

Court No. - 37

Case :- FIRST APPEAL No. - 417 of 2022

Appellant :- Prabhat

Respondent :- Raju Singh @ Avanindra Singh And 6 Others

Counsel for Appellant :- Iqbal Ahmed, Nand Kishor

Mishra, Saroj Kumar Yadav, Shilpa Ahuja

Counsel for Respondent :- Gaurang Dwivedi, Sanjay

Kumar Feyes Asthana

Hon'ble Dinesh Pathak, J.

1. Heard Sri Anil Tiwari (Senior Advocate) assisted by Sri Iqbal Ahmad Siddiqui, learned counsel for the applicant and Sri Naveen Sinha (Senior Advocate) assisted by Sri Gaurang Dwivedi, learned counsel for the respondent.

2. Instant first appeal is arising out of the election petition filed by present appellant under rule 35 of the Uttar Pradesh Kshetra Panchyats (Election of Pramukhs and Up Pramukhs and Settlement of Election Disputes) Rules 1994 (in brevity Rules, 1994). Appellant is aggrieved with the order dated 20.4.2022 passed by learned District Judge, Mahoba in Election Petition No. 1 of 2021, whereby election petition has been rejected for non compliance of the provisions enunciated under rule 35(2) of Rules, 1994 on the ground that election petition was not presented in person by the election petitioner before the judge/election tribunal concerned.

3. Facts culled out from the record available on board are that the present appellant (election petitioner) is the first runner in the Panchyat Election, 2021 to the post of Pramukh, however, Respondent No.1, namely, Raju Singh, has been declared as returned candidate. Having been aggrieved with the result declared by the Returning Officer, present appellant has filed an election petition under Rule 35 of the Rules, 1994. Respondent No.1 has filed his detailed written statement dated January 6, 2022 with a specific plea in para 32 that the election petition has not properly been presented as per provisions enunciated under rule 35 (2) of Rules, 1994.

Respondent No.1 (returned candidate) has moved an application dated February 1st, 2022 (Paper No. 55C2) to the effect that election petition filed on behalf of the present appellant may be rejected for want of compliance of the provisions enunciated under rule 35(2) of Rules, 1994. Against the said application, appellant has filed his objection dated 8.2.2022 with the plea that he has presented the election petition in person. After hearing the parties, on the application dated 1.2.2022 (Paper No. 55C2) filed on behalf of respondent no.1, learned District Judge (Election Tribunal) has allowed the application No. 55C2 and dismissed the election petition for non compliance of the provision under Rule 35 (2) of Rules, 1994 with a specific finding that the election petitioner (appellant herein) was not present at the time of presentation of the election petition in person before the authority concerned, vide judgment dated 20.4.2022, which is under challenge before this court.

4. Learned Senior Advocate for the appellant submits that:-

4(i) Election Tribunal has misread and misinterpreted the order sheet of the election petition from 28.07.2021 to 03.09.2021 and the report of office clerk (Sadar Munsarim) dated 28.07.2021 qua presence of the petitioner at the time of presentation of the election petition. Office clerk (Sadar Munsarim) has clearly mentioned in report that election petition has been filed on behalf of the petitioner through his counsel Shri Manish Shankar Amist. Signature of the appellant is available in the margin of the order sheet dated 28.7.2021.

4(ii) It is next submitted that placement of the specimen signature of the present appellant in the margin of the order sheet dated 28.07.2021 to 03.09.2021 has been misconstrued by learned District Judge considering it to be a signature of dated 16.8.2021, which is next date after the 28.7.2021.

4(iii) Specimen signature of the appellant in the margin of the order sheet dated 28.07.2021 bolster his presence before the authority concern in person at the time of presentation of the election petition. Thus, prerequisite for maintainability of the

election petition as enunciated under rule 34(2) of the Rules, 1994 has fully be complied with.

4(iv) Order impugned passed by learned District Judge is liable to be quashed, being illegal, cryptic, perverse and unwarranted under the law.

