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**Satya Pal Vs. Ivth Additional District and Sessions Judge and anr.**

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**Court : Allahabad**

**Decided On : Oct-14-1996**

**Reported in : (1997)1UPLBEC106**

**Judge : R.R.K. Trivedi, J.**

**Acts :** Uttar Pradesh Zila Panchayats (Election of Adhyaksha and Upadyaksha and Settlement of Election Disputes) Rules, 1994 - Rules 33, 38, 43, 44 and 47; Representation of the Peoples Act, 1951 - Sections 116B(1); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 94, 94E and 151; [Constitution of India](#) - Article 226

**Appeal No. :** Civil Misc. Writ Petition No. 32628 of 1996

**Appellant :** Satya Pal

**Respondent :** ivth Additional District and Sessions Judge and anr.

**Advocate for Def. :** S. C.

**Advocate for Pet/Ap. :** A. Kumar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**R.R. K. Trivedi, J.**

1. Heard learned counsel for petitioner and the learned standing counsel.

2. Short but important question involved in this petition is as to whether the Judge while giving judgment in an election petitioner filed under Rule 33 of the Uttar Pradesh Zila Panchayats (Election of Adhyaksha and Upadhyaksha and Settlement of Election Disputes) Rules, 1994 (hereinafter referred to as the Rules) may stay operation of his own order for the period provided for filing appeal before High Court under Rule 47 of the Rules.

2-A. Facts, in short, necessary to appreciate the controversy are that respondent No. 2 Jivendra Kumar was declared elected as Adhyaksha of the Zila Panchayat of district Shahjahanpur on 22-5-1995. Challenging this election. Election Petition No. 1 of 1995 was filed by Jaidrath Singh and Vijai Pratap Singh. Aforesaid Election Petition has been decided finally by learned IVth Additional District and Sessions Judge, Shahjahanpur by his judgment and order dated 26-9-1996, while delivering judgment respondent No. 1, on the application of respondent to stay operation of the order dated 26-9-1996 for one month, passed the following order :-

'Counsel for the applicant-respondent No. 1 wants to file an appeal in the Hon'ble High Court. Provisions of C. P. C. are applicable. The execution of the order and judgment shall remain stayed for 25 days so that the appeal may be filed during this period. Sd/- Illegible

26-9-1996

IVth A. D. J.'

3. Aggrieved by the aforesaid order this petition has been filed by the petitioner Satya Pal who was elected Upadhyaksha on 28-6-1996. His claim is that as the election has been set aside, and there is vacancy in the office of Adhyaksh, petitioner being Upadhyaksha, is entitled to hold the office till an Adhyaksha is elected in accordance with law.

4. Shri A. Kumar, learned counsel for the petitioner, has submitted that as the impugned judgment was pronounced by the learned Judge, he became functus

officio and could not pass the impugned order staying the operation of his own order for 25 days. There is nothing like inherent or implied power to justify the impugned order. There is also no parallel provision in Kshetra Samitis and Zila Parishads Adhiniyam, 1961, like Section 116B of the Representation of Peoples Act, 1951 and the order is wholly without authority of law. By the impugned order the right of petitioner to hold office of the Adhyaksha has been illegally curtailed.

5. Learned counsel for petitioner has placed reliance in the following cases :-

1, Debi Saran v. Sub-Divisional Officer, Kitcha Rudrapur, district Nainital and Ors. reported in 1988 AWC 1039.

2 Jagdish Prasad v. Sub-Divisional Officer Domariaganj, district Basti and Anr. reported in 1989 AWC 151 : 1990 RD 363.

3. Mahabir Singh v. State of U. P. and Anr., reported in 1989 AWC 401.

6. Learned standing counsel appearing for the State submitted that under the provisions of the Act and the Rules, the learned Judge had power to stay operation of his judgment for a short period and there is nothing in the Act or the Rules on which basis it may be said that such power could not be exercised.

7. I have considered the submission of learned counsel for petitioner and have also perused to cases relied in support thereof. From perusal of the aforesaid three judgment of this Court, it is clear that the legal position expressed therein was regarding the power of the prescribed authority/sub-divisional officer to grant interim order while hearing an election petition Under Section 12-C of Uttar Pradesh Panchayat Raj Act. In all the judgments it has been said that no procedure has been prescribed either in Section 12-C of U. P. Panchayat Raj Act or under Rule 25 framed thereunder and in absence of any such procedure, it cannot be inferred that the Sub-Divisional Officer/Prescribed Authority hearing the election petition may have the power to grant interim order depriving the pradhan whose election was in question from discharging his duties and functions as elected Pradhan. From the narration of the aforesaid facts, it is clear that the judgments are distinguishable from the facts of the present case. For election

petitions filed under the Rules, procedure has been specifically provided under Rule 38 which reads as under :-

'38. Except so far as provided by the Act or in these rules, the procedure provided in the Civil Procedure Code, 1908, in regard to suits, shall in so far as it is not inconsistent with the Act or any provisions of these rules and it can be made applicable, be allowed in the hearing of the election petitions :provided that-

(a) x x x(b) x x x(c) x x x(d) x x x(e) x x x(f) the Judge may review his decision on any point on an application being made within fifteen days from the date of the decision by any person considering himself aggrieved thereby:

(g) X X X(2) The provisions of the Indian Evidence Act, 1872 (Act 1 of 1872) shall be deemed to apply in all respects to the trial of an election petition.(3) x x x

8. From the provisions contained in Rule 38, it is clear that there is a procedure provided for hearing of the election petitions and the Judge hearing the election petition may apply the procedure provided in Civil Procedure Code, 1908 if it can be made applicable. There is also power of review. In the circumstances, it is difficult to accept that the learned Judge after giving his judgment became functus officio and could not pass the impugned order. Section 94 of the Code of Civil Procedure specifically provides that in order to prevent the ends of justice from being defeated, the Court may pass orders contemplated in Clauses A to E mentioned thereunder. Clause E provides that the Court may make such interlocutory orders as may appear to the Court to be just and convenient. It cannot be denied that in the First Schedule of the Code of Civil Procedure under various clauses, provisions have been made for staying the operation of the judgment and decree. They need not be narrated here.

