
(2015) 03 AHC CK 0023

Allahabad High Court

Case No: Writ C No. 67346 of 2014

Kamlesh Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 13, 2015

Acts Referred:

- Representation of the People Act, 1951 - Section 12, 80, 83

Hon'ble Judges: B. Amit Sthalekar, J.

Bench: Single Bench

Advocate: J.P. Pandey, for the Appellant; Ajay Bhanot and R.P.S. Chauhan, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Amit Sthalekar, J.

Heard Shri J.P. Pandey, learned counsel for the petitioner and Shri Ajay Bhanot, learned counsel appearing for the respondent No. 5. Learned standing counsel who has accepted notices on behalf of respondents No. 1,2 and 3 submits that the dispute is entirely between the petitioner and the respondent No. 5 and that he adopts the submissions made on behalf of the respondent No. 5 in support of the impugned order.

2. In this writ petition, the petitioner is seeking quashing of the order dated 1.9.2014 passed by the District Magistrate, Shahjahanpur whereby Arab Singh-respondent No. 5 has been entrusted and handed over the duties of Pradhan of Gram Panchayat, Bhunni Khera, Block Kalan, Tehsil Jalalabad, District Shahjahanpur and further for a direction to the respondent No. 2 -District Magistrate, Shahjahanpur that since the election of Naresh Chandra has been set aside, a meeting of the elected members of Gram Panchayat, Bhunni Khera, Block Kalan, Tehsil Jalalabad, District Shahjahanpur be convened to ascertain the wishes of the elected members

of the Gram Panchayat for nomination of officiating Pradhan.

3. Briefly stated the facts of the case are that the election for the post of Gram Pradhan, Gram Panchayat, Bhunni Khera, Block Kalan, Tehsil Jalalabad, District Shahjahanpur was held in 2010. Naresh Chandra, Arab Singh-respondent No. 5 and the petitioner Kamlesh Kumar contested the election. Naresh Chandra was declared elected and Arab Singh was placed at sl. No. 3. Arab Singh filed an election petition under section 12-C of the U.P. Panchayat Raj Act, 1947 (hereinafter referred to as the Act, 1947 only) questioning the election of Naresh Chandra. The election petition No. 9/10-11 filed by Arab Singh was allowed by the Election Tribunal by order dated 5.12.2013 and the election of Naresh Chandra for the post of Gram Pradhan was declared null and void and it was further directed that the applicant, namely, Arab Singh-respondent No. 5 was entitled to be declared elected on the post of Gram Pradhan.

4. Aggrieved by the order of the Tribunal, Naresh Chandra filed Revision No. 1/2013 before the District Judge, Shahjahanpur who dismissed the revision by order dated 11.7.2014. The grievance of the petitioner, however, is that by the impugned order dated 1.9.2014 the District Magistrate, Shahjahanpur has handed over and entrusted the duties and function of the office of Gram Pradhan of Gram Panchayat, Bhunni Khera, Block Kalan, Tehsil Jalalabad, District Shahjahanpur to the said Arab Singh-respondent No. 5.

5. Shri J.P. Pandey, learned counsel for the petitioner submitted that the impugned order dated 1.9.2014 has been passed by the District Magistrate, Shahjahanpur without ascertaining the wishes of the members of the Gram Panchayat. Although he does not dispute that such an order could have been passed under Section 12-J of the Act, 1947 but submits that this Court in a catena of decisions has held that before exercising the powers under Section 12-J of the Act, 1947, the competent authority is required to ascertain the wishes of the members of the Gram Panchayat. Shri J.P. Pandey further submitted that since Section 12-H of the Act, 1947 contemplates casual vacancy and provides that in such an eventuality the vacancy in the office of Pradhan shall be filled before the expiration of a period of six months from the date of such vacancy, for the remainder of his term in the manner as far as may be provided in Section 11-B, 11-C or 12, as the case may be and if on the date of occurrence of such vacancy the residue of the term of the Gram Panchayat is less than six months, the vacancy shall not be filled.

