

Court No. - 6

Case :- WRIT - C No. - 31014 of 2023

Petitioner :- Kunti Devi @ Baikunthi Devi

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Awadhesh Prasad, Radhey Shyam Singh

Counsel for Respondent :- C.S.C., Tarun Agrawal

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Awadhesh Prasad, learned counsel for the petitioner, Ms. Harshita Goyal, Advocate holding brief for Mr. Tarun Agrawal, learned counsel for the respondent no.1 and learned Standing Counsel for the State-respondents.

2. This writ petition has been filed challenging the order dated 01.08.2023 passed by the respondent no.3- U.P. Ziladhikari, Sikandra Rao, District- Hathras in Case No.4220 of 2021 "Kunti Devi @ Baikunthi Devi vs. Smt. Geeta Devi and Others" under section- 12C of U.P. Panchayat Raj Act, 1947.

3. Learned counsel for the petitioner submits that the aforesaid order is an ex-parte order, wherein the petitioner has not been heard. Placing reliance upon the judgment of the Division Bench of this Court in the case of **Mohd. Mustafa vs. UP Ziladhikari & Ors. reported in 2007 (5) ALJ 437**, he submits that by the impugned order dated 01.08.2023, the respondent no.1 has directed for recounting, hence, this being an interim order, the writ petition is maintainable. The relevant paragraph nos.25&27 of the aforesaid judgment in **Mohd. Mustafa (supra)** is extracted here-in-below:-

"25. It is evident from the order impugned that only the order of recount has been passed. However, the other issues are yet to be decided after recount of ballot papers as to whether the election had been held in accordance with law and as to whether the votes cast in favour of the contesting respondent has been mixed up with the votes of the returned candidate and on the basis of which the petitioner has been declared elected. It is further to be decided as to whether the election application is to be allowed or dismissed, Therefore, by no stretch of imagination, it can be held that the order of recount of votes has finally disposed of the election application.

.....

27. We answer the questions referred to by the learned Single Judge as follows:

(I) A revision under Section 12-C(6) of the Act shall lie only against a final order passed by the Prescribed Authority deciding the election application preferred under Section 12-C(1) and not against any interlocutory order or order of recount of votes by the Prescribed Authority.

(II) The judgment of the learned Single Judge in the case of Abrar v. State of U.P. and Ors. (2004) 5 AWC 4088 does not lay down the law correctly and is, therefore, overruled to the extent of the question of maintainability of a revision petition, as indicated hereinabove.

(III) As a natural corollary to the above, we also hold that a writ petition would be maintainable against an order of recount passed by the Prescribed Authority while proceeding in an election application under Section 12-C of the U.P. Panchayat Raj Act, 1947."

4. In view of the aforesaid submission, learned counsel for the petitioner, therefore, submits that challenging the impugned order dated 01.08.2023, the writ petition is maintainable.

5. Learned counsel for the respondent no.1 and learned Standing Counsel submit that the writ petition against the final orders rejecting the election petition is not maintainable. They further submit that as per the section- 12C(6) of the Act of 1947, the revision lies against the final orders. They further submit that the election petition has been finally decided as issues have been framed and complete opportunity has been granted to the election petitioner to place his arguments, but he did not turn up. Therefore, after discussing all the issues the election petition has been finally decided.

6. They further submit that the nature of the order impugned amounted to disposing of the matter which is final in nature and, therefore, a revision would lie under sub-section (6) of Section 12C of the Act. In support of their contention, they have relied upon the judgment of **Abrar, Rahat vs. State of U.P. reported in 2004 (5) AWC 4088**. The relevant paragraph nos.5 to 9 of the aforesaid judgment is extracted here-in-below:-

"(5) THE moot question that puts forth itself in the forefront is whether any revision was maintainable or not. In connection with this proposition, section 12 C (6) needs to be analysed. Section 12 C (1) contemplates the questioning of an election by means of an application. It is the disposal of this application by a specific order, which has been made revisable under Section 12 c (6) of the Act. A similar dispute arose before the learned Single Judge of this Court in bhagwat Prasad Misra v. S. D. O. Salon, 1985 UPLBEC 115, and the Court observed as under: "section 12 C (1) contemplates the questioning of an election by means of an application. It is the disposal of this application by a specific order, which has been made revisable under section 12 C (6) of the Act. The order impugned in the writ petition is an interlocutory order by which the application for recounting of votes has been allowed by the Sub Divisional Officer. This order cannot be said to be an order disposing of the election petition filed

under section 12 C (1) of the Act. Consequently, the order impugned in the petition would not be covered by the provisions of Sub Section (6) of Section 12 C of the Act. . . . "

(6) IN connection with the issue subjudice before the Court, it would be useful to examine the provisions of section 12 C (6) of the U. P. Panchayat Raj Act, 1947. Section 12 C (6) is quoted below.

"any party aggrieved by an order of the prescribed authority upon an application under sub-section (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) I am fully in agreement with the view taken by the learned- Single Judge that section 12 C (1) contemplates the questioning of an election by means of an application and therefore, the specific order so passed has been made revisable. Considering the provisions of section 12 C (6) and receiving reinforcement from the aforesaid decision, it would not be difficult to hold that the revision against the impugned order which was a specific order deciding on merit various issues formulated by it including direction for recounting was maintainable inasmuch as the election Tribunal allowed the application thereby disposing it of by a specific order directing recounting of votes and therefore it would, be an order finally disposing of the application so to warrant invocation of the provisions of section 12 C (6) of the Act.

