Another Vs. Deputy Director of Consolidation, Kanpur & Ors, reported in **1993 RD 13, Ramanand Vs. Deputy Director of Consolidation, Basti** reported in **1993 RD 91 (HC); Smt. Rama Devi Vs. Dilip Singh,** reported in **(2008) 104 RD 538, Faggal Vs. State of U.P.** reported in **2008 (105) RD 496 and Kamta Vs. Board of Revenue, 2018 SCC OnLine All 8881.**

24. The direction for validating a transfer of immovable property by ACO by depositing certain amount/revenue on the market value of the property in the Government Treasury is without any authority. Further, this Court is of the firm view that the transfer which was not valid initially, cannot be validated by means of depositing certain amount in the Government Treasury.

25. For the reasons aforesaid, this Court finds that the interference in the impugned order is required.

26. Accordingly, the order dated 30.04.2025 (Annexure No.1) is hereby set aside/quashed and the order dated 03.03.2025 passed by SOC is restored.

27. With regard to prayer no. 2, it is provided that the issues related to possession which includes the issues based upon Section(s) 209 and 210 of the Act of 1950 would be decided by the competent authority/Court, as per law, and till decision on this aspect of the case the parties are directed to maintain status quo as exists today.

28. Aforesaid is for the reason that to establish the actual physical possession over the land in dispute i.e. Gata no. 748 copies of revenue receipts and copies of khasra have not been placed on record.

29. With the aforesaid, the the petition is ***partly allowed.***

30. At this stage, Mr. Rakesh D. Kumar, Advocate, prayed for stay on the implementation and operation of this judgment for some time for the purpose of filing Leave to Appeal. The prayer sought is rejected for the reason that by this order the parties have been directed to maintain status quo till decision on the issues related to possession by the competent authority/Court.

(2025) 5 ILRA 564
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.05.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ C No. 4987 of 2025

Shitla Prasad ...Petitioner
Versus
Amrit Lal & Ors. ...Respondents

Counsel for the Petitioner:
Sharad Pathak, Lalta Prasad Misra, Manoj Kumar Dwivedi

Counsel for the Respondents:
Dinesh Kumar Ojha, Anupam Mehrotra

Civil Law - U.P. Municipalities Act, 1916 - Election Petitions - Sections 12-A to 12-H, 12-E(2), 13-A to 13-K, 19, 20 - Order 6 Rule 17 CPC - Petitioner contested the election of Chairman of Nagar Panchayat. After the counting petitioner was declared elected. Opposite Party No.1 filed an election petition on 29.05.2023. Petitioner filed written statement on 18.01.2024. An amendment application was filed under Order 6 Rule 17 CPC on 14.02.2024 – District Judge, allowed the amendment application. In election petition, the

election of the petitioner was set aside and contestant at Serial No.2 was declared to have been elected. *Held :* Although there was laches in challenging the order of amendment passed on 08.07.2024, the court held that laches would not be fatal, as firstly there was no controversion to the challenge in the absence of any counter affidavit and secondly, all the interim orders merged in the final order being the order dated 21.05.2025, which was being challenged alongwith the earlier order dated 08.07.2024. Amendment application drastically changed the nature of the election petition; there being no such pleading in the initial election petition, the amendment could not have been allowed that too after the limitations for filing the petition had come to an end. As per S. 20 an election petition can be presented within 30 days after the day on which the result of the elections sought to be questioned is announced by the Returning Officer. Order impugned dated 21.05.2025 further suffers from the procedural error inasmuch as after the amendment, a specific issue to that effect ought to have been framed, which is non-existent; the specific issue with regard to the inclusion of the name of the petitioner in the electoral roll could be tested only after framing of specific issue to that effect and after allowing the parties to lead evidence, which has not been done. (Para 30, 31, 32, 33)

Allowed. (E-5)

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Dr. L.P. Mishra, learned counsel assisted by Ms. Anupama Agnihotri, Ms. Arti Bali, Mr. Shivang Dwivedi, Mr. Saurabh Pathak and Shri Sharad Pathak, learned counsel for the petitioner, and Shri Anupam Mehrotra, Shri Balkeshwar Srivastava and Shri Rishi Raj Mishra, learned counsel for the respondent.