6. Shri Ajay Bhanot, learned counsel for the respondent No. 5 on the contrary submitted that Section 12 J of the Act, 1947 provides that where the office of Pradhan is vacant by reason of death, removal, resignation or otherwise or where the Pradhan is incapable to act by reason of absence, illness or for any reason whatsoever, the prescribed authority shall nominate a member of the Gram Panchayat, to discharge the duties and exercise the powers of Pradhan until such vacancy in the office of the Pradhan is filled in, or until such incapacity of the

Pradhan is removed. Shri Ajay Bhanot on the other hand has sought to distinguish between casual vacancy and temporary arrangement by referring to the definition of the terms "casual" and "temporary" as given in Black's Law Dictionary. "Casual" has been defined as under:

"Casual - Occurring without regularity, occasional; impermanent, as employment for irregular periods.

Happening or coming to pass without design and without being foreseen or expected; unforeseen; uncertain; unpremeditated"

7. Temporary on the other hand has been defined as under:

"Temporary - That which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration. Opposite of permanent. Thus, temporary alimony is granted for the support of the wife pending the action for divorce; a temporary receiver is one appointed to take charge of property until a hearing is had and an adjudication made."

8. Sri Bhanot further submits that this is not a casual vacancy but does not dispute that the rest of the term is more than six months.

9. Both the counsels, however, admit that against the order dated 11.7.2014 dismissing the revision, Naresh Chandra has filed writ petition No. 42281 of 2014 (Naresh Chandra v. Prescribed Authority and others) in the High Court challenging the aforesaid orders but there is no interim order by the High Court or any other court for that matter.

10. Shri Ajay Bhanot further submitted that this is not a case of casual vacancy inasmuch as immediately after declaring the election of Naresh Chandra to be null and void the Election Tribunal allowed the application filed by Arab Singh-respondent No. 5 and declared him to be the elected candidate and that the impugned order dated 1.9.2014 is also only a consequential order which follows the direction of the Election Tribunal dated 5.12.2013. Therefore, he submits that the question here in the present case is not whether there is a casual vacancy but whether the exercise of powers under Section 12-J of the Act, 1947 by the District Magistrate was valid or not.

11. Shri J.P. Pandey, learned counsel for the petitioner has referred to the judgment of the Full Bench of this Court reported in [Ram Adhar Singh Vs. The District Judge and Others](#), and submitted that the Full Bench of this Court has held that the provisions of U.P. Panchayat Raj Act, 1947 and Representation of People Act, 1951 are almost identical to each other. Reference has been made to paragraphs 6,9,11 and 16 of the said judgment. The aforesaid paragraphs are quoted herein below:

"6. As is evident from its preamble the U.P. Panchayat Raj Act has been enacted with a view to establish and develop Local Self-Government in rural areas, and to make

better provision for village administration in the State. Various provisions contained in the Act clearly spell out the legislative intention that such local Government and village administration are to be carried on for the benefit of rural populous by their representatives elected on the basis of adult franchise. In order to ensure that such franchise is exercised fairly and freely, Section 12-A of the U.P. Panchayat Raj Act, like the provisions contained in the Representation of People Act which deal with election to Parliament and State Legislature, stipulates that the election to the office of the Pradhan or Up Pradhan of a Gaon Sabha or a member of the Gram Panchayat shall be held by secret ballot in the manner prescribed.

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9. A perusal of the corresponding provisions contained in the Representation of People Act and the Rules framed thereunder which too are directed towards securing free and fair exercise of franchise in relation to Parliamentary and Assembly election by secret ballot, reveals that like the provisions contained in the U.P. Panchayat Raj Act, Section 80 of the Representation of People Act provides that no election under that Act shall be called in question except by means of an election petition presented in accordance with the provisions of Part VI. Section 83(1) thereafter states what an election petition should contain. It, inter alia provides that an election petition shall contain concise statement of the material facts on which the petitioner relies. Section 90(1) lays down the procedure for the trial of an election petition. Section 92 enumerates the powers which a Tribunal trying an election petition may exercise. Rule 93 of the Conduct of Election Rules, 1961 framed under the Representation of the People Act, lays down that:

"(1) While in the custody of the returning officer-

(a) the packets of unused ballot papers;

(b) the packets of unused ballot papers whether valid, tendered or rejected;

(c) the packets of the marked copy of the electoral roll or, as the case may be the list maintained under sub-section (1) of sub-section (2) of Section 152; and

(d) the packets of the declaration by electors and the attestation of their signatures;

shall not be opened and the their contents shall not be inspected by, or produced before any person or authority except under the order of a competent court or tribunal.

