

A.F.R.

Court No. - 6**Case :-** WRIT - C No. - 34527 of 2023**Petitioner :-** Munni Devi**Respondent :-** State Of U.P. And 6 Others**Counsel for Petitioner :-** Bal Mukund Singh, Shri Prakash Mishra**Counsel for Respondent :-** C.S.C, Nisheeth Yadav, Pardeep Kumar, Sanjay Kumar Yadav, Tarun Agrawal**Hon'ble Mrs. Manju Rani Chauhan, J.**

1. Heard Mr. Ravi Kant, learned Senior Advocate, assisted by Mr. Bal Mukund Singh, learned counsel for the petitioner, Mr. C.B. Yadav, learned Senior Advocate, assisted by Mr. Sanjay Kumar Yadav, learned counsel for respondent no.6 and learned Standing Counsel for the State-respondents.

2. The writ petition has been filed assailing the impugned order dated 20.09.2023 passed by respondent no.2 vide which election of petitioner for the office of Block Pramukh of Block Gangoh Provincial Election Area No.98, District Saharanpur, has been declared void.

3. The petitioner was elected as a Block Pramukh of Block Gangoh, Tehsil-Nakud, District-Saharanpur under O.B.C. (Woman) reserved category in the uncontested elections held under Rule 14 of U.P. Kshetra Panchayat (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994¹ by the results declared on 10.07.2021.

4. An election petition under Rule 35 of Rules of 1994 was filed by respondent no.6 on 06.08.2021 with a prayer to set aside the uncontested election of the petitioner (opposite party no.4 in the election petition) dated 10.07.2021 for the office of Block Pramukh of Block Gangoh, Provincial Election Area No.98, Saharanpur declaring the election of the returned candidate (petitioner) as void. The election petition came to be decided finally on 20.09.2023 wherein the order dated 10.07.2021 passed by

1 Rules of 1994

opposite party no.3 was set aside and the election of petitioner, the returned candidate, was declared void. Challenging the aforesaid order, the present petition has been filed.

5. Learned counsel for respondent no.6 raising preliminary objection regarding maintainability of the writ petition, submits that Rule 35 provides manner and time of presenting the election petitions.

6. As per Rule 37, the election petitioner may claim either of the following declarations/reliefs;

(a) that the election of returned candidate is void; and

(b) that the election of returned candidate is void and that he himself or any other candidate has been duly elected.

7. As per Rule 43 of Rules of 1994, if a Judge hearing the election petition, after making such enquiry finds in respect of any person whose election is called in question by means of filing an election petition, that his election was valid, he shall dismiss the petition as against such person. However, if the Judge finds that the election of any person is invalid, he shall either-

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected.

8. As per Rule 44 of Rules 1994, if any person who has lodged an election petition has, in addition to calling in question the election of returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Judge is of the opinion that in fact the petitioner or such other candidate received a majority of the valid votes, Judge shall after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

9. Emphasising upon Rule 49, learned counsel for respondent no.6 submits that an appeal shall lie against every order made by the Judge under Rule 44 to the High Court within 30 days from the date of order.

10. Emphasising upon the aforesaid provisions, he submits that election petition, which has been filed under Rule 35, has to be presented praying for relief either to declare the election of the returned candidate void, and that the election of the returned candidate is void and that he himself i.e the election petitioner or any other candidate has been duly elected. In the present case, the election petition challenging the election of the petitioner as Block Pramukh has been filed with the relief to set aside the election dated 10.07.2021 and declare the election of the returned candidate i.e the petitioner, as void.

11. Learned Senior counsel next contended that the order impugned dated 20.09.2023 has been passed declaring that the election of the returned candidate is void, therefore, the same has been passed under Rule 44 of Rules of 1994 as there is no finding that the election of the petitioner was invalid, hence no declaration that casual vacancy has been created nor any other candidate has been declared as duly elected. In the present case Rule 49 is very specific about filing of appeal against order passed under Rule 44.

12. While elaborating his arguments, he further submits that the election of the petitioner as Pramukh has been declared void i.e. "0" *Shunya* and not invalid. Word 'invalid' cannot be taken to mean void, thus, order has been passed under Rule 44.