2. Present petition has been filed by the petitioner challenging the order dated 21.05.2025 passed by the Additional District Judge, Pratapgarh in Election Petition No.02 of 2023 whereby the election of the petitioner was set aside and contestant at Serial No.2 was declared to have been elected.

Present petition also challenges the order dated 08.07.2024 passed by Additional District Judge, Pratapgarh whereby the amendment application was allowed.

3. Learned counsel appearing for the petitioner of election petition namely Shri Anupam Mehrotra, Shri Balkeshwar Srivastava and Shri Rishi Raj Mishra appears for the respondents herein and make a statement that they do not want to file a counter affidavit and the present petition may be decided based upon the arguments advanced.

4. Present petition was heard at length.

5. Dr. L.P. Mishra, learned counsel appearing for the petitioner argues that the petitioner contested the election of Chairman of Nagar Panchayat Konhdaur, Pargana and Tehsil Patti, District Pratapgarh held on 04.05.2023 and after the counting held on 13.05.2023, the petitioner was shown to have secured 2584 votes and declared elected. Opposite Party No.1 secured 1957 votes and thus, there was a difference of 627 votes. It is stated that Opposite Party No.1 filed an election petition being Election Petition No.2 of 2023. The said petition was filed on 29.05.2023 and is contained in Annexure – 3. It is stated that a written statement was filed by one another candidate on

12.01.2024, Opposite Party No.3 herein, and the petitioner also filed a written statement on 18.01.2024 (Annexure – 5) controverting the allegations as levelled in the election petition.

6. It is stated that after the written statement was filed, an amendment application was filed under Order 6 Rule 17 of CPC on 14.02.2024 (Annexure – 6) to which objections were also filed on 20.02.2024 (Annexure – 7). District Judge, Pratapgarh vide an order dated 08.07.2024 (Annexure – 8) allowed the amendment application and thereafter, an application was also filed by Opposite Party No.1 in reply to the written statement filed by the petitioner on 04.03.2024. It is pleaded in Para 13 that although, the amendment application was illegally allowed, the petitioner, however, could not challenge the said order as the trial was proceeding speedily. However, it is argued that the amendment application could not have been allowed as the effect of the said amendment was that the nature of the election petition was changed and an otherwise time barred plea was allowed. It is further pleaded that after the amendment application was allowed, documents were filed by Opposite Party No.1 on 18.04.2023 and 19.04.2023 and the Opposite Party No.1 examined himself as PW – 1 and one Shri Pawan Kumar as PW – 2. It is stated that the petitioner also examined himself as DW – 1 and one Shri Krishna Lal Soni as DW – 2.

7. It is stated that thereafter the District Judge while deciding the election petition framed as many as six issues, which are as under:

"1- क्या याची चुनाव याचिका में वर्णित तथ्यों पर, पुनर्मतणना के आधार पर निर्वाचित अध्यक्ष घोषित होने का अधिकारी है ?

2- क्या वर्ष २०२३ में नगरीय पंचायत चुनाव के अन्तर्गत नगर पंचायत कोहडौर का अध्यक्ष पद, अनुसूचित जाति के लिए आरक्षित था ?

3- क्या प्रत्यर्थी संख्या-१ शीतलता प्रसाद का निर्वाचन वैध था ?

4- क्या याचिका अन्दर मियाद है ?

5- क्या मतगणना विहित चुनाव प्रक्रिया / प्रावधिनों के तहत करायी गयी थी ?

6- अन्य अनुतोष ?"

And thereafter framed another issue being Issue No.7, which is as under:

"7- क्या वर्तमान चुनाव याचिका धारा-८० सी०पी०सी के प्रावधान से बाधित है?"

8. Contention of learned counsel for the petitioner is that on all the issues except Issue No.3, findings were returned in favour of the petitioner, however, the Issue No.3 was decided against the petitioner and based thereupon alone, the election of the petitioner was set aside. He argues that on a plain reading of Issue No.3, it is clear that the same was a general issue to the effect as to whether the election of Opposite party No.1 Shitla Prasad was valid ? However, in the garb of the said issue, the pleadings which were made by respondent no.1 through amendment were extensively considered and without framing a specific issue, the same was decided against the petitioner.

