
(2013) 02 AHC CK 0184
In the Allahabad High Court
Case No : Writ Petition No. 27 (MIS) of 2013

Guru Prasad

APPELLANT

Vs

Additional District Judge, Court No.1, Barabanki and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C(6)

Citation : (2013) 02 AHC CK 0184

Hon'ble Judges : Ritu Raj Awasthi, J

Final Decision : Allowed

Judgement

Ritu Raj Awasthi, J.

Heard Mr. A.M. Tripathi, learned counsel for petitioner, Mr. Nipendra Mishra, learned counsel holding brief of Mr. Manish Kumar, learned counsel for opposite party no. 1, learned Standing Counsel for opposite party no. 2 and Mr. Sudhir Kumar Singh, learned counsel for opposite party no. 3.

The writ petition has been filed challenging the order dated 19.12.2012 passed in Panchayat Revision No. 2 of 2012 (Chaubey Vs. Guru Prasad and others).

Learned counsel for petitioner submits that the election petition was filed under Section 12C (6) of U.P. Panchayat Raj Act, 1947 (for short "the Act") by opposite party no. 3, the same was dismissed vide order dated 15.5.2012 by the opposite party no. 2/Prescribed Authority. Feeling aggrieved, the opposite party no. 3 had preferred the aforesaid revision before opposite party no. 1. The revisional Court while reappreciating the evidence has ordered for recounting of votes maintaining secrecy of ballot and to pass appropriate orders after that.

Submission is that in case the revisional Court was satisfied that certain material evidence was not properly considered by the Prescribed Authority, the revisional Court was required to remand the matter back to the Prescribed Authority for reconsideration after giving its observations, however, the revisional Court should not have itself ordered for recounting of votes giving its own finding after

reappreciating the evidence.

In support of his submission, learned counsel for petitioner relies on the judgment of the Apex Court in the case of Ubaiba Vs. Damodaran; (1999) 5 Supreme Court Cases 645 wherein it has been observed that the revisional Court cannot have the jurisdiction to reappreciate the evidence and substitute its own finding upsetting the findings arrived at by the appellate authority.

Learned counsel for petitioner also relies on the judgment of the Apex Court in the case of Pyla Mutyalamma Alias Satyavathis Vs. Pyla Suri Demudu and Another; (2011) 12 Supreme Court Cases 189 wherein it has been held that the revisional Court shall not substitute its own finding and upset the maintenance order recorded by the Magistrate.

Mr. Sudhir Kumar Singh, learned counsel for opposite party no. 3, on the other hand, submitted that the revisional Court has full power under the Act, particular under Section 12C (8) of the Act to affirm, vary or rescind the order of the Prescribed Authority or remand the case to the Prescribed Authority.

It is further submitted that in case the revisional authority after going through the records and appreciating the evidence comes to conclusion that the prescribed authority has not properly considered any particular evidence then the revisional authority is fully empowered to give its own finding and pass appropriate orders in this regard. There is no necessity to remand the matter back to the prescribed authority for that purpose.

In support of his submission, learned counsel for opposite party no. 4 relies on a judgment of this Court in the case of Mohammad Shamim Vs. 2nd Additional District Judge, Ghazipur and others; [1997 (15) LCD 861] wherein the Court has observed that in case the findings of the prescribed authority are based on misreading of evidence the order of the prescribed authority is liable to be discarded as being contrary to law.

Learned counsel for opposite party no. 4 also relies on the judgment of the Apex Court in the case of Shyam Lal Vs. Rasool Ahmed (Dead) By Lrs.; (2002) 9 Supreme Court Cases 499 wherein it has been held that the District Court while exercising power under Section 25 of Provincial Small Cause Courts Act, 1887 has full power to arrive at a different view based on material on record. The District Court is fully justified in interfering with the finding of facts arrived at by the trial court which overlooked the weighty relevant material available on record.

I have considered the submissions made by the parties' counsel.

The election of Gram Pradhan of Gram Panchayat Sarai Dunauli, Vikas Khand Pure Dalai, Tehsil Sirauli Gauspur, District Barabanki was challenged in election petition filed under Section 12C of the Act before the prescribed authority. The prescribed authority vide order dated 15.5.2012 had dismissed the election petition holding that there is no illegality in the election on the post in question. The prescribed authority had considered the evidence placed in support of the

contentions raised by the contesting parties. The opposite party no. 3, feeling aggrieved against the order of prescribed authority, filed the revision which was registered as Panchayat Revision No. 2 of 2002. The revisional Court vide impugned order has held that the prescribed authority had not properly considered certain material evidence, particularly affidavit of one Sri Ram Krishna which was filed in support of contention raised by the opposite party no. 3 while filing the election petition. The revisional Court considering the said affidavit came to conclusion that it is a fit case in which recounting should have been ordered and if the facts stated in the affidavit of Ram Krishan are found to be false on recounting, he should be prosecuted under the appropriate sections for giving false affidavit. The revisional Court, therefore, ordered for recounting of votes and directed the prescribed authority to pass appropriate orders after recounting of votes.

The revisional Court has also observed that two bundles of votes of 55 each were counted as 50 each in favour of opposite party no. 3 and two bundles of votes of 45 each were counted as 50 each in favour of Guru Prasad.

It appears that the revisional Court had reappreciated the evidence and on that basis had come to conclusion that recounting of votes was required to be done and for that purpose had issued the order.

Considering the peculiar facts and circumstances of the case, I am of the considered opinion that in case the revisional Court was of the opinion that certain material evidence was ignored or not properly considered by the prescribed authority, the appropriate course would have been to remand the matter back to the prescribed authority to reconsider the entire matter in the light of the observations made by the revisional Court and pass appropriate orders in accordance with law. The revisional Court was not justified in issuing direction for recounting of votes itself.

In this view of the matter, the writ petition is allowed.

The order impugned is hereby set aside so far as it relates to direction for recounting of votes. The matter shall be remanded back to the prescribed authority for reconsideration of the entire matter in the light of the observations made by the revisional Court and pass appropriate orders in accordance with law.

Looking into the fact that the matter relates to the election of Gram Pradhan who is elected for a limited period of five years, out of which more than two and half years have already passed, it is hereby directed that the prescribed authority shall pass final orders in accordance with law, expeditiously as early as possible, say, within a period of three months from the date of receipt of certified copy of this order.