

Court No. - 3

AFR

Case :- WRIT - C No. - 7524 of 2022

Petitioner :- Dr M Ismail Faruqui

Respondent :- Shri Adityanath

Counsel for Petitioner :- In Person

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

1. The petitioner-in-person seeks liberty to correct the name of the respondent as Ajay Mohan Singh Bisht for and in place of Yogi Adityanath, the sole respondent in the present writ petition. We permit the petitioner to correct the particulars of respondent during the course of the day.

2. The prayer made in the writ petition reads as under:-

(i) Issue a writ quo warranto to the respondent very kindly questioning his continuance as Chief Minister of State of Uttar Pradesh with effect from 25.09.2022.

(ii) To pass any other appropriate order as the circumstances of the case may require; and

(iii) To allow the writ petition.

3. Apparently, the Petitioner at Para 19 of the Writ Petition has admitted that he is neither an Elector nor a candidate at the election of 322- Gorakhpur Urban Legislative Assembly constituency, from which the Respondent stands elected. It is also available from the Writ Petition that the present petition has come to be filed on the ground that (a) the respondent is a usurper of office of Chief Minister of State of Uttar Pradesh with effect from 25.09.2022 and (b) Allegedly the Respondent was not qualified to contest the election for the current legislative assembly of State of Uttar Pradesh due to violation of provisions of Rule 4 A of the Conduct of Election Rules, 1961. Thus, in a nut-shell, it has been prayed by the Petitioner for issuance of Writ of Quo Warranto against the Respondent for his continuation as Chief Minister of State of Uttar Pradesh with effect from 25.09.2022. The

petitioner has also relied upon a judgment passed by the Kerala High Court in the case of Shaiju J. Kooran & Etc. V/s State Election Commission, Thirunanvanthapuram and Ors. (AIR 2003 Kerala 246), wherein election as municipal councillors and panchayat member under the Kerala Municipality Act was under challenge.

4. This court having given a thoughtful consideration to the issue in hand, finds the present petition to be very amusing. The petitioner seems to be in a spree of filing this kind of petition as admittedly, an identical petition praying inter-alia for the same relief vide W.P (C) no. 5627 of 2022, was dismissed as withdrawn. It would be interesting to note the final order dated 29.08.2022 passed by a coordinate division bench of this Court, which inter-alia says:

"Heard the Petitioner appeared in person and learned Advocate General for the respondents – State.

After arguing at some length, learned counsel for the petitioner states that he may be permitted to withdraw the writ petition.

Accordingly, the writ petition is dismissed as withdrawn."

5. Apparently, no leave nor any liberty had been sought by the Petitioner to file the present Writ Petition. A constitutional Bench of the Hon'ble Supreme Court way back in the year 1990 has held that the principles of res judicata are applicable to writ petitions in the case of **Direct recruit class II engineering officers Association V/s State of Maharashtra, (1990) 2 SCC 715**, however this court without testing the present writ petition on the premise of res-judicata, grants the concession of considering the present writ petition.

6. Section 80 of the Representation of People's Act, 1951 inter-alia states that no election shall be called in question except by an Election Petition presented in accordance with the provisions of this part. Essentially, the sum & substance of the relief being sought by the Petitioner is on the basis of an attack to the alleged affidavit filed by the Respondent in terms of the provisions of Rule 4 A of the Conduct of Election Rules, 1961. It is the case of the petitioner that since the said affidavit was not as per the provisions of the said rules, the election of the respondent as a Member of the Legislative Assembly

was not legal and consequently, even if, the respondent had been appointed as a Chief Minister of the state of Uttar Pradesh, his continuation cannot be confirmed as per law in view of Article 164(4) of the Constitution of India, which prescribes that a Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

7. In the first blush, the argument of the petitioner seems to be very attractive, but on a deep enquiry it is apparent that the petitioner is drawing the aforesaid analogy by presuming that the election of the Respondent is not proper. The petitioner besides drawing attention of this court to the Affidavit filed by the respondent in terms of Rule 4A of the Conduct of Election Rules, 1961 has not been able to show a single document which would show that the election of the respondent has been found by any competent authority to be not proper. Having said so, this court finds that the Petitioner under the garb of the present petition is actually seeking to challenge the election of the Respondent from 322 - Gorakhpur Urban Legislative Assembly.

