

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6372 of 2023

Petitioner :- Kamalakant @ Kamalakant Bajpai

Respondent :- Rizwan Khan And 14 Others

Counsel for Petitioner :- Kirti Kar Tripathi, Noor Alam Khan, Shrikant Tripathi

Counsel for Respondent :- Aakash Singh

Hon'ble Rajnish Kumar, J.

1. Heard, Shri Shrikant Tripathi, learned counsel for the petitioner and Shri Aakash Singh, learned counsel for respondents no.14 and 15.
2. This petition has been filed challenging the order dated 20.11.2023 passed in Election Petition No.1 of 2023.
3. The sole argument advanced by learned counsel for the petitioner is that on one hand the application No.9-Ga filed by the petitioner for summoning and inspecting the ballot papers has been rejected on the ground that the case is fixed for filing of the reply and the petitioner has to prove his case through evidence, whereas the petitioner has already placed the materiel on record alongwith the election petition. He further submits that it has further been observed that at the stage of arguments if there would be any need, then conclusion will be drawn for summoning the ballot papers but no liberty has been granted for moving fresh application. Therefore the impugned order is not sustainable and liable to be set aside.
4. Per contra, learned counsel for respondents no.14 and 15 submits that there is no illegality or error in the impugned order because the petitioner has to prove his case after filing of the replies and framing of issues, by adducing evidence and only thereafter the decision can be taken in regard to summoning of the ballot papers and merely on the averments made in the election petition no decision could have been taken. He further

submits that by the impugned order it has also been observed that in case at the stage of arguments there would be any need then the decision will be taken for summoning of ballot papers.

5. Having considered the submissions of learned counsel for the parties and on perusal of the record and the impugned order dated 20.11.2023, it is apparent that the election petition is fixed at the stage of reply of the respondents, whereas any decision in regard to summoning and inspection of the ballot papers can be taken only after the evidence is adduced by the parties and case of the petitioner is proved through evidence, therefore this court does not find any illegality or error in the impugned order. Even otherwise it has specifically been observed in the impugned order that in case at the stage of argument it is found that there is any need of summoning of ballot papers then the decision shall be taken for summoning the ballot papers. Therefore the argument of learned counsel for the petitioner that no liberty has been granted for moving fresh application is misconceived and not tenable.

6. In view of above, this court is of the view that the impugned order has rightly been passed in accordance with law, which does not call for any interference by this court. The petition is misconceived and lacks merit.

7. The petition is, accordingly, **dismissed**.

(Rajnish Kumar,J.)

Order Date :- 20.12.2023

Banswar