

Decision no. 4057 - Dispatch

Part: 32 Year: 2047 Month: Baisakh Number: 1

Verdict Date :2046/11/03 ि ि 1653

Decision no. 4057 N.K.P. 2047 (a) Issue 1

Joint Bench

Honorable Judge Mr. Prithvi Bahadur Singh

Honorable Judge Mr. Hiranyeswaraman Pradhan Samvat

2046 Year No. 1352 Order Date: 2046.11.3.4

Petitioner : Panchthar Dist. Falaicha Ga.Pt.

Opponent against Chaturman Vedha aka Rajendra living in War No. 6 :

Special Election Court, also District

Court of Panchthar Subject : Dispatching

(1) If the Special Election Court has decided to cancel the election on the basis of Section 14(2) of the Election (Election Offenses and Punishments) Act, 2024, the basis of Section 14(1) is mentioned. It is not seen that the order of dispatch should be issued as per the demand, as it appears that they have made a mistake. (Chapter No. 9)

On behalf of the petitioner : Learned Senior Advocate Mr. Krishna Prasad

Pant On behalf of the Opponent : Learned Additional Advocate General Mr. Prem Bahadur Bista and Learned Advocate Mr. Madhav Baskota

order

Justice Hiranyeswaraman

The summary of the case is presented under Article 16.71 of the Constitution of Nepal 1.

Predhan Panchthar dated 2045.12.3 symbol of the 2045.12.3, the opposition, rabbit symbol, Tikaram's Madal symbol and Bhoj Prasad Kharel's spade symbol. I am the applicant Falaicha Ga.Pt. In the election of the vice-presidential panel, I was elected to the vice-presidential panel as I got the highest number of votes as I got 388 votes and the opposition got 306 votes and Tikaram Kharel got 213 and Bhojprasad Kharel got 141 votes. There were no complaints until the election. They complained to the election officer and the chief district officer that the opposition filed a complaint against me. But it has been stated that the special election court issued a deadline for the complaint vote given to the unauthorized body and after my reply letter, without properly evaluating the evidence, the special election court decided on 2045.12.3 that I was elected and declared that the opposition Narprasad Adhikari was elected as the deputy president on the basis that he got 308 votes. . As my legal and constitutional rights have been affected by the said judgment and there is no other remedy under the law, I have come to take refuge in this honorable court. As the decision was not reached, A.B. 35 no. is unfavorable. In the complaint of the opponent, it has been claimed that sub-sections (1) and (2) of section 14 of the Election (Crimes and Punishments) Act, 2024 have been upheld and the application to be quashed under section 14(1)(6) (b) of the said Act has been upheld. If you think about it, the election can be canceled, it can never be said that the complainant was elected. Section 14(1)(b) of the Elections (Crimes and Punishments) Act, 2024, held that the opposition Narprasad Adhikari is deemed to have been elected as the Deputy President. It is wrong in itself to have decided to apply Section 14(1)(a) and 14(2)(a) of the Election (Crimes and Punishments) Act, 2024, which cannot be applied to that. Therefore, the petition also requests that the decision of the Special Election Court Panchthar dated 2045.12.3 be sent and an interim order be issued to stop the execution of the said decision by issuing an order, order or part. 3. What happened to it? Order of a judge's bench on 046.1.25 to submit a written response from the opponent or to submit it according to the rules, as well as to submit a memorandum to the opponent for the discussion of the interim order.

