
(2016) 08 AHC CK 0050

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 17299 of 2016

Husna Bano

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 13-I, 44-A

Citation : (2016) 8 ADJ 216 : (2016) 5 ALLJ 537 : (2016) 118 ALR 680

Hon'ble Judges : Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

Bench : Division Bench

Advocate : Mahendra Pratap Singh, Advocate, for the Appellant; C.S.C. and Aprajita Bansal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner claiming herself to be an eligible Elector is aggrieved by the holding of the bye-election to the office of Chairman, Nagar Panchayat Kichhauchha, district Ambedkar Nagar to be held on 31.7.2016 on the ground that the said elections are being held on the basis of the Electoral List of the year 2012 that was prepared on the basis of Census of 2001, whereas the new Electoral List should be prepared on the basis of Census of 2011 and then only a valid Electoral List would exist for the purpose of holding of the election. He therefore submits that this violates Article 243-P (g) of the Constitution of India.

2. His further contention is that in the absence of any such list, a bye-election cannot be held and in view of the judgment in the case of Sandeep @ Sandeep Mehrotra and another v. State of U.P. and others, (2012) 30 LCD 222, the entire election process is vitiated.

3. He then contends that the provisions of Sections 13-H and 13-I of the U.P. Municipalities Act, 1916 are being violated as this is a bye-election which cannot be held as the casual vacancy would give a term of less than one year and hence, the vacancy may be left unfilled.

4. Thus, either way, the initiation of the elections is vitiated and therefore, the post of Chairman should be filled-up in the forthcoming election of 2017 for which the revision of Electoral Roll is already going on and is likely to be completed in the month of September, 2016 where after the elections of the office of Chairman can be held along with all of the elections of the local bodies scheduled upon expiry of the term. For this, he has invited the attention of the Court to the timetable, which fixes the finalisation of the Electoral College by 10.9.2016, a copy whereof is Annexure ? 3 to the writ petition.

5. Opposing the petition, Ms. Aparajita Bansal, learned Counsel for the State Election Commission has urged that the argument of the petitioner of violation of any rights does not arise, inasmuch as if the petitioner had become of age as an Elector as alleged by her, then she could have got the Electoral List corrected under the existing rules by moving an application before the Electoral Registration Officer. According to the learned Counsel for the Commission, it is not understood as to why the petitioner or any other aggrieved person waited for the same since 2013 when the election of the then Chairman was declared as invalid in an Election Petition. It is urged that since 2013 till now, there was ample time for the petitioner to seek correction in the Electoral Roll before the Electoral Registration Officer under the relevant rules of 1994. The filing of the petition on the eve of the holding of the bye-election therefore cannot be a ground to question the correctness of the election process which has already been notified and it should not be interfered at this stage under Article 226 of the Constitution of India.

6. She also contends that the argument on the strength of Sections 13-H and 13-I of the 1916 Act is also misplaced as the petitioner's Counsel has totally ignored the impact of Section 44- A thereof. The Election Commission is duty bound to get the election held within three months of its vacancy. It is further submitted that Section 13-H (2) stood deleted long back.

7. Learned Standing Counsel submits that with the introduction of Section 44-A by U.P. Act No. 12 of 1994, the bye-election of the Chairman has to be held. This has been carved out as an exception to Section 13-H which only talks of a Member whereas for the office of President there is a specific provision under Section 44-A.

8. In the aforesaid background, Ms. Aparajita Bansal and learned Standing Counsel both contend that there is no legal impediment in the holding of the election for the causal vacancy of the office of a Chairman which is vacant since 2013 on account of the setting aside of the election of the elected Chairman. The State Election Commission can only proceed when such information is given to it by the State Government for filling up of the vacancy and therefore, there is no delay on the part of the Election Commission in proceeding to get the bye-election held. It is therefore submitted that the writ petition is devoid of merit and deserves to be dismissed.

9. We have considered the rival contentions and we find that the revision of the Electoral Roll has already commenced on account of the general election of local municipalities that are to be held in 2017. If any individual was affected by the non-inclusion of his/her name, the remedy is provided. During the intervening period since 2013, the 1994 Rules were in existence under which a person who had come of age could have always got the Electoral Roll supplemented by getting his/her name added in the event he/she intended to exercise the right of franchise. The contention of the learned Counsel for the petitioner that it is the obligation of the State to revise the Electoral Roll has not been raised in the context of the General Election but of a bye-election and of a casual vacancy. In such a situation, the proceedings initiated on the strength of the Electoral College already existing cannot be vitiated as the revision of Electoral Rolls ordinarily takes place with the impending General Election. The State is therefore discharging its obligations and had the petitioner or any other individual approached the Electoral Registration Officer, the State would have discharged its obligation. In such a situation, the holding of the bye-election on the basis of the existing Electoral List cannot be said to be vitiated on that count. The argument of the learned Counsel for the petitioner that bye-elections are going to be held on the basis of no Voter List is therefore misplaced and is accordingly rejected. The Voter List exists and the bye-elections are being held on a casual vacancy having arisen.

10. Coming to the next argument, it is evident that Sections 13-H and 13-I indicate the filling up of the casual vacancy of Members and a Member would also include the office bearer. Sections 13-H and 13-I are extracted hereunder:-

"13-H Bye-elections ?(1) Subject to the provisions of sub-section (2) of Section 13-I, when the seat of a member, elected to a Municipality becomes vacant or is declared vacant or his election is declared void, the State Election Commission shall in consultation with the State Government by a notification in the Official Gazette, call upon the ward concerned to elect a person for the purpose of filling the vacancy caused before such date as may be specified in the notification and the provisions of this Act and of the Rules and Orders made thereunder, shall apply, as far as may be, in relation to the election of member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such ward for the Scheduled Castes, the Scheduled Tribes, the Backward Classes or the women the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes the Scheduled Tribes, the Backward Classes or the women, as the case may be."

"13-I Certain casual vacancies not to be filled ? Where a vacancy occurs on a Municipality by reason of death, resignation, removal or avoidance of an election of the elected member and the term of office of that member would, in the ordinary course of events, have determined within one year of the occurrence of the vacancy. Such vacancy may be left unfilled."

11. The words used in Section 13-I are that if the tenure of the office of a Member on a casual vacancy is less than a year, then the vacancy may not be filled. The word "may" cannot be read as "shall" in the context it has been used. However, even attaching the ordinary meaning to the words used in the aforesaid two Sections, it is correct that the word "Member" would also include an office bearer, but for the purpose of bye-elections of a President, the provisions of Section 44-A would directly come into play, which is extracted hereunder:-

"44-A Bye-election of President ? If a casual vacancy occurs in the office of the President owing to death or resignation or any other cause, the President shall be elected as soon as may be thereafter, but not later than three months from the date of occurrence of the said vacancy, in the manner provided in Section 43."

12. This special provision therefore excludes the status of a Member as understood in the context of his tenure under Section 38 of the U.P. Municipalities Act, 1916. A perusal of Section 44-A would therefore clear any doubt that it is a special provision that has been made in relation to the office of Chairperson, namely, the President of the Municipality. Sub-Section (3) of Section 43 applies to the provisions of the Act and Rules *mutatis mutandis* in relation to the election of a President, but at the same time, the provision of Section 44-A exclusively defines the bye-election of a President and therefore, the same would not be governed by the provisions of bye-elections of the Members under Section 13- I.

13. Thus, on both counts, we do not find any reason to interfere with the notification of the bye-election of the office of President of the Municipality at the instance of the petitioner. The writ petition lacks merit and is accordingly rejected.