

(2013) 03 AHC CK 0181

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5561 of 2012

Sarita

APPELLANT

Vs

Up-Ziladhikari/Prescribed Authority Musafirkhana and
Another

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C

Citation : (2013) 03 AHC CK 0181

Hon'ble Judges : Zaki Ullah Khan, J

Final Decision : Disposed Of

Judgement

Zaki Ullah Khan, J.

Instant writ petition under Article 226 of the Constitution of India has been preferred by the petitioner praying that writ of certiorari be issued for quashing the impugned order passed by opposite party no. 1 S.D.M. dated 27.09.2012 and also prayed the writ in nature of mandamus be issued directing the opposite party no. 1 to allow the petitioner to continue to work and discharge her duties as Gram Pradhan of Gram Panchayat Hasanpur Tewari, Block Bazar Shukul, Tehsil Musafirkhana, District Amethi.

learned counsel for the petitioner has argued that the petitioner basically challenged the order passed by the opposite party no. 1 i.e. Sub Divisional Magistrate, Musafirkhana, Amethi. By the impugned order, the learned Sub Judicial Magistrate directed that the votes be recounted.

Aggrieved by the aforesaid order, the petitioner has been preferred the present writ petition mainly on the ground; 1. The writ petition is not well within the limit of Section 12 (c) of the U.P. Panchayat Raj Act 2. writ petition itself is defective, because by way of petition the O.P. No. 2 prayed that only recounting be made and 3. This Court has already directed the O.P. No. 2 to decide the election petition expeditiously within one year. The time has expired.

Learned counsel for the opposite parties no. 2 argued that the O.P. No. 2 himself has admitted that there is need to recount the vote, because there is only margin of two votes and number of invalid votes have been counted and as per assertions of the opposite party no. 2, the seal of the ballot box were found broken and even that time request has been made for recounting of the votes.

Learned Standing Counsel, who represent the opposite party no. 1 argued that the counter affidavit has not been filed and only short affidavit was filed and the record was also summoned and as per direction of the Court, all the record was sent back. The matter was not taken for consideration on that date.

Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2 and learned Standing Counsel for opposite party no. 1 and perused record and relevant Act 12(C).

The relevant Act under Section 12C is produced as under:

12C. Application for questioning the elections. (1) The election of a person as Pradhan [***] or as member of a [Gram Panchayat] including the election of [a person appointed] as the Panch of Nyaya Panchayat under section 43 shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that

(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election, or

(b) that the result of the election has been materially effected

(i) by the improper acceptance or rejection of any nomination; or

(ii) by gross failure to comply with the provisions of this Act or the rules framed thereunder.

(2) The following shall be deemed to be corrupt practices of bribery or undue influence for the purposes of this Act:

(A) Bribery, that is to say, any gift, offer or promise by a candidate or by any other person within the connivance of a candidate of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing

(a) A person to stand or not to stand as, or withdraw from being a candidate at any election; or

(b) an elector to vote or refrain from voting at an election, or as a reward to

(i) a person for having so stood or not stood or having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting.

(B) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or of any other person with the connivance

of the candidate with the free exercise of any electoral right:

Provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who

(i) threatens any candidate, or any elector, or any person in whom a candidate or any elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) Includes or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause.

(3) The application under subsection (1) mayh be presented by any candidate at the election or any elector and shall contain such particulars as may be prescribed.

Explanation Any person, who filed a nomination paper at the election whether such nomination paper was accepted or rejected, shall be deemed to be a candidate at the election.

(4) The authority to whom the application under subsection (1) is made shall, in the matter of

(i) hearing of the application and the procedure to be followed at such hearing;

(ii) setting aside the election, or declaring the election to be void or declaring the applicant to be duly elected or any other relief that may be granted to the petitioner, have such powers and authority as may be prescribed.

(5) Without prejudice to the generality of the powers to be prescribed under subsection (4) the rules may provide for summary hearing and disposal of an application under subsection (1).

(6) Any party aggrieved by an order of the prescribed authority upon an application under subsection (1) may, within thirty days from the date of the order, apply to the District Judge for revision of such order on any one or more of the following grounds, namely:

(a) that the prescribed authority has exercised a jurisdiction not vested in it by law;

(b) that the prescribed authority has failed to exercise a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercise of its jurisdiction illegally or with material irregularity.

(7) The District Judge may dispose of the application for revision himself or may assign it for disposal to any Additional District Judge, Civil Judge or Additional

Civil Judge under his administrative control and may recall it from any such officer or transfer it to any other such officer.

(8) The revising authority mentioned in subsection (7) shall follow such procedure as may be prescribed, and may confirm, vary or rescind the order of the prescribed authority or remand the case to the prescribed authority for rehearing and pending its decision pass such interim orders as may appear to it to be just and convenient.

(9) The decision of the prescribed authority, subject to any order passed by the revising authority under this section, and every decision of the revising authority passed under the section, shall be final.]

I have perused the election petition, which the opposite party no. 2 has moved before the prescribed authority i.e. S.D.M. Mushafirkhana, District Sultanpur on 10.11.2010. The election petition can be moved under section 12C of the Panchayat Raj Act, 1947 for setting aside the election ground mentioned in section 12C of the Act. There is a long list corrupt practice of bribery or undue influence, which can be ground for setting aside the election by way of petition under the Act. The original petition is Annexure 3 to this writ petition, which has been moved on 10th November, 2010 and I am surprised to note that the petition before the SDM, which was moved by the opposite party no. 2 has only challenged the counting of votes. She did not make any prayer regarding setting aside of the election. The O.P. No. 2 also approached the Division Bench of this Court, in which the Division Bench has directed that "In view of the above, we permit the petitioner to prefer an application for recounting concerned before the prescribed authority which shall be decided within six months and the election petition filed by the petitioner shall be decided within one year from the date of receipt of a certified copy of this order".

Probably, it was not brought to the notice of the Division Bench that the petition itself is not in accordance with rules. Even, if the entire petition is allowed, it will not serve any purpose to the opposite party no. 2, because, unless she prays for setting aside the election, the petition would be infructuous. On the basis of the direction given by the Division Bench of this Court, the SDM passed impugned order and directed for counting of votes. The time given to O.P. No. 1 by the Division Bench has expired and there is no need to grant further time to opposite party to file its affidavit. The facts of petition are similar as mentioned in [2011 (29) LCD 1064 Surendra Singh vs. State of U.P. and others, in which this Court has given ratio regarding election dispute or recounting the votes. In para 8 of this citation, this Court has passed the order as mentioned in Ram Adhar Singh vs. District Judge, Ghazipur and others reported in 1985 All. C.J. 196.

I am, therefore, of the opinion and hold that the impugned order has been passed by the SDM Mushafirkhana, suffers from gross irregularities as he has not given time to adduce the evidence to the petitioner i.e. O.P. in the petition before him. Therefore, in the interest of justice, it would be proper to grant time to

opposite party/ petitioner to adduce her evidence and then pass a fresh speaking order regarding counting of votes. Since the election petition is also defective, the opposite party who is the petitioner before the SDM be given as an opportunity to move amendment regarding the relief for setting aside the election and the SDM shall decide the matter within three months regarding counting of votes and after passing speaking order and given opportunity of hearing to the opposite party, then decide the petition, because mere counting is not enough. The prescribed authority shall complete the formalities within three months from the date of receipt of the copy of this order and the prescribed authority will decide the same on merits in accordance with law given under Panchayat Raj Act, 1947.

The petition is disposed of in the light of above observation.