SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Barkatullah Vs. Rabindranath Malakar and ors.

Barkatullah Vs. Rabindranath Malakar and ors.

SooperKanoon Citation : sooperkanoon.com/128564

Court : Guwahati

Decided On : Jan-30-1979

Judge : K. Lahiri, J.

Acts : Representation of the People Act, 1951 - Sections 81, 97 and 100

Appeal No. : Election Petn. No. 11 of 1978

Appellant : Barkatullah

Respondent : Rabindranath Malakar and ors.

Advocate for Def. : G.S. Bhattacharyya, K.N. Saikia, C.C. Deka, A.K. Roy, H. Rashid, D.N. Das, K. Deka, K. Dewan, S.C. Choudhury, G. Dauri, J.N. Phukan, H. Das and A.K. Bardalei, Advs.

Advocate for Pet/Ap. : P.C. Kataki, D.K. Bhattacharyya, S. Ali, S.A. Laskar, A.K. Enamul Haque, A.C. Upadhyaya, U.C. Nath, H.K. Sarma, N. Sarma and G. Gopal, Advs.

Disposition : Application rejected

Judgement :

K. Lahiri, J.

1. For all intents and purposes the Election Petition is over and the order to follow is just a formality to comply with the requirements of law (The Representation of the People Act, 1951) and to put the records straight.

2. Shri Barkat Ullah, one of the contesting candidates of 55 Haja Assam Legislative Assembly Constituency (hereinafter referred as 'the constituency)', filed an application under Sections 80A and 81 of the Representation of the People Act, 1951 (as amended) (hereinafter referred to as 'the Act'). The petitioner and six others including Shri Rabindra Nath Malakar, Respondent No. 1, contested for the Assembly Seat from 'the constituency.' Poll was held on 25-2-1978 and the counting of votes commenced and concluded on 27-2-1978. The Respondent No, 1 was declared elected having secured the highest number of votes, and the petitioner polled the second highest votes, Tha difference of votes between the petitioner and the Respondent No, 1 according to the Final Result Sheet (Form No. 20) was shown as 695 but according to the Check Memo the said difference came to 309 votes only. It may be stated here that during the course of the trial of the election proceedings the parties and the witnesses conceded that there were errors in reflecting the correct votes in Form No. 20. All hands agreed that the correct reflection was made in the Check Memos, and the difference between the petitioner and the Respondent No. I was 309 votes and not 695 votes (as reflected in Form No. 20), After completion of the counting and announcement of the result recorded in Form No. 20 the petitioner applied in writing to the Returning Officer for recount of the votes in respect of Tables Nos. 3, 4 and 7 of the 4th round and also in respect of Table No. 3 of the 2nd round, setting fourth the grounds on which the petitioner had demanded such recount The prayer was turned

down by the Returning Officer. Thereafter, the petitioner filed this election petition praying inter alia 'for a recount of the ballot papers and to declare the result of the election on that basis', The election petition was contested by the returned candidate Shri Rabindra Nath Malakar, who filed his written statement; issues were framed (it is needless to set forth the issues for the reasons to follow), petitioner examined himself and 7 other witnesses and the contesting respondent examined himself as R. W, 1 and also examined 3 other witnesses. In due course the matter came up for hearing arguments and during the course of the argument

the parties filed a joint application which reads as under: 'The petitioner and the respondent No. 1 hereby state that in view of various manifest errors in calculation and the preparation of the check Memos (Ext. P-3 series) and also in view of the fact, admitted by both the parties, that the respondent No. 1 appears to have won the election by a margin of 309 votes only as per check Memos (Ext. P-3 series) and not by 695 votes as shown in Form No. 20 (Ext. P-4) both the parties agree as follows:--

(1) That sample recounting in respect of second and fourth rounds pertaining to all candidates may be made by an officer of the court appointed by Your Lordship in presence of the parties and their counsels and with help of tellers appointed by Your Lordship, Disputed rejected votes shall be referred to Your Lordship.

(2) That the said officer appointed by Your Lordship will rescrutinise all the rejected votes of all rounds and ascertain the number of petitioner's votes improperly rejected.

(3) That if upon scrutiny and recount as aforesaid, and taking into account the improperly rejected votes, the margin of votes between the Respondent and the petitioner is reduce by 35 or more i.e. the margin between the two is reduced from 309 votes (as appears from the check Memos) to 274 or less, there shall be recount in respect of the first and third rounds also and upon such recount the result of the election of No. 55 Haje Legislative Assembly Constituency will be declared or that basis.