8. However, this court finds that the said challenge to the election can be made only by filing an Election Petition before this court as per the conditions provided in the Representation of Peoples Act, 1951. Any challenge to an election is a statutory right and is available to a person as has been prescribed under the statute only. The Petitioner has for obvious reasons not filed the Election Petition in the present case & has chosen to file the present Writ Petition which is not permissible under the statute. In fact the Petitioner by filing the present Writ Petition is trying to do something indirectly which the law prohibits him to do directly. The principle that "if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all" articulated in **Nazir Ahmed vs. Emperor (1936) SCC Online PC 41**, has found wide spread acceptance & has also been reiterated by the Hon'ble Supreme Court recently in the

judgment of **Municipal Corporation of Greater Mumbai vs. Abhilash Lal & Ors. (2020) 13 SCC 234.**

9. Further, the Petitioner claims that the provisions of Article 329 of the Constitution of India and Section 80 of the Act are not applicable herein as no Election Petition could have been filed, if at all, preferred by the Petitioner questioning the election of the Respondent on the grounds mentioned in the present Writ Petition. First and foremost as already held that the relief being sought by the Petitioner could have been granted in Election Petition only, however this court finds that the Hon'ble Supreme Court in case of Krishna Ballabh Prasad Singh vs. Sub – Divisional Officer Hilsa- Cum-Returning Officer & Ors. (1985) 4 SCC 194 has held that the process of Election comes to an end after the declaration in Form 21–C was made and the consequential formalities were completed, the bar of clause D of Article 329 of the Constitution of India came into operation thereafter and an Election Petition alone was maintainable thus the Hon'ble Supreme Court held in that case that the Writ Petition cannot be entertained. Thus, the reliance placed by the petitioner in the Shaiju J. Kooran case as mentioned supra is misplaced. This court finds it profitable to quote the observation made by the Hon'ble Supreme Court relating to the filing of the Petition under section 226 of the Constitution of India inter-alia challenging the election to the state legislature which has been sought to be similarly done in the present case. The Hon'ble Supreme Court in the case reported as **Indrajit Barua and ors. vs. Election Commission of India and ors. (1985) 4 SCC 722** at Para 6, has held inter-alia:

"These are clear authorities – and the position has never been assailed – in support of the position that an election can be challenged only in the manner prescribed by the Act. In this view of the matter, we had concluded that writ petitions under Article 226 challenging the election to the state legislature were not maintainable and election petition under section 81 of the Act had to be filed in the High Court. The act does not contemplate a challenge to the election to the Legislature as a whole and the scheme of the Act is clear. Election of each of the returned candidates has to be challenged by filing of a separate election petition. The proceedings under the act are quite strict and clear provisions have been made as to how an election petition has to be filed and who should be

parties to such election petition. As we have already observed, when election to a legislature is held it is not one election but there are as many elections as the Legislature has members. The challenge to the elections to the Assam Legislative Assembly by filing petitions under Article 226 of the Constitution was, therefore, not tenable in law."

10. The present petition is also liable to be rejected in as much as the Petitioner does not have any locus for filing the present petition. As to who can prefer an Election Petition, section 81 of the Representation of People Act, 1950 provides that an Election Petition may be presented by (a) any elector or; (b) any candidate at such election. Further the explanation to section 81 provides that an elector means a person who was entitled to vote at the election to which the Election Petition relates. In the present case, the Petitioner has admitted that he is not an elector registered in the 322 – Gorakhpur Urban Legislative Assembly. Therefore, this court finds that the petitioner does not have any locus for filing the present writ petition as has also been held in the case of *Tej Bahadur vs. Narendra Modi* (2020) SCC Online SC 951, wherein the Hon'ble Apex court held that the locus for filing an Election Petition depends entirely on the question whether a particular person is an elector of the constituency or is a candidate or can claim to be a duly nominated candidate. The Petitioner fails to fall in any of the category to make the present petition maintainable.

11. The courts have also from time to time held that no litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in a manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See *Dr. B.K. Subbarao vs. Mr. K. Parasaran*, (1996 (7) JT 265) as is being sought to be done in the present case. The court cannot be oblivious to the fact that today people rush to Courts to file cases in profusion under this attractive name of public interest.

12. Further, the petitioner has failed to show from records as to how the appointment or the continuation of the respondent in the Chief

Minister post is not in accordance with law. Recently the bench of HMJ D.Y Chandrachud & HMJ Hima Kohli in the case of "**State of West Bengal Vs Anindya Sundar Das**", while referring to various judgments including Bharati Reddy v. State of Karnataka (2018) 6 SCC 162, observed that the issue is no longer res integra relating to the settled position that the writ of quo warranto can be issued only where an appointment has not been made in accordance with the law.

13. For all the aforesaid reason the present petition is dismissed, however since valuable time has been spent by this court on atleast two occasions, therefore this court finds it appropriate to impose an exemplary cost of Rs. 11,000/- on the petitioner, which shall be paid to State legal Services Authority Within four weeks from today.

Order Date :- 11.11.2022

S. Shivhare