

Kashi Ram Vs. Sub-divisional Officer, Sadar, District and Another

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Court : Allahabad

Decided On : Sep-05-1994

Reported in : AIR1995All234

Judge : A.P. Singh, J.

Acts : [Constitution of India](#) - Articles 136 and 226; Uttar Pradesh Panchayat Raj Act, 1947 - Sections 12C(6), (7), (8) and (9)

Appeal No. : Writ Petition No. 220 (M/S) of 1993

Appellant : Kashi Ram

Respondent : Sub-divisional Officer, Sadar, District and Another

Advocate for Def. : C.S.C. and ;R.N. Gupta, Adv.

Advocate for Pet/Ap. : T. Punvam, Adv.

Judgement :

ORDER

1. This writ petition is directed against the order of the Sub-Divisional Officer, Sadar, District Hardoia, passed ,on 12-1-1993 by which Election Petition filed by opposite party No. 2 under Section 12C of U.P. Panchayat Raj Act, 1947 was allowed and the election of the petitioner as Gram Pradhan of village Sankh, Pargana and tehsil Sandila, district Hardoi was set aside.

2. On an application filed by Sri Vyas Deo Tripathi, opposite party No. 2 the Sub-Divisional Officer, Hardoi who exercises powers of the Prescribed Authority for deciding Election Petitions under the U.P. Panchayat Raj Act, 1947, made an order for recounting of the votes cast in the election which was the subject-matter of the election petition in which the petitioner was declared elected. The said order of the Sub-Divisional Officer ordering recounting of votes was challenged by the petitioner by filing a writ petition in this Court under Art. 226 of the [Constitution of India](#). That writ petition was dismissed by this Court by the judgment and order dated 6-3-1992. The petitioner then challenged the order of recounting in the Supreme Court under Art. 136 of the [Constitution of India](#) through Special Leave Petition. The Supreme Court dismissed the Special Leave Petition and upheld the order of recounting by its judgment and order dated 1-12-1992. Ultimately recounting of the votes in pursuance of the order dated 6-3-1992 took place and in the recounting of the votes which were cast in the election of Pradhan of the Gaon Sabha it was found that the petitioner had polled 609 valid votes whereas opposite party No. 2, who was the petitioner in the Election Petition, had polled 517 valid votes. The Prescribed Authority accordingly allowed the Election Petition and declared opposite party No. 2 Sri Vyas Deo Tripathi as having been duly elected Gram Pradhan of village Sankh, Pargana and Tahsil Sandila, district Hardoi by the impugned order under challenge in this writ petition.

3. At the outset the learned counsel for the opposite party No. 2 took objection to the entertainability of the writ petition on the ground that the order under challenge in the writ petition is open for review by the District Judge by way of revision as provided by subsection (6) of Section 12C of the Act and, therefore, this Court should not entertain the writ petition and dismiss the same on the ground of alternative remedy. Learned counsel for the petitioner repelled this contention of the learned counsel for opposite party No. 2 on the ground that since the order of the Prescribed Authority under challenge, was passed without affording an opportunity of hearing to the petitioner, therefore, the order being void ab initio can be challenged before this Court without taking recourse to the statutory remedy under sub-section (6) of Section 12C of the Act. For a proper application of the argument raised by the learned counsel for the parties it is necessary to extract the provisions of sub-sections (6), (7), (8) and (9) of Section 12C of the Act. The

aforesaid provisions are as follows:

(6) Any party aggrieved by an order of the prescribed authority upon an application under sub-section (1) may, within thirty days from the date of the order, apply to the District Judge for revision of such order on any one or more of the following grounds, namely:

(a) that the described authority has exercised a jurisdiction not vested in it by law;

(b) that the prescribed authority has failed to exercise a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercise of its jurisdiction illegally or with material irregularity.

(7) The District Judge may dispose of the application for revision himself or may assign it for disposal to any Additional District Judge, Civil Judge or Additional Civil Judge under his administrative control and may recall it from any such officer or transfer it to any other such officer.

(8) The revising authority mentioned in sub-section (7) shall follow such procedure as may be prescribed, and may confirm, vary or rescind the order of the prescribed authority or remand the case to the prescribed authority for re-hearing and pending its decision pass such interim orders as may appear to it to be just and convenient.

(9) The decision of the prescribed authority, subject to any order passed by the revising authority under this section, and every decision of the revising authority passed under this section, shall be final.'