9. Besides, Under Section 94-E, the Court has also the inherent power Under Section 151 of the Code of Civil Procedure which provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary in the ends of justice or to prevent abuse of the process of the Court.

10. Learned counsel for petitioner has not been able to point out any provision in the Act or the Rules which may be said to be inconsistent with the provisions of Sections 94 and 151 of the Code of Civil Procedure. Learned counsel, however, relied on Rule 44 which provides that an order of the Judge under Sub-rule (2) of Rule 40 shall take effect from the date of the order, however, there is nothing in Rule 44 to curtail the power of the Judge to postpone the effect of his order after pronouncement of the same. He could pronounce in the judgment itself that the order will take effect after a limited period.

11. It may not be out of place here to mention that Representation of Peoples Act, 1951, is a sort of general law in this country to generally provide guidance in matter of elections and in deciding the election disputes and in the absence of any specific contrary provision in the Act or the Rules under consideration, the guidance may be taken from the Representation of Peoples Act, 1951. Section 116B(1) reads as under :-

'(1) An application may be made to the High Court for stay of operation of an order made by the High Court Under Section 98 or Section 99 before the expiration of the time allowed for appearing therefrom and the High Court may, on sufficient cause being shown, and on such terms and conditions as it may think fit, stay the operation of the order, but no application for stay shall be made to the High Court after an appeal had been preferred to the Supreme Court.

(2) where an appeal has been preferred against an order made Under Section 98 or Section 99 the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay operation of the order appealed from.'

12. It may be mentioned here that initially provisions of Section 116B were not part of the Representation of Peoples Act, 1950 or 1951. This section was inserted by Amending Act No. 27 of 1958 after gaining experience.

13. After the 73rd Amendment of the Constitution in 1992, the elections of the Panchayats and election disputes have to be judged from a different angle. Panchayats have now become part and parcel of the democratic functioning of this

Country from grass root level to the national level. The Panchayats at village level, intermediate level and district level have been conferred important duties and functions and there appears no harm if a power in terms of Section 116B is also inferred on the basis of the existing provisions with the Judge hearing election petitions under the Rules. Hon'ble Supreme Court in case of *Indira Gandhi v. Raj Narain* reported in AIR 1975 SC 1590 considered in detail the relevant factors for consideration while granting interim order in such circumstances. Para 13 of the judgment reads as below :-

'What has been the prior practice of this Court in such cases? What if any, are the special circumstances compelling departure in favour of the petitioner? What is the balance of convenience? What does the public justice of the case dictate? Which way does public interest lie? These are the sociolegal considerations which are relevant to the grant or refusal of stay and the terms to be imposed on the petitioner in the event of grant. Stay pending appeal has been usually granted but hampered in by conditions.....'

14. Now, coming to the facts of the present case and considering the guidelines provided by Hon'ble Supreme Court, in my opinion, the order is justified. The sole ground for setting aside the election is that respondent No. 2 Jivendra Kumar and another candidate Manvendra Singh secured equal votes. However, the Election Officer committed illegality in adopting lottery system for declaring the result. It has been held that when equal votes were found, the decision should have been on the basis of the first preference votes secured by the candidates. Thus, the election has been set aside on the basis of technical defect in counting and not on the basis of any disqualification or on the basis of the charges of corrupt practices. Rule 43 deals with the procedure in case of equality of votes. The aforesaid Rule reads as under :-

'43 (1) If during the trial of an election petition it appears that there is an equality of votes between candidates at the election and that one of them is to be eliminated, then-

(a) any decision, made by the Returning Officer under the provisions of these Rules, shall, in so far as it determines the question between those Candidates, be

effective also for the purposes of petition, and

(b) so far as that question is not determined by such a decision, the Judge shall decide between them in accordance with the provisions of the instructions in Schedule II to these rules?.'

15. Considering the aforesaid Rules, and without expressing any opinion on the merits of the case, it can be safely said that there was a prima facie case in favour of respondent No. 2 for passing the impugned stay order. The petitioner is Upadhyaksha and by this order no irreparable loss or injury can be said to have been caused to him. It is a temporary period of 26 days. During this period, it shall be in the interest of public justice not to disturb the office of the Adhyaksha of Zila Panchayat and specially in the facts and circumstances of the present case.

16. The important aspect of the case is that petitioner was not party to the election petition. It is highly doubtful that he shall have the locus standi to challenge the impugned order. Assuming for the time being that the interim order is granted by his Court in appeal filed by respondent No. 2 can petitioner question the interim order? In my opinion, he cannot. The election dispute was confined between the parties to the election petition, petitioner may be entitled to hold the office in absence of the Adhyaksha but on this basis he cannot question the order passed by the Judge who heard the election petition or the order passed in appeal. Thus, he has no locus standi to challenge the order.

17. For the reasons stated above, I do not find any merit in this writ petition and it is accordingly rejected.