(4) That on the other hand, if upon such scrutiny and recount of second

and fourth rounds the margin of votes is not reduced by 36 or more vote there shall not be any further recount of other rounds and the election petition shall be rejected.

It is, therefore, prayed that Your Lordship may graciously be pleased to pass order in terms of this joint petition and/or pass any further order or orders as to Your Lordship may seem fit and proper.

And for this act of your kindness, the petitioner and the respondent No. 1, as in duty bound, shall ever pray.'

3. Upon hearing the parties, I allowed the prayer by my order dated 19-12-1978 and rendered the following order, an extract of which is quoted hereinbelow:--

'19-12-1978 -- During the course of

the argument, the petitioner and the sole contesting Respondent (Respondent No. 1, Shri Rabindra Nath Malakar) filed an application to the effect that they have agreed for recount to be done under the personal supervision of an officer of this Court to be appointed by me on the terms and conditions set out in the application which reads:

'The petitioner .....fit and proper'

(The joint application is skipped over

aa already incorporated in para 2 of

this judgment). It appears clear from the evider ce and proved documents that the Respondent No. 1 had won the election by a margin of 309 votes only (as per documents Ext. P-3 series and Ext. P-4) and not 695 as reflected in Ext, P-4. It is also admitted that in the round-wise grand total of each candidate as per Form No. 20, the petitioner's total votes in the third round was shown ag 5607 instead of 5631. As such, admittedly, the petitioner had secured 14608 total votes on the basis of the documents themselves and not 14584 as shown in Ext. P-4. It appears clear from the proved documents and admissions made by the Assistant Returning Officer and the Respondent No. 1 that the returned candidates (Shri Rabindra Nath Malakar's) total in the third round of counting was wrongly shown as 3667, thereby showing excess of 362 votes. The total in the said round ought to have been 3305 instead of 3667. As such the total votes shown against Shri Rabindra Nath Malakar as 15279 was

wrong Calculation made by the counting official. It ought to have been 14917. As such, the difference of votes between the petitioner and the Respondent No. 1

comes to 309 votes only and not 695 votes (as shown in official result-sheet in Form No. 20 maintained under Rule 56 (7) of the Conduct of Election Rules, 1961 framed under the Representation of the People Act, 1951). These have been admitted by the counting officials and also the Respondent No. 1. These have been fully set out in the preamble of the agreement filed today. According to the settlement arrived at by the parties and marked by me as Annex-ure 'SETTLEMENT' which shall form a part of the record of this case, the basis of future calculation shall be, according to the parties, that the Respondent No. l, the returned candidate had WOE the election by 309 votes and not by 695 votes. The parties have agreed for sample recount in respect of second ard fourth round and also rescrutiny of all the rejected ballots of all the rounds (1st to 4th rounds). The parties also agree that if upon scrutiny and recount and taking into account the improperly rejected votes the margin of votes between the Respondent No. 1 ard the petitioner is reduced by 35 or more votes i.e., if the margin between the two, namely the Respondent No. 1 and the petitioner is reduced from 309 votes to 274 votes or less there shall be a recount in respect of first and third rounds and upon such recount the result of the election of No. 55 Haji Legislative Assembly Constituency would be declared, on the basis of the recount. It has been stated in para 4 that if upon such scrutiny and recount, as set out in paras 1 and 2 of the 'SETTLEMENT' and on rescrutiny of the rejected ballots of all the rounds, the margin of votes is not reduced by 35 or more votes there shall not be any further recount of the other rounds (first and third rounds) and the election petition shall be rejected and the declaration of the result shall be made on the basis of rescrutiny of second and fourth rounds and also rescrutiny of the rejected ballot papers.

'The petitioner and the Respondent No. 1 are members of the local bar. They are personally present and have signed the application and they agree to abide by the 'SETTLEMENT'

signed by them. The petition is also signed by the learned counsel appearing on behalf of the parties. The agreement is genuine and bona fide.

However, the only question that arises for consideration is as to whether in an election petition, this court can make orders in pursuance to such agreement.