(2) all other papers relating to the election shall be open to public inspection subject to such conditions and to be payment of such fee, if any, as the Election Commission may direct.

(3) Copies of the returns by the returning officer forwarded under Rule 64 or as the case may be under sub-rule (3) of Rule 84 shall be furnished by the Chief Electoral Officer of the State concerned on payment of a fee of two rupees for each such copy."

10.

11. A comparison of the two sets of provisions contained in the U.P. Panchayat Raj Act and the Rules framed thereunder and those of the Representation of the People Act and the Rules framed thereunder in that regard, shows that they are almost identical to each other and it would not be wrong to infer that the discretion of the authority dealing with the election petition under the two enactments for looking into and in directing inspection of ballot papers should be governed by the same principles.

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16. This Court has consistently applied aforementioned principles enunciated by the Supreme Court, for looking into and permitting inspection of ballot papers in cases arising under the Representation of the People Act, to similar cases arising under the U.P. Panchayat Raj Act as well. (See Dhanai Prasad v. Sub Divisional Magistrate, Chunar, District Mirzapur and others, 1974 ALJ 371; [Charan Singh Attar Singh Vs. The Sub-Divisional Officer Sikandrabad and Another](#), ; Kali Prasad v. Prescribed Authority (S.D.O.), Pratapgarh and another, 1980 ALJ 378, and [Mohammad Husain Vs. S.D.O. Shahabad and Another](#)--> ."

12. Reading of the aforesaid paragraphs shows that although the Full Bench has drawn a comparison between the U.P. Panchayat Raj Act, 1947 and Representation of the People Act, 1951, the Court was actually interpreting the provisions of Section 12-A and 12-C of the U.P. Panchayat Raj Act and Sections 80, 83 and 90 of the Representation of the People Act, 1951 and it was in that context the Full Bench held in paragraph 11 that a comparison between the two sets of provisions contained in the U.P. Panchayat Raj Act and the Rules framed thereunder and those of the Representation of People Act and the rules framed thereunder in that regard, shows that they are almost identical to each other and it would not be wrong to infer that the discretion of the authority dealing with the election petition under the two enactments for looking into and in directing inspection of ballot papers should be governed by the same principles. Paragraph 16 is also in the same vein with regard to inspection of ballot papers. In my opinion the aforesaid judgment has absolutely no application to the facts of the present case as the present case is not one of inspection of ballot papers but with regard to the powers under Section 12-J of the

Act, 1947 and as to whether the competent authority is empowered to make an alternative arrangement for nomination of a member of the Gram Panchayat to discharge the duties and exercise the powers of a Pradhan where a vacancy of the office of Pradhan occurs by reason of death, removal, resignation or otherwise or where the Pradhan is incapable to act by reason of absence, illness or for any reason, whatsoever.

13. Sri J.P. Pandey, learned counsel for the petitioner has placed reliance upon a judgment of the Supreme Court reported in [Prakash Khandre Vs. Dr. Vijaya Kumar Khandre and Others](#), .

14. This was a case arising under the Representation of the People Act, 1951 where there were more than two candidates contesting election for the same post of M.L.A. and the question was whether when the election of the elected candidates is declared void, the candidate having the second highest number of votes can be declared elected.

15. The Supreme Court answered the question in the negative. Reference may be made to the paragraph 14 of the of the judgment which reads as follows:--

"14. However, in an election where elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, 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 Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been secured by the next candidate who has secured more votes. If 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. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected."

16. The Court held that in an election where the elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, 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 Act is silent on this point.

