

# Sarvesh Kumar vs State Of U.P. And 4 Others on 27 March, 2025

**Bench: Anjani Kumar Mishra, Jayant Banerji**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:43878-DB

Reserved on 06.01.2025

Delivered on 27.03.2025

Court No. - 3

Case :- WRIT - C No. - 14628 of 2023

Petitioner :- Sarvesh Kumar

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Anil Kumar Mehrotra, Manoj Kumar

Counsel for Respondent :- J.P. Singh, Ten Singh

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

(Per Hon'ble Anjani Kumar Mishra, J.)

1. Heard Shri Anil Melhotra and Shri Manoj Kumar, learned counsel for the petitioner, Shri Ashok Khare assisted by Shri J.P. Singh for respondent no.5, Shri Ten Singh for the State Election Commission and learned Standing Counsel for the respondents 1 to 3.

2. The petitioner by means of this petition has sought a writ of quo-warranto restraining the respondent no.5 from holding the post of Kshettra Panchayat Pramukh, Block Martinganj, District Azamgarh. A direction has also been sought for declaring the said post to be vacant for holding fresh

elections to it.

3. The undisputed facts of the case are that the respondent no.5, resident of village Surhan, contested the election of member of the Block Development Council and was duly elected. He thereafter was also elected as the Pramukh of Kshettra Panchayat.

4. By a notification dated 22.07.2022, issued under Section 3 of the Municipalities Act, 1916, village Surhan was excluded from the territorial constituency of Kshettra Panchayat, Martinganj and was incorporated in the territorial constituency of Nagar Palika, Martinganj.

5. Since the name of the respondent no.5 existed in the electoral roll of village Surhan, which stood excluded from the territorial constituency falling under the Kshettra Panchayat, the said respondent could not have been permitted to continue as the Pramukh but was wrongly and illegally, so allowed.

6. On 10.02.2023, the respondent no.5 got elected to the Block Development Council from village Aurangabad and was permitted to continue as the Pramukh of Kshettra Panchayat without any fresh elections having been held. This was after he got his name expunged from the electoral roll of village Surhan and incorporated in the electoral roll of village Aurangabad.

7. It is contended that in view of clause (o) of Section 13 of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, the respondent no.5 incurred a disqualification as his name did not exist in the electoral roll of the territorial jurisdiction of the Kshettra Panchayat. His name has been included therein after a substantial gap of almost 10 months. Accordingly, the post of Pramukh should have been declared vacant and fresh elections should have been held for the said post.

8. In support of these contentions, learned counsel for the petitioner has placed reliance upon Sunil Kumar vs. State of U.P., 2003 (3) AWC 2224, especially paragraphs 12 and 13, thereof and Madan Singh vs. Madhwa Nand Joshi, 2000 (2) AWC 1639.

9. It has also been submitted that the relevant assertions made in paragraph 17 of the writ petition has not been denied in the counter affidavits that have been filed by the respondents. The disqualification, which the respondent no.5 incurred was one provided under clause (o) of Section 13 of the Act. In any case after the notification of 22.07.2022, village Surhan became part of Nagar Panchayat, Martinganj.

10. Learned counsel for the petitioner has also referred to Section 7 of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 to submit that every Pramukh of a Kshettra Panchayat is to be elected by the elected members of the Kshettra Panchayat from amongst themselves. The respondent no.5 got elected as a member of the Kshettra Panchayat after exclusion of village Surhan therefrom on 10.03.2023. He has been allowed to continue as the Pramukh of the Kshettra Panchayat despite having been rendered ineligible to hold the post after 22.07.2022. He again got elected as a member of the Kshettra Panchayat on 10.02.2023. Therefore, even for being the Block Pramukh of the Kshettra Panchayat Martinganj, a fresh election was required, which was never held and hence the relief prayed in the writ petition.