5. Per contra, learned Senior Advocate for respondent no.1 has contended that:-

5(i) There is no specific averment on behalf of the respondent no.1 that he was present at the time of presentation of the election petition in person filed on his behalf.

5(ii) Appellant has not refuted the report dated 28.07.2021 submitted by the Sadar Munsiram and the order dated 28.7.2021 passed by learned District Judge that petition was presented on behalf of the election petitioner through counsel Sri Manish Shankar Amist and Sri B.B. Lal Saxena.

5(iii) Learned Senior Counsel has laid emphasis on the finding returned by the Election Tribunal, whereby signature of the election petitioner has been treated to be prefixed at the beginning to the order dated 16.8.2021, and contended that appellant was present on 16.08.2021, not on 28.07.2021. In support of his submission he has placed reliance upon the judgment passed by coordinate Bench of this Court in the matter of *Devendra Yadav Vs. District Election Officer/District Magistrate, Mau, First Appeal No. 270 of 2021, decided on 29.09.2011*. While relying upon the aforesaid judgment, learned Senior Advocate has contended that in similar facts and circumstances, Coordinate Bench of this Court has held that in case there is no specific averment by the Munsrim or the court concerned that election petition was presented in person by the petitioner it will be presumed that election petition was not filed as per norms required under Rule 35 (2) of Rules, 1994.

5(iv) It is next contended that there is no illegality and perversity in the order impugned, thus, instant first appeal is liable to be dismissed, being misconceived and devoid of merits.

6. Having considered the rival submissions advanced by learned Senior counsel for the parties and on perusal of

record, it is manifest that the point for consideration in the instant matter lies in a narrow compass as to whether the election petitioner (appellant herein) was present in person at the time of presenting the election petition on his behalf before the authority concerned as per norms required under Rule 35 (2) of Rules, 1994. Thus, provision enunciated under rule 35 of Rules, 1942 is to be considered, in the given circumstances of the present case, which is quoted hereinbelow:-

“35. Time and manner of presenting petitions- (1) An election petition calling in question the election of a Pramukh or Up-Pramukh may be presented to the Judge at any time within thirty days from the date of declaration of the result under Rule 14 or Rule 29, as the case may be.

(2) It shall be presented in person by the petitions or if there are more than one petitioner, by any one or more of them.”

7. Chapter IV of Rules, 1994 contains the provisions relating to disputes qua elections of Pramukhs and Up-Pramukhs, which commence from rule 35 to rule 49. Looking limited the scope of this appeal, rule 35 is relevant which denotes time and manner of presenting the election petition. Rule 35(1) provides the limitation to file the election petition that it should be filed within thirty days from the date of declaration of the result under rule 14 or rule 29, as the case may be. Moreover, rule 35(2) of Rule, 1994 (which is relevant for the instant first appeal) denotes prerequisite to file election petition that it shall be presented in person by the petitioner. And, if petitioners are more than one, it shall be presented by any one or more of them.

8. In the light of the provisions, as mentioned above, and the controversy involve in the instant matter, this Court has carefully scrutinised the record of the court below which is available on the board and same has been perused by counsel for both the parties as well. Record evince that the election petition had been presented on 28.7.2021 before the concerned clerk (Sadar Munsiram) who has made his report at the rear side of the first page of the election petition that the election petition has been presented on behalf of the election petitioner through counsel Sri Manish Shankar

Amist. For the ready reference endorsement made by the sadar munsiram dated 28.7.2021 is quoted hereinbelow:

‘श्रीमानजी,

प्रस्तुत चुनाव याचिका याची प्रभात की ओर से श्री मनीष शंकर अमिष्ट एड0 द्वारा प्रस्तुत किया गया। चुनाव याचिका न्यायिक क्षेत्राधिकार व समय सीमा के अन्तर्गत है। अदा किया गया न्याय शुल्क पर्याप्त है।’

रिपोर्ट सादर प्रस्तुत है।

हस्ताक्षर

28-7-2021

सदर मुंसरिम”

