

**(1974) 02 AHC CK 0020**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 4481 of 1973

Charan Singh Attar Singh

APPELLANT

Vs

The Sub-Divisional Officer Sikandrabad and Another

RESPONDENT

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**Date of Decision :** 27-02-1974

**Acts Referred:**

Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C

**Citation :** AIR 1974 All 282

**Hon'ble Judges :** K.N. Singh, J

**Bench :** Single Bench

**Advocate :** S.K. Dhaon, for the Appellant; R.P. Singh, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K.N. Singh, J.—This petition is directed against an order of the Sub-Divisional Officer dated 12th July, 1973, allowing amendments in the election petition filed against the petitioner.

2. Charan Singh petitioner and Gandharwa Sain, respondent No. 2, contested election for the office of Pradhan of Gaon Sabha. The petitioner was declared elected on 2nd June, 1972. Respondent No. 2 filed an application u/s 12-C of the U. P. Panchayat Raj Act questioning the petitioner's election on a number of grounds. The Sub-Divisional Officer, Sikandrabad, before whom the election petition was pending trial, permitted inspection of ballot papers by respondent No. 2. After inspection, respondent No. 2 made an application for amendment of the election petition. By the proposed amendment he sought to challenge the validity of counting of ballot papers on the ground that a number of ballot papers which should have been cancelled had been wrongly counted in petitioner's favour which materially affected the result of the election. The petitioner, who was the returned candidate, and respondent to the election petition, contested the amendment application. The Sub-Divisional Officer by his order dated 12th July, 1973, allowed the amendment application on payment of Rs. 10/- as costs. The petitioner thereupon approached this Court under Article 226 of the

Constitution challenging the validity of the said order of the Sub-Divisional Officer.

3. Section 12-C of the U. P. Panchayat Raj Act lays down that an application questioning the election of a pradhan shall be filed in the manner prescribed on the ground enumerated therein. Sub-section (4) of Section 12-C further lays down, that the authority to whom the application is made, shall follow such procedure for the trial, of the petition which may be prescribed. Rules 24 and 25 framed under the Act lay down the manner and procedure for trial of election petition. Rule 24 requires that an application under Sub-section (1) of Section 12-C should be presented before the Sub-Divisional Officer within 90 days. The election petition is further required to contain the grounds on which the election of the returned candidate is questioned and it must contain a summary of circumstances to justify the questioning of election on those grounds. Rule 25 prescribes procedure required to be followed at the hearing of the election petition. According to that rule, every election petition is required to be tried by the Sub-Divisional Officer as nearly as may be in accordance with the procedure applicable under the CPC to the trial of suits subject to the provisions of the Act and the Rules framed thereunder. The scheme of the Act and the Rules is similar to that laid down in the Representation of the People Act relating to the trial of election petitions. In *Harish Chandra Bajpai Vs. Triloki Singh*, the Supreme Court considered the provisions of Sections 90, 92 and 83 of the Representation of the People Act and held that an election tribunal hearing an election petition has jurisdiction to amend the election petition and for that purpose it could exercise powers under Order 6, Rule 17 of the CPC but the power of Amendment was subject to the provisions of the Act and the Rules framed thereunder. Their Lordships of the Supreme Court observed as under :--

"The Tribunal has power under Order 6, Rule 17 to order amendment of a petition but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will then be barred."

The law laid down by the Supreme Court in *Harish Chandra Bajpai's* case is fully applicable to the trial of an election petition under the U. P. Panchayat Raj Act.

4. In the instant case, a perusal of the election petition, a copy of which has been filed as Annexure 1 to the petition, shows that respondent No. 2 did not question the petitioner's election on the ground that there was gross non-compliance with the provisions of the Act and the Rules framed thereunder in counting ballot papers or in determining the result of the election. Respondent No. 2, therefore, did not challenge the petitioner's election on the ground of any illegality or irregularity committed at the counting of ballot papers. But the amendment permitted by the Sub-Divisional Officer made out a new ground of challenge that a number of votes which were liable to be rejected had been wrongly counted in petitioner's favour. The amendment clearly made out a new ground to challenge the petitioner's election which was neither pleaded nor raised in the election petition. The amendment application was filed in 1973 after

the expiry of the limitation of 90 days. An election petition on the grounds raised in the amendment application was not maintainable after the expiry of 90 days. The Sub-Divisional Officer had no power or jurisdiction to allow amendment of the election petition challenging the petitioner's election on a ground not raised within time. I, therefore, hold that the Sub-Divisional Officer acted without jurisdiction in permitting amendment of the election petition.

5. Learned counsel for respondent No. 2 placed reliance on A.K. Gupta and Sons Vs. Damodar Valley Corporation, in support of his contention that amendment of pleadings is permissible even in a case where the claim may be barred by time. In A. K. Gupta's case the Supreme Court recorded a finding that the amendment sought to be made in the plaint did not introduce a new cause of action or a new case. That situation did not exist in the instant case; therefore, the law laid down in that case does not lend any support to the respondent's contention. Moreover, that case did not arise out of election dispute, on the contrary there is direct authority of the Supreme Court in the case of Harish Chandra Bajpai Vs. Triloki Singh, laying down the scope and power of the election tribunal permitting amendment of an election petition. The law laid down in that case is fully applicable to the instant case.

6. The Sub-Divisional Officer committed a manifest error of law in permitting inspection of ballot papers at a stage when no evidence had been produced by the parties. He failed to realise that where election is held by ballot as was done in the instant case, secrecy of voting was the essence of election. Therefore effort should be made to maintain that secrecy. Inspection of ballot papers should not be allowed as a matter of routine as it is bound to impair secrecy. It is permitted only when clear allegations are made in the election petition relating to illegalities committed at the time of counting and those allegations are well supported by cogent and reliable evidence produced by the election petition. If these two requirements are made out the Tribunal is further required to satisfy itself whether inspection of ballot papers was necessary in order to do justice in the case, only then it has power to permit inspection of ballot papers. In the instant case, the Sub-Divisional Officer did not comply with the requirement of law relating to inspection of ballot papers. Respondent No. 2 had not produced any evidence to make out a case for inspection of ballot papers. In these circumstances, respondent No. 2 was not entitled to inspect ballot papers or to derive any benefit from that inspection or to challenge the petitioner's election on the illegalities alleged to have been found after the inspection.

7. Learned counsel urged that respondent No. 2 had no prior knowledge about the illegalities at the counting, he discovered the same only after the inspection of ballot papers that a number of ballot papers which were invalid had wrongly been counted for the petitioner and, therefore he could not challenge the petitioner's election on that ground earlier. The argument is misconceived. If this plea is upheld doors would be opened for making a roving and fishing enquiry. The law is well settled that a roving and fishing enquiry should not be permitted.

Absence of knowledge of illegalities is no valid excuse to permit inspection of ballot papers or to allow amendment of election petition after the expiry of limitation. Similar contention was repelled by this Court in *Amirullah v. L. P. Nigam* 1956 All LJ 189. In the result I allow the petition and quash the order of the Sub-Divisional Officer dated 12th July, 1973. The petitioner is entitled to his costs.