11. Shri Ashok Khare appearing for the fifth respondent, referring to Article 243-F (2) read with Article 243-O of the Constitution of India, has submitted that the question as to whether a member of a Panchayat is subjected to any disqualification under law, has to be referred to such authority and in the manner the legislature of the State may make provision for. He has submitted that, in view of Rule 7 of the U.P. Kshettra Panchayats (Removal of Disqualification and Settlement of Disputes Relating to Disqualification and Membership) Rules, 1994, the question was required to be raised within a period of 30 days before a judge. He has also submitted that this provision applies both to an objection against the election of a member as also against the continuance to a member despite his having incurred a disqualification.

12. He has next submitted that Article 243-O of the Constitution bars interference of courts in electoral matters, except by way of any election petition. A petition under sub-rule (1) of Rule 7 of U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam Rules, 1961 was the only remedy available and for this reason alone, a writ of quo-warranto is not maintainable. In support of his contention he has relied upon Ashok Kumar Jain vs. Neetu Kathoria And Others, 2004 (12) SCC page 73, specially paragraphs 10 and 11 and Bharati Reddy vs. State of Karnataka and Others, 2018 (6) scc 162, specially paragraphs 18, 19, 32, 33, 35, 36, 37, 38, 39 and 41, thereof.

He is also vehemently submitted that the initial election of the petitioner as Pramukh of the Kshettra Panchayat is, admittedly, not under a cloud. No statutory disqualification from holding the post of a Pramukh is specified in the Act of 1961. The only statutory disqualification is from being elected as a member of the Kshettra Panchayat and the issue that is being raised by means of the petition regarding disqualification to function as Pramukh is by inference and not on account of any specific provision of law.

13. It is lastly submitted that after issuance of a notification dated 22.07.2022, the Election Commission was required to revise the electoral roll and delete the electoral roll of ward 354 from the electoral roll of the Kshettra Panchayat, which is only a follow-up action and not a statutory consequence of the issuance of the notification dated 22.07.2022. The notification of the Election Commission for revising the electoral roll is dated 02.03.2023 on which date the name of the respondent no.7 stood included in the electoral roll of Gram Sabha Aurangabad, Block Martinganj, which was of ward Atal Nagar, Kshettra Panchayat Martinganj. He has therefore contended that the petition merits dismissal also on account of existence of a statutory alternative remedy due to which the writ of quo-warranto would not lie.

14. Learned Standing Counsel has also supported the contention of Shri Ashok Khare and Shri Ten Singh, counsel for the State Election Commission, that no illegality has been committed and that no interference is required in the writ petition.

15. From the material available on record, especially the material brought on record by Shri Ten Singh, counsel for the State Election Commission, it is clear that on 18.11.2022, the respondent no.5 applied for deletion of his name from the electoral roll of village Surhan, which deletion was actually effected on 12.12.2022. On 07.12.2022 the respondent no.5 applied for inclusion of his name in the electoral roll of village Aurangabad. This application was forwarded to the SDM for action on

12.12.2022 and was received by him on 13.12.2022. On 22.01.2022, a letter was issued for recording the name of respondent no.5 in the electoral roll of Aurangabad and was so included in the supplementary list of 01.01.2023.

16. It is also admitted to learned counsel for the parties that the date of notification for election to the Kshettra Panchayat was 18.01.2023.

17. We have considered the submissions made by learned counsel for the parties and perused the record.

18. The first issue for consideration in this writ petition is whether in the facts and circumstances of the case, a writ of quo-warranto would lie or whether the proper remedy available to the petitioner was by means of a petition as provided under Rule 7 of the Rules, 1963.

19. Undisputedly the name of the petitioner existed in the voter list of Gram Panchayat Surhan, which formed part of the Kshettra Panchayat, Martinganj and on its basis, respondent no.5 contested the election of member of the Kshettra Panchayat and was duly elected. Subsequently he was elected as the Pramukh, which elections were held in the year 2021.