(8) COMING to. the order passed by revisional authority, I am of the view that the revisional authority merely confined itself to the question of maintainability of revision and did not delve into the contentions of the parties on merits at all. It is implicit that the learned revisional authority misread the order and was swayed on consideration by mistaking the order to be an interlocutory order and in consequence, dismissed the revision on ground of being not maintainable holding that the remedy lay in filing writ petition. It would be eloquent from a bare reading of the order that revisional authority erred in dismissing the revision without delving deep into the matter that the order passed by the Prescribed authority was final adjudication of the controversy on the aspect of recounting and nothing was left pending for final adjudication. In my considered view, the revisional authority erred in law in not entertaining the contentions of parties on merits and dismissed the revision ostensibly on the fallacy that the order of election tribunal was of interlocutory nature.

(9) IN the result, the petition succeeds and is allowed and the impugned order passed by the revisional authority is quashed, in consequence, the matter is relegated to the revisional authority attended with the direction that it would decide the revision afresh on merits in accordance with law within a period of one month from the date of production of a certified copy of this order."

7. They have also relied upon the judgment of the Co-ordinate Bench of this Court in the case of **Athar Hussain vs. Razda**

Begum and 6 others reported in 2017 (135) RD 128. The relevant paragraph nos.7, 8 & 9 of the aforesaid judgment is extracted here-in-below:-

"(7) In the instant case, the Prescribed Authority (Sub-Divisional Magistrate) had framed as many as 12 issues for adjudication in the election petition. By the order dated 19th January, 2017 he proceeded to decide all the 12 issues in favour of the election petitioner as would be apparent from the second last paragraph of the order dated 19th January, 2017. Thereafter, the Prescribed Authority proceeded to order as follows : 'Uprokt wad binduon ki vivechna evam nistaran ke uprant mai is niskarsh par pahunchti hun ki yachi ki yachika anshik rup se swikar ki jane yogya hai'. In the operative portion, the Prescribed Authority directed as follows 'Astu yachi ki yachika anshik rup se swikar ki jati hai. Sahayak Nirvachan Adhikar (Panchasthani), Amroha ko nirdesit kiya jata hai ki wah dinank 04.02.2017 ko gram pachayat Sinaura Jalalabad, Nyay Panchayat Patei Khalsa, Vikas Khand Joya tehsil, Amroha ke sealed mat patra, maton ki punargadna hetu adhocastachhri ke nyayalaya me pratah 10.00 beje prastut kere tatha is hetu samuchit matgadna staff ki tainati bhi sunischit kere. Prabhari Nirikshak, Kotwali Amroha Nagar ko ukt dinank ko kanun evam shanti vyawastha banaye rakhne hetu samuchit police bal ki tainati hetu patra bhi presit kiya jaye. Aadesh ki prati krinyawayan hetu sahayak jila nirvachan adhikar (Panchasthani), Amroha tatha prabhai nirikshak, Kotwali Amroha Nagar ko bheji jae'.

(8) From the aforesaid portion of the order it is clear that the Prescribed Authority (Sub-Divisional Magistrate) had decided all the issues arising in the election petition, after considering all the evidence led by the parties, in favour of the election petitioner and has partly allowed the election petition. Under the circumstances, it could not be said that the order dated 19th January, 2017 was an interlocutory order. Once the Election Tribunal decides all the issues and declares election petition as partly allowed and as a consequence thereof directs for recount, the order of recount does not remain an interlocutory order and, therefore is amenable to the revisional jurisdiction.

(9) In view of the discussion made above, this Court finds that in the facts of the case, the order of the Election Tribunal was not an interlocutory order therefore revision against the same is maintainable. Accordingly, there is no good reason to interfere with the order passed by the Court below. However, considering that election petition and the revision emanating therefrom must be decided with utmost expedition, this petition is disposed of with an observation that the learned District Judge, Amroha will proceed with the revision expeditiously and would endeavour to decide the same, in accordance with law, preferably within a period of three months from the date of filing certified copy of this order."

8. Learned counsel for the respondent no.1 and learned Standing Counsel, therefore, submit that the issues were framed and after deciding all the issues, election petition has been finally decided. The Tribunal, while accepting the election petition, has directed for recounting of votes. Therefore, a revision would lie as the same is final order.

9. At this stage, leaned counsel for the petitioner requests that

the petitioner may be granted some time to file the revision before the revisional authority on which a decision may be taken within the stipulated period.

10. In view of the aforesaid, no useful purpose will be served to keep this writ petition pending and calling for a counter affidavit.

11. Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, this writ petition is finally **disposed of** with a direction to the petitioner to file revision before the competent authority within three weeks from today along with a certified copy of this order and, if any such revision is filed, the competent authority shall decide the same, ignoring the delay and laches, if any, after giving opportunity of hearing to all the parties, in accordance with law, by a reasoned and speaking order, within a period of four months from the date of production of certified copy of this order, without granting any unnecessary adjournment to either of the parties.

12. It is made clear that this Court has not examined the merits of the claim of the petitioner and the authority concerned shall apply its own mind strictly in accordance with law.

13. Interim order, if any, stands vacated.

Order Date :- 17.10.2023

Saif