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Badri Prasad Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Dec-20-2000

Reported in : 2001(1)AWC559

Judge : S.K. Sen, C.J. and ;Jagadish Bhalla, J.

Acts : U. P. Municipal Corporation Act, 1959 - Sections 62(2) and 71

Appeal No. : Writ Petition No. 6110 of 2000 (MB)

Appellant : Badri Prasad

Respondent : State of U. P. and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : R.N. Gupta, Adv.

Judgement :

S. K. Sen, J.

1. We have heard learned counsel Mr. R. N. Gupta for petitioner and learned standing counsel for respondents.

2. In the instant writ petition the petitioner has prayed for the following reliefs :

(i) A writ order or direction in the nature of certiorari the result of respondent No. 7 to be elected as Corporator Lucknow Corporation declared on 25.11.2000 be quashed.

(ii) Writ order or direction in the nature of mandamus the provisions of Section 62(2) of Municipal Corporation Act, 1959 be declared as ultra vires and opposite parties be commanded to hold a fresh election after preparation of final voter list.

(iii) the cost of the writ petition be awarded to the petitioner against opposite parties.

(iv) Any other writ order or direction befitting in the circumstances of the case be also passed.

3. The contention of the writ petitioner is that some voters whose names figure in the list which is part of the voters list which is annexed to the writ petition at page 60 to 90 have been allowed to cast votes although they are not eligible to cast votes being not included in the original voters list.

4. We have considered also the submissions of Mr. S. S. Chauhan and learned standing counsel. Learned standing counsel has drawn out attention to Section 71 (d) (iii) (iv) which provides as follows :

71 (d). that the result of the election, in so far as it concernsa returned candidate, has been materially affected ;

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non compliance with the provisions of this Act or of any rules or orders made thereunder.

5. He has submitted relying upon the aforesaid provisions that even assuming the contention of the writ petitioner to be true, the instant case clearly falls within parameters of Section 71 (d) (iii) and (iv). It appears to us that the submissions of standing counsel cannot be said to be without any substance. The case of the writ petitioner is that some voters who should have not been allowed to vote and their

votes should not have been accepted, have been accepted inspite of his protest. The same really amounts to improper reception of votes under category of 71 (d) (iii) and (iv) as such, proper remedy is to file election petition on the alleged irregularity on counting process. In that view of the matter, we are unable to grant any relief in the writ petition and it is not necessary to go into the question of ultra vires in respect of Section 62 sub-clause (3) in the instant writ petition. The proper remedy in our view for the writ petitioner is to file election petition on the alleged ground of irregularity. The writ petition accordingly fails and is dismissed with the observations as above.

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