9. In the backdrop of the said arguments, it is essential to notice that the election petition initially filed by respondent no.1 on various grounds, however, through an amendment application, specific amendment was sought by pleading that the name of the petitioner appeared in the electoral list prepared at Mumbai (Maharashtra) in the list of Bandra East at Serial No.126 and as the name of the petitioner was mentioned in

the said electoral roll, the election of the petitioner was automatically void. It is argued that in the reply to the said amendment application, it was stated that earlier the petitioner used to reside at Mumbai, however, after shifting to Pratapgarh, an application was moved for removal of his name through an application. It was also pleaded in the objection that the whole complexion of the election petition changes because of the said amendment.

10. It is also essential to notice that while recording finding of Issue No.3, the trial Court has recorded that the name of the petitioner appeared in the electoral list of Jawahar Nagar, Bandra East, Mumbai (Maharashtra) at Serial No.1216 of Electoral Roll No.115. The trial Court also considered the submission of the petitioner to the effect that to the best of his knowledge, his name was already struck off from the electoral list of Maharashtra and in any case, the same would not have any effect on the elections held in the State of Uttar Pradesh. He also recorded the statement of the petitioner to the effect that he could not state with certainty that his name has been deleted from the electoral list of Maharashtra. Thereafter, the trial Court considering the mandate of Section 12-E(2) of the U.P. Municipalities Act, held that the name of the electorate cannot be included in any other municipality, cantonment etc., and as the petitioner has failed to discharge the burden that his name had been struck off and no evidence was also produced to the effect that an application bearing relevant date or endorsement of acceptance was filed, as such, the name of the petitioner was wrongly included in the electoral list and was not included in terms of the statute and thus, the election of the petitioner was not valid.

11. In the light of the said, Dr. L.P. Mishra, learned counsel for the petitioner, strongly argues that in terms of the provisions contained in the U.P. Municipalities Act *(hereinafter referred to as 'the Act'),* electoral rolls are to be prepared in terms of the mandate of Section 12-A to 12-H and the conduct of elections is prescribed under Section 13-A to 13-K of the Act. He argues that process of election is set forth in terms of the prescriptions contained under Section 13-A and prior thereto, the manner of including entry in electoral rolls itself specifies that in the event of there being errors in the electoral list, a method of correction is prescribed including an appeal. He further argues that the election petitions in terms of the mandate of the Act can only be filed in terms of the mandate of Section 19, which is as under:

"19. Power to question municipal election by petition. *- (1) The election of any person as a member of a Municipality may be questioned by an election petition on the ground, -*

(a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in Section 28;

(b) that such person was declared to be elected by reason of the improper rejection or admission of one or more votes, or any other reason was not duly elected by a majority of lawful votes;

(c) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of the petitioner was improperly rejected.

(2) The election of any person as a member of a Municipality shall not be questioned, -

(a) on the ground that the name of any person qualified to vote has been omitted from, or the name of any person not qualified to vote has been inserted in the electoral roll or rolls;

(b) on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or informality has materially affected the result of the election."

12. He specifically draws my attention to Section 19(2) to argue that the election cannot be challenged and there is a specific restriction contained in Section 19(2)(a).

13. He further argues that the District Judge has erred in ignoring the mandate of Section 1(2) of the Act itself, wherein it is specified that the Act extends to the whole of Uttar Pradesh and thus, even if for the sake of argument, Section 12-E(2) is taken into consideration, the same cannot be accepted as admittedly the name of the petitioner appeared in the electoral rolls at Mumbai, Maharashtra and not in any place in the State of Uttar Pradesh. It is essential to quote Section 12-E which is as under:

"12-E. Registration to be in one ward only. - *(1) No person shall be entitled to be registered in the electoral roll for more than one ward or more than once in the electoral roll for the same ward.*

(2) No person shall be entitled to be registered in the electoral roll for any ward, if his name is entered in any electoral roll pertaining to any city, other Municipal area, Cantonment or area of Gram Panchayat, unless he shows that his name has been struck off from such electoral roll."