17. In the present case it appears that the law makers had contemplated such a situation and therefore Section 12-J was specifically inserted in the U.P. Panchayat Raj Act, 1947 by way of amendment under the U.P. Act 44 of 2007 w.e.f. 20.08.2007 and the power has been conferred upon the prescribed authority to nominate the member of Gram Panchayat to discharge the duties and exercise the powers of Pradhan until such vacancy in the office of Pradhan is filled in, or until such

incapacity of the Pradhan is removed. Therefore, on a comparative reading of the provisions of the Representation of the People Act, 1951 and the U.P. Panchayat Raj Act, 1947 it would be noticed that there is no such provision like Section 12-J of the Act, 1947 in the Act, 1951 and the Act of 1951 is silent on this aspect of the matter and it is this which has been noted by the Supreme Court in paragraph 14 of the judgment.

18. In Prakash Khandre (supra) the Supreme Court has specifically held that there is no such provision under the Representation of the People Act, 1951 where the candidate who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Therefore, I am of the view that the judgment in the case of Prakash Khandre (supra) has no application to the facts of the present case.

19. Sri J.P. Pandey next referred to a Division Bench judgment of this court in the case of Puspendra Kumar v. State of U.P. and Others, (2010) 4 ADJ 348. In the said judgment the provisions of Section 12-H as well as Section 12-J of the Act, 1947 have been considered and with regard to Section 12-H the Division Bench has held that the same deals with permanent vacancy which may occur by resignation or otherwise on the post of Pradhan and it provides for filling up the vacancy by way of election as provided under Section 11-B and Section 12 of the Act where the residual term is more than six months. The Court has further held that till such election is held a temporary arrangement has to be made taking recourse to the provisions of Section 12-J of the Act and it is here that the provisions of Section 12-J come into play and therefore relying on an earlier Division Bench judgment of the High Court in the case of Udaivir v. State of Election Commission of U.P. through its Chairman and others 2009 (106) RD 151, the Division Bench in Puspendra Kumar (supra) has held that the Prescribed Authority has to act in accordance with the majority opinion of the members of the Gram Panchayat while nominating the Officiating Pradhan. The Division Bench having distinguished the Pradhan of Section 12-H and 12-J it is not necessary for the Court to examine the definition of the word "casual" and "temporary" as given in the Black's Law Dictionary as the two terms have been defined in the judgment of the Division Bench of this Court in the case of Puspendra Kumar (supra).

20. Sri Ajay Bhanot submits that Naresh Chandra elected candidate has challenged the order of the Election Tribunal dated 05.12.2013 as well as the order of the District Magistrate dated 01.09.2014 in Writ Petition No. 42281 of 2014 but there is no interim order granted by the High Court.

21. He further submits that Naresh Chandra had filed a separate writ petition No. 48682 of 2014 challenging the order of the District Magistrate dated 1.9.2014 but subsequently the said writ petition was dismissed as withdrawn with liberty to move appropriate application in the pending writ petition No. 42281 of 2014. However, a perusal of the order of the Court dated 15.9.2014 passed in writ petition No. 48682

of 2014 it is seen that in the writ petition No. 42281 of 2014 there is a stay order pending against the revisional order dated 11.7.2014 but it has not been indicated as to whether the order dated 1.9.2014 was subsequently challenged by the Naresh Chandra or not. However, neither counsel has been able to state positively as to whether the order dated 1.9.2014 has been challenged by Naresh Chandra in the pending writ petition No. 42281 of 2014.

22. In support of his contention Shri Bhanot has referred to the following decisions:

"1. [Shyamu Vs. State of U.P. and Others](#)--> .

2. (2009) 106 R.D. 151, (Udaivir v. Election Commission of India and others).

3. (2010) 4 Adj 348, (Puspendra Kumar v. State of U.P. and Others).

4. [Lallan Prasad Verma Vs. State of U.P. and Others](#), .

5. [Sri Kamta Pal Vs. State of U.P. and Others](#), .

6. (2010) 2 ADJ 172, (Farida v. State of U.P. and Others).

7. [Smt. Kusma Devi Vs. State of U.P. and Others](#), .

8. (2009) 106 RD-105, (Laliti Devi v. State of U.P. and Others).

9. [Jaglal Vs. State of U.P. and Others](#)--> .

10. [Mohd. Yasin Khan Vs. State of U.P. and Others](#), .