13. Rebutting the submissions as made by learned counsel for respondent no.6, learned counsel for the petitioner submits that under Rule 44 read with Rule 40(e) and Rule 49 of Rules of 1994; an appeal does not lie against the order impugned in the facts of the case. He further submits that in the present case, the petitioner was elected as Pramukh of Block Gangoh, Provincial Election Area No.98 in the uncontested election, results of which

were declared on 10.07.2021 as the nomination papers filed by one candidate were rejected and the other withdrew his candidature.

14. Needless to say that the election petition can be filed claiming either of the following declarations;

(a) that the election of returned candidate is void; and

(b) that the election of returned candidate is void and that he himself or any other candidate has been duly elected.

15. In the present case, there being no other candidate as the petitioner was elected unopposed being the only qualified candidate, there was no question or occasion to declare the election petitioner or any other candidate as duly elected. Even otherwise, the relief as claimed by the respondent no.6 while filing the election petition is to declare the election of returned candidate as void.

16. Rule 44 deals with the grounds on which a candidate other than the returned candidate may be declared to have been elected. As there was no other candidate who could have been declared as elected, therefore, the appeal as provided under Rule 49 does not lie in the present facts of the case and the writ petition is maintainable.

17. Emphasising upon the provisions of Rule 40(e), he submits that no appeal or revision shall lie on a question of fact or law against any decision of the Judge. The provisions of Rule 44 has to be read with Rule 40(e) in order to see as to whether as per the Rule 49, an appeal lies against the order declaring the election of the returned candidate as void or not. He further submits that two situations should be there to see that the order has been passed under Rule 44, one, the election of returned candidate is declared void and the other that the candidate who has secured majority of valid votes has been declared duly elected.

18. Learned Chief Standing Counsel for the State Mr. Kunal Ravi Singh and learned counsel for Election Commission Mr. Tarun Agrawal, while assisting the Court, submit that Rule 49 of Rules of 1994, provides for an appeal against the order passed under Rule 44, it does not provide for an appeal in any other case.

19. As per Rule 37, (i) election petitioner can claim either of the two reliefs mentioning therein that the election of the returned candidate is void; and (ii) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

20. Rule 44 covers only the situation contemplated in Rule 37(b), therefore, remedy of appeal is available only when the returned candidate is replaced by another candidate. Rule 40(e) bars any appeal or revision except for cases covered by Rule 49 read with Rule 44.

21. Rule 43(2) also maintains the distinct nature of the reliefs and orders can be passed by the Judge.

22. Elaborating their arguments, the aforesaid counsels submit that in the case of election of a Pradhan, which is a direct election, Section 12-C(6) of U.P. Panchayat Raj Act provides for a remedy of revision against any order passed by the Election Tribunal whereas Section 14(2) makes the decision of Election Tribunal final and binding in the case of members. No appeal or revision is provided. The only remedy is writ petition. The position is re-affirmed by U.P. Kshetra Panchayat (Removal of Disqualification and Settlement of Disputes Relating to Disqualification and Membership) Rules of 1994.

23. The aforesaid counsels submit that the election for the office of Block Pramukh or Pramukh of Zila Panchayat, U.P. is governed under (Election of Adhyaksha and Up-Adhyaksh and Settlement of Election Disputes) Rules of 1994² and that of Block Pramukh of Kshetra Panchayat by Rule of 1994,

2 Zila Panchayat Rules

accordingly, as per Rule 35, the petitioner may claim either of the following declarations;

(i) that the election of the returned candidate is void; and

(ii) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

24. As per Rule 40 of the Zila Panchayat Rules, 1961, if the Judge finds that the election of any person is invalid, he shall either declare a casual vacancy to have been created or declare any other candidate to have been duly elected.

25. As per Rule 42, the ground for which a candidate other than the returned candidate may be declared to have been elected.

26. Rule 47 provides for an appeal from every order made by a Judge under Rule 40.

27. Placing the aforesaid provisions, learned counsels submit that the aforesaid rules of Zila Panchayat Rules are pari-materia to Rules of 1994 i.e. (i) Rule 35 of Zila Panchayat Rules is pari-materia with that of Rule 37 of Rules of 1994; (ii) Rules 40 with that of Rule 44 of Rules of 1994.

