

**Court No. - 17**

**Case :-** WRIT - C No. - 10178 of 2023

**Petitioner :-** Smt. Dropti

**Respondent :-** State Of U.P. Thru. Prin. Secy. Panchayti Raj,  
Civil Sectt. Lko. And 6 Others

**Counsel for Petitioner :-** Nijam Ahamad, Abhishek  
Mishra, Samanvya Dhar Dwivedi

**Counsel for Respondent :-** C.S.C., Rakesh Kumar Chaudhary

**Hon'ble Alok Mathur, J.**

1. Heard Sri Samanvya Dhar Dwivedi, learned counsel for the petitioner, learned Standing counsel for respondent Nos. 1, 3 and 5, Sri Virendra Singh for respondent No.7 and Sri Rakesh Kumar Chaudhary for respondent No.s 4 and 6.

2. By means of the present writ petition the petitioner has challenged the order dated 1.8.2023 passed by District Judge, Ambedkar Nagar whereby he has dismissed the revision preferred by the petitioner under Section 12 (Ga) (6) of U.P. Panchayat Raj Act, 1947 (hereinafter referred to as the Act of 1947) against the order of the Prescribed Authority passed under Section 12 Ga of the Act of 1947.

3. It has been submitted by learned counsel for the petitioner that present dispute pertains to the election of Village Pradhan of Gram Panchayat Sehari, Pargana Surhampur, Tehsil Jalalpur, Block Bhiyaon, District Ambedkar Nagar which took place on 29.4.2021 where respondent No.7 was declared as returned candidate. The petitioner had lost the election by two votes and consequently he filed election petition before Sub Divisional Magistrate, Tehsil Jalalpur District Ambedkar Nagar. The Prescribed Authority while considering the election petition has passed an order for recounting on 26.4.2023.

4. Respondent No.7 being aggrieved by the order of recounting approached this Court by filing writ petition C No.3773 of 2023 where a preliminary objection was raised by the petitioner with regard to maintainability of the petition on the ground that the petitioner had an alternate remedy under Section 12 (C) (6) of the Act of 1947 by filing revision before District Judge. The preliminary objection raised by the petitioner was upheld by this Court and consequently the writ petition was dismissed on the ground of alternate remedy.

5. As observed by this Court by means of order dated 12.5.2023 respondent No.7 had filed revision before the District Judge which has been allowed vide order dated 1.8.2023 and the order of the Prescribed Authority dated 26.4.2023 has been set aside asking him to pass a fresh order in accordance with law. The petitioner has approached this Court being aggrieved by the order of the revisional court dated 26.4.2023.

6. Learned counsel for the petitioner has assailed the said order mainly on the ground that the same is interlocutory order against which no revision was maintainable.

7. Learned counsel for respondent No.7, at the outset, has submitted that it was a preliminary objection raised by the petitioner himself before the writ Court wherein respondent No.7 was asked to avail his statutory remedy under the Act of 1947 and consequently the petitioner cannot be permitted to blow hot and cold at the same time and this argument cannot be raised by him again once he has already raised contrary argument before this Court leading to dismissal of the writ petition.

8. At this stage, learned counsel for the petitioner submits that he does not want to press the said argument and submits that the matter may be remitted back to the Election Commissioner for taking decision as directed by the revisional authority. He submits that the Prescribed Authority may be directed to consider and decide the issue pertaining to recounting expeditiously.

9. Learned counsel for the respondents do not object to the prayer made by the petitioner.

10. In view of the above, the writ petition is **disposed off** with a direction to the Prescribed Authority i.e. respondent No.3 to consider and decide the issue pertaining to counting, expeditiously, say within a period of four weeks from the date a certified copy of this order is placed before him in accordance with law after giving full opportunity of hearing to the concerned parties.

**(Alok Mathur, J.)**

**Order Date :- 20.11.2023**  
RKM.