Heard the learned counsel for the parties. The learned counsel for the petitioner submits that there is no prohibition in the Representation of the People Act and as such, there is no impediment in giving effect to a lawful, valid and genuine settlement arrived at by the parties. Counsel submits that the parties having fully understood the consequence of their 'SETTLEMENT' have entered into the same and, as such, nothing can stand in the way of the court in giving effect to the settlement. The learned counsel for the parties relied on Suk-had Raj Singh v. Ram Harsh Misra, AIR 1977 SC 681. I have gone through the decision very carefully along with the learned counsel and I find that their Lordships have categorically stated that recount of disputed votes on the basis of an agreement arrived at between the parties is not violative of any of the provisions of the Representation of the People Act, 1051. In fact, their Lordships were pleased to act upon such a settlement and passed necessary direction for recount in the said case. Being fortified by the arguments advanced and the decision of their Lordships in the Supreme Court I have no hesitation in acting upon the agreement mutually arrived at by the parties.

Accordingly, I direct, in the best interest of the parties that the recount should be done as expeditiously as possible. I direct that the recount of the second and fourth rounds of votes pertaining to all the candidates and also rescrutiny of all the rejected votes shall be done by or under the personal supervision of Shri M. Gurumoorthy, Joint Registrar of this Court along with two Assistants (tellers), namely Shri Paramananda Deka, B. A. and Shri Nagen Chandra Das of the Original Section. Two peons Shri Asirat AH and Shri Gopal Das shall assist in the counting proceedings. Parties, their counsel and agents not exceeding three in number for each

party, shall be permitted to remain present at the time of counting, The recount proceeding shall commence from 11 A. M, tomorrow the 20th Dec. 1978 until the recount and the rescrutiny of the second and fourth rounds and also rescrutiny of the rejected ballots are completed. The venue shall be Court No. 4. The Joint

Registrar shall get a remuneration for tomorrow's counting, a sum of Rs. 250/- and the Assistants shall be paid at the rate of Rs. 75/- each. For the present, the amount shall be withdrawn and paid to the counting staff from the security deposited by the petitioner. The Registrar is to produce the ballot boxes in Court No, 4 tomorrow at 10.30 A. M,

Sent a copy of this order and also the joint petition to the Joint Registrar forthwith.

Let the matter come up at 10.30 A. M. tomorrow for further orders.'

4. While allowing the application I took into consideration the decision of the Supreme Court reported in AIR 1977 SC 68l (Sukhad Raj Singh v. Ram Harsh Misra), In that case the parties agreed that all the disputed votes should be recounted and the re-milt of the election might be declared on the basis of such recounting; the recounting of the undisputed votes done by the High Court under its order dated Nov. 5, 1974 should stand undisturbed; all undisputed votes, and the votes secured by the respective candidates as a result of recounting of disputed votes to be done under the order of the Supreme Court, should both be taken into account for the purpose of determining as to which candidate had polled a largest number of votes. The Supreme Court ordered for a recount in the manner agreed by the parties. The Supreme Court issued direction for recount to be done by or under the personal supervision of the Joint Registrar of the High Court of Allahabad (Lucknow Bench) as the parties agreed that the result of recount and scrutiny as declared by the Joint Registrar would be final. It was held that the agreement entered into between the parties was not violative of any of the provisions of the Representation of the People Act, 1951 including Section 97 thereof.

5. The Joint Registrar submitted reports of scrutiny and recount of ballot papers as ordered by me. As a result

of the scrutiny of 'the rejected votes', the Joint Registrar found that 21 valid votes of the petitioner were found in the bundles of rejected votes and 2

votes of the petitioner were found In the bundle of another candidate, Thus the petitioner secured in all 23 extra votes whereas 21 invalid votes were found in the bundles of the petitioner and 8 votes cast in favour of the Respondent No, 1 were found in the bundles of the petitioner and all these 29 votes had been counted in favour of the petitioner by the counting officials which the petitioner was not entitled to. Thus, minus 29 votes were found against the petitioner on recount and scrutiny of the ballot papers of the petitioner. As such, the net result of the recount and scrutiny of the bundles of the petitioner and rejected votes of the candidates is that the total number of votes polled by the petitioner is reduced by minus 29 plus 23 = minus 6 (six) votes. As such, the margin of difference of votes polled by the petitioner and the Repondent No. 1 is not decreased by 35 votes, on the other hand, it increased by 6 votes. This apart, the Respondent No. I's total increased by 4 votes. However, leaving apart thesa four votes, I find that instead of increase in the margin of votes polled between the petitioner and the Respondent No. 1, the petitioner's total vote is reduced by 6 votes,

6. I quote hereunder 'the summing up of the scrutiny and recounting' as made by the Joint Registrar fextract)--(i) Petitioner:

(i) Petitioner :

1.

