

Court No. - 5

Case :- WRIT - C No. - 40749 of 2023

Petitioner :- Smt. Vimlesh

Respondent :- Mukut Singh And 2 Others

Counsel for Petitioner :- Narendra Kumar Pandey, Peeyush Kumar Shukla

Counsel for Respondent :- CSC

Hon'ble Piyush Agrawal, J.

Heard Sri N.K.Pandey, learned counsel for the petitioner, Sri Ravi Shankar Tripathi, learned counsel for the private respondent and learned standing counsel for the State-respondents.

By means of the present writ petition, the petitioner is assailing the order dated 3.11.2023 passed by the 7th Additional District & Sessions Judge/ Gangster Act, Badaun in Civil Revision No. 16 of 2023.

Learned counsel for the petitioner submits that the petitioner is the declared winning candidate of Pradhan Gram Panchayat, Village Khirkvari Bhud, Block Dahgawan, Tehsil Sahaswan, District Badaun on the basis of the election held in the year 2021. He further submits that thereafter the respondents filed election petition challenging the election without following the mandatory provision of Section 12-C(3) of the U.P. Panchayat Raj Act which mandates that the candidates who have filed the election petition shall present personally before the Presiding Officer. He further submits that the ground raised by the petitioner with regard to Section 12-C(3) was not considered by the Prescribed Authority/ Up Ziladhikari Sahaswan vide order dated 23.2.2023 and summoned the ballot papers for the purpose of recounting of votes against which the petitioner preferred Revision No. 4 of 2023 in which vide order dated 6.3.2023 notices were issued. He further submits that in view of the impugned order dated 3.11.2023 passed by the revisional authority remanding the matter, the Prescribed authority, is bent upon to decide the matter within 20 days and fixed day to day hearing in the matter.

Learned counsel for the petitioner has drawn attention of the Court towards Annexure 9 to the writ petition at page 87 wherein in paragraph 3 of objection filed in Case No. 3690 of 2021 it has been specifically stated that the petitioner has not presented the petition personally before the prescribed authority.

The said ground was also raised in in paragraph 24 of the written statement, copy of which has been annexed as Annexure 8 to the writ petition. He further submits that these grounds were raised before the prescribed authority as well as before the revisional court but the same was not considered. He further submits that remand order has been passed but his preliminary objection with regard to maintainability of the election petition as provision of section 12-C(3) was not followed, has not been considered. He further submits that without considering his application of the petitioner, the maintainability of the election petition itself goes. He submits that his application may be decided within the time fixed by this Court for which Sri Ravi Shankar Tripathi learned counsel for the respondent no.2 has no objection.

In view of the above, without entering into the merit of the case the prescribed authority is directed to first consider the application filed by the petitioner with regard to Section 12-C(3) of the Act on its own merit and decide the same after hearing all stake holders then proceed in the matter in accordance with law.

The writ petition is accordingly disposed of.

Order Date :- 28.11.2023

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