

(2003) 01 AHC CK 0132
In the Allahabad High Court
Case No : C.M.W.P. No. 48825 of 2002

Smt. Bhoori

APPELLANT

Vs

Additional Sub-Divisional Officer, Election Tribunal and Others

RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C

Citation : (2003) 2 AWC 857 : (2003) 94 RD 454 : (2003) 2 UPLBEC 1035

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : N.K. Pandey and Sudha Pandey, for the Appellant; K.A. Ansari and Rajiv Sisodia and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri N. K. Pandey for petitioner and Sri K. A. Ansari for contesting respondent No. 2.

2. This writ petition has been filed against the order dated 12.9.2002 passed by the Election Tribunal/Additional Sub-Divisional Officer, Amroha, by which he has returned findings, partly accepting issue No. 1 with regard to deletion of certain paragraphs and has returned issue Nos. 3 and 4 in favour of election petitioner, and has deferred the hearing for deciding issue with regard to maintainability of the election petition.

3. The facts of this case are that the petitioner was returned as elected Pradhan of Gram Panchayat Hatauwa, Block Joya, district Jyotiba Phulenagar. Respondent No. 2, Smt. Bano, filed an Election Petition challenging her election. The first Writ Petition No. 54485 of 2000 filed by the petitioner was dismissed by this Court on 18.12.2000 against the order passed by the Tribunal directing petitioner to file written statement, with a finding that the writ petition was premature and that the order deferring application under Order VI Rule 16, C.P.C. did not suffer from any infirmity or error requiring interference by this Court. Second writ petition

No. 22272 of 2001 was filed by the petitioner against the order dated 22.5.2001 of the Tribunal observing that the Election Petition is maintainable, was disposed of by this Court with a direction to the Tribunal to see that all the pleas which had been raised with regard to the maintainability of the petition and which may require additional issues to be framed, and which go to the root of maintainability of the election petition, shall be decided as preliminary issues. A third Writ Petition No. 25037 of 2002, filed by the petitioner against the order passed by the Tribunal dated 18.6.2002 calling for certain records for deciding preliminary issues was also dismissed by this Court on the ground that it is not necessary to go into the question at this stage and that it will be open to the petitioner to challenge the findings on preliminary issues. The Tribunal thereafter framed five additional issues on 12.3.2002 and one more additional issue was framed on 20.5.2002 and that by its order dated 27.6.2002 found that the election petition was maintainable. A fourth writ petition No. 26876 of 2002 was filed against the order dated 27.6.2002 which was allowed by this Court and while quashing the order, this Court directed the Prescribed Authority/Election Tribunal to decide issue Nos. 1, 3 and 4 as well as the issue whether the election petition was maintainable to be decided as preliminary issues expeditiously by its order dated 30.7.2002.

4. The petitioner thereafter moved a transfer application before the Collector, Jyotiba Phulenagar for transfer of election petition to some other sub-Divisional Officer on the ground that three brother-in-laws of the election petitioner are practising in tahsil Amroha and have considerable influence in the Bar, on account of which the petitioner is not getting any advocate to do pairvi of the case. The Collector found that the petitioner is vigorously defending her case and has filed repeated writ petitions before the High Court in which orders have been passed to expeditiously decide the election petition. The fact, that the petitioner was not getting any advocate was not substantiated inasmuch as she was represented on record. I did not find any error in the grounds of rejection of the transfer application.

5. The petitioner thereafter moved an application to allow her to engage some advocate from outside Amroha. The application had been rejected by the Election Tribunal on the ground that no such permission is required and that the petitioner has a right to be represented by any advocate, practising at any place. The order did not cause any prejudice to the petitioner and did not call for any interference by this Court, and thus the above referred fifth writ petition No. 48201 of 2002, was dismissed on 17.1.2003.

6. The petitioner has filed this sixth writ petition No. 48825 of 2002 against the order in the same proceedings, deciding preliminary issues against her. The said writ petition was also heard and is being decided as below.

7. By the Impugned order dated 12.9.2002, additional issue No. 1 has been decided partly in favour of the objector by directing deletion of paragraph Nos. 3 and 5 of the election petition and returning issue Nos. 3 and 4 with regard to

verification of the petition and deposit of security in favour of election petitioner. Counsel for petitioner contends that the Tribunal has without applying its mind illegally and arbitrarily recorded same reasons on which his earlier order dated 27.6.2002 was quashed and has not applied his mind with regard to the objection of the petitioner to delete paragraphs 7, 8, 10, 11, 16 and 17 of the election petition. The election petitioner had not supplied material facts or particulars in the aforesaid averments, and that the petition does not disclose the cause of action and thus is liable to be dismissed under Order VII Rule 11. C.P.C. Voters list cannot be challenged in an election petition and that the Tribunal has without application of mind illegally and arbitrarily summoned ballot papers and other records with regard to the election and has wrongly decided the issue with regard to the maintainability of the election petition without taking into consideration the relevant case law.

