

Chedda Lal Vs. the Sub-divisional Officer, Mainpuri and ors.

Chedda Lal Vs. the Sub-divisional Officer, Mainpuri and ors.

SooperKanoon Citation : sooperkanoon.com/448435

Court : Allahabad

Decided On : Apr-28-1971

Reported in : AIR1972All51

Judge : R.S. Pathak and ;R.L. Gulati, JJ.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Panchayat Raj Rules - Rule 21C

Appeal No. : Special Appeal No. 863 of 1962

Appellant : Chedda Lal

Respondent : The Sub-divisional Officer, Mainpuri and ors.

Advocate for Def. : J.N. Chatterji, Adv.

Advocate for Pet/Ap. : U.N. Khare, Adv.

Disposition : Appeal dismissed

Judgement :

Gulati, J.

1. This is an appeal by Chedda Lal, whose writ petition has been dismissed by the Hon'ble S. N. Dwivedi, J.

2. The appellant and respondent Nos. 3 and 5 contested the election to the office of the Pradhan of Gaon Sabha Kuchela. The appellant secured 684 votes, the respondent No. 3 secured 679 votes, the respondent No. 4 got 13 votes and respondent No. 5 obtained 16 votes. The appellant was declared elected by the Returning Officer. Respondent No. 3 filed an election petition on the ground amongst others that certain valid votes of his were wrongly rejected and certain invalid votes of the appellant were wrongly counted by the Returning Officer. The election petition filed by respondent No. 3 came before the Judicial Officer, who recorded evidence led by the parties. The ballot papers which were kept in a sealed cover by the Returning Officer were sent for by him for inspection and recounting. Before, however, the Judicial Officer pronounced the judgment, the case was transferred to the Sub-Divisional Officer for trial, presumably on the apprehension that a Judicial Officer had no jurisdiction to decide an election petition. On an application being made by respondent No. 3, the Sub-Divisional Officer examined the ballot papers and came to the conclusion that three ballot papers which should have been counted in favour of respondent No. 3 had been wrongly rejected by the Returning Officer and that eleven ballot papers which should not have been counted in favour of the appellant had been wrongly counted for him. Accordingly he added three votes to the total votes of the respondent No. 3 and deducted eleven votes from the total votes secured by the appellant. In this way the Sub-Divisional Officer found that the appellant had secured 673 votes while respondent No. 3 had secured 682 votes. Accordingly the Sub-Divisional Officer set aside the election of the appellant and declared a casual vacancy. The appellant challenged the order of the Sub-Divisional Officer by means of a writ petition which has been dismissed by Hon'ble Dwivedi, J. Hence this Special Appeal.

3. Only one point has been urged by Sri V. N. Khare, who appears for the appellant. His submission is that one of the contentions raised before the Sub-Divisional Officer was that the ballot papers had been tampered with sometime during the interval between the first counting by the Returning Officer and the recounting by the Sub-Divisional Officer. In support of this contention he had relied upon the following four circumstances:--

'1. No argument was advanced on behalf of the third respondent before the Judicial Officer that certain ballot papers were wrongly rejected for him and that certain ballot papers were wrongly counted for the petitioner :

(2) The Returning Officer, who was the Block Development Officer, was cross-examined neither before the Judicial Officer nor, before the Sub-Divisional Officer by the third respondent on the question of wrong counting of ballot papers;

(3) The third respondent has said nothing in his statement about the wrong counting of ballot papers and,

(4) The envelopes did not bear the signatures of the Block Development Officer or the Judicial Officer.'

He goes on to argue that the Sub-Divisional Officer rejected this contention on the ground that the seals on the envelopes containing ballot papers were found intact. He did not take into consideration any of the four circumstances pointed out by the appellant. The finding of the Sub-Divisional Officer that the envelopes containing the ballot papers had not been tampered with, according to the learned counsel, suffers from a patent error of law. The learned Single Judge has found that the circumstances Nos. 2 and 3 were not pointed out to the Sub-Divisional Officer at any time, while the matter was pending before him. In other words the Sub-Divisional Officer was never called upon to consider two out of four circumstances.

4. As regards the remaining circumstances they were mentioned in the application filed by the petitioner, but the order of the Sub-Divisional Officer does not show that he considered them. The learned Single Judge, however, has expressed the opinion that the fact that the seals on the envelopes were found to be intact was a piece of evidence upon which the finding of the Sub-Divisional Officer could be based. The finding that the ballot papers had not been tampered with, therefore, cannot be said to be without evidence. A finding of fact which is not based upon evidence can be said to suffer from a patent error of law, but a finding which is based upon some evidence does not suffer from any such infirmity, even though some other evidence might not have been considered. With respect we find that the learned Single Judge has set out the point rather too widely. It is not in every

case that where some material evidence has not been considered no question of law arises.

5. In *Commr. of Income-tax, Punjab v. Indian Woollen Textiles Mills* : [1964]51ITR291(SC) while dealing with a case under the Income-tax Act, the Supