

Rahmat Khan Vs. District Judge, Bareilly and Others

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Court : Allahabad

Decided On : May-24-2001

Reported in : AIR2001All357; (2001)2UPLBEC1762

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 12C(1), 12C(6) and 43;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397

Appeal No. : C.M.W.P. No. 20134 of 2001

Appellant : Rahmat Khan

Respondent : District Judge, Bareilly and Others

Advocate for Def. : S.C., ;S.P. Shukla and ;R.P. Shukla, Adv.

Advocate for Pet/Ap. : Krishna Gopal Srivastava, Adv.

Disposition : Writ Petition dismissed.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 5.2.2001 passed by the Prescribed Authority rejecting the objection of the petitioner in regard to the validity of filing the election petition and the order of the revisional court dated 11.5.2001

dismissing the revision against the said order.

2. The election of Pradhan of Gram Panchayat Boomchi, tehsil Meerganj, Bareilly was held in June, 2000. The petitioner was elected as Pradhan of the said Gram Panchayat. Respondent No. 3 filed election petition under Section 12C of the U. P. Panchayat Raj Act, 1947 (in short the Act) challenging the election of the petitioner on various grounds. In the said election petition, the petitioner filed an application before the Prescribed Authority for rejecting the election petition with the allegations that the election petition was not properly presented before the appropriate authority and without required amount being deposited before presenting the election petition.

3. The Prescribed Authority rejected the application vide Order dated 5.2.2001 holding that the election petition was properly presented before the Prescribed Authority concerned and the respondent No. 3 had deposited the required amount before presentation of the election petition. The petitioner preferred a revision against this order and it was dismissed by respondent No. 1 on 11.5.2001 on the ground that it was against the interlocutory order. These orders have been challenged in the present writ petition.

4. I have heard Sri Krishna Gopal Srivastava, learned counsel for the petitioner and S/Sri S. P. Shukla and R. P. Shukia, learned counsel for the contesting respondents.

5. Learned counsel for the petitioner submitted that when an order that adjudicates the rights of the parties, it should not be treated as interlocutory order and revision against such order is maintainable. The maintainability of the revision has to be examined in the context of the provision of sub-section (6) of Section 12C of the Act. Section 12C (1) of the Act which provides that the election of a person as Pradhan including the election of a person appointed as the Panch of the Nyaya Panchayat under Section 43 shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground specified therein. Sub-section (6) of Section 12C of the Act reads as under:

'Any party aggrieved by an order of the prescribed authority upon an application under subsection (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 prescribed 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.'

6. Sub-section (1) refers to an application and sub-section (6) of Section 12C of the Act also refers to an order of the Prescribed Authority upon an application under subsection (1) of the Act. A revision is maintainable only when the application is decided filed under sub-section (1) of Section 12C of the Act challenging the election of Pradhan of Gram Panchayat, etc. The revisional court is not empowered to entertain any revision on any other application filed during the pendency of the election petition. It may be that during the election petition, an application may be filed by one of the parties in that election petition and decision on such application by the Prescribed Authority may determine certain questions relating to the election petition but decision on such application will not be covered by sub-section (6) of Section 12C of the Act. This question was considered in *Kedar Singh v. District Judge, Agra and others*, 1983 AWC 622, wherein the order of the Sub-Divisional Officer allowing the application for inspection of ballot papers was challenged. The Court held that such an order having been not passed on an application as contemplated under Section 12C (1) of the Act, the revision was not maintainable. Similar view was expressed in *Bhagwat Prasad Misra v. Sub-Divisional Officer and others*. 1985 AWC 94.

7. Learned counsel for the petitioner has placed reliance upon the decision *Amar Nath and others v. State of Haryana and others*, AIR 1977 SC 2185, wherein the Hon'ble Supreme Court interpreting the words 'interlocutory order' used under Section 397(2), Cr. P.C. held that any orders which affect or adjudicate the rights of the accused or decides certain rights of the parties cannot be said to be

interlocutory order so as to take it 'outside the purview of the revisional jurisdiction of the High Court under Section 397(2), Cr. P.C. The Court was interpreting the meaning 'interlocutory order' as used under Section 397(2). Cr- P.C. The language used in sub-section (2) of Section 397. Cr. P.C. is different and the interpretation of the word 'interlocutory order' cannot be made applicable while interpreting the power of the revisional court conferred under sub-section (6) of Section 12C of the Act for the reasons given above.

8. Even on merits, I do not find any illegality in the order passed by the Prescribed Authority. He has recorded a finding that the election petition was filed before the appropriate authority and the respondent No. 3 had deposited the required amount before filing the election petition.

9. In view of the above, the writ petition is dismissed.

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