

(2016) 09 AHC CK 0180
ALLAHABAD HIGH COURT
Case No: Writ C. No. 42324 of 2016

Devesh Kumar Dubey

APPELLANT

Vs

State Election Commission

RESPONDENT

Date of Decision: Sept. 7, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Panchayat Raj Act, 1947 - Section 5-A(c)

Citation: (2017) 3 ADJ 697 : (2017) 2 ALLJ 183 : (2016) 6 AllWC 6153 : (2016) 133 RD 803

Hon'ble Judges: Ran Vijai Singh, J.

Bench: Single Bench

Advocate: Ashwani Kumar Mishra, Advocate, for the Petitioner; C.S.C., Tarun Agrawal and Mohit Kumar Shukla, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Ran Vijai Singh, J. - Heard Sri Ashwani Kumar Mishra, learned counsel for the petitioner, Sri Siddharth Singh, learned Additional Chief Standing Counsel appearing for the State-respondents and Sri Mohit Kumar Shukla, learned counsel holding brief of Sri Tarun Agrawal, learned counsel for the State Election Commission.

2. This writ petition has been filed with the following prayers:

"1. issue a writ, order or direction in the nature of quo warrant thereby asking respondents as under what authority of law he is occupying the post of Pradhan in spite of being disqualified for being chosen as Pradhan under section 5A(C) of the U.P. Panchayat Raj Act.

2. issue a writ, order or direction in the nature of mandamus declaring the result dated 13.12.2015 of Election of Pradhan so far it relates to respondent no. 4 to be

null and void being disqualified for contesting the election of Pradhan.

3. to issue a writ, order or direction in the nature of mandamus directing the authority concerned to declare the petitioner to be elected Pradhan being at serial No. 2 in the result of election dated 13.12.2015 Pradhan of Gram Panchayat Shuklapuri Nyay Panchayat Mahuapadi, Block Barahalganj, District Gorakhpur."

3. It appears, the petitioner contested the election of Gram Pradhan of Gram Panchayat Shuklapuri Nyay Panchayat Mahuapadi, Block Barahalganj, District Gorakhpur and after being defeated, he has filed the present writ petition seeking a writ of quo warranto on the ground that the person, who has been elected as Gram Pradhan, is Principal of school Bathwal Sanskrit Mahavidyalaya, therefore, he is disqualified to become a Pradhan in view of section 5A(c) of the U.P. Panchayat Raj Act, 1947 (in short, "the Act").

4. Learned Additional Chief Standing Counsel appearing for the State - respondents as well as Sri Shukla appearing for the State Election Commission have raised a preliminary objection with regard to the maintainability of the writ petition. In their submissions, the petitioner has prayed for issuing a writ of quo warranto on the basis of disqualification mentioned in section 5-A (C) of the Act. Hence, the petitioner has to avail the remedy contained under section 6-A of the Act, which reads as under:

<i>"6-A: Decision on question as to disqualification</i>: If any question arises as to whether a person has become subject to any disqualification mentioned in Section 5-A or in sub-section (1) of Section 6, the question shall be referred to the prescribed authority for his decision and his decision shall, subject to the result of any appeal as may be prescribed, be final."

5. The submission of learned counsel for the respondents also finds support from the decision of the Division Bench of this Court in <i><ß>Ramesh Singh v. State of U.P. and Others (Writ C. No. 19884 of 2016, decided on 4.5.2016)</ß</i>, wherein it has been held that the only remedy for such person is to approach the concerned Prescribed Authority for redressal of his grievance as required under section 6-A of the Act.

6. Learned counsel for the petitioner apprehended that since the Prescribed Authority himself has to decide the election petition, therefore, before whom the application be given for referring the matter. The aforesaid aspect has been responded to by the learned counsel for the respondents taking shelter of rule 5 of the U.P. Panchayat Raj (Computation of Period of Five Years for Removal of

Disqualification, Fixation of period of Dues, etc. and Settlement of Disputes of Disqualification) Rules, 1994, which reads as under:

5. Reference under section 6-A pertaining to disqualification - (1) Where any question as is referred to in Section 6-A of the Act is raised otherwise than in a claim or objection, it shall be referred to the Tehsildar by the officer or authority before whom such question arises for consideration.

(2) On the receipt of a reference under sub-rule (1), the Tehsildar shall fix the date, time and place for its hearing and shall give notice to the parties concerned.

(3) The Tehsildar shall, after hearing the parties and after such other enquiries as he deems fit, give his decision on the question referred to him.

(4) Any person aggrieved by the order of the Tehsildar may, within fifteen days of the date of such order, prefer an appeal to the Sub Divisional Officer.

(5) The Sub Divisional Officer shall, after notice to the parties and after hearing such of them as desire to be heard, dispose of the appeal.

(6) A copy of the final order passed on the question referred to the Tehsildar as modified in appeal, if any, shall be forwarded to the Secretary of the Gram Panchayat and to the Assistant Development Officer (Panchayat) of the concerned Kshettra Panchayat."

7. From the perusal of the aforesaid rule, it transpires that it is the Tehsildar concerned who will be the Prescribed Authority for the purposes of reference under section 6-A of the Act pertaining to disqualification.

8. The decision of the Division Bench of this Court in the case of Ramesh Singh (supra) has been rendered taking note of the decision of the Hon"ble Apex Court in <i><ß>K. Venkatachalam v. A. Swamickan, (1999) 4 SCC 526</ß</i>, wherein, following observation has been made:

"We are not inclined to entertain the writ petition under Article 226 of the Constitution, having due regard to the principle which has been laid down by the Supreme Court in <i><ß>K. Venkatachalam v. A. Swamickan, (1999) 4 SCC 526</ß</i>, in the following terms:

"... Various decisions of this Court, which have been referred to by the appellant that jurisdiction of the High Court under Article 226 is barred challenging the election of a returned candidate and which we have noted above, do not appear to apply to the case of the appellant now before us. Article 226 of the Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief..."

In the present case, when a recourse is provided under the Act for the resolution of the issue of disqualification, it would not be appropriate for the Court to entertain a writ petition under Article 226 of the Constitution. Hence, we relegate the petitioner to the remedy available under Section 6-A.

The petition is accordingly dismissed. There shall be no order as to costs. "

9. In view of the aforesaid legal position, since the petitioner has remedy under section 6A of the Act, no relief can be granted to him under Article 226 of the Constitution of India. The writ petition is dismissed.

Petition dismissed.

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