28. That though the Zila Panchayat Rules provide a remedy for an appeal under Rule 47 against any orders passed under Rule 40 which is pari-materia to Rule of 43 of Rules of 1994, no such appeal is provided under Rule 49 of the Rules of 1994 against any order passed under Rule 44 and not Rule 43.

29. To make it more specific, when all the provisions of Zila Panchayat Rules and that of Rules of 1994 dealing with the elections of Kshettra Panchayat and Zila Panchayat respectively, both are pari-materia to each other and the provisions of Rule 40 of Zila Panchayat Rules and that of Rule 43 of Rules of 1994 provide that the Judge can pass an order declaring a casual vacancy to have been created if he finds the election of any person is invalid or can declare any other candidate to have been duly elected. In one,

against the order, the aforesaid appeal is provided whereas in the other no appeal is provided against the aforesaid, the intention of legislation is very clear.

30. Thus, they submit that the present writ petition is maintainable and no appeal lies against the order impugned.

31. Heard learned counsel for the parties.

32. Before dealing with the issue of maintainability, it would be appropriate to place aforesaid provisions of Rules of 1994.

33. The Rules 37, 40(e), 43, 44 and 49 of Uttar Pradesh Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994, are quoted herein below:

“37. Relief that may be claimed by the petitioner- A petitioner may claim either of the following declarations-

(a) that the election of the returned candidate is void; and

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected.

40. Procedure- Except so far as provided by the Act or in the Rules, the procedure provided in the Civil Procedure Code, 1990 in regard to suits, shall, insofar as it is not inconsistent with the Act or any provision of these Rules and it can be made applicable, be followed in hearing of the election petition;

(e) no appeal or revision shall lie on a question of fact or law against my decision of the Judge;

43. Finding of the Judge.- (1) If the Judge after making such inquiry as he deems fit finds in respect of any person whose election is called in question by a petition, that his election was valid he shall dismiss the petition as against such person and award costs at his discretion.

(2) If the judge finds that the election of any person was invalid he shall either-

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected and in either case may award costs at his discretion.

44. Grounds on which a candidate other than the returned candidate may be declared to have been elected.- If any person who has lodged an

election petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Judge is of the opinion that in fact the petitioner or such other candidate receive a majority of the valid votes, the Judge shall after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

Provided that the petitioner or such other candidate shall not be declared to be duly elected if it is proved that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election.

49. **Appeal against the order of the Judge-** An appeal shall lie from every order made by the judge under Rule 44 to the High Court within thirty days from the date of the order.”

34. Having perused the provisions as referred to above, it is very clear that in an election petition as presented under Rule 35, the relief of declaring the election of returned candidate as void and that the election petitioner or any other candidate has been duly elected, can be prayed for. While hearing the petition, if the Judge finds that the election of the returned candidate is invalid, he shall declare casual vacancy to have been created or declare any other candidate to have been duly elected. Thus, in the present case, where the respondent no.4 has been declared as winning candidate in the uncontested elections, as the nominations filed by one of the candidates was rejected and that of the other was withdrawn, there being no other candidate, once the election of the returned candidate is declared void, a vacancy automatically arises and no declaration of casual vacancy having been created is required. To clarify the position, in the facts of the present case, there was no other candidate available to have been declared duly elected. Therefore, the order declaring the election of the returned candidate as void comes within the ambit of Rule 43 of Rules of 1994 and thus, no appeal lies.

35. A right of appeal is a statutory right and is available for the purpose for which such an appeal is provided for. The entire object of the provision of an appeal is to provide of a forum for challenging the order relating to the orders passed while deciding the election petition. When once the relief

claimed by the election petitioner is to declare the election of the returned candidate as void, there being no other candidate, the case does not fall under the ambit of Rule 44.