11. [Smt. Brij Rani Singh Vs. State of U.P. and others](#), .

12. (1992) AWC 562, (Smt. Usha Rani v. D.M. and Others).

13. [Ram Kumar Vs. District Panchayat Raj Officer and Another](#), .

14 [Ram Beti Vs. District Panchayat Raj Adhikari and Others](#), .

15. [Edukanti Kistamma \(Dead\) thr. Lrs. and Others Vs. S. Venkatarreddy \(Dead\) thr. Lrs. and Others](#), .

16. J.T. 2009 (14) 102 (Bharat Amrat Lal Kothari v. Dasuram and others).

17. AIR 1990 Rajasthan 120 (M/s. Boards and Boards Pvt. Ltd. v. M/s. Himalaya and others).

18. [State of U.P. and Others Vs. Sandeep Kumar Balmiki and Others](#), .

19. [Dayanand Vedic Vidhalaya Sanchalak Samiti Vs. Education Inspector, Greater Bombay and Another](#), .

20. [Jyoti Basu and Others Vs. Debi Ghosal and Others](#), ."

23. In the case of Shyamu (supra), the Division Bench of this Court has considered the earlier judgment of the Division Bench of this Court in the case of Udaivir (supra) while interpreting the provisions of Section 12-J of the Act, 1947 and held that the prescribed authority at the highest should note the opinion of the members and thereafter proceed to nominate the Pradhan. Such a step will help the prescribed authority to know who enjoys the confidence of the members and this will help him to make an informal choice. This judgment does not help the case of the respondent No. 5 but rather is in support of the submissions made by Shri J.P. Pandey on behalf of the petitioner.

24. The next judgment is of Udaivir (supra) which has already been considered by the two Division Bench judgments of this Court in the case of Shyamu (supra) and Pushpendra Kumar (supra).

25. The judgment in the case of Lallan Prasad Verma (supra) also does not help the respondent No. 5 because in that case the Division Bench of this Court held that even if the meeting of the Gram Panchayat is not held in the Gram Panchayat as required under Section 12-B of the Act, 1947 but is held in the office of the prescribed authority, the decision of the prescribed authority on the basis of the wishes of the members cannot be said to be a procedural irregularity. This judgment also does not help the case of the respondent No. 5 in any manner.

26. The judgment of Kamta Pal (supra) has already been considered in the case of Lallan Prasad Verma (supra).

27. In the case of Farida (supra) the elected Pradhan resigned thus creating a substantive vacancy and the learned single Judge has followed the Division Bench judgment in the case of Udaiveer (supra) and held that though the language of Section 12-J of the Act, 1947 does not talk of convening any meeting but lacuna has been filled up through judicial pronouncement by directing that meeting shall be convened and that as per the majority wishes interim arrangement should be made amongst elected Gram Panchayat members. This judgment also does not help the respondent No. 5.

28. In Kusma Devi (supra) also the elected Pradhan had resigned creating a substantive vacancy. The judgment in the case of Smt. Kusma Devi (supra) in my opinion is contrary to the law now settled by the several decisions of this Court in the case of Shyamu (supra), Udaiveer (supra) and Pushpendra Kumar (supra) and therefore this judgment would be contrary to the legal position settled by the various Division Benches of this Court.

29. The judgment in the case of Lalti Devi (supra) also has no application to the facts of the present case as that was a case of temporary vacancy under Section 12-J on account of the frequent absence of the petitioner-Pradhan from her post.

30. The judgment of Jag Lal Ram (supra) is also contrary to the Division Bench judgments in the cases of Shyamu (supra), Udaiveer (supra) and Pushpendra Kumar (supra) as it was a case under Section 12-J and was a case where the vacancy occurred on account of death of the elected Pradhan and therefore it cannot be said to lay down the correct law being contrary to the judicial opinion now settled by the Division Benches of this Court.

31. For the same reason the judgment in the case of Mohd. Yaseen Khan (supra) cannot be said to lay laid down the correct law as this was also a case under Section 12-J where the temporary vacancy occurred on the death of the elected Pradhan, in view of the judicial position settled by the Division Benches of this Court already referred to herein above.

