

Court No. - 5

Case :- WRIT - C No. - 84 of 2024

Petitioner :- Mangala

Respondent :- State Of U.P. Thru. Prin. Secy. Panchayat Raj, Lucknow And Others

Counsel for Petitioner :- Dinesh Chandra Tewari

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner, Sri Mukesh Mohan Sharma, learned Standing counsel appearing on behalf of the respondents no. 1 to 6 and Sri Arvind Kumar Shukla, Advocate who has filed his Vakalatnama today in Court on behalf of the respondent no. 7.

2. Under challenge is the order dated 02.01.2024 passed by the prescribed authority under Section 12-C of the Uttar Pradesh Panchayat Raj Act, 1947 (hereinafter referred to as "Act, 1947") in an election petition filed by the respondent no. 7 whereby while disposing of the election petition, the prescribed authority has directed for the recounting of the votes to be held on 08.01.2024.

3. Placing reliance on the judgment of this Court in the case of **Parshuram Vs. State of U.P and Ors** passed in **Matter Under Article 227 No. 31424 of 2021** decided on **23.12.2022**, the legal argument of learned counsel for the petitioner is that this Court has held that after deciding of the election petition, the prescribed authority becomes *functus officio* and no further orders can be passed on the election petition which has been finally decided and thus the order impugned per which the election petition has been decided and recounting of votes has been directed to be held is beyond the power as given to the prescribed authority under the provisions of the Act, 1947 and the order also does not serve any purpose inasmuch as once the election petition has finally been decided, no further order can be passed by the prescribed authority even if the results of the votes are to come before him as has been directed by means of the order impugned.

4. On other hand, Sri Mukesh Mohan Sharma, learned Standing counsel as well as Sri Arvind Kumar Shukla, learned counsel for the respondent no. 7 take a

preliminary objection that against the order impugned, the petitioner has a statutory remedy of filing of a revision under Section 12-C (6) of the Act, 1947 before the learned District Judge and as such, the instant petition is not maintainable.

5. Having heard the learned counsel appearing on behalf of the contesting parties and having perused the record and the argument raised on behalf of the contesting parties what emerges is that vide order impugned dated 02.01.2024, the prescribed authority on an election petition filed before him under the Act, 1947 has disposed of the election petition and has directed for recounting.

6. This Court in the case of **Parshuram (supra)** has held that after an election petition is finally decided, the prescribed authority becomes *functus officio* and no further orders can be passed by him subsequent to the election petition having been finally decided and thus prima facie the order impugned is not in accordance with law and is beyond the jurisdiction as vested with the prescribed authority under the provisions of the Act, 1947. Thus, the remedy of revision can also not be considered to be a bar in entertaining the present petition more particularly when the order impugned is itself beyond the jurisdiction of the prescribed authority.

7. Considering the aforesaid, a prima facie case for interference is made out. As such, until further orders of this Court, the operation of the order impugned dated 02.01.2024, a copy of which is annexure 1 to the writ petition shall remain stayed.

8. Issue notice to the respondents no. 8 to 15 returnable at an early date.

9. Steps be taken within a week.

10. All the respondents may file counter affidavit within four weeks. Rejoinder affidavit, if any, may be filed within two weeks.

11. List thereafter.

12. At this stage, the Court may also observe that no assistance has been

rendered by Sri Mukesh Mohan, learned Standing counsel inasmuch as it is only the legal argument that has been raised by the learned counsel for the petitioner to which Sri Mukesh Mohan, learned Standing counsel initially sought time to seek instructions on the legal point or for having the case passed over. The writ petition itself was filed on Friday i.e 05.01.2024 and once only a legal point has been raised consequently, it was for the learned Standing counsel to have studied the matter and to have addressed the Court on the legal point as has been urged by the learned counsel for the petitioner.

13. This Court has repeatedly been observing that despite various opportunities having been given to the learned Standing counsel to address the Court on the legal points the learned Standing counsels have miserably failed to assist the Court on the legal points as are urged. This aspect of the matter cannot be ignored by this Court more particularly when repeatedly time has been granted to the learned Standing counsel to pull up their socks and address the Court on the legal point as are repeatedly being urged by the counsel who appear on behalf of the petitioner. This Court is constrained and pained to observe that no assistance is rendered by the learned Standing counsels.

14. The Court is compelled to pass this order inasmuch as the entire previous week i.e from 02.01.2024 to 05.01.2024, the learned Standing counsels were warned that in case things are not set right at their end and assistance is not provided by them then the Court may be compelled to pass orders against them. However, it appears that the warning as issued by this Court, as usual have fallen on deaf ears.

14. Considering the aforesaid, let a copy of this order be placed by the office before the Principal Secretary (Law & Remembrancer) and the learned Advocate General within three days, and the views of the Principal Secretary (Law & Remembrancer) and the learned Advocate General as to how this issue of non assistance by the learned Standing counsel is sought to be addressed would be submitted before this Court within two weeks from today by way of filing of a personal affidavit by the Principal Secretary (Law & Remembrancer) containing the views of learned Advocate General also and to be placed before this Court

by the next fixed for the said purpose alone which is 24.01.2024 failing which the Court may be compelled to summon the learned Advocate General and the Principal Secretary (Law & Remembrancer).

15. Let a copy of this order be provided to the learned counsel appearing on behalf of the contesting parties on payment of usual charges today itself .

Order Date :- 8.1.2024

Pachhere/-