36. The right of appeal as provided under Rule 49 of Rules of 1994 is clearly confined and limited to every order made by Judge under Rule 44 of the Rules of 1994. Rule 44 speaks about the grounds on which a candidate other than the returned candidate may be declared to have been elected, which means, in case, in addition to calling in question, the election of the returned candidate, the election petitioner claims a declaration that he himself or any other candidate has been duly, elected, then on the basis of the majority of valid votes as received by such a candidate, the Judge after declaring the election of returned candidate to be void, declare such person, be the election petitioner or such other candidate, as the case may be, to have been duly elected.

37. From the aforesaid, it can be said that plain and ambiguous meaning being given to Rule 44, the same would require some other candidate to have been duly elected, once the election of returned candidate has been declared void. In the present facts of the case, this is not the situation where in the uncontested election of the returned candidate i.e. the respondent no.4, has been declared void, without specifying that a casual vacancy has arose and without there being any declaration of any other candidate, who is not available in the present case, has not been duly elected.

38. In other words, the language of Rule 44 is clear and the rule does not demand that we should substitute any other word or read the word interchangeably for achieving the object in purpose of any Act or Rule. On the contrary, the objective of the Act is more than clear that the legislature intended to provide a very limited right to appeal. The orders which can be appealed against have been specifically stipulated by unambiguously excluding the provisions which the legislature did not intend to make

appealable under the provisions of the Act. It is always expected of the Court to apply plain rule of construction rather than trying to read the words into the statute which have been specifically omitted by the legislature.

39. It is well known that the right of appeal is not a natural or inherent right. It cannot be assumed to exist unless expressly provided for by statute. Being a creature of statute, remedy of appeal must be legitimately traceable to the statutory provision.

40. A statute is stated to be the edict of legislature. It expresses the will of legislature and the function of the court is to interpret the document according to the intent of those who made it. It is a settled rule of construction of the statute that the provisions should be interpreted by applying plain rule of construction. The courts normally would not imply anything which is inconsistent with the words expressly used by the statute. In other words, the court would keep in mind that its function is *jus dicere*, not *jus dare*. The right of appeal being creation of the statute and being a statutory right does not invite unnecessarily liberal or strict construction. The best norm would be to give literal construction keeping the legislative intent in mind.

41. While reading the analogous provisions of rules of Zila Panchayat Rules and Rules of 1994, Rule 40 of Zila Panchayat Rules being *pari-materia* to Rule 43 of Rules of 1994, the legislature in its wisdom made difference in Rule 40 capping the same with provisions of Rule 47 of Zila Panchayat Rules providing for appeal against the aforesaid, while looking into the provisions of Rule 43 of Rules of 1994, no such appeal is provided. Likewise, there is difference in Rule 49 of Rules of 1994 wherein appeal is provided against every order passed under Rule 44, which is analogous with the provisions of Rule 42, against which, no appeal is provided under Rule 47 of Zila Panchayat Rules. Thus, where no other candidate has been duly elected after declaration of election as void, it cannot be interpreted in a

manner to create a situation that filing of appeal is required in the present case.

42. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.

43. Rule 44 should be interpreted in the natural and ordinary sense. It is well settled in several decisions of Apex Court as well as High Court that the interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, the words should be given the same meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

44. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.

45. Be that as it may, having considered the provisions enshrined under Zila Panchayat elections where remedy of appeal lies from every order made by the Judge under Rule 44, it has to be seen that Rule 44 provides the grounds on which a candidate other than the returned candidate may be declared to have been elected. In the present facts of the case, the uncontested election of returning candidate has been declared as void and as there was no other candidate, who has been duly elected, no ground exists on which candidate other than returned candidate could have been declared elected. Thus, impugned order does not fall within the ambit of Rule 44, hence no appeal lies.

46. In view of the above submissions made by learned counsel for the parties and the aforesaid discussion, this Court finds that present writ petition is maintainable.

47. Put up as fresh on 20.11.2023 to be heard on merits at 2:00 P.M.

48. As an interim measure, the State Election Commissioner (Panchayat and Local Bodies), State Election Commission, U.P., Lucknow i.e. respondent no.2 is directed not to notify the elections in question without leave of the Court.

Order Date :- 27.10.2023
Rahul.

Justice Manju Rani Chauhan