32. For similar reasons the judgments in the cases of Smt. Brijrani Singh (supra), Smt. Usha Rani (supra) and Ram Kumar (supra) also do not help the respondent No. 5 as they have no application in the present case.

33. In the case of Ram Beti decided by the Supreme Court only the provisions of Section 12-H were before the Court and there is no reference to Section 12-J of the Act, 1947. In any case the said judgment is prior in point of time to the amendment of 20.8.2007 by which the new section 12-J has been incorporated in the Act, 1947 and therefore, the said judgment has no application to the facts of the present case as the present case is one with regard to the manner of exercise of powers of the Prescribed Authority under section 12-J of the Act, 1947.

34. The judgment in the case of Jyoti Basu (supra) also has absolutely no application to the facts of the present case as in that case the Court was considering the provisions of the Representation of the People Act, 1951 and there is no provision like Section 12-J of the Act, 1947 in the Representation of the People Act, 1951 and the Supreme Court in the case of Prakash Khandre (supra) in paragraph 14 has already held that where the elected candidate is held to be disqualified, the next candidate having secured the second highest vote cannot be declared as elected as there is no such provision in the Act. The Act is silent.

35. The judgment in the case of M/s. Boards and Boards Pvt. Ltd. (supra) also has no application to the facts of the present case and in any case learned counsel for the respondent No. 5 has not been able to show as to how the said judgment is applicable to the facts of the present case.

36. The other judgment in the case of Sandeep Kumar (supra) also has no application to the facts of the present case nor has the respondent has been able to point as to how the said judgment is applicable to the facts of the present case.

37. In the present case the respondent No. 5, Arab Singh had given challenge to the election of the Pradhan, Naresh Chandra and it was in his election petition that the election of Naresh Chandra was declared to be a nullity and ab initio void and while

deciding the issue No. 8 the Tribunal had declared the respondent No. 5 to be eligible to be declared elected through its order dated 05.12.2013. Therefore, considering the matter in the light of the powers conferred upon the Tribunal under Section 12-C(4)(ii) of the Act, 1947 to declare the applicant before it to be duly elected, and in the present case the Tribunal having declared the respondent No. 5 as duly elected the power exercised by the Prescribed Authority under the provisions of Section 12-J of the Act was in compliance of the order of the Tribunal dated 05.12.2013.

38. Section 12 C (4) of the Act, 1947 which deals with the subject of challenge to the election of a candidate reads as under:

"12-C (4) The authority to whom the application under sub-section (1) is made shall, in the matter of -

(i) hearing of the application and the procedure to be followed at such hearing.

(ii) setting aside the election, or declaring the election to be void or declaring the applicant to be duly elected or any other relief that may be granted to the petitioner."

39. Section (ii) of sub section (4) of Section 12-C of the Act, 1947 provides that the authority before whom the application is filed shall set aside the election or declare the election to be void or declare the applicant to be duly elected or any other relief that may be granted to the applicant.

40. From a bare reading of the provisions of sub-section (ii) of Clause (4) of Section 12-C of the Act, 1947 it appears that the Tribunal while entertaining an application questioning the election of a person as Pradhan may set aside the election or declare the election to be void or declare the applicant to be duly elected. Thus unlike the provisions of the Representation of the People Act, 1951 where when the election of the elected candidate is declared void or the candidate is declared disqualified, the candidate having the second highest number of votes may not be declared as elected because the Act is silent as held by the Supreme Court in the case of Prakash Khandre (supra), the U.P. Panchayat Raj Act, 1947 specifically confers powers upon the Tribunal to either set aside the election or declare the election to be void or declare the applicant to be duly elected by conferring such powers under sub-section (ii) of Clause (4) of Section 12-C of the Act, 1947. Therefore in such a situation where the Tribunal declares the applicant before it to be duly elected and in pursuance of such order the District Magistrate directs the said candidate to assume the powers and discharge the duties of the office of Pradhan, in my opinion, it would not be necessary for the District Magistrate to obtain the views of the members of the Gram Sabha while exercising such powers under Section 12-J of the Act, 1947. The various Division Bench decisions in the case of Shyamu (supra), Udaivir (supra), Pushpendra (supra) and Lallan Prasad Verma (supra) therefore would have no application in the peculiar facts of the present case.

