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Court : Patna

Decided On : Sep-14-2005

Judge : Barin Ghosh, J.

Appeal No. : CWJC Nos. 5738 and 1601 of 2005

Appellant : Raj Kumar

Respondent : Bihar State Election Commission and ors.

Advocate for Def. : Aditya Prakash Sahay and Aparna Bharti, Advs. for respondent No. 7 and R.B. Nath, Adv.

Advocate for Pet/Ap. : Yogesh Chandra, Verma, Sr. Adv. Dhirendra Kumar, JC to G.P. 3

Disposition : Petition dismissed

Judgement :

Barin Ghosh, J.

1. Election petitioner was one Anil Kumar. His election symbol was 'Chain of pearls'. In respect of the self same election, there was another Anil Kumar whose election symbol was 'Blackboard'. After the election was held and in course of counting the votes, in relation to Booth No. 154 of Ward No. 10 the election petitioner lodged a complaint that the votes caste in his favour at the said booth

have been accepted to have been cast in favour of the other Anil Kumar. This objection was not adhered to and recounting was not ordered. The election petitioner thus raised an election dispute by filing an election petition. At Booth No. 154 of Ward No. 10, altogether 296 votes were cast; of them 33 votes were shown to have been received by the other Anil Kumar. From the very beginning it was the contention of the election petitioner that the said 33 votes were, in fact, cast in his favour and if those votes are added to the votes already received by him at other booths, there is no other option but to declare him as the winner of the election. From the very beginning it had been, therefore, the endeavour of the learned Munsif to look into those ballots and to sort out the matter.

2. The moment those ballot papers were exhibited, the writ petitioner approached this Court by filing a writ petition registered as CWJC No. 385/2003 and contended that those ballot papers cannot be looked at. The Court dismissed the writ petition in so far as that contention of the writ petitioner, but at the same time permitted the writ petitioner to make an application to the learned Munsif for recalling the order and not to consider the exhibits at that stage. Subsequent thereto the Munsif passed an order on the basis of the admission of other Anil Kumar and not the election petitioner as made in his written statement that the said 33 votes were wrongly counted in his favour and the same ought to have been counted in favour of the writ petitioner. This order was challenged by filing a writ petition being CWJC NO. 6082/20043.

This Court while disposing of the said writ petition (CWJC No. 6082/2003) vide order Dt. 1.9.2004 observed that when the votes were not properly counted and there was mistake of identity then such evidence should be brought on record and the trial Court should record a finding even on preponderance of probability that the allegations made by the election petitioner, in fact, are proper and stand proved. The Court further observed that simply on the basis of some submissions made by a defendant, who does not appear in the witness box, the Court below cannot record a finding. The Court then observed in the facts and circumstances of the case as was found by the Court that the direction of the Munsif that the ballot boxes be opened and votes be examined by two counsel cannot be approved inasmuch as votes were to be counted and examined by the Presiding

Officer of the Court and that the same is a judicial act and cannot be delegated to counsel. The order of the Court below was accordingly quashed and the writ petition was allowed.

The matter went back to the Court below again. The Court then directed that those 296 ballots be counted in his presence, after dealing with the entire matter by the judgment and order dated 13th January, 2005. He further directed that those ballots shall be counted in his presence with the assistance of the agents of the parties as well as in presence of the Block Development Officer with a direction upon the Block Development Officer to submit a report after such counting to him in a sealed cover. The writ petition registered as CWJC No. 1601/2005 has been filed by the writ petitioner challenging the said decision.

3. During the pendency of the writ petition CWJC No. 1601/2005), those 296 ballots were looked at and 33 ballots were segregated under the supervision of the learned Munsif, when the Block Development Officer as well as the agents of the rival parties were present and the Block Development Officer submitted a report in relation to those 33 ballots in a sealed cover. The sealed cover report was opened by the learned Munsif and the learned Munsif found therefrom that all those 33 ballots were, in fact, cast in favour of the election petitioner and not in favour of other Anil Kumar, who was shown to have originally bagged those votes.

4. The final order of the learned Munsif has been challenged by filing the writ petition being CWJC No. 5738/2005. In the event, the order of the learned Munsif dated 13.1.2005 is quashed, the petitioner will succeed in both the writ petitions.

5. It is the contention of the petitioner that once inter se the parties it has been declared by the Court that counting of ballots is a judicial act and it must be done by the Presiding Officer himself, such act could not be delegated to anyone. It was, therefore, submitted that counting of the ballots in the presence of the Presiding Officer and the declaration of the result thereof secretly by the Block Development Officer in a sealed cover and placing reliance thereon is not permissible.

6. It is not the contention in any of the writ petitions that those 33 ballots, which are still preserved and protected as exhibits before the trial Court, were, in fact, cast in favour of other Anil Kumar and not the election petitioner.

7. It is true that counting of ballots is a judicial work and it can only be ordered after recording of evidence and when a full proof case is made out about counting of ballots. A judicial work cannot be delegated. However, that does not mean that the Judicial Officer himself is required to count each and every ballot. It must be done in his presence, under his supervision and in accordance with the guidelines given by him. In the instant case, the learned Munsif did not direct counting of the ballots. He directed segregation of those 33 disputed ballots out of 296 ballots and that too in his presence, under his supervision as well as in presence of the agents of the rival parties. The Block Development Officer was asked to find out in whose favour those were cast. I do not find in doing so the Munsif had acted in a manner unwarranted. In the instant case, the dispute could be sorted out by only locating those ballots which were cast either in the name of Anil Kumar, the election petitioner, or the other Anil Kumar, out of 296 ballots. That apart there must be transparency in locating ballots cast in favour of the rightful claimant. As was originally done at the initial stage of counting so was done at the later stage by the learned Munsif where the agents of the persons seeking election were permitted to be present at the time of looking into those ballots. The learned Munsif permitted the agents to be present at the time of locating 33 ballots out of 296 ballots which were cast in favour of Anil Kumar. There is no dispute inter se the parties that 33 ballots did contain votes cast in favour of Anil Kumar. The dispute was whether those 33 ballots were cast in favour of the election petitioner Anil Kumar or in favour of other candidate whose name incidentally is also Anil Kumar. This has been sorted out by the learned Munsif in presence of the agents of the writ petitioner. It is not the contention in any of the writ petitions that the agents of the writ petitioner reported to him that any of those 33 ballots was, in fact, cast in favour of the other Anil Kumar and not in favour of the election petitioner.

8. In such view of the matter I am afraid I am unable to interfere with the writ petitions. Both the writ petitions are accordingly dismissed.

