

(2019) 05 UK CK 0046
In the Uttarakhand High Court
Case No : Special Appeal No. 469 Of 2019

Geeta Kumai

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Uttarakhand Municipalities Act, 1916 — Section 13(D)(n), 19, 28, 40
Himachal Pradesh Panchayati Raj Act, 1994 — Section 122, 122(1)(a), 166, 175
Constitution Of India, 1950 — Article 243(O), 243(O)(b), 243(ZG)

Citation : (2019) 05 UK CK 0046

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Arvind Vashisth, B.S. Bhandari, Puja Banga, Ramji Srivastava, D.S. Patni

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Arvind Vashisth, learned Senior Counsel appearing on behalf of the appellant-sixth respondent and Mr. Ramji Srivastava, learned

counsel for the respondent-writ petitioner and, with their consent, the appeal is being disposed of at the stage of admission.

2. The respondent-writ petitioner herein invoked the jurisdiction of this Court by way of Writ Petition (M/S) No.960 of 2019 seeking a writ of

mandamus commanding the respondents to conduct and conclude the inquiry forthwith regarding the legality and validity of the sixth respondent

holding the post of member of the Mussoorie Nagar Palika Parishad, and to remove her from the office of member of the Mussoorie Nagar Palika

Parishad, Dehradun district.

3. Facts, to the limited extent necessary, are that elections were held to the post of member of the Mussoorie Nagar Palika Parishad in 2018; the sixth

respondent contested the elections from Ward No.8, and the results of the elections were declared in October, 2018; and she was elected as a

member of the Mussoorie, Nagar Palika Parishad. It does not appear to be in dispute that the respondent-writ petitioner contested against the

appellant-sixth respondent, and had lost in the said elections. This fact has, however, not been stated in the affidavit filed in support of the Writ

Petition. While we were initially inclined to initiate proceedings against the respondent-writ petitioner for having failed to disclose relevant and material

facts in the writ affidavit, and thereby abusing the process of the Court, Mr. Ramji Srivastava, learned counsel for the respondent-writ petitioner,

would tender his unconditional apology on behalf of the respondent-writ petitioner, and submit that failure to so state was by oversight; and the

petitioner has no intention of misleading this Court or to suppress material facts.

4. Be that at it may, the petitioner invoked the jurisdiction of this Court seeking the aforesaid relief and, in the order under appeal dated 05.04.2019, the

learned Single Judge recorded the submission of the counsel for the petitioner, that he be permitted to file a fresh representation before the competent

authority and the petition may be disposed of directing the competent authority, to decide the petitioner's representation in view of Section 13(D)

(n) and Section 40 of the Uttarakhand Municipalities Act, 1916, within a stipulated time.

5. At the stage of admission of the writ petition, and even without notice being issued to the appellant-sixth respondent, much less being given an

opportunity of being heard, the learned Single Judge, by the order under appeal dated 05.04.2019, permitted the petitioner to file a representation within

ten days from the date of the order; and directed the competent authority to decide the same in view of Section 13(D)(n) and Section 40 of the

Uttarakhand Municipalities Act, 1916 by passing a speaking and reasoned order, within a period of sixty days.

6. Mr. Arvind Vashisth, learned Senior Counsel appearing on behalf of the appellant-respondent no.6, while contending that the learned Single Judge

had erred in allowing the Writ Petition at the stage of admission even without the appellant being put on notice and without her being given an

opportunity of being heard, would also submit that the scope of Section 122(1) (a) of the Himachal Pradesh Panchayati Raj Act, 1994 (for short the

1994 Act) [a provision identical to Section 13(D)(n)] was considered by the Supreme Court in *State of Himachal Pradesh & others vs. Surinder*

Singh Banolta: AIR 2007 SC 903; and, while examining the scope of Section 122(1)(a), in the context of Article 243(O)(b) of the Constitution of India,

the Supreme Court had observed that, while Section 122 no doubt contemplated disqualification of a member, both before and after he is chosen as

such, the said Section 122 should be read in the light of Section 162 of the 1994 Act which expressly provided for the exclusive jurisdiction of the

Authorized Officer to determine the existence or otherwise of any ground enumerated in Section 175 of the 1994 Act.

7. Mr. Arvind Vashisth, learned Senior Counsel, would submit that Section 13(D) (n) of the Uttarakhand Municipalities Act, 1916 is in pari materia

with Section 122(1)(a) of the 1994 Act; Article 243(O) of the Constitution, referred to in the judgment of the Supreme Court in *Surinder Singh*

Banolta, is in pari materia with Article 243(ZG) of the Constitution; Section 19 of the Uttarakhand Municipalities Act provides for the manner in which

the election of a member can be questioned; and Section 28 deals with corrupt practices. According to the learned Senior Counsel, any challenge to

the election of the appellant-respondent no.6 can be made, in view of the judgment of the Supreme Court in *Surinder Singh Banolta*, only by way of an

election petition.

8. While the submission of the learned Senior Counsel cannot be said to be without merit, it is unnecessary for us to examine these contentions in an

intra-court appeal, since none of the contentions were examined by the learned Single Judge while passing the order under appeal. It is only if the

appellant-sixth respondent had been put on notice, and was given an opportunity of being heard, could she have raised these contentions before the

learned Single Judge; and it is only, thereafter, could the learned Single Judge have examined the rival contentions, and pass an order on merits and in

accordance with law. The Writ Petition is disposed of on the short ground that the appellant-sixth respondent was not even put on notice, much less

being given an opportunity of being heard. The order under appeal is set-aside, and the Writ Petition is restored to file.

9. Mr. Arvind Vashisth, learned Senior Counsel appearing on behalf of the appellant-respondent no.6, would submit that the appellant would file a counter-affidavit in the Writ Petition within three weeksâ?? from today. It is open to Mr. Ramji Srivastava, learned counsel for the respondent-writ

petitioner, to request the learned Single Judge to take up the Writ Petition for admission/hearing any day after three weeks from today.

10. Suffice it to record our displeasure on the respondent-writ petitioner having failed to state, in the writ affidavit, that he had contested the elections against the appellant-respondent no.6 and had lost. We say no more.

11. The appeal is disposed of accordingly. No costs.