20. It is also undisputed that by the notification of 22.07.2022 issued by the State Government under Section 3 of the Municipalities Act, 2016 read with Article 243-Q of the Constitution of India, village Surhan, wherefrom the respondent no.5 was elected as member of Kshettra Panchayat, Martinganj was excluded from the territorial constituency of this Kshettra Panchayat, Martinganj, and was included in the territorial constituency of Nagar Panchayat, Martinganj.

21. Since by the notification of 22.07.2022 village Surhan ceased to be part of the territorial constituency of the Kshettra Panchayat Martinganj, therefore in view of Section 13 (o) of the Act, the respondent no.5 incurred a disqualification as he ceased to be a resident of, and his name no longer stood included in the electoral roll of the territorial constituency of Kshettra Panchayat Martinganj. He therefore, incurred a disqualification from being elected as a member of the Kshettra Panchayat, Martinganj. His name has been included in the electoral list of Aurangabad, which forms part of the territorial constituency of Kshettra Panchayat Martinganj, sometime in January / February 2023. It is also not in dispute that during this intervening period i.e., from 22.07.2022 to January/February, 2023, the respondent no.5 continued to function as the Pramukh of Kshettra Panchayat Martinganj, despite the disqualification incurred by him.

22. It is the contention of the petitioner that at this stage, fresh elections to the post of Pramukh should have been held, but was not held, wrongly and illegally. Even after getting his name included in the electoral roll of Aurangabad and having been elected therefrom, he was allowed to continue as Pramukh of the Kshettra Panchayat without any fresh elections having been held, which is again illegal as the post of the Pramukh is to be filled by an election to be conducted in accordance with the Rules framed in this regard.

23. In Sunil Kumar vs. State of U.P., wherein also Section 13 (o) of the Act, 1961 was under consideration, it was held as follows:-

"15. In the instant case, the villages from the different blocks have been included while forming the new block Dubaulia. The elected members thereof had not been the voters in his election. In a democratic set up, like ours, and particularly after amendment in the Constitution, inserting the provisions of Article 243K, petitioner cannot be forced upon the elected members of newly created block who had not chosen him, therefore, in the changed circumstances and to give the purposive interpretation to this provision, it is difficult to hold that the petitioner can become a Block Pramukh of said block Dubaulia without contesting the election afresh."

24. The judgments relied upon by Shri Ashok Khare on the contrary also require consideration. In Ashok Kumar Jain (supra), in paragraph 11 relied upon, it has been held that where the rules provide for a challenge by means of an election petition such challenge could be only by presenting an election petition. Barring some exceptionally extraordinary circumstance, normally, remedy under Article 226 of the Constitution of India should not be entertained.

25. The judgment therefore cannot be said to be conclusive insofar as the instant petition is concerned also because a different Act and the rules framed thereunder were involved in this writ petition. It can be held conclusive only to the extent that only in exceptionally extraordinary circumstances can Article 226 of the Constitution of India be invoked.

26. The other judgment relied upon namely the judgment in Bharati Reddy (supra), the Apex court, relying upon various other decisions held that "the jurisdiction of the High Court to issue a writ of quo-warranto is a limited one, which can only be issued if the appointment is contrary to the statutory rules and the Court has to satisfy itself that the appointment is contrary to the statutory rules."

27. However, paragraph 39 of the said judgment is relevant and the same reads as follows:-

"39. We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the indisputable facts, the High Court ought not to entertain the prayer for issuance of a writ of quo-warranto."

(emphasis supplied)

28. It has therefore been held that in case an incumbent has incurred disqualification to continue in an office in view of the statutory provisions and unless a satisfaction in this regard is based on indisputable facts, the High Court should not entertain the prayer of issuance of a writ of quo-warranto.

29. In the case at hand the factual matrix is not in dispute and is admitted to the learned counsel for the parties. Therefore, it can safely be held that this petition seeking a writ of quo-warranto is maintainable.

