qualified under Sec 19 of the Act. Election petition can only be filed by a candidate of that election. An election petitioner can also take the ground that the returned candidate had incurred disqualification prior to contesting of the election. The power to dismiss the election petition or declare the election of the returned candidate to be void and further to declare the election petitioner or any other candidate to have been duly elected lies under the Election tribunal. This doesn't cover the situation where the person has been disqualified from contesting election and the only enabling provision in such a case is Section 39 of the Act, 1994. Sec 39(1)(i) provides that a person loses the eligibility to continue to be a member on incurring the disqualification specified in Section 19.

Petitioner was not eligible to contest the election and cannot be permitted to hold the office for the reason that his entering into the office was in violation of the statutory requirement which cannot be cured by any means.

The quo warranto proceedings affording a judicial inquiry in which any person holding an independent substantive public office or franchise or liberty is called upon to show by what right he holds the said office, franchise or liberty. If the inquiry leads to the finding that the holder of office had no valid title to it issuing a writ of quo warranto ousts him from that office. If the jurisdiction of the Court to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it.

Delay or laches becomes immaterial if the appointment/election to an office is illegal, every day the office-bearer acts in that office, a fresh cause of action arises and the petition for quo warranto is maintainable for challenging his very right to act on the post and the same can be questioned. It is not necessary for the petitioner to claim a relief for himself. Any person, by way of writ, can challenge the right of a person to sit as a Member in Gram Panchayat/Municipal Board or State Legislature or Parliament.

Writ lies to test the validity of the election to a public office or in a statutory body and in case Court is satisfied that election had been held on the basis of an electoral roll prepared in contravention of the statutory provisions or the electoral roll itself was illegal or the person contesting the election stood disqualified, the Court should not hesitate in asking the person to vacate the office because he cannot be permitted to usurp the public office.

Merely because of pendency of the election petition, it can't be held that the impugned order dated 24.10.2000 could not have been issued. Petitioner devoids any merit and accordingly is dismissed. The respondents are directed to conclude the inquiry expeditiously, preferably within the period of two months from the date of filing the certified copy of the order before

respondent No. 1. Petitioner is directed to co-operate with the inquiry and in case he does not do so, the Enquiry Officer may proceed ex-parte after recording the reasons. Learned Counsel for respondents Ms. Kusum Rao, shall place before him within the period of ten days from today. A copy of this judgment and order shall be given to her on usual charges within the period of three days.

