
(1958) 03 AHC CK 0001

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 332 of 1958

Sadho Singh

APPELLANT

Vs

Baboo Ram and anothor

RESPONDENT

Date of Decision : 21-03-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1(1)(c)
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 25(1)(viii)

Citation : (1958) 28 AWR 571

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : Sri Radha Krishna, for the Appellant; Sri R.K. Garg and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Chaturvedi, J.—This is a petition u/Art. 226 of the Constitution praying that a writ of certiorari be issued calling for the record of the case and quashing the order dated 14-12-1957, passed by the Sub Divisional Officer, arrayed as Respondent No. 2 in the writ petition. It is further prayed that a writ of prohibition be issued to the said Respondent j (sic) raining him from proceeding further with the case.

2. The facts of the case, in brief, are that an election was held for the office of Pradhan of the Gaon Sabha in question and as a result of the poll held on 22-12-1955, the Petitioner was declared as duly elected Pradhan. The first Respondent Babu Ram filed an election petition before the Sub Divisional Officer challenging the election of the Petitioner. This petition was dismissed on 27-1-1956. The very next day the first Respondent applied for the review of the order passed on the 27th of January and the Sub Divisional Officer allowed the application and directed notices to be issued to the Petitioner for the hearing of the election petition on merits. Dissatisfied with this order the Petitioner filed a Writ petition in this Court which was numbered as Writ Case No. 2457 of 1956.

The writ petition came up for hearing on 24-4-1957 and a learned single Judge allowed it and set aside the order dated 28-1-1956, by which the review application had been allowed by the Sub Divisional Officer without issuing any notice of it to the Petitioner. The learned single Judge accordingly set aside the order mentioned above and directed the Sub Divisional Officer to decide the review application after giving due notice of it to the Petitioner. It appears that during the pendency of the writ petition in this Court the officer who had passed the order allowing the application for review had been transferred and had been succeeded by a different officer. When the case reached back the court of the Sub Divisional Officer, the Sub Divisional Officer issued notice of the review application to the Petitioner and proceeded to decide it on merits. By the impugned order dated 14-12-1957, he allowed the application for review and directed the parties to produce their evidence in the election petition on 10-1-1958. The present writ petition has been filed against this order.

3. The only point urged by the Learned Counsel for the Petitioner is that the successor of the officer who had decided the election petition could not possibly review the order of his predecessor. The Learned Counsel referred me in this connection to proviso (viii) of sub R.(I) of R. 25 of the UP Panchayat Raj Rules. R. 25 deals with the subject of the hearing of the election petitions and proviso 8 says that the Sub Divisional Officer may, on an application of either party made within 5 days after the date of his decision, review his order. The argument of the Learned Counsel is that the use of the word "his" before the description of the officer points to the conclusion that the officer deciding the review application must be the same who decided the election petition and that his successor could not possibly review his predecessor's order. He also referred me in this connection to the last part of O.47, R. 1 (1)(c) wherein it has been stated that a party may apply for review of judgment to the Court which passed the decree or made the order. The Learned Counsel says that the word "Court" here must mean the particular presiding officer. I do not find myself able to agree with the contention of the Learned Counsel. The word used in the relevant portion of Cl. (c) of sub R. (1) of R. 1 is Court and not the particular officer presiding over the court at the time. The court continues to be such even though the presiding officers change. It was probably for this reason that the rule making authority put down in R. 2 of O. XLVII that an application for review of a decree or an order of a court could be made to the successor of the officer who passed the decree or order, on certain specified grounds. A successor was not entitled to deal with review application on every grounds and his powers were limited in this respect by R. 2. But R. 2 by necessary implication meant that if it were not for R. 2, it was possible for the successor to deal with an application for review in the manner his predecessor could. The Legislature has now found that the provisions of R. 2 of O. XLVII lead to injustice in some cases and by Act 66 of 1956 this rule has been ordered to be deleted. Act 66 of 1956 came into force on 1-1-1957. The result, therefore, is that even in cases which fall u/O, XLVII of the CPC, there is no limitation now on the power of the successor of the presiding officer of a

court to deal with the review applications against the orders of his predecessor. The remand by this Court was on 24-4-1957, and Act 66 of 1956 had by then come into force. It would consequently follow that that if this application were under the CPC it would be open to the successor of the previous Sub-Divisional Officer to entertain it and to decide it according to law.

4. I need not go into the question whether an application for review filed under proviso (viii) to sub-R. (1) of R. 25 of the Panchayat Raj Rules is governed by the CPC because, even if it is so governed, there is no prohibition against the successor deciding the review application.

5. As far as the rules under the Panchayat Raj Act are concerned they do not present any difficulty at all. The power of review has been expressly conferred on the Sub-Divisional Officer by proviso (viii) to Sub-rule (1) of R. 25. The Sub-Divisional Officer refers to the person holding charge of the revenue sub-division of a district and the office continues even though the holders of it may be transferred from time to time. The office is the office of sub-Divisional Officer Jalalabad and it is the holder of that office who must decide the review application. The successor of the previous Sub-Divisional Officer is now the Sub-Divisional Officer of Jalalabad and as such under proviso (viii) he is entitled to deal with the application for review. I do not find any force in the contention of the Learned Counsel. The petition is accordingly dismissed with costs in favour of the first Respondent.