9. Election petition was placed on the same day before learned District Judge along with the report of Sadar Munsiram. After receiving the record, learned District Judge, Mahoba has passed the order dated 28.7.2021 with an observation that election petition has been filed on behalf of the election petitioner through counsel Sri Mani Shankar Amit and Sri B.B. Lal Saxena. For ready reference order dated 28.7.2021 passed by learned District Judge is quoted hereinbelow:

“आज यह चुनाव याचिका याची की ओर से उनके विद्वान अधिवक्तागण श्री मनीष शंकर अमिष्ट एवं श्री बी0बी0 लाल सक्सेना द्वारा प्रस्तुत की गई। मुंसरिम आख्या का अवलोकन किया।

आदेश हुआ कि चुनाव याचिका के रूप में दर्ज रजिस्टर हो। विपक्षीगण को नोटिस जारी हो। वास्ते सुनवाई दिनांक 16/08/21 को पेश हो’

जिला जज

महोवा’

10. Perusal of first page of order sheet evince that it contains three orders i.e. order dated 28.7.2021, 16.8.2021 and 3.9.2021. Specimen signature of the election petitioner is endorsed below the order dated 28.7.2021 in the margin of the aforesaid order sheet. District Judge has returned the finding that specimen signature of the election petitioner is endorsed parallel to the order dated 16.8.2021 (Suffix the order dated 16.8.2021). He has emphasised, as well, on the order dated 16.08.2021 wherein District Judge has noted the personal presence of the election petitioner and, accordingly, inferred that petitioner was not present in person at the time of presenting the election petition i.e. 28.07.2021 rather he was present in person only on 16.08.2025. Learned Senior Counsel for the respondent has pointed out that in order dated 16.8.2021 personal presence of the election petitioner has

been noted by the learned Tribunal, however, his personal presence has not been noted in order dated 28.7.2021, therefore, it can easily be inferred that election petitioner was not present in person on 28.07.2021 rather he was present on 16.08.2021 and, accordingly, he has put his specimen signature near to the order dated 16.8.2021. I am sceptical of the submission advanced by the learned Senior Counsel for the respondent that the specimen signature endorsed by the election petitioner pertains to the order dated 16.8.2021 and it cannot be inferred that he was present in person at the time of presenting the election petition on 28.7.2021. However, bare eyes reading evince that, signature of the election petitioner is endorsed just below the order dated 28.7.2021, that too, parallel to the signature of District Judge of said date and above the order dated 16.8.2021 in the margin of the order sheet. In my opinion, any prudent person can infer that it pertains to the order dated 28.7.2021 and not to the order dated 16.8.2021 as interpreted by the learned District Judge and fortified by learned Senior Counsel for the respondent No.1. It appears, prime facie, that signature being endorsed below the order dated 28.7.2021 has led the learned District Judge drew inference that it has been signed on the next date i.e. 16.8.2021, however, failed to appreciate that specimen signature of the appellant was made parallel to the signature of learned District Judge of the same date and above the order dated 16.08.2021. Thus, finding returned by District Judge qua absence of the election petitioner at the time of presenting the election petition, based on positioning of specimen signature of election petitioner in the margin of order sheet, is perverse.

11. The case of Devendra Yadav (supra) relied upon by the learned senior counsel for the respondent No.1 evince that in the report submitted by the sadar munsiram there is a specific noting with regard to the person who has filed the election petition. For the ready reference noting made by sadar munsiram in the cited case, as mentioned in paragraph 19 of the order, is quoted hereinbelow:

“19. The Sadar Munsarim had made the following report on the back of the first page of the election petition:

“प्रस्तुत करने का दिनांक 23.12.2010

प्रस्तुत कर्ता—श्री सदानन्द राय एड०

श्रीमान्

प्रस्तुत चुनाव याचिका इस न्यायालय के क्षेत्राधिकार एवं अवधि के अंतर्गत है। प्रदत्त न्याय शुल्क मु० 200.00 रुपया पर्याप्त है तल्बाना दिया गया है। प्रतिभूति की धनराशि मु० 500.00 रुपये ट्रेजरी में जमा करके चालान दाखिल है। नकल निर्णय दाखिल है। मुसन्ना दिया गया है। प्रपत्र 8 के अनुरूप त्रैमासकी मई निर्वाचन विवरण का जिला न्यायालय जनपद मउ के कार्यालय से आहूत करने हेतु दाखिल प्रस्तुत है।