Votes declared in fa-vour of the petitioner on scrutiny of the rejected votes of all rounds

--

21 (Vide my report dated 4-1-79)

2.

Votes cart In favour of the petitioner but were found in the bundle of Shri Baruah,

--

2

Total

23

(1)

Votes found invalid in the bundle of the petitioner

--

21

(2)

Votes cast In favour of the Respondent No. I but were wrongly shown as belonging to the petitioner in his bundle.

--

8

Total

--

29

The net result therefore is that the total number of votes polled by the petitioner is reduced by

--

6 (29-23)

(ii) Respondent No. 1 :

(1)

Votes cast in favour of Respondent No. 1 but were included in the bundle belonging to Shri M. Ali

--

5

(2)

Votes cast in favour of Respondent No. 1 but were wrongly included in the bundle of petitioner.

--

8

Total

--

13

Less votes found invalid in the bundle of Respondent No. 1.

--

8

Votes cast in favour of Smt. Das but was wrongly included in the bundle of Respondent No. 1.

--

1

Total

--

9

The net result is that the Respondent No. 1 has gained (13-9) = 4 votes.
The final position therefore is that the margin of votes polled between the petitioner and the Respondent la not decreased by 35 votes.

X X X X X

The rejected and the disputed ballot papers have been sealed in covers 1 and 2 respectively as directed.

Laid for favour of orders. Sd/- M. Gurumoorthy,

Joint Registrar

10-1-79'

7. The report as also the earlier report dated 4-1-1979 as submitted by the Joint Registrar were scrutinised by the counsel for the parties, I have perused the report and scrutinised the rejected ballots as referred to in the report and found the report to be exact and correct. The reports were made available to the counsel for the parties. The petitioner and also the counsel for the petitioner found the report made by the Joint Registrar to be correct and did not contest the correctness of the reports (submitted by the Joint Registrar) in any form

whatsoever. They have fairly conceded that the petitioner was not entitled to any further recount in view of the conditions set out in Clause (4) of the joint application dated 19-12-78 which reads as follows:--

'(4) That on the other hand, if upon such scrutiny and recount of second and fourth rounds the margin of votes is not reduced by 35 or more votes there shall not be

any further recount of other rounds and the election petition shall be rejected.'

8. The said admission has been recorded by me in my order dated 12-1-1979. That apart, I have verified the report and found the same to be correct, exact and authentic. I accept this report wholly and find that the margin of votes was not reduced by 35 or more votes. On the other hand, it increased by 6 votes, if the recount and scrutiny of the petitioner's ballots are only taken into consideration. The net result of the counting and scrutiny of the Respondent No. I's ballots indicates increase of ballots by 4 votes. Under these circumstances, I entirely agree with the counsel for the parties that the petitioner's total votes is not reduced by 35 or more votes, rather decreased by 6 and/or 10 votes. As the margin of votes between the peti-i tioner and the Respondent No. 1, on scrutiny and recount of the second and fourth rounds, did not reduce by 36 or more votes, in terms of the condition of the joint application, the petition is liable to be rejected.

9. That apart, in view of the result of the recount and scrutiny the margin of difference between the petitioner and the Respondent No. 1 did not decrease but instead increased numerically. Under these circumstances. I am constrained to hold that there is no purpose whatsoever for any further scrutiny of the ballots in respect of the first and the third rounds of the counting. As such, I am fully satisfied that no useful purpose would be served in further scrutiny and recount of the first and third rounds.

10. In the result, the application stands rejected for the reasons set out above. During the course of hearing on 12-1-1979 Mr. K. N. Saikia, the learned counsel for the Respondent No. 1 did not seriously press for any cost in view of good personal relationship existing between the petitioner

and the Respondent No. 1 and also in

view of the facts and circumstances ox the case. Under these circumstances, I make no order as to costs.

11. However, the costs and expen ses directed to be paid to the officials who took the trouble of recount proceeding shall be borne by the petitioner out of the

security money deposited by him about which I have already rendered my orders in presence of the Counsel for the parties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com