
(2015) 11 AHC CK 0126
In the Allahabad High Court
Case No : Writ-C No. 59002 of 2015

Bandana Devi

APPELLANT

Vs

Election Tribunal/Special Judge (E.C. Act.) and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Citation : (2015) 11 AHC CK 0126

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Heard Sri K. Ajit, learned counsel for the petitioner.

2. Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 7.10.2015 passed by the Election Tribunal/ Special Judge (E.C. Act) Mainpuri in Election Petition No. 4 of 2012 (Manju Lata v. Bandana Devi and others) by which the application No. 111 ga of the applicant-, for summoning the records i.e. nomination papers submitted by the petitioner and the documents filed in her support as well as the objection filed by the respondent No. 2 along with supporting documents, has been rejected. The applicant contested the election of President Nagar Panchayat Kusmara and got elected. Her election was challenged by the opposite party No. 2 on the ground that she was under age on the date of the nomination. To this, an objection was filed and thereafter the evidence was also led and hearing of the objection started. It has also been brought in my notice that the respondent No. 2 has filed two writ petitions one Civil Misc. Writ Petition No. 488 of 2013 (Manju Lata Alias Manju Devi v. State of U.P. And others) for expeditious disposal of the election petition, which was disposed of on 27.2.2013 with the liberty to the petitioner to file an application before the learned District Judge praying for expeditious disposal of the election petition. Thereafter another writ petition being Writ-C No.

21638 of 2014 (Manju Lata @ Manju Devi v. State of U.P. And others) was filed, which was dismissed on 25.4.2014. It appears thereafter the applicant has filed present application for summoning the documents as mentioned hereinabove. The Election Tribunal, after going through the application, has observed that the application has been filed at the belated stage with a view to delay the disposal of the election petition, whereas this Court has observed for expeditious disposal of the same.

3. Learned counsel for the petitioner, taking shelter of Section 23-D of U.P. Municipal Act, 1916, which reads as:-- "the District Judge for the purpose of deciding any issue, shall only be found to require the production of, or to receive so much evidence, oral or documentary, as it considers necessary" submits that it was incumbent upon the learned District to consider as to whether summoning of these documents are necessary for proper adjudication of the matter or not but the learned Judge, without addressing himself on this point, has swayed away by the fact that the application has been filed with a view to delay the disposal of the election petition. In the submissions of learned counsel for the petitioner, the learned Judge has erred in not considering the application in right perspective and passing the impugned order without recording any reason on the merit of the application. In support of his submissions, he has placed reliance upon the judgement of the Apex Court in the case of Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat and Another, wherein the Apex Court, while dealing with the matter of judicial review of administrative actions, has observed as under:--

"? 24. Proviso opens with the words where the State Government is of opinion that substantial modifications in the draft development plan and regulations are necessary".... These words are indicative of the satisfaction being subjective one but there must exist circumstances stated in the proviso which are conditions precedent for the formation of the opinion.

? 25. The term consider means to think over; it connotes that there should be active application of the mind. In other words the term consider postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word necessary means indispensable, requisite; indispensably requisite, useful, incidental or conducive; essential; unavoidable; impossible to be otherwise; not to be avoided; inevitable. The word necessary must be construed in the connection in which it is used.

? 26. The formation of the opinion by the State Government should reflect intense application of mind with reference to the material available on record that it had become necessary to propose substantial modifications to the draft development plan."

4. After hearing learned counsel for the petitioner and perusing the impugned

order, I find that the learned Judge has rejected the application of the petitioner on the ground that sufficient opportunity was given to the parties to led their evidence and those evidence are already on record. The hearing of the case is going on and filing of application at this stage would delay the disposal of the election petition particularly in the circumstances when the High Court has directed for expeditious disposal of the case.

5. Learned counsel for the petitioner contended that the learned Judge has committed a manifest error of law in not considering as to whether the record, which was prayed to be produced before the court, was relevant for the purpose of deciding the controversy or not and swayed by the fact that the delay in disposal of the case. In support of his submissions, he has placed reliance upon the judgment of the Apex Court in the case of Bhikhubhai Vithlabhai Patel and others (*supra*). So far as the judgment of the Apex Court is concerned, the observation has been made by the Apex Court in a case of judicial review of administrative actions and not with regard to the judicial proceedings where the cases are decided on the basis of the procedure prescribed under the statutes. Here, the learned Judge has considered the relevant aspect of the matter for deciding the case. So far as non-consideration of necessity for production of record for the purposes of decision of the case is concerned, the learned Judge is not powerless in case he reaches to the conclusion that sufficient materials to pronounce the judgment are not on record and the required records are necessary for pronouncing the judgment, he may still summon the same.

6. In view of foregoing discussions, I do not find any illegality or impropriety in the impugned order.

7. The writ petition is dismissed.