रिपोर्ट सेवा में प्रेषित है।

ह० अपठित

सदर मुसरिम

23.12.2010”

Thereafter, the election petition was placed before the Judge concerned who had passed the following order on 23.12.2010:

23.12.2010

“आज यह चुनाव याचिक याची देवेन्द्र यादव के अधिवक्ता श्री सदानन्द राय, एड० द्वारा प्रस्तुत किया गया। मुंसरिम आख्या के साथ पेश हुआ।

आदेश

दर्ज रजिस्टर हो। विपक्षी को दिनांक 12.1.2011 नियत कर सम्मन जारी हो।

ह० अपठित

I/c जिला जज”

12. Bare perusal of the aforesaid report, as quoted in the cited judgment, evince that the name of the person who has presented the election petition is clearly mentioned as Sadanand Rai (Advocate) at the top of the report and below the aforesaid noting there is a report running in 5 and ½ lines showing the valuation etc. of the election petition. Subsequent to the report there is a order of District Judge dated 23.12.2010 which clearly indicates that election petition has been filed by Sada Nand Rai, Advocate counsel for Devendra Yadav. Accordingly, the election petition has been ordered to be registered .

13. Having considered the cited case of Devendra Yadav (supra) in the given circumstances of the present case, I am of the view that there is a visible difference with regard to the noting made by the Sadar Munsiram in the instant election

matter and the matter which has been relied upon by the senior counsel for the respondent No.1. The order dated 28.7.2021 unequivocally mentioned that election petition has been presented on behalf of the election petitioner through counsel Sri Manish Shankar Amist and B.B. Lal Saxena, however, there is no averment that election petition has been filed/presented by aforesaid counsel on their own as counsel for the election petitioner, as mentioned in the cited case. Moreover, signature of the present appellant in the margin of order sheet dated 28.7.2021 authenticates his presence in person on the date of presentation of the election petition, which lacks in the cited case. Apart from that submission advanced by learned Senior counsel for the respondent that in order dated 16.8.2021 personal presence of election petitioner has been mentioned, and to authenticate his presence he has put his signature in the margin of order sheet dated 16.8.2021, is of no avail as well. Submission of learned Senior Advocate in this regard is not supported by the following order sheets wherein election petitioner has been shown to be present before the court, however, order sheet does not bear his signature.

14. Presenting the election petition on behalf of the election petitioner through his counsel does not mean that election petitioner was not present at the time of presenting the election petition. In my opinion, signature made by the election petitioner in the margin of the order sheet dated 28.7.2021 clearly indicates his presence in person at the time of presenting the election petition. Learned District Judge has misread and misinterpreted the placement of the signature of the election petitioner (appellant) in the margin of the order sheet which contains orders dated 28.7.2021, 16.8.2021 and 9.9.2021. Assuming arguando, that no specific finding has been returned by learned District Judge in its order dated 28.7.2021 that petitioner is present before the court in person at the time of presenting the election petition, the signature endorsed in the margin of the order sheet dated 28.7.2021 clearly infers his presence at the time of presenting the election petition in person. Thus, the case of Devendra Kumar (supra) relied upon by learned Senior Advocate for the respondent No.1 is not fully applicable in the facts and circumstances of the present case.

15. In this conspectus, as above, instant First Appeal succeeds and is allowed. Order dated 20.4.2022 passed by District Judge, dismissing the election petition No.1 of 2021, for want of compliance of Rule 35 (2) of Rules, 1994, is set aside. Election petition is restored to its original number and both the parties are hereby relegated before the election tribunal concerned to get the aforesaid election petition decided on merits.

16. Having considered the old matter of 2021 it is expected from learned tribunal that he shall make an endeavour to decide the election petition as early as possible.

Order Date :- 9.5.2025

Kumar Manish