

(2016) 03 AHC CK 0219
In the Allahabad High Court

Case No : Writ C. Nos. 14277, 14285, 14117, 13985 and 14029 of 2016

Anita Devi and Others

APPELLANT

Vs

Prescribed Authority, Panchayat Raj and Others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Citation : (2016) 6 ADJ 27 : (2016) 3 AILLJ 479 : (2016) 132 RD 1 : (2016) 2 RJ 968 : (2016) 2 UPLBEC 1530

Hon'ble Judges : Arun Tandon and Amar Singh Chauhan, JJ.

Bench : Division Bench

Advocate : Ajit Kumar, for the Appellant;

Final Decision : Disposed off

Judgement

1. These five writ petitions have been filed for writ of mandamus commanding the Election Tribunal to decide the election petition filed under Section 12C of the Panchayat Raj Act in an expeditious manner.

2. In all the cases it is alleged by the election petitioners that on various dates the proceedings of the election petition have only been adjourned because the Sub-Divisional Magistrate who has been appointed as the prescribed authorities is stated to be busy in other work. It is submitted that the very purpose of filing the election petition is frustrated because of adjournment and delay in deciding the same within reasonable time. It is submitted that the elections are held for an office of a fixed term. The order of the Election Tribunal can be subjected to challenge by way of revision and in case the proceedings are not concluded in expeditious manner there is every likelihood that the proceedings itself may be rendered infructuous by passage of time i.e. expiry of the term of the office concerned.

3. We may take note of the fact that large number of similar petitions are filed before this Court where the prayer is that the Election Tribunal may be directed to decide the election petition expeditiously without granting any unnecessary

adjournment, in a time bound manner.

4. We have been confronted with the orders where the High Court has issued directions for election petitions being decided within a period of six months.

5. For appreciating the anxiety of the petitioners to get their election petitions decided in an expeditious manner, we deem it fit and proper to refer to the statutory provisions which made for the purpose.

6. Section 12-C of the U.P. Panchayat Raj Act, 1947 provides that the election to the office of Pradhan or members of a Gram Panchayat or Nyay Panchayat can be called in question only on an application being made before such authority within such time and in such manner as may be prescribed on the grounds mentioned in the Section.

7. Sub-clause 5 of Section 12-C of the U.P. Panchayat Raj Act directs that without prejudice to generality of the powers to be prescribed under sub-section (4) the rules may provide for summary hearing and disposal of an application under sub-section (1).

8. In exercise of powers for nominating the prescribed authority and regulating the method and procedure for presentation and hearing of election petition State of Uttar Pradesh has framed "Uttar Pradesh Panchayat Raj (Settlement of Election Disputes) Rules, 1994." The Rules provide that an application under Section 12-C Rule-3 has to be filed within ninety days from the date the result is declared. Rule-4 provides for the Sub-Divisional Magistrate being the competent authority to hear such election disputes. Rule-4 declare that while deciding such election petitions the Sub-Divisional Magistrate shall summarily follow the procedure applicable under the Code of Civil Procedure 1908 for trial of suits. Such applications can be dismissed, without giving notice to the opposite parties. It shall not be necessary to record the evidence in full and he may only maintain a memorandum of the evidence produced by the parties before him.

9. The Sub-Divisional Magistrate may only allow such evidence be produced as he may deem relevant for the purpose of deciding the election petitions. From the aforesaid rules regulating the procedures for hearing of the election petitions read with Section 12 C sub-rule (5) the intentions of the State Legislature is, that there must be early disposal of the election petitions and if required the rules may provide for summary hearing and disposal of the said election petition.

10. The election petitions must be heard in an expeditious manner and there should not be uncalled for adjournment of such petitions. This is more necessary because of the fact that the elections are for a fixed term and every attempt must be made to settle the disputes pertaining to such elections within reasonable time and nobody should be permitted to linger the proceedings so as to frustrate the election petition or to create a situation where the relief to be granted to the election petitioner may be rendered illusory.

11. We are of the considered opinion that the Sub-Divisional Magistrate who is

appointed as the Election Tribunal under the provisions of Section 12 C of the Panchayat Raj Act must proceed with the election petitions in a business like manner. There should not be any uncalled adjournment on the mere asking of the parties. The time frame provided for in the matter of filing of the written statement must be strictly adhered to. For avoiding adjournment, of the election petitions on the ground that the Sub-Divisional Magistrate is busy with other work or has been assigned other duties, the State Government must issue directions to ensure that the Sub-Divisional Magistrate/Election Tribunal fix at least one particular day in a week on which they shall necessarily hear the election petitions. Adjournment of the election petition on the ground that the election officer is busy with other work has to be avoided except in extremely unavoidable circumstances.

12. In our opinion a general direction must be issued by the State Government to Sub-Divisional Magistrate to make all attempts to decide the election petition filed under Section 12 C preferably within six months of their institution and only in exceptional cases the time limit fixed be extended and that to for reasons to be recorded.

13. We draw support from the judgment of the Apex Court in the case of Satya Narain v. Dhuja Ram and Others , 1994, Vol. 4 SCC 247 we have been emphasised that for proper functioning of a democracy, the principal object of the Act is to ensure purity of elections and, therefore, when an election of a returned candidate is challenged, trial has to be necessarily expedited. Though these observations were expressed in relation to the provisions of the Representation of the People Act, 1951, the same would equally apply to the election of a member of the Zila Panchayat. In P. Nalla Thampy Thera v. B. Shanker and F.A. Sapa v. Singora, the Supreme Court expressed the same view.

14. Recently, in Mohd. Akbar v. Ashok Sahu & Ors. and Pukhrem Sharatchandra Singh v. Mairembam Prithviraj @ Prtihibiraj Singh, the Supreme Court also held that election petitions should be disposed of expeditiously.

15. The observations made by the Supreme Court in Pukhrem Sharatchandra Singh are as follows:

"A voter casts his vote as a responsible citizen to choose the masters for governing the country. That being the trust of the electorate in an elected candidate, when he faces an assail to his election, it should be his sanguine effort to become free from the assail in the election petition and work with attainment and not take shelter seeking adjournments with the elated hope that he can be triumphant in the contest by passage of time. This kind of attitude has to be curbed from all angles because law does not countenance it...."

16. The principle which has been applied by the Supreme Court in dealing with election petitions filed under the Representation of the People Act should also apply to election petitions filed under the provisions of the Panchayat Raj Act.

17. In view of the aforesaid, we dispose of these writ petitions with a direction to the State Government to issue necessary directions to Sub-Divisional Magistrate as indicated above preferably within two weeks from the date a certified copy of this order is filed before the Secretary Panchayati Raj. Such directions are necessary to avoid filing of such election petitions in future before this Court.