14. He further argues that in any case it is well settled that the amendment in the election petition cannot be allowed to incorporate the pleas which make the election petition time barred as a time of 30 days is prescribed for filing an election petition under Section 20 of the Act.

15. To support his arguments as recorded above, reliance is placed upon a judgment of the Supreme Court in the case of ***Indrajit Barua and Ors. v. Election Commission of India and Ors.; (1985) 4 SCC 722*** with emphasis on Para 12, which reads as under:

"12. From the materials placed by the parties and the Election Commission, we have come to the conclusion that the Election Commission did not give directions contrary to the requirements of Section 16 of the Act and the revision of the 1979 electoral rolls could not be undertaken for reasons beyond the control of the Election Commission. As pointed out by us in our order of September 28, 1984, there was no dispute to the electoral roll of 1977 nor was any challenge advanced against the election of 1978 to the State Legislature held on the basis of such rolls. Admittedly, the 1979 rolls were the outcome of intensive revision of the rolls of 1977. That being the position and in view of the proviso to sub-section (2) of Section 21 which we have extracted above the

electoral rolls of 1979 were validly in existence and remained effective even though the process contemplated in sub-section (2) for revision had not either been undertaken or completed. It has been indicated by a Constitution Bench decision of this Court in Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman; (1985) 4 SCC 689] that preparation and revision of electoral rolls is a continuous process not connected with any particular election but when an election is to be held, the electoral roll which exists at the time when election is notified would form the foundation for holding of such election. That is why sub-section (3) of Section 23 provides for suspension of any modification to the electoral roll after that last date of making of nominations for an election and until completion of the election. We had, therefore, come to the conclusion that the electoral rolls of 1979 were not invalid and could provide the basis for holding of the elections in 1983. Whether preparation and publication of the electoral rolls are a part of the process of election within the meaning of Article 329(b) of the Constitution is the next aspect to be considered. In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [(1952) 1 SCC 94 : AIR 1952 SC 64 : 1952 SCR 218 : (1951-52) 1 ELR 133] this Court had to decide the amplitude of the term 'election'. Fazl Ali, J. speaking for the Constitution Bench indicated:

"It seems to me that the word 'election' has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature. The use of the expression 'conduct of elections' in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(b). That the word 'election' bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. Tlie subject is dealt with quite concisely in Halsbury's Laws of England in the following passage under the heading 'Commencement of the Election':

Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when 'the conduct and management of' an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case.

The discussion in this passage makes it clear that the word 'election' can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process."

We are not prepared to take the view that preparation of electoral rolls is also a process of election. We find support

for our view from the observations of Chandrachud, C.J. in Lakshmi Charan Sen case [AIR 1957 SC 304 : 1957 SCR 68 : (1956) 12 ELR 443] that "it may be difficult, consistently with that view, to hold that preparation and revision of electoral roll, is a part of 'election' within the meaning of Article 329(b)". In a suitable case challenge to the electoral roll for not complying with the requirements of the law may be entertained subject to the rule indicated in Ponnuswami case [(1985) 4 SCC 689]. But the election of a candidate is not open to challenge on the score of the electoral roll being defective. Holding the election to the Legislature and holding them according to law are both matters of paramount importance. Such elections have to be held also in accordance with a time bound programme contemplated in the Constitution and the Act. The proviso added in Section 22(2) of the Act of 1950 is intended to extend cover to the electoral rolls in eventualities which otherwise might have interfered with the smooth working of the programme. These are the reasons for which we came to the conclusion that the electoral roll of 1979 had not been vitiated and was not open to be attacked as invalid."

16. He next places reliance on the judgment of the Constitutional Bench of the Supreme Court in the case of ***S.M. Banerji v. Sri Krishna Agarwal; AIR 1960 SC 368*** and places reliance on Para 11, which reads as under:

