

Court No. - 6

Case :- WRIT - C No. - 25649 of 2023

Petitioner :- Smt. Nazreen Begum

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Sanjeev Kumar Tyagi, M. Asif

Counsel for Respondent :- C.S.C., Arvind Kumar Rai, Jitendra Kumar Yadav

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Sanjeev Kumar Tyagi, learned counsel for the petitioner, Mr. Arvind Kumar Rai, learned counsel for the respondent no.5 and Mr. Ravindra Kumar Tripathi, learned Standing Counsel for the State-respondents.

2. This writ petition has been filed by the petitioner with a prayer to quash the order dated 13.07.2023 passed by Sub-Divisional Magistrate, Tehsil-Tilhar, District-Shahjahanpur in election petition no.03479 of 2021 (Nashra Begum vs. Nazreen Begum & Others), under Section 12C of U.P. Panchayat Raj Act and a further prayer to direct the Sub-Divisional Magistrate, Tehsil Tilhar to decide the question of maintainability, i.e. issue nos. 7, 8 & 9 before entering into the merit of other issues treating the same as preliminary issue.

3. Brief facts of the case are that in the election of Gram Pradhan of Gram Panchayat Unkalan held in the year 2021, the petitioner as well as respondent nos. 5, 6, 7, 8 & 9 were candidates, who filed their nomination and contested the election. After counting, the petitioner was declared as successful candidate and elected as *Pradhan*. Subsequently, an election petition has been filed by the respondent no.5 challenging the aforesaid election on several grounds. The court concerned, after issuing notices to the concerned parties, has framed as many as 11 issues. Thereafter, the petitioner moved an application with a request to decide the issue nos.7, 8 & 9 before proceeding to decide the election petition on merit treating the same to be preliminary issues as the same was on maintainability of the election petition on the ground that the contesting parties have not been arrayed as respondents in the election petition so filed by the election petitioner. On the aforesaid application, the order impugned dated 13.07.2023 has been passed without application of judicial mind stating therein that all the issues shall be decided after the election petition is heard on merits, hence the present petition has been filed.

4. Learned counsel for the petitioner submits that the order impugned has been passed without application of judicial mind as the same would amount to wasting of precious time of the court when the preliminary issues regarding maintainability of the election petition are not decided first.

5. On the other hand, learned counsel for the respondent no.5 could not dispute the aforesaid fact, however, submits that one of the candidates, namely, Mushahid Raza Khan has not contested the election as alleged by the learned counsel for the petitioner, therefore, the same may be verified.

6. I have very carefully examined the submissions made by the learned counsel for the parties and perused the impugned orders as well as the other materials brought on record.

7. This Court feels that the preliminary issues regarding maintainability of the election petition has to be decided first prior to proceeding on merit to decide the election petition, therefore, the impugned order is liable to be quashed.

8. In view of the above, the impugned order dated 13.07.2023 is **set aside** with a direction to the respondent no.2; Sub Divisional Magistrate, Tehsil Tilhan, District-Shahjahanpur to decide the preliminary issues regarding maintainability as requested by the petitioner on the application so moved by him, after hearing all the parties and perusing the records, preferably, within a period of 15 days from the date of production of certified copy of this order.

9. Till final orders passed on the application of the petitioner or 20 days from today, whichever is earlier, the court concerned is restrained from hearing the election petition.

10. With the aforesaid observations/directions, the writ petition stands **allowed**, accordingly.

Order Date :- 29.11.2023

Jitendra/-