4. Narprasad Adhikari, who got 388 votes less than me and got 306 votes less than me, is an unauthorized body election officer and P.G.A. Case no. Local Panchayat Election Guidelines, 2043 that if a complaint is brought to the concerned election officer who has filed a complaint under the Election Crimes and Punishment Act, 2024, the concerned election officer shall register the complaint and send all such complaints to the special election court at the relevant level. It is clearly mentioned in section 87 of (1) and sub-section 2 of section 18 of Election Crimes and Punishment Act, 2024. There is no reason to file a complaint against the Election Officer regarding the fact that the complaint should be dismissed because there is no opposition to the Election Officer. Because the polling officers appointed in accordance with section 69 of the Local Election Guidelines, 2043 have already been delegated authority in accordance with section 70. Therefore, since the petitioner has violated the constitutional rights of the respondent, the interim order as per the petition should not be issued, but the petition should be dismissed and the local panchayat election officer and P.G.A. written answer to 5. Under the Elections (Crimes and Punishment) Act, 2024, the concerned person who complains about any election must file a complaint with the relevant election officer within 35 days of the publication of the election results, as this election has been sent to the special court by the election officer for action in accordance with the law. According to the same Act, subsection 1, 2 of Section 14, there is no provision in the said Act that claims cannot be taken simultaneously. Since the petitioner has won the election contest by concealing the provisions of the Act and the matter of falsification of age under (2) (b) of Section 14(1) of the Elections (Crimes and Punishments) Act, 2024 is also included in the crime and Since the main claim of the complaint is related to age falsification, the plea that both sub-sections 1 and 2 cannot be claimed at the same time is baseless. 045.5.1 of the district office of Panchthar that the law stipulates that the candidate for the vice president must be 21 years of age, the petitioner faked his age and won the election.

The written response of the special election court also said that the application should be dismissed as it was seen from the letter and the certificate of permanent citizenship that his age was only 19 years at the time of the election. Section 14(2) of the Election (Offences and Punishment) Act, 2024. The Act specifies that the offense under section 14(2)(a)(b) is proven, the election of the elected candidate will be annulled and the hearing officer will be able to decide that the complainant or any other person has been duly elected. has been done According to the same, the opposition has falsified the age of the candidate and violated the provisions of the Act under section 14(1) of the Election (Crime and Punishment) Act and A. 14(2) of 2024 (b) below, the complaint that the claim cannot be filed because both crimes have been committed is baseless. By violating the laws and constitution and participating in the election as a candidate and not winning, the opposition's constitutional rights were not affected and the evidence was evaluated and I was sent to Panchthar District Falaicha Ga. Pt. Narprasad Adhikari's written reply that the decision of the election special court on the date of 045.12.3, which was declared elected as the post of vice-president, should be dismissed. 7. According to the rules, the learned senior advocate Mr. Krishna Prasad Pant, appearing for the petitioner in the present appeal which has been placed on the list of appearance, stated that sections 1 and 2 of the Election (Crimes and Punishments) Act, 2024 are not applicable in the same situation, against the decision of the Special Election Court. The main argument was that the decision of the Special Election Court should be upheld by the learned Additional Advocate General Mr. Prem Bahadur Bishta on behalf of the opposition and the argument was made by the learned Advocate Mr. Madhav Baskota on behalf of the opponent Narprasad Adhikari. A date was fixed for hearing the verdict. 8. Now a decision has to be made as to whether or not the recall report should be issued along with section 14(1)(2) of the Election (Crime and Punishment) Act, 2024.

When the Vice President's decision is in accordance with the above legal provisions, a complaint has been filed before the election officer and sent to the election special court, in the case of the petitioner's election, the opposition has been declared elected if the petitioner has not reached the age to be a candidate in the election. and Punishment) of the Act, Section 14(1)(2) of the Act, 2024, for claiming that the entire election should be annulled from the complaint, but not for requesting that it be annulled up to the election of the Vice-President. According to 1)(2), it has been seen that the petitioner is not eligible to be a candidate due to the fact that he is not yet 21 years old at the time of the election, so it should be considered that he has claimed that he should be declared elected and get the second majority in accordance with section 14(2). The Special Election Court also took into consideration the same claim of the complaint received from the Election Officer and evaluated the evidence received regarding the petitioner's age in accordance with the law. It is seen that the opposition who got the most votes is declared elected. However, if the Special Election Court has decided to annul the election of the Deputy President, the election should be annulled according to Section 14(2) of the Election (Crime and Punishment) Act, 2024, as long as the basis of Section 14(1) is mentioned, which provides for the annulment of the entire election. Since it is not seen that there has been a mistake, it is not seen that the order of expulsion should be issued as per the demand, as it is seen that the opponent who is seen to have got the second majority in accordance with the same section 14(2) has been declared elected as the Deputy President, this appeal is considered to be dismissed. Submit the file according to the rules .

I agree with that opinion.

Justice Prithvi Bahadur Singh

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