

Nand Kishore Vs. State Election Commission and ors.

Nand Kishore Vs. State Election Commission and ors.

SooperKanoon Citation : sooperkanoon.com/487697

Court : Allahabad

Decided On : Nov-15-2002

Reported in : 2003(1)AWC394; (2003)1UPLBEC158

Judge : M. Katju and ;Rakesh Tiwari, JJ.

Acts : Uttar Pradesh Municipalities Act, 1916 - Sections 25(2)

Appeal No. : C.M.W.P. No. 33331 of 2002

Appellant : Nand Kishore

Respondent : State Election Commission and ors.

Advocate for Def. : A.N. Singh, ;A.P. Mishra and ;A.D. Prabhakar, Advs. and ;S.C.

Advocate for Pet/Ap. : P.R. Ganguli, ;Ramanuj Pandey and ;W.H. Khan, Advs.

Disposition : Petition allowed

Judgement :

M. Katju, J.

1. This writ petition has been filed against the impugned order dated 27.7.2002 Annexure-1 to the petition passed by the Vth Additional District Judge, Meerut, by which he has allowed the election petition of Shoraj (respondent No. 5 in this

petition) and has cancelled the election of respondent No. 6 Vishnu for the post of Adhyaksh, Nagar Panchayat, Qasba Kharkauda, tehsil and district Meerut and has further directed that Shoraj should be installed as the Adhyaksh of the Nagar Panchayat.

2. It is alleged in paragraph 2 of the writ petition that in the election held in November, 2000, the respondent No. 6 Vishnu was elected as Adhyaksh of the Nagar Panchayat by defeating the respondent No. 5 Shoraj, the petitioner and six other candidates. In this election Vishnu the respondent No. 6 got 2,051 votes, the respondent No. 5 Shoraj got 1,544 votes and the other candidates got lesser votes. The respondent No. 5 filed an election petition challenging the election of Vishnu, and this election petition was allowed holding that Vishnu was less than 30 years of age, and hence was disqualified. However, the respondent also directed that the respondent No. 5 Shoraj should be installed as the Adhyaksh as he has secured the second highest number of votes.

3. The short submission of learned counsel for the petitioner is that although the direction in the impugned order cancelling the election of Vishnu was correct, the additional direction directing Shoraj to be installed as Adhyaksh was illegal. Learned counsel for the petitioner has relied on the decision of the Supreme Court in *Prakash Khandre v. Dr. Vijaya Kumar Khandre and Ors.*, AIR 2002 SC 2345. In that decision, it was held that if there is no specific provision under the Act under which the person who has secured the next highest number of votes could be declared as elected, the declaration that the person securing the second highest votes as elected would be illegal. The Supreme Court held that if the disqualified candidate was not permitted to contest the election, then how the voters would have voted in favour of the candidate who has secured more votes than other remaining candidates would be a question in the realm of speculation and unpredictability.

4. The number of votes cast for each of the candidates is given in paragraph 4 of the counter-affidavit.

5. Learned counsel for the respondents has relied on Section 25(2) of U. P. Municipalities Act, which states as follows :

'(2) If the District Judge, finds that the election of any person was invalid, or that the nomination paper of the petitioner was improperly rejected, it shall either :

(a) declare a casual vacancy to have been created, or

(b) declare another candidate to have been duly elected, whichever course

appears, in the particular circumstances of the case, the more appropriate, and in either case may award costs at its discretion.'

He has urged that in view of Clause (b) of Section 25 (2), it was open to the District Judge to declare Shoraj to have been duly elected.

6. In our opinion, Clause (b) of Section 25 (2), cannot be interpreted in a manner so as to give unfettered discretion to the District Judge to declare another candidate to have been duly elected. Every power or discretion has to be exercised in a non-arbitrary manner.

7. In our opinion, Clause (b) can only be interpreted to mean that if there are only two candidates in an election and the person getting the highest number of votes is declared to be disqualified, then the District Judge can declare the second candidate to have been elected.

8. In our opinion, if there are more than 2 candidates there has to be a fresh election, and the person getting second highest number of votes cannot be declared to be elected. This is because if the voters had known that the person who got the highest number of votes was disqualified to contest the election, it is quite possible they would have voted for the person who got the third highest number of votes or some other candidate other than the person who got the second highest number of votes. As observed by the Supreme Court in Prakash Khandre's case (supra), 'if the disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than other remaining candidates would be a question in the realm of speculation and unpredictability.'

9. In view of the above, we allow the writ petition and set aside - that part of the impugned order which has declared Shoraj (the respondent No. 5) as the elected candidate. The authority concerned will now hold a fresh election for the post of Adhyaksh, Nagar Panchayat, Qasba Kharkauda, tehsil and district Meerut, expeditiously in accordance with law. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com