
(2018) 04 UK CK 0009

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 814 of 2018

SMT. KALPANA

APPELLANT

Vs

AKHTAR AND OTHERS

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Citation : (2018) 04 UK CK 0009

Hon'ble Judges : MANOJ K. TIWARI, J

Bench : Single Bench

Advocate : B.D. Pande, Narendra Bali

Final Decision : Allowed

Judgement

Counter affidavit filed on behalf of the respondent No. 4 is taken on record. With the consent of parties, the writ petition is heard and decided at the admission stage itself.

1. By means of the present writ petition, petitioner seeks following reliefs:

â??(a) Set aside the judgment and order dated 21.03.2018 passed by the learned Revisional Court in Civil Revision No. 09/2018 (Mohd. Sarfaraj vs Smt. Kalpana)

(b)Â Issue any other order or direction which this Honâ??ble Court may deem fit and proper in the circumstances of the case.â??

2. The facts of the case in brief as follows:-

3. Petitioner filed an Election Petition against respondent No.4 i.e. Mohd. Sarfaraj, who was elected as Gram Pradhan in the election held in the year

2014,Â Â which was registered as Election Petition No. 2 of 2014 in the Court of learned Prescribed Authority/Sub Divisional Officer, Kashipur,

District Udham Singh Nagar. On 23.12.2017, petitioner filed an application seeking permission to amend the Election Petition, which was allowed by the Prescribed Authority/Sub Divisional Officer, Kashipur, vide order dated 08.01.2018. The respondent No. 4, who is the returned candidate, unconditionally filed additional written statement to the amended Election Petition on 09.01.2018. Thereafter, on 10.01.2018, issues were framed and on 11.01.2018, statement of petitioner (PW1) was recorded. Petitioner moved an application seeking permission to lead evidence, which was allowed on 11.01.2018 fixing 15.01.2018. On 15.01.2018, respondent no. 4 moved an application seeking adjournment, the same was allowed and the matter was posted for 17.01.2018 for cross-examination of the petitioner. Since, the Presiding Officer was not available on 17.01.2018, the case was adjourned to 18.01.2018, on which date petitioner was cross-examined by respondent no.4. Thereafter, on the next date i.e. 20.01.2018, respondent no.4 filed his affidavit of examination-in-chief and the case was fixed for cross-examination on 23.01.2018, on which date the respondent no.4 as well as his witness Smt. Jehra Begam were cross-examined. The matter was fixed on 30.01.2018 for remaining evidence of respondent no.4. On 30.01.2018, the Returning Officer filed affidavit of examination-in-chief and the case was adjourned to 07.02.2018, on which date, the Returning Officer was cross-examined. Thereafter on 09.02.2018, respondent no.3 sought time to lead evidence and the matter was fixed for 17.02.2018.

4. During the interregnum, respondent no.4 challenged the order dated 08.01.2018, passed by Prescribed Authority whereby petitioner's application for amendment was allowed, by filing Civil Revision No. 09 of 2018 before the learned District Judge, Udham Singh Nagar. The said revision was filed on 12.02.2018, and the same was allowed vide judgment and order dated 21.03.2018 and order dated 08.01.2018 was set aside. The order passed by Revisional Court is under challenge in the present writ petition.

5. From the aforesaid discussion, it is apparent that respondent no.4 not only unconditionally filed additional written statement to the amended Election Petition, but also produced evidence and participated in all proceedings without raising any objection nor did he ever seek adjournment for challenging the order dated 08.01.2018 before the higher forum. This would amount to waiver and respondent No.4 cannot be permitted later to turn

around and challenge the order dated 08.01.2018, which has been acted upon by him.

6. I have gone through the impugned order dated 21.03.2018 wherein learned District Judge, Udham Singh Nagar, has noted the submission made on

behalf of the petitioner that respondent no.4 after having filed additional written statement to the amended Election Petition is estopped from

challenging the amendment order. However, learned District Judge has not dealt with this material aspect of the matter in his order. Without

commenting on the legality of the order dated 08.01.2018, whereby amendment application filed by the petitioner was allowed, this Court is of the

opinion that the interference made by learned District Judge with the order dated 08.01.2018 was uncalled for in the peculiar facts and

circumstances of the case.Â Â

7. In such view of the matter, writ petition is allowed. Impugned order dated 21.03.2018 passed by learned District Judge, Udham Singh Nagar in Civil

Revision No. 09 of 2018, Mohd. Sarfaraj vs. Smt. Kalpana is set aside.Â Â Â

8. No order as to costs.

9. Let a copy of this order be supplied to the learned counsels for the parties, on payment of usual charges, within 48 hours.Â Â