

(1957) 12 AHC CK 0002

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1598 of 1956

Gajram Singh

APPELLANT

Vs

The Sub-Divisional Officer Gunnaur and others

RESPONDENT

Date of Decision : 23-12-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 25(1)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 25(1)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 25(1)

Citation : (1958) 28 AWR 210

Hon'ble Judges : V.G. Oak, J

Bench : Single Bench

Advocate : Sri Hari Swarup, for the Appellant;

Final Decision : Allowed

Judgement

V.G. Oak, J.—This petition u/Art. 226 of the Constitution is directed against a decision of the learned Sub Divisional Officer, Gunnaur rejecting an election petition. In the beginning of the year 1956, election was held for the office of Pradhan of Gaon Sabha Nadrauli, district Budaun. There were three candidates. They were Gajram Singh Petitioner, and Gauti Sahai and Makundi, opposite parties Nos. 4 and 5. Nominations were filed on 17-3-1956. Election was held on 31-3-1956. Gauri Sahai was declared elected.

2. Gajram Singh filed an election petition challenging Gauri Sahai's election. The learned Sub Divisional Officer, Gannaure rejected the election petition on 20-4-1956. Gajram Singh has filed the present writ petition for getting that order dated 20-4-1956 quashed.

3. The order dated 20-4-1956 is brief. In that order the learned Sub Divisional Officer observed thus:

I have heard the counsel and gone through the allegations put forth by the Petitioner. The election was conducted under my own presence, and no illegality as alleged by the Petitioner was committed during election. So to say, it was the most fair election, and I find no substance in the allegations of the Petitioner. I, therefore, reject the petition u/R. 25 (1) of the Panchayat Raj Act.

4. It will be noticed that the election petition was rejected u/R. 25 (1) UP Panchayat Raj Rules. R. 25 (1) Lays(sic) down the broad principle that, the CPC is applicable to the trial of election petitions. R. 25 (1) contains eight provisos. Proviso (i) is important in the present case Proviso (i) runs thus:

The Sub Divisional Officer may hear the Petitioner or his counsel and, if he finds that the petition has no substance, reject the same without the issue of any notice to the opposite parties.

5. Proviso (vii) enables a Tribunal to dismiss the election petition on the ground that, it is barred by time or that the petition is not accompanied by the prescribed treasury chalan. In the present case the impugned order makes no mention about limitation or about a treasury chalan. It appears that the election petition was rejected under proviso (i) to R. 25 (1), UP Panchayat Raj Rules.

6. It will be noticed that, the impugned order did not indicate the grounds on which the election was being challenged. The learned Sub Divisional Officer observed that, the election was conducted under his own presence, and he was satisfied that it was a most fair election. On this view the election petition was dismissed.

7. Mr. K.C. Saxena appearing for Gauri Sahai supported the order dated 20-4-1956 on the ground that, proviso (i) enables a Sub Divisional Officer to dismiss an election petition on finding that the petition has no substance. It was urged that in the present case the Tribunal found that the petition has no substance. So it was rejected.

8. The proviso under consideration enables a Tribunal to reject an election petition without issuing notice to the opposite party. There is a similar provision in the CPC. U/Cl. (a) of R. 11 of O. VII of the CPC, a plaint may be rejected when it does not disclose a cause of action. Proviso (i) to R. 25(1), UP Panchayat Raj Rules is on the lines of Cl. (a) of R. 11, O. VII, CPC. It is perhaps permissible to reject an election petition u/O. VII R. 11, CPC. But by way of abundant caution, the rule-making authority inserted proviso (1) in R. 25 (1) of UP Panchayat Raj Rules.

9. R. 25 (1) clearly indicates that the function of an Election Tribunal is quasi judicial. U/R. 25 (1), a Sub Divisional Officer does not act administratively. It is not, therefore, open to a Sub Divisional Officer to dispose of an election petition merely upon his personal knowledge. An election petition has to be disposed of on principles applicable to inquiries in quasi-judicial proceedings. It appears that the expression "the petition has no substance" appearing in proviso (i) to R. 23

(1) is equivalent to expression "the plaint does not disclose a cause of action" appearing in O. VII, R. 11, CPC.

10. Now in the present case the election petition was not rejected on the footing that, the petition did not disclose a cause of action. The ground for rejecting the election petition was that, the Tribunal was convinced that it was a most fair election. It was perhaps open to the Tribunal to take action on the lines of S. 202, CrPC. The Tribunal could receive *ex parte* evidence in support of the election petition. If the Tribunal was satisfied after receiving such evidence that the petition has no substance, the petition could be dismissed under proviso (i) to R. 25 (I), UP Panchayat Raj Rules. But no such action appears to have been taken in the present case.

11. I have read the election petition. The main ground taken in the election petition is that, although the Petitioner had filed his nomination paper on 17-3-1956, the presiding Officer did not call out the Petitioner's name at all on the day of polling. Consequently, the Petitioner's supporters had no opportunity to cast votes in Petitioner's favour. The fact that the Petitioner was a candidate has not been disputed on behalf of Gauri Sahai or Makundi. If the allegations made in the election petition are true, that would be a serious irregularity in the election. The Petitioner should have been given a chance to support his allegations. The Election Tribunal was wrong in rejecting the election petition merely upon its own knowledge. The election petition must be remanded for decision in accordance with law.

12. The learned Sub Divisional Officer mentioned in his order that, the election was conducted in his presence. It appears that he is already convinced that, it was a most fair election. With that conviction he is likely to feel embarrassed in trying the election petition. It will be better if the election petition is now heard by another Tribunal.

13. The petition u/Art. 226 of the Constitution is allowed. The order of the learned Sub Divisional Officer dated 20-4-1956 is quashed. The election petition filed by Gajram Singh is remanded for hearing in accordance with law. The District Magistrate of Budaun is directed to transfer the election petition to the file of some Sub Divisional Officer of the district other than the officer, who passed the order on 20-4-1956. Gajram Singh Petitioner shall get costs of this writ petition from Gauri Sahai Opposite Party No. 4.