
(2002) 07 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 26859 of 2002

Brij Pal Singh

APPELLANT

Vs

Additional District and Sessions Judge, (Fast Track Court No. 4) and Others

RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226
Uttar Pradesh Panchayat Raj (Nirvachan Vivadon Ka Niptara) Niyamawali, 1994 — Rule 3(1)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C(1)

Citation : (2002) 5 AWC 3500 : (2002) 93 RD 783

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Shree Prakash Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The Petitioner has filed this writ petition under Article 226 of the Constitution of India, inter alia, challenging the order dated 29.4.2002 passed by Respondent No. 1 and the order dated 30.10.2000 passed by Respondent No. 2. The said orders have been filed as Annexures-5 and 3 to the writ petition, respectively.

2. It appears that the Respondent No. 3 filed an election petition u/s 12C(1) of the U.P. Panchayat Raj Act, 1947, questioning the election of the Petitioner as Gram Pradhan in village Jajnar block Puvarka, Tehsil and district Saharanpur. A copy of the election petition has been filed as Annexure-1 to the writ petition. A perusal of the election petition shows that the result of the election of the Gram Pradhan was declared on 25th June, 2000 and the election petition was filed on 17.7.2000.

3. Subsequently, it appears that the Respondent No. 3 filed an application

seeking certain amendments in the election petition on 18.8.2000. A copy of the amendment application has been filed as Annexure-2 to the writ petition.

4. By an order dated 30th October, 2000 (Annexure-3 to the writ petition), the prescribed authority/ Sub-Divisional Officer, Saharanpur (Respondent No. 2) allowed the said amendment application, dated 18.8. 2000 filed by the Respondent No. 3.

5. The Petitioner, thereupon, filed a Revision No. 122 of 2000 before the District Judge, Saharanpur, and the same was transferred to the Additional District and Session Judge (Fast Track Court No. 4), Saharanpur (Respondent No. 1).

6. By his judgment and order dated 29.4.2002, the learned Additional District and Session Judge (Fast Track Court No. 4), Saharanpur (Respondent No. 1) dismissed the said Revision No. 122 of 2000, filed by the Petitioner.

7. The Petitioner, thereafter, filed the present writ petition. Learned Counsel for the Petitioner made two submissions:

(1) The period of limitation for filing the election petition u/s 12C (1) of the U.P. Panchayat Raj Act, 1947, is 30 days as provided under Sub-section (6) of Section 12C of the said Act. The said period of 30 days is from the date of declaration of result as provided under Sub-section (6) of Section 12C of the said Act. The result of the election having been declared on 25th June, 2000 and the said period of 30 days having expired, the amendment application dated 18.8.2000 could not be entertained.

(2) The grounds which were sought to be added by the amendment application were available to the Respondent No. 3 when the election petition was filed, and in this view of the matter, amendment application could not be entertained.

8. Having heard learned Counsel for the Petitioner, I am not satisfied that the submissions made by the learned Counsel for the Petitioner are correct. So far as the first submission made by the learned Counsel for the Petitioner is concerned, under Sub-section (1) of Section 12C of the U.P. Panchayat Raj Act, 1947, the election petition should be filed before such authority and within such period and in accordance with such procedure as may be prescribed, i.e., prescribed by the rules framed under the U.P. Panchayat Raj Act, 1947. In exercise of power conferred by Sections 12C and 12D read with Section 110 of the U.P. Panchayat Raj Act, 1947, the rules, namely the U.P. Panchayat Raj (Nirvachan Vivadon Ka Niptara) Niyamawali, 1994, have been framed. Rule 3 (1) of the said Rules clearly lays down that the election petition may be filed within a period 90 days from the date of declaration of the result of the election in question. Therefore, the submission of the learned Counsel for the Petitioner that the period of filing the election petition is 30 days from the date of declaration of result of the election is not correct.

9. So far as Sub-section (6) of Section 12C of the U.P. Panchayat Raj Act, 1947, is concerned, the said provision deals with the period of limitation for filing the

revision before the District Judge against any order passed by the prescribed authority on the election petition. The said Sub-section (6) of Section 12C of the said Act does not deal with the period of limitation for filing the election petition. As noted above, the period of limitation for filing the election petition is to be determined in accordance with the Rules framed under the U.P. Panchayat Raj Act, 1947, and the said period is 90 days from the date of declaration of result of the election. Therefore, the submission of the learned Counsel for the Petitioner that the period of filing the election petition is 30 days from the date of declaration of the result of the election is not correct.

10. In the present case, the result of the election was declared on 25th June, 2000 and the election petition was filed on 17th July, 2000, while the amendment application was filed on 18.8.2000. Therefore, the said amendment application was filed within the period of 90 days from the date of declaration of result of the election, which is the period prescribed for filing election petition under Rule 3 of the aforesaid Rules of 1994. Therefore, the amendment application was rightly entertained. The conclusion of the Respondent No. 1 in this regard in the judgment and order dated 29.4.2002 was correct. The first submission of the learned Counsel for the Petitioner, thus, fails.

11. Coming to the second submission made by the learned Counsel for the Petitioner, he submits that the grounds which were sought to be added by the amendment application were available to the Respondent No. 3 at the time of filing the election petition, as such, amendment application could not be entertained. The said submission again has no force. Rule 4 (1) of the aforesaid 1994 Rules, inter alia, provides that the procedure to be followed for hearing the election petition by the prescribed authority/ Sub-Divisional Officer would as far as possible be the same as provided for hearing the suit in the Code of Civil Procedure. Thus, the provisions of the CPC have been made applicable to the hearing of the election petition filed u/s 12C of the U.P. Panchayat Raj Act, 1947. Hence, the amendment application filed by the Respondent No. 3 seeking amendment in the election petition was to be decided in accordance with the provisions of the Order VI, Rule 17 of the Code of Civil Procedure, and the principles established thereunder. Even if the grounds sought to be added by the amendment application were available to the Respondent No. 3 at the time of filing the election petition, still the amendment application was required to be decided in accordance with the provisions of Order VI, Rule 17 of the CPC and the principles established thereunder.

12. Having perused the impugned order dated 30.10.2000 in the light of the aforesaid legal position, I am of the opinion that the amendment application filed by the Respondent No. 3 was rightly allowed by the said order dated 30.10.2000. Cogent reasons have been given in the said order for allowing the amendment application filed by the Respondent No. 3. Learned Counsel for the Petitioner has not been able to point out any illegality in the said order dated 30.10.2000 allowing the amendment application. The Respondent No. 1 rightly dismissed the

said Revision No. 122 of 2000 filed by the Petitioner. The second submission made by the learned Counsel for the Petitioner, thus, fails.

13. In view of the above discussion, this writ petition lacks merits and is dismissed accordingly.