4. A perusal of sub-section (6) would show that any party feeling aggrieved by the order of the prescribed authority may within 30 days from the date of the order apply to the District Judge for revision of such an order on any of the grounds given in sub-clauses (a), (b) and (c), sub-clause (c) which is material in the context of the argument of the learned counsel for the petitioner, entitles the aggrieved party to file the revision also on the ground of denial of opportunity of hearing by the prescribed authority while deciding election petition. It is further to be seen that

decision of the prescribed authority on the election petition is subject on an application filed under clause (6). Although it is admitted to the learned counsel for the petitioner that the ground regarding denial of opportunity of hearing, which is the main ground on which the writ petition is based, is open for the petitioner to be taken in the revision if the same was filed against the prescribed authority's order under challenge in this writ petition, still he maintains that the writ petition cannot be dismissed on ground of alternative remedy inasmuch as the order under challenge is void ab initio for the reason that the same was passed without affording an opportunity of hearing to the petitioner. It is maintained by the learned counsel that notwithstanding the remedy of revision before the District Judge under Section 12C(6) of the Act the writ petition will be maintainable under Art. 226 of the Constitution simply for the reason that the order is void ab initio. The contention of the learned counsel for the petitioner, in my opinion, is not acceptable.

5. The remedy under Art. 226 of the Constitution is an extraordinary remedy. Recourse to such a remedy can be taken only when the alternative remedy provided by the statute is not found to be effective or efficacious. Learned counsel for the petitioner has not been able to show that the remedy provided that clause (6) by means of revision which is maintainable before the District Judge, against the order of the prescribed authority, is not efficacious or effective. The ground, which has been taken in the writ petition as observed above, is also open to be taken by the petitioner in the revision as well. The District Judge, who is empowered to hear and decide the revision, is not barred from making an enquiry in the allegations made before him in that respect for the revision of the order under challenge. It is to be seen from clause (9) of Section 12C of the Act that the order of the prescribed authority is subject to the order that may be passed by the District Judge in revision. Therefore, the remedy of revision under Section 12C(6) apart from being effective is also efficacious. I, therefore, reject the argument of the learned counsel for the petitioner that only because the order is void ab initio, therefore, the remedy of filing writ petition under Art. 226 of the Constitution of India should be available at the cost of by-passing the statutory remedy under sub-section (6) of Section 12C.

6. The question can be examined from another angle. The manner of election to the office of Pradhan and the settlement of the dispute in relation of the election are provided within the Act. The Act thus offers complete machinery in respect of the election of the Pradhan and such machinery not having been shown to be defective or deficient in any respect should normally be treated as complete in itself. In the normal course it is not permissible to a person aggrieved by the order of the prescribed authority to take recourse to the proceedings under Art. 226 of the [Constitution of India](#) for the reason that effective and efficacious remedy is provided within the statute for the settlement of disputes in respect of the Office of the Pradhan. On a perusal of the order under challenge I do not agree with the argument of learned counsel for the petitioner that the petitioner was not given opportunity of hearing. The prescribed authority in his order has noted that despite notice and sufficient opportunity the petitioner, who was opposite party in the election petition, did not appear at the time of hearing. There is another circumstance which substantiates the aforementioned observations of the prescribed authority in the impugned order. The prescribed authority passed the impugned order on 12-1-1993. The petitioner made the application for issue of a certified copy of the said order on 13-1-1993. Promptness in making the application for issuance of the certified copy of the impugned order speaks for itself and demonstrates that the petitioner was having the knowledge of hearing of the case on 12-1-1993 and also, the order which was passed on that day. He, therefore, made the application for issue of the certified copy on the next day. The observations are being made on the basis not only of the endorsement made in the impugned order, which has been filed as Annexure-4 to the writ petition, but also on the basis of the averments made by respondent No. 2 in paragraphs 17, 18, 20 and 21 of the counter-affidavit. In support of the above contentions documents have also been filed from which it is clear that the notice was duly served on the prescribed authority. Observations that the petitioner was given proper and reasonable opportunity of hearing have been made by me above only for the decision of this case on the preliminary ground of maintainability of the petition and not on the merits of the case. Therefore, these observations would have no bearing for the purposes of the decision of the said revision in case the petitioner files a revision before the District Judge under Section 12C(6) of the Act.

7. In view of the above discussion, the writ petition fails and is dismissed on the ground of alternative remedy. There shall be no order as to costs.

8. Petition dismissed.

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