30. The position has been further clarified in paragraph 41 of the judgment in Bharati Reddy, which again reads our follows:-

41. "This, however, will make no difference to the conclusion which we must reach in this case that the High Court could not have issued a writ of quo-warranto until the Income and Caste Certificate issued in favour of the appellant, on the basis of which she participated in the election for the post of Adhyaksha and got elected, was to be declared void or invalidated by the Caste Scrutiny Committee. We do not wish to dilate on other incidental aspects/arguments as the same will not have any bearing on the conclusion noted above."

31. It therefore is to be reiterated that where the issue involves disputed question of fact a writ of quo-warranto would not lie. Such is not the position in the case at hand.

32. Shri Ashok Khare has also relied upon U.P. Kshettra Panchayats (Removal of Disqualification and Settlement of Disputes Relating to Disqualification and Membership) Rules, 1994 to submit that in fact the issue raised by means of the petition should have been raised by means of a petition under Rule 7. The said rule reads as follows:

"7. Manner of raising question under sub-section (2) of Section 14.

(1) If any question arises as to whether a person has been lawfully chosen a member of Kshettra Panchayat or has ceased to remain eligible to be such member, the question shall be referred within thirty days from the date of arising of such question by means of a writ petition by any person who could legally be a candidate at such choosing or whose name is registered as an elector in the electoral roll for the territorial constituency of the concerned Kshettra Panchayat, to the Judge.

(2) Every petition under sub-rule (1) shall be presented in person by the petitioner or if there are more signatories to the petition by any one or more of them.

(3) A petition presented under sub-rule (1) shall specify the grounds on which the member of the Kshettra Panchayat is alleged to have been wrongly chosen or is alleged to have ceased to remain eligible to be a member and shall contain a summary of the circumstances alleged to justify the dispute being raised on such grounds.

(4) A person whose membership is questioned under this rule shall be made a respondent to the petition."

33. The heading of this rule is "Manner of raising question under sub-section (2) of Section 14" of the Act, 1961. Sub-section (2) of section 14 of the Act is quoted here below.

"14(2). If any question arises as to whether a person has been lawfully chosen a member of a Kshettra Panchayat or has ceased to remain eligible to be such member the question shall be referred in the manner prescribed to the Judge, whose decision shall be final and binding."

34. It is true that on a bare reading of afore-quoted sub-section (2) of Section 14, a petition under Rules 7 of the Rules could have been preferred. However, the petitioner has chosen to invoke Article 226 of the Constitution of India by seeking a writ of quo-warranto on undisputed facts.

35. Therefore, in view of what has been held by the Apex Court in Bharati Reddy (supra), the issue can be decided by this Court and if necessary a writ of quo-warranto can also be issued despite existence of a remedy provided under Rule 7 of the Rules, 1994.

36. It is undisputed that the respondent incurred a disqualification laid down in Section 13(o) of the Act No. 22 of 1961, on the issuance of a notification under Section 3 of the Municipalities Act, 1916 whereby village Surhan was excluded from the territorial constituency of Kshettra Panchayat, Martinganj, as his name existed in the electoral roll of village Surhan. His name was included in the electoral roll of village Aurangabad, which fell in the territorial constituency of the Kshettra Panchayat. During this intervening period of about ten months he was under the disqualification provided in Section 13(o) of the Act. Even after his name was included in the electoral roll of village Aurangabad, he has been permitted to function as Pramukh without a fresh election for the post of Pramukh. This is clearly contrary to what has been held in paragraph 15 of Sunil Kumar v. State of U.P., already extracted hereinabove. He has clearly been foisted upon the elected members of a reconstituted Block/Kshettra Panchayat, Martinganj without a fresh election to the post of Pramukh.

37. This is impermissible in view of what has been laid down in the judgment of Sunil Kumar (supra).

38. Accordingly, the writ petition is allowed and a writ is issued restraining the respondent from holding the post of Pramukh, Kshettra Panchayat, Block Martinganj and the said post is declared vacant, to be filled up by a fresh election to be held in accordance with law, forthwith.

Order Date :- 27.03.2025 Mayank