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(2010) 11 AHC CK 0287

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 6804 of 2010 (M/S)

Anil Tripathi	APPELLANT
Vs	
State Election Commission and Others	RESPONDENT

Date of Decision: Nov. 19, 2010

Acts Referred:

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 12C, 12C(1), 43, 9

Citation: (2011) 112 RD 726 : (2011) 1 UPLBEC 834

Hon'ble Judges: Narayan Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Shri Narayan Shukla, J.

Heard Mr. Rakesh Kumar Chaudhary, learned Counsel for the Petitioner as well as Mr. Sanjay Sareen, learned Counsel for the opposite parties. The Petitioner has prayed for issuing a direction to the State Election Commissioner to enquire the matter regarding improper inclusion of the voters name in the electoral list, which came to his knowledge at later stage i.e. on the date of election i.e. 11th of October, 2010. He submits that the electoral list was published on 22nd of July, 2010 properly, in which those 32 names were not there, but any how subsequently those 32 names found place in the electoral list by way of amendment and accordingly they have been permitted to cast their votes. The Petitioner is a defeated candidate, but only by 16 votes. Accordingly he claims that had those 32 names been not included in the electoral list, definitely he would have been elected as Gram Pradhan, In this manner he has challenged the election of Gram Pradhan.

2. On the other hand Mr. Sanjay Sareen, learned Counsel for the State Election Commissioner raised objection against the maintainability of the writ petition in

light of the provisions of Section 12-C of the Uttar Pradesh Panchayat Raj Act, 1947, which provides that the election of a person as a Pradhan or as member of a Gram Panchayat including the election of a person appointed as the Panch of a Nyaya Panchayat u/s 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 except on the grounds mentioned therein. Section 12-C (1), which is relevant part, is reproduced hereunder:

12-C. Application for questioning the elections.--(1) The election of a person as Pradhan or as member of a Gram Panchayat including the election of a person appointed as the Panch of a Nyaya Panchayat u/s 43 shall not be called in question excepted by an application presented to such authority within such time and in such manner as may be prescribed on the ground that--

(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election, or

(b) that the result of the election has been materially affected-

(i) by the improper acceptance or rejection of any nomination; or

(ii) by gross failure to comply with the provisions of this Act; or

the rules framed thereunder.

3. I am informed that Sub-Division Officers concerned have been appointed as Prescribed Authority.

4. In the light of the aforesaid provisions he points out that the inclusion of names of the voters improperly, may be called a failure of the authority to comply with the provisions of the Act and that very ground is available for challenging the election. He also invites the attention of this Court towards Section 9 of the Act, which provides the provisions for preparation of electoral roll. Accordingly he submits that, if any, illegality has been committed in preparation of the same, definitely that may be the failure in compliance of the provisions of the Act.

5. He further submits that once the ground which has been taken for enquiry is available for the Election Tribunal to deal with the election petition, the parallel proceeding may not be permitted to be adopted as the result of the enquiry may affect the election of the elected candidate, which can be set aside only by the Election Tribunal, not by the other authority, therefore, it is the election petition alone and alone which is proper remedy for redressal of the Petitioner''s grievance.

6. Keeping in view the submissions of the learned Counsel for the parties as well as the provisions of the Act, I find that the improper inclusion of voters name comes under the scope of Section 9 and since it is done in violation of the provisions of the Act, definitely it comes under the scope of Section 12-C(1) (b)(ii), therefore, I am of the view that the appropriate remedy for the Petitioner is available to file the

election petition before the Election Tribunal for redressal of his grievance.

7. Under the circumstances, I hereby dismiss the writ petition on the ground of statutory remedy available to the Petitioner with liberty to him to adopt the same.