"11. The second case is a decision of four Judges and it defines the powers of the Election Tribunal in the matter of amendment of pleadings. This decision also turns upon the relevant provisions of Act 43 of 1951 before it was amended by Act 27 of 1956. Section 83(3) of the Act before the amendment corresponds to Section 90(5) of the amended Act. In other respects, so far as it is material to the question raised, no change has been introduced in the other relevant sections. In this case, the respondent in the appeal filed an election petition challenging the election of the appellants to the U.P. Legislative Assembly on the ground that they had committed corrupt practices, the material allegations being, (i) that the appellants "could in the furtherance of their election enlist the support of certain Government servants", and (ii) that the Appellant 1 had employed two persons in excess of the prescribed number for his election purposes. No list of particulars of corrupt practices was attached to the petition. Long after the period of limitation prescribed for the filing of election petitions, the respondent applied for amendment of his petition by adding the names of certain village Headmen (Mukhias) as having worked for the appellants and later on becoming their polling agents. The Election Tribunal allowed the amendment on the ground that the allegations sought to be introduced by the amendment were mere particulars of the charge already made. Holding that corrupt practice had been committed by the appellants, it declared their election void under Section 100(2)(b) of the Act. The appellants preferred an appeal against that order to this Court and contended that the Election Tribunal had no power either under Section 83(3) of the Act or under Order 6 Rule 17 of the Code of Civil Procedure to allow the amendment. In that context, this Court elaborately considered the scope of the power of the Election Tribunal to amend the pleadings in an election dispute and summarized its

views in the following two propositions, at p. 392:

"(1) Under Section 83(3) the Tribunal has power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges, and this power extends to permitting new instances to be given.

(2) The Tribunal has power under Order 6 Rule 17 to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations will then be barred."

On the basis of those propositions this Court held that the petition as originally presented did not allege that the appellants had committed corrupt practices and, therefore, that the allegations sought to be introduced by the amendment, namely, that two village Headmen worked for the appellants and later on became their polling agents, so radically altered the character of the petition as originally framed as to make it practically a new petition, and so it was not within the power of the Tribunal to allow amendments of that kind. Even if the Tribunal had the power under Order 6 Rule 17 of the Code of Civil Procedure to permit an amendment raising a new charge, the Court held that it did not under the circumstances exercise a sound and judicial discretion in permitting the amendment in question. It may be noticed that in that case the question turned upon the construction of Section 83, sub-sections (2) and (3), of the Act. Though in that case this Court was concerned with the powers of an Election Tribunal to amend the petition beyond the period of limitation, the discussion of the Court covered a wider field, presumably, because the Court intended to settle the principles governing the power of Election Tribunals to amend pleadings with a view to prevent confusion and to stabilize the procedure. This Court rejected the argument that Order 6 Rule 17 of the Civil Procedure Code, does not apply to election petitions. It was observed at p. 389:

"We are accordingly of opinion that the application of Order 6 Rule 17, Civil Procedure Code to the proceedings before the Tribunal is not excluded by Section 83(3)."

It was contended for the appellant in that case that even if Section 83(3) of the Act did not exclude the application of Order 6 Rule 17, Civil Procedure Code, to the proceedings before the Tribunal, the exercise of the power under that rule must, nevertheless, be subject to the conditions prescribed by Section 81 for presentation of an election petition, that one of those conditions was that it should be presented within the time allowed therefor, and that accordingly, no amendment should be allowed which would have the effect of defeating that provision. After considering the English decisions on the statutory provisions which are pari materia with our enactments, the Court held that the Election Tribunal had no power to permit a new ground to be raised beyond the time of limitation prescribed by Section 81 of the Act. Mr A.V. Viswanatha Sastry contended that the learned Judges, having rightly conceded the power of the Election Tribunal to amend the pleadings under Order 6 Rule 17, Civil Procedure Code, went wrong in limiting that power in the way they did, and that the reason advanced by them in limiting that power equally applies to the pleadings in a suit, for, it is said, under the Indian Limitation Act, every suit filed beyond the prescribed period of limitation shall be dismissed

although limitation has not been set up as a defence. There is no doubt some force in this contention, but this argument was presumably advanced before the learned Judges and was negatived on the following ground stated at p. 392:

"The Tribunal sought to get over this difficulty by relying on the principle well-established with reference to amendments under Order 6 Rule 17 that the fact that a suit on the claim sought to be raised would be barred on the date of the application would be a material element in deciding whether it should be allowed or not but would not affect the jurisdiction of the court to grant it in exceptional circumstances as laid down in Charan Das v. Amir Khan [(1920) LR 47 IA 255] . But this is to ignore the restriction imposed by Section 90(2) that the procedure of the court under the Code of Civil Procedure in which Order 6 Rule 17 is comprised, is to apply subject to the provisions of the Act and the rules, and there being no power conferred on the Tribunal to extend the period of limitation prescribed, an order of amendment permitting a new ground to be raised beyond the time limited by Section 81 and Rule 119 must contravene those provisions and is, in consequence, beyond the ambit of authority conferred by Section 90(2)."