41. In the case of Shyamu (supra), the candidate elected as Pradhan died thereby creating a vacancy of the post of Pradhan.

42. In the case of Udaivir (supra)(Ref: C.M.W.P. No. 53468 of 2007, Udaivir v. The State Election Commission of U.P. through its Chairman and Others) the vacancy arose on the death of the Pradhan. There being no elected Up-Pradhan and the petitioner therein who was the member of the Gram Panchayat was nominated by the District Magistrate to function as Pradhan.

43. Thus, the case of Udaivir (supra) also was not a case where the election of the duly elected Pradhan had been set aside or declared void or the candidate declared disqualified nor was it a case where the Tribunal had declared the applicant to be elected.

44. In Lallan Prasad (supra) also the facts disclose that there were 13 members of the Gram Panchayat and a meeting was convened by the District Magistrate in his office and out of 13 members, 9 had supported the current Pradhan. The writ petitioner/appellant contended that 9 members had filed their notary affidavits to the effect that they had not voted in favour of the current Pradhan. The counsel for the Pradhan objected to such submission of the writ petitioner on the ground that these affidavits were never produced before the prescribed authority. Thus, this also was not a case where the election of the Pradhan had been given a challenge before the Election Commissioner through an election petition as contemplated in Section 12-C of the Act, 1947.

45. It is next submitted by Shri Ajay Bhanot that the petitioner in the present case has challenged the order of the District Magistrate dated 1.9.2014 which is only a consequential order and flows from the direction given by the Election Tribunal in its order dated 5.12.2013 but the order dated 5.12.2013 itself has not been challenged by the petitioner and therefore without challenging the principal order, the subsequent consequential order cannot be challenged in the present writ petition. In support of his contention he has placed reliance upon a Supreme Court judgment reported in [Edukanti Kistamma \(Dead\) thr. Lrs. and Others Vs. S. Venkatareddy \(Dead\) thr. Lrs. and Others](#), . The relevant paragraph 20 of the said judgment reads as under:

"20. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide [P. Chitharanja Menon and Others Vs. A. Balakrishnan and Others](#), ; [H.V. Pardasani and Others Vs. Union of India \(UOI\) and Others](#), ; and [Government of Maharashtra and Others Vs. Deokar's Distillery](#), ."

46. I have carefully considered the submissions advanced by the learned counsel for the parties. The order dated 5.12.2013 was passed by the Election Tribunal declaring

the election of Naresh Chandra as nullity and ab initio void while deciding the issue No. 8 and the Tribunal had further held that the applicant Arab Singh (respondent No. 5 herein) is entitled to be declared elected as Pradhan. It is flowing from the directions of the Tribunal that the District Magistrate has passed the order dated 1.9.2014 declaring the respondent No. 5 as the elected Pradhan.

47. The order impugned in the present writ petition dated 01.09.2014 passed by the District Magistrate is only a consequential order in pursuance of the order of the Tribunal dated 05.12.2013. The petitioner admittedly has only challenged the consequential order of the District Magistrate dated 1.9.2014 but he has not challenged the order of the Tribunal dated 5.12.2013. It is not enough to say that the order of the Election Tribunal as well as the revisional order are already under challenge in the writ petition No. 42281 of 2014 filed by Naresh Chandra, the disqualified candidate. If the petitioner wanted a relief for herself it was necessary for her to have challenged the order of the Election Tribunal dated 5.12.2013.

48. Therefore, in view of the law laid down in the case of E. Kistamma (Dead) (supra), the petitioner cannot get any relief by only challenging the order of the District Magistrate dated 1.9.2014 without giving challenge to the order of the Election Tribunal dated 5.12.2013 and having failed to do so no relief can be granted to her in the present writ petition against the order dated 1.9.2014 which is merely a consequential order. Therefore, on a conspectus of facts and law no relief can be granted to the petitioner so far as the order dated 1.9.2014.

49. The writ petition fails and is accordingly dismissed.