

Ram Murat Vs District and Sessions Judge, Allahabad & Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Aug. 30, 1991

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 5 Rule 15

Uttar Pradesh Panchayat Raj Act, 1947 â€” Section 12C

Uttar Pradesh Panchayat Raj Rules, 1947 â€” Chapter 1F, 25

Hon'ble Judges: Palok Basu, J

Final Decision: Allowed

Judgement

1. Ram Murat Yadav has filed this writ petition challenging the order of the S.D.O. Phulpur (Election Tribunal), dated 19121989 whereby he

decided an election petition ex parte, setting aside the election of the petitioner as Pradhan of village Bhadkar, Tehsil Phulpur, district Allahabad.

This order has been upheld in revision by the District Judge, Allahabad on 2351991.

2. It may be relevant to mention here that after having come to know of the ex parte order passed by the SubDivisional Officer as mentioned

above, the petitioner moved an application for restoration before the S.D.O. The said restoration application was also subject matter of challenge

before the District Judge in a connected Revision. Ultimately by the order dated 2351991 the District Judge has dismissed the two Revisions,

upheld the two orders of the S.D.O. and has, therefore, put the seal of his approval to the ex parte order as well as to the order dismissing the

restoration application; hence this writ petition.

3. At the time of admission, notice was issued to the opposite parties and an interim order was granted on 2561991 to the effect that if charge of

the post of Pradhan has already not been taken over from petitioner, he would continue till 8th of July, 1991. In the meantime the contesting

opposite party no. 3, namely, Banwari Lal, who was the electionpetitioner before the S D.O has put in appearance through Sri C.K. Rai,

Advocate. He has filed a counter affidavit. Rejoinder Affidavit is also filed. Sri Kaushlendra Singh Chauhan, learned Standing Counsel, has

espoused the cause of the State.

4. The short question involved for decision in this writ petition for the time being is as to whether the service on the petitioner of the election petition

filed by the opposite party no. 3 was proper and in accordance with law or not. It is not disputed, rather a categorical finding has been recorded to

this effect that the notice of the election petition was served upon the uncle of the petitioner in his village.

5. On the question of "service", two arguments have been advanced by the learned counsel for the petitioner. Firstly, the uncle of the petitioner is

living separately and that he is on inimical terms with him. Secondly, it is not expected that the petitioner who was an elected Pradhan should be

taken to be absent or "continue" to be absent for a reasonable length of time" so as to make it incumbent upon the processserver to serve the

notice upon his uncle.

6. The reply of Sri C.K. Rai, the learned counsel for the opposite party as also of the Standing Counsel is that since Order V Rule 15 CPC is

applicable to election petitions arising out of Panchayat Raj Act it was a proper service on the petitioner if an adult member of his family had been

served with the notice.

7. The controversy having thus been narrowed down to the simple question as to whether on the facts of the present case the service on the uncle

of the petitioner can be taken to be a service not he petitioner, a look may be had at Order V Rule 15 CPC which reads as under:

~½Where service may be on adult member of defendant's family:

Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his

residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service

of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation: A servant is not a member of the family within the meaning of this rule~½.

8. It is inherent in the provision that it is only when the processserver is of the opinion that "there is no likelihood of his being found at the residence

within a reasonable time and he has no agent empowered to accept service of summons on his behalf, that the service can be effected on another

adult member of the family who is residing with the defendant.

9. It is obvious that the person to be adversely affected in an election petition is the person elected. No other person will be seriously concerned

with such a litigation than the elected citizen. Thus the Legislature in subrule (2) of Rule 24 framed under the Panchayat Raj Act has provided as

under;

~½24(2); The person whose election is questioned and where the petition claims that the petitioner or any other candidate shall be declared

elected in the room and place of such person, every unsuccessful candidate shall be made a respondent to the application.

10. Serious repercussions are attached to such proceedings which are initiated by way of election petition challenging the duly elected persons to

respectable offices such as Pradhan of a village. Consequently, strict compliance with the rule of service is necessitated. The authorities below shall

do well to ensure that the purpose of the law is carried to the logical end and that no slipshod method is adopted allegedly to fulfil the material

requirements of law. Under the circumstances a mere observation in the ex parte order by the Election Tribunal that the notice has been served

upon an adult member of the elected Pradhan may not be enough proof complying with Rule 24 (2) of Panchayat Raj Act and Order V Rule 15

CPC quoted above. It appears desirable to insist that a categorical finding be recorded by the Tribunal that the contingencies contemplated by

Order V Rule 15 CPC existed and they have been fully obeyed by the process server when alone the Tribunal may be entitled under the law to

proceed ex parte.

11. Admittedly the petitioner was, at the time of filing of the election petition, a sitting Pradhan of the village. It is unreasonable to argue that he

would not be available in the village "for a reasonable length of time" Any body making the least effort certainly would have found him & served

the notice on him. Under the circumstances the allegation of the petitioner that the service effected on his uncle cannot be taken to be a proper

service on him, has to be accepted. In view of the aforesaid discussion this petition should succeed as the three impugned orders suffer from errors

apparent on the face of the record.

12. Sri Hari Narain Singh, learned counsel for the petitioner and Sri C.K. Rai, learned counsel for the opposite parties are agreed that the matter

being of extreme urgency requires expeditious decision by the Tribunal. Sri Hari Narain Singh has made a statement on behalf of his client that the

date fixed by this court shall be taken to be sufficient information to his client and he will present himself before the S.D.O., Phulpur, on the said

date.

13. In view of what has been discussed above, this writ petition is allowed. The orders dated 19121989 and 2151990 passed by the S.D.O.

Phulpur, Allahabad, and 2551991 passed by the District Judge, Allahabad in Revision Nos. 151 of 1990 and 152 of 1990 under the Panchayat

Raj Act are quashed. The petitioner will present himself before the S.D.O., Phulpur, on 10th September, 1991. The election petition filed by

Banwari Lal, respondent no. 3 shall be restored to its original number and decided on merits according to law within a period of three months from

10th September, 1991. Costs easy.

14. A copy of this order may be furnished to the learned counsel for the parties on payment of usual charges by 4th September, 1991.

(Petition allowed)