This passage indicates that the learned Judges were aware of the argument now advanced and, for the reason mentioned by them, namely, that unlike a civil suit wherein the Court can extend the period of limitation in a proper case, the Tribunal has no such power, rejected the argument. We are bound by this decision."

17. He next places reliance on the judgment of the Supreme Court in the case of ***Yeswant Deorao Deshmukh v. Walchand Ramchand Kothai; 1950 SCC 766 : 1950 SCC OnLine SC 44***, with emphasis on Para 16, which read as under:

"16. Having thus got over the difficulty in his way under Section 48 of the Code of Civil Procedure, he has next to meet the objection under the Limitation Act. On behalf of the appellant, it was urged that Section 18 of the Limitation Act applied to the facts and that the right to apply accrued to the appellant when the fraud by the judgment-debtor became known to him in 1946. No reliance was placed on Section 18 of the Limitation Act in the courts below and no reference to it is found in the grounds of appeal to this Court. It is however mentioned for the first time in the appellant's statement of the case. If the facts proved and found as established are sufficient to make out a case of fraud within the meaning of Section 18, this objection may not be serious, as the question of the applicability of the section will be only a question of law and such a question could be raised at any stage of the case and also in the final court of appeal. The following observations of Lord Watson in Connecticut Fire Insurance Co. v. Kavanagh [Connecticut Fire Insurance Co. v. Kavanagh, 1892 AC 473 (PC)] are relevant. He said : (AC p. 480)

"... When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea. The expediency of adopting that course may be doubted, when the plea cannot be disposed of without deciding nice questions of fact, in considering which the court of ultimate review is placed in a much less advantageous position than the courts below."

18. He also places reliance on the judgment of the Supreme Court in the case of ***M/s Trilokchand Motichand and Ors. v. H.B. Munshi, Commissioner of Sales Tax, Bombay and Anr.; AIR 1970 SC 898*** and lays emphasis on Paras 6 & 39, which read as under:

"6. Then again this Court refrains from acting under Article 32 if the party has already moved the High Court under Article 226. This constitutes a comity between the Supreme Court and the High Court. Similarly, when a party had already moved the High Court with a similar complaint and for the same relief and failed, this Court insists on an appeal to be brought before it and does not allow fresh proceedings to be started. In this connection the principle of res judicata has been applied, although the expression is some what inapt and unfortunate. The reason of the rule no doubt is public policy which Coke summarised as "interest reipublicae res judicatas non rescindi" but the motivating factor is the existence of another parallel jurisdiction in another Court and that Court having been moved, this Court insists on bringing its decision before this Court for review. Again this Court distinguishes between cases in which a speaking order on merits has been passed. Where the order is not speaking or the matter has been disposed of on some other ground at the threshold, this Court in a suitable case entertains the application before itself. Another restraint which this Court puts on itself is that it does not allow a new ground to be taken in appeal. In the same way, this Court has refrained from taking action when a better remedy is to move the High Court under Article 226 which can go into the controversy more comprehensively than this Court can under Article 32.