8. The petitioner has relied upon a number of decided cases, most of which are not relevant and are not being cited in this order. The law relating to striking of pleadings is fairly well settled. The Court may at any stage of the proceedings strike off pleadings under Order VI Rule 16, C.P.C. which are unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay fair trial of the suit ; or which are otherwise an abuse of the process of the Court. In the present case, paragraphs 3 and 5 which have been deleted related to comments upon the electoral roll which could not be challenged after the electoral rolls were finalised and election was notified. Paragraph 7 relates to the allegations against the polling party. In paragraph 8, the petitioner has alleged that the polling party was looked after by the returned candidate and her family. Paragraphs 10, 11, 16 and 17 relate to corrupt practices which are specific in nature and can only be proved by evidence to be adduced in the election petition. These averments were not found by the Court to fall within the mischief of Order VI Rule 16, C.P.C. The allegations cannot be said to be vague or general and that in case these are deleted, the entire substance of the allegations of corrupt practices will be taken away. The Tribunal has not, therefore, committed any error in law in deleting the offending paragraphs except paragraphs 3 and 5.

9. In *Ramji Pandey Vs. Vikramaditya and Others*, this Court considered the law relating to striking out vague, general and scandalous pleadings and relying upon *Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others*, it was held that the election petitioner should state in the petition material facts referring to a point of substance and not of mere form. The material facts disclosed by the petitioner must afford an adequate basis for the allegations made. The allegations in the election petition in paragraphs 7, 8, 10, 11, 16 and 17 cannot be termed as general or vague and that the Tribunal has rightly rejected the application to delete them. Whereas paragraphs 7 and 8 relate to the allegations with regard to stay of polling party, including the employees who were deputed on election duties at the residence of Ram Gopal and Ram Prasad, son of Thakuri Singh for which objection was made by the election petitioner and a grand party organised for polling party on an evening before the date of election in which liquor was

consumed in large quantity ; paragraphs 10 and 11 relate to the allegations with regard to large number of persons including strangers and ladies standing in long queues at the election booths early in the morning. It is alleged that election petitioner made objections with regard to strangers who were not included in the voting list, but no action was taken and in spite of protests, the voting started and the allegations with regard to snatching away of the ballot papers from old, infirm and lady voters and regarding booth capturing regarding which complaints were made and on account of which about 100 votes could not be polled in favour of the election petitioner. Paragraphs 16 and 17 relate to the allegations with regard to counting wherein it has been stated that when the ballot boxes were brought to the counting table, it was found that the seals were broken. Objections were made by the election petitioner, but were ignored and the counting started and regarding preparation of the bundles of votes, it is alleged that whereas the bundles were to be prepared consisting of fifty ballots each, in one bundle, there were 45 votes, in two bundles 47 votes each and in another two bundles, 52 votes each. The other allegation relates to 20 votes which were stamped at the election symbol of the election petitioner, but they were rejected. Respondent No. 1 had polled only 342 votes which were Increased to 402.

10. These allegations are still to be supported by the evidence which has not been adduced so far. It cannot be said that these are general or vague. In my opinion, these allegations can be termed as concise and specified pleadings setting out material facts on which evidence may be adduced and thus these allegations could not be scored out at this stage.

11. Issue No. 3 related to verification of the pleadings. The Tribunal has found that the petitioner has complied with the provisions of Order VI Rule 15 (2), C.P.C. and has verified the pleadings on the basis of personal knowledge and legal advice which she believes to be true and has rightly found that the pleadings have been verified in accordance with law.

12. So far as issue No. 4 is concerned, it relates to deposit of Rs. 50 with the Zila Panchayat Raj Adhikari of which the receipt No. 013055, dated 22.7.2000 was enclosed with the petition. An objection was taken that the amount has not been deposited in accordance with law. The fact that the amount has been deposited with Zila Panchayat Raj Adhikari and is available as security to abide by the result of the election petition is sufficient compliance with the provisions of the Act, There is nothing to show on record that the amount was either deposited under wrong Head or that it could not be made available to the Court as security to abide by the result of the election petition. The Tribunal has rightly rejected this objection.

13. By the impugned order, the Tribunal has also summoned the entire records of the election for the disposal of the application for recount of votes. It has not passed orders for recount as yet. The Assistant Development Officer was examined in which he accepted that original records did not bear the signatures of either the election officer or the Assistant Election Officer. It bears the

signature of the election officer. The Tribunal has found that this is a serious irregularity and may affect the elections. He has, thereafter, directed the matter to be fixed on 27.9.2002 for hearing on the maintainability of the election petition. It does not cause any prejudice to the returned candidate.

14. It is distressing to note that the returned candidate is filing repeated writ petitions and is not allowing the election petition to proceed. This is the seventh writ petition filed by election petitioner against the interlocutory orders passed by the Tribunal. No doubt, the election petition has to proceed in accordance with law, but that cannot be a reason to obstruct its progress by filing writ petitions against each and every order passed by the Tribunal. The petitioner has a remedy to challenge the final orders by filing a revision before the District Judge under Sub-section (6) of Section 12C of U. P. Panchayat Raj Act, 1947.

15. For the aforesaid reasons, I do not find any merit in the challenge to the impugned order. The writ petition is accordingly, dismissed with costs quantified at Rs. 5,000.