

(1989) 07 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8783 of 1989

Avdhesh Mishra

APPELLANT

Vs

The Incharge District Judge and Others

RESPONDENT

Date of Decision : 12-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C, 12C(1), 43

Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 2, 24, 25, 25(1), 25(4)

Citation : (1989) 2 AWC 1102

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : R.B. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

Anshuman Singh, J.—The facts giving rise to this petition briefly stated are that election for the post of Pradhan of Gaon Sabha of village Bagaha, Post Office Mail, district Deoria was held on July 6, 1988 in which the Petitioner was declared elected as Pradhan. Respondent No. 5 Hari Shankar alias Shiv Prasad, who contested the election and lost, challenged the election of the Petitioner u/s 12-C of the U.P. Panchayat Raj Act, 1947 (hereinafter referred to as the Act) before the Prescribed Authority/Sub-Divisional Officer, Salempur, district Deoria. The Petitioner appeared and filed his written statement and denied the allegations contained in the election petition. On December 13, 1988 an application was filed by Respondent No. 5 before the Collector, Deoria, praying that the election petition filed by him may be transferred from the court of the Sub-Divisional Officer, Salempur, to some other officer. The Collector, Deoria same day transferred the election petition from the court of the Sub-Divisional Officer, Salempur, to the Assistant Sub-Divisional Officer, Salempur, district Deoria camp at Deoria, without affording any opportunity of being heard to the Petitioner. The Petitioner feeling aggrieved against the impugned order dated December 13, 1988 has come to thIS COURT in the instant petition under Article 226 of the

Constitution of India.

2. A counter affidavit has been filed in the present case on behalf of Respondent No. 5. Counsel for the Petitioner stated that he does not propose to file any rejoinder affidavit. With the consent of the counsel for the parties and as provided under the second proviso to Rule 2 of Chapter XXII of the Rules of court this petition is being disposed of finally at the admission stage itself.

3. Mr. R.B. Tripathi, learned Counsel for the Petitioner, urged that the order passed by the Collector transferring the election petition from the court of the Sub-Divisional Officer, Salempur, to the court of the Assistant Sub-Divisional Officer, Salempur camp at Deoria was wholly illegal and without jurisdiction and as such is liable to be quashed. Before deciding the controversy involved in the instant petition it is pertinent to mention the provision relating to the provision for deciding the election petition of a Pradhan as provided under the Act. Section 12-C of the Act provided that an application may be filed for quashing the election of a person as Pradhan of a Gaon Sabha or as member of a Goan Panchayat including the election of a person appointed as the Panch of the Nyaya Panchayat u/s 43 Rule 24 of the U.P. Panchayat Raj Rules, 1947 (hereinafter referred to as the rules) framed under the Act provides that an application under Sub-section (1) of Section 12-C of the Act shall be presented before the Sub-Divisional Officer within whose jurisdiction the Sabha concerned lies within ninety days after the day on which the result of the election questioned is announced under the provisions of Chapter I-D or I-E as the case may be.

4. From a perusal of Rule 24 there is no room for doubt that it is only the Sub-Divisional Officer within whose jurisdiction the Gaon Sabha is situate has exclusive jurisdiction to try the election petition challenging the election of a Pradhan u/s 12-C of the Act, and no other Sub-Divisional Officer and on the strength of the said rule counsel for the Petitioner vehemently urged that since the fact that Gaon Sabha Bagaha lies within the jurisdiction of the Sub-Divisional Officer, Salempur, district Deoria is not disputed, it is only the Sub-Divisional Officer Salempur, who had exclusive jurisdiction to try the election petition.

5. Counsel for the Respondent No. 5, Mr. S.N. Singh, on the other hand, contended that under Rule 25(1)(vi) the District Magistrate has been empowered to transfer an election petition u/s 12-C of the Act for hearing to another Sub-Divisional Officer at any stage of the case on an application being made and as such the order passed by the Collector, Deoria is wholly legal and is liable to sustained.

6. For deciding the aforesaid controversy it has become necessary to refer to the amendments made in Rule 25 from time to time. It is admitted by the counsel for the parties that initially under Rule 25 (1)(vi) of the Rules the District Magistrate had been empowered to transfer a case u/s 12-C of the Act at any stage for hearing from the court of the Sub-Divisional Officer to the court of another Sub-Divisional Officer other than the one in whose jurisdiction the Gaon

Sabha did not situate. Subsequently by Notification No. 150-P/XXXIII-61 dated January 9, 1961 published in Gazette of U.P. Extraordinary dated January 9, 1961 page 1, Sub-rule (1), Clause (vi) of the proviso to Rule 25 was deleted and after Sub-rule (4) a new Sub-rule (5) was added which runs as under:

(5) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard or of his own motion without such notice or hearing, the District Magistrate may, at any stage, withdraw any application under Sub-section (1) of Section 12-C of the Act pending in the district for disposal and--

(a) himself try or dispose of the same, or

(b) transfer the same for trial or disposal to any Assistant Collector of the First class in the District, or

(c) transfer the same for trial or disposal to the officer from whom it was withdrawn.

From the aforesaid amendment it appears that the District Magistrate was empowered to transfer an election petition u/s 12-C of the Act from the court of Sub-Divisional Officer within whose jurisdiction the Gaon Sabha was situate and could have either tried himself or sent to any Assistant Collector of the First class in the District or transferred the same for trial or disposal to the officer from whom it was withdrawn.

7. Thereafter by another Notification No. 5004-P/XXXIII-268-61 dated August 31, 1961, published in U.P. Gazette Part III dated September 8, 1962, at page 688 Sub-rule (5) inserted in Rule 25 by Notification dated January 9, 1961 was deleted.

8. From the narration of the aforesaid facts it is abundantly clear that after September 8, 1962 a District Magistrate had no power/jurisdiction to transfer an election petition u/s 12-C of the Act from the court of the Sub-Divisional Officer within whose jurisdiction the Gaon Sabha was situate to any other Sub-Divisional Officer.

9. The last limb of the argument of the counsel for the Respondent was that since the words "Sub-Divisional Officer" include the words "Assistant Sub-Divisional Officer" the order passed by the District Magistrate, assuming that he had no jurisdiction to transfer, cannot be set aside. The said argument, in my opinion, is wholly fallacious and has no legs to stand. Once the power of the District Magistrate to transfer an election petition from the court of the Sub-Divisional Officer, within whose jurisdiction the Gaon Sabha was situate, was taken away, he had no jurisdiction to transfer the same to any other Sub-Divisional Officer and it was the Sub-Divisional Officer alone in whose jurisdiction the Gaon Sabha was situate was the competent authority to dispose of the election petition u/s 12-C of the Act.

10. For the reasons stated above I am of the opinion that the order dated December 13, 1988, passed by the District Magistrate/Collector, Deoria, is wholly illegal and without jurisdiction and is liable to be quashed.

11. In the result the petition succeeds and is allowed. The order dated December 13, 1988 passed by the Collector, Deoria, is set aside, and the Sub-Divisional Officer, Salempur, district Deoria, is directed to dispose of the election petition expeditiously in accordance with law. However, the parties shall bear their own costs. The interim order dated 11-5--1989 is discharged.