39. The next and the more fundamental question is whether in the circumstances the Court should give relief in a writ petition under Article 32 of the Constitution. No period of limitation is prescribed for such a petition. The right to move this Court for enforcement of fundamental rights is guaranteed by Article 32. The writ under Article 32 issues as a matter of course if a breach of a fundamental right is established. Technical rules applicable to suits like the provisions of Section 80 of the Code of Civil Procedure are not applicable to a proceeding under Article 32. But this does not mean that in giving relief under Article 32 the Court must ignore and trample under foot all laws of procedure, evidence, limitation, res judicata and the like. Under Article 145(1)(c) rules may be framed for regulating the practice and procedure in proceedings under Article 32. In the absence of such rules the Court may adopt any reasonable rule of procedure. Thus a petitioner has no right to move this Court under Article 32 for enforcement of this fundamental right on a petition containing misleading and inaccurate statements and if he files such a petition the Court will dismiss it, see Indian Sugars & Refineries Ltd. v. Union of India, 1968 SCC OnLine SC 158. On grounds of public policy it would be intolerable if the Court were to entertain such a petition. Likewise the Court held in Daryao v. State of U.P. [1961 SCC OnLine SC 21 : (1962) 1 SCR 574] that the general principles of res judicata applied to a writ petition under Article 32. Similarly, this Court has summarily dismissed innumerable writ petitions on that ground that it was presented after unreasonable delay."

19. In the light of the said, it is argued that present petition deserves to be

allowed and impugned order deserves to be set aside.

20. Shri Anupam Mehrotra, learned counsel for the respondent, on the other hand, extensively draws my attention to the pleadings contained in Paras 13 & 14 to the following effect:

"13. That the application for amendment was illegally allowed but petitioner could not challenge the aforesaid order at that point of time as the trial was proceeding speedly but since the application for amendment could not have been allowed changing the nature of election petition and, M therefore, the petitioner is challenging the said / order now before this Hon'ble Court.

14. That however after allowing the application for amendment, documents were filed by opposite party no. 1 on 18.04.2023 and 19.04.2023. The opposite party no. 1 also examined himself as PW- 1 and Mr. Pawan Kumar as PW-2. The true copy of the evidence of opposite party no. 1 recorded as PW-1 is annexed herewith as Annexure No. 10 to this writ petition and true copy of evidence of Pawan Kumar recorded as PW-2 is annexed herewith as Annexure No. 11 to this writ petition."

to argue that the said pleadings cannot be a ground for challenging the order dated passed on the amendment application.

21. He further draws my attention to the amendment application filed whereby it was specifically pleaded that the name of the petitioner was included in the electoral roll at Mumbai and also draws my attention to the reply filed by the petitioner to the said amendment application to argue that the only ground taken was that he had taken steps for scrolling off his name in the electoral roll at Mumbai. He, thus, argues that no specific denial was made.

22. He further draws my attention to the affidavit filed by the petitioner himself in the petition to demonstrate that it was specifically deposed by the petitioner that his name had been scrolled off and even if his name appeared, the fault was that of the employees who had not scrolled off the name despite there being an application. He, thus, argues that the petitioner having failed to challenge the order passed on the amendment application, cannot challenge the same now by filing a petition which suffers from laches insofar as it relates to the challenge to the order dated 08.07.2024.

23. He further argues that in the absence of any specific pleadings, the points cannot be urged as are being argued. He extensively relies upon the judgment of the Supreme Court in the case of ***Kedar Shashikant Deshpandey v. Bhor Municipal Council and Ors.; (2011) 2 SCC 654*** with emphasis on Para 28, which reads as under:

"28. The question whether the Additional Collector had jurisdiction to entertain and decide the disqualification petition filed by the respondents is essentially a question of fact. It is pertinent to note that Section 13(3) of the Maharashtra Land Revenue Code, 1966 contemplates statutory delegation in favour of the Additional Collector. Whether there was statutory delegation in favour of the Additional Collector in terms of Section 13(3) of the Maharashtra Land Revenue Code, is a question of fact. Therefore, the appellants cannot be permitted to argue for the first time before this Court the point that the Additional Collector had no

jurisdiction to entertain the disqualification petition filed by the respondents. Even otherwise, the record clinchingly shows that the appellants had submitted to the jurisdiction of the Additional Collector and participated in the proceedings before the Additional Collector without any reservation. Therefore, having lost before the Additional Collector, they cannot turn round and challenge the jurisdiction of the Additional Collector for the first time in the appeals filed under Article 136 of the Constitution."

24. The said point is emphasized to the effect that once the petitioner had submitted to the jurisdiction, even after the amendment, he could not agitate the same.

25. He further extensively relies upon the commentary on ***Constitutional Law of India by H.M. Seervai; Fourth Edition (Vol. 2)*** to argue that improper conduct in presenting the petition can lead to a conclusion that the petitioner has come with unclean hands and the Court should refuse him the relief.

