

Court No. - 5

Case :- WRIT - C No. - 707 of 2024

Petitioner :- Mahendra Kumar Verma

Respondent :- State Of U.P. Thru. Addl. Chief Secy., Panchayat Raj, Lucknow
And Others

Counsel for Petitioner :- Anurag Shukla, Rajesh Kumar Singh

Counsel for Respondent :- C.S.C., Shailesh Kumar Pathak

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of the respondents no. 1, 3 & 5 and Sri Prabhat Kumar, learned counsel for the respondent no. 8. Notices on behalf of the respondents no. 2, 4 & 6 have been accepted by Sri Atul Kumar Dubey, Advocate.
2. No notice need be issued to the respondents no. 9 to 12 considering that the election petition before the Prescribed Authority under the provisions of Section 12-C of the Uttar Pradesh Panchayat Raj Act, 1947 had been filed by the respondent no. 8 who is the contesting party. As such, notices are dispensed with.
3. With the consent of learned counsels appearing on behalf of the contesting parties, the instant writ petition is being finally decided.
4. Under challenge is the order dated 09.01.2024 passed by the revisional authority/Additional District Judge, Court No. 3 at Sadar, Pratapgarh in Revision No. 64 of 2023 Inre; Mahendra Kumar Verma Vs. Garun Kumar Tiwari and 8 Ors per which the revision filed by the petitioner has been dismissed vide order dated 09.01.2024 on the ground that the order under challenge dated 17.06.2023 is an interlocutory order against which revision is not maintainable.
5. Also under challenge is the order dated 17.06.2023 passed by the respondent no. 3 i.e the Prescribed Authority per which he has disposed of the election petition finally and has directed for re-counting of votes on 01.07.2023.
6. The contention of learned counsel for the petitioner is that earlier challenging the order dated 17.06.2023, the petitioner filed Writ-C No. 5332 of 2023 Inre;

Mahendra Kumar Verma Vs. State of U.P and Ors which was decided vide order dated 04.07.2023, a copy of which is annexure 3 to the writ petition whereby this Court after placing reliance on the earlier judgment of this Court in the case of **Parshuram Vs. State of U.P and Ors** passed in **Matter Under Article 227 No. 31424 of 2021** decided on 23.12.2022 had given liberty to the petitioner to approach the revisional authority and the authority was required to consider the application for interim relief in accordance with law.

7. It is contended that in pursuance thereof, the revisional authority has dismissed the revision on the ground that the order under challenge before it in revision namely the order dated 17.06.2023 is an interlocutory order against which the revision under the provisions of Section 12-C (6) of the Uttar Pradesh Panchayat Raj Act, 1947 (hereinafter referred to as "Act, 1947") would not be maintainable.

8. The contention is that this issue has been considered threadbare by this Court in the case of **Parshuram (supra)** wherein it has been held that where an election petition is finally disposed of, the authority concerned becomes *functus officio* and as such, there would not be any occasion for the authority concerned, for having passed the order for re-counting of votes as has been passed by means of the order impugned dated 17.06.2023.

9. It is further argued that when keeping in view the law laid down by this Court in the case of **Parshuram (supra)** the order dated 12.06.2023 is a final order consequently, revisional Court has patently erred in rejecting the revision filed by the petitioner by treating the order dated 17.06.2023 to be an interlocutory order as emerges from a perusal of the order dated 09.01.2024. It is thus contended that both the orders merit to be set aside on these grounds alone.

10. On the other hand, Sri Prabhat Kumar, learned counsel for the respondent no. 8 as well as learned Standing counsel have placed reliance on a subsequent judgment of this Court passed in **Writ-C No. 4999 of 2023 Inre; Kusum Mishra Vs. State of U.P and Ors** decided on 21.07.2023 **Neutral Citation No. 2023:AHC-LKO-47903** wherein after considering the judgment of this Court in

the case of **Parshuram (supra)** it has been provided that as the order of the Prescribed Authority finally disposing off the election petition falls within the ambit of being a final order consequently, the revision would be maintainable.

11. It is thus contended that considering considering the judgment of this Court in the case of **Kusum Mishra (supra)** the revision in fact was maintainable before the revisional Court and as such, the revisional Court has patently erred in rejecting the revision of the petitioner by treating the order impugned dated 17.06.2023 to be an interlocutory order.

12. Having heard the learned counsels appearing on behalf of the contesting parties and having perused the records it emerges that initially the Prescribed Authority vide order impugned dated 17.06.2023 finally disposed of the election petition and at the same time directed for re-counting of votes to be held on 01.07.2023. The petitioner being aggrieved filed Writ-C No. 5332 of 2023 which was disposed of vide judgment and order dated 04.07.2023 leaving it open to the petitioner to file a revision and the revisional authority was required to decide the interim relief application filed in the said revision in accordance with law.

13. In pursuance thereof, the revisional Court vide order dated 09.01.2024 has dismissed the revision on the ground that the order dated 17.06.2023 passed by the Prescribed Authority is an interlocutory order and hence the petition.

14. Whether the order dated 17.06.2023 is an interlocutory order or a final order is no longer *res integra* having been settled by this Court in the case of **Parshuram (supra)** which has also been admitted by the learned counsels appearing on behalf of the contesting parties and thus, it is apparent that the order dated 17.06.2023 would fall within the ambit of being a final order.

15. Thus, it emerges that the order impugned dated 09.01.2024 passed by the revisional authority rejecting the revision filed by the petitioner solely on the ground that the order dated 17.06.2023 is an interlocutory order is legally untenable in the eyes of law.

16. This aspect of the matter has also been considered by this Court in the case

of **Kusum Mishra (supra)** wherein after placing reliance on the earlier judgment of this Court in the case of **Parshuram (supra)** it had been provided that in case the petitioner prefers the revision within a period of thirty days which is the limitation prescribed for filing the revision, the same shall be decided on merits.

17. Accordingly, keeping in view the law laid down by this Court in the case of **Parshuram (supra)** as well as **Kusum Mishra (supra)** the instant writ petition is partly allowed. The order impugned dated 09.01.2024, a copy of which is annexure 1 to the writ petition is quashed. The matter is remitted to the revisional Court to decide the revision filed by the petitioner in accordance with law on merits after hearing all the parties concerned.

18. Let the said revision be decided within a period of three months from the date of receipt of a certified copy of this order.

Order Date :- 23.1.2024

Pachhere/-