26. He also draws my attention to the observations made in the same commentary in the context of judgment in the case of ***Furquharson v. Morgan; (1894) 1 Q.B. 552*** wherein a distinction was made between a patent want of jurisdiction i.e. a want of jurisdiction appearing on the face of the proceedings, and a latent want of jurisdiction i.e., a want of jurisdiction becoming manifest in the course of proceedings.

27. He further argues that Dr. L.P. Mishra, learned counsel for the petitioner, is wrong in contending that the petitioner on the ground that his name was included in the electoral list at Mumbai cannot be a ground for challenge on the plain reading of Section 19(1)(c) of the Act which itself prescribes that the election petition can be filed against a person who was not qualified to be nominated as a candidate for election. He, thus, argues that in view of the bar created by Section 12-E of the Act, it is clear that the name of the petitioner could not be included in the list of electoral rolls and thus, the election petition would lie.

28. Controverting the submission based upon Section 1(2) of the Act, it is argued that on a conjoint reading of Section 12-E of and Section 1(2) of the Act, it is clear that the registration in the electoral roll is barred if the name is included in any other electoral roll in any city, municipal area or cantonment area and thus, according to him, for a person to seek election in State of Uttar Pradesh, his name should not appear in any electoral roll in any place throughout India. He, thus, argues that the writ petition is liable to be dismissed.

29. Considering the first submission that as to whether the amended petition would be decided in the manner in which it has been decided ?

30. Irrespective of the ground taken to challenge the amendment order, the fact remains that the respondents have specifically stated that they do not want to file a counter affidavit and thus, the averments made in the writ petition are uncontroverted; although there are laches in challenging the order of amendment passed on 08.07.2024, the laches would not be fatal, as firstly there is no controversion to the challenge in the absence of any counter affidavit and secondly, all the interim orders merged in the final order being the

order dated 21.05.2025, which is being challenged alongwith the earlier order dated 08.07.2024.

31. The amendment application, could not have been allowed as the amendment relates back to the date of the election petition which fact was not even reverted in the order dated 08.07.2024. The said amendment also drastically changed the nature of the election petition; there being no such pleading in the initial election petition, the amendment could not have been allowed that too after the limitations for filing the petition had come to an end.

32. The argument of Shri Anupam Mehrotra founded on improper pleading in the petition and objections to the amendment application are self inflicting as all the arguments have been raised without filing a counter affidavit and thus, in absence of any pleadings, the same cannot even be agitated.

33. Order impugned dated 21.05.2025 further suffers from the procedural error inasmuch as after the amendment, a specific issue to that effect ought to have been framed, which is non-existent; the specific issue with regard to the inclusion of the name of the petitioner in the electoral roll could be tested only after framing of specific issue to that effect and after allowing the parties to lead evidence, which has not been done.

34. Thus, on these two grounds alone, present petition deserves to be ***allowed and is ordered accordingly.***

35. Orders dated 08.07.2024 & 21.04.2025 are hereby quashed.

(2025) 5 ILRA 576
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.05.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Writ C No. 5205 of 2025

M/s Ganpati Classic ...Petitioner
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioner:
Abhinav Jaiswal, Udit Chandra

Counsel for the Respondents:
A.S.G.I., J.N. Maurya, Ravi Prakash Singh, Somya Chaturvedi

A. Civil Law - Constitution of India,1950-Article 226-The petitioner challenged the recovery order dated 12.08.2024 and a consequential recovery notice dated 17.12.2024 issued by the Pollution Control Board without affording an opportunity of hearing or supplying inspection-related documents-violation of audi alteram partem-impugned order quashed-Authorities directed to furnish relevant documents, grant hearing and pass fresh reasoned order within eight weeks.(Para 1 to 8)

The writ petition is disposed of. (E-6)

List of Cases cited:

1. A.K. Kraipak Vs U.O.I., (1970) AIR (SC) Supreme court 150

2. St. of Ori. Vs Dr. Binapani Dei, (1967) AIR (SC) Supreme Court 1269

3. Swadeshi Cotton Mills Vs U.O.I. (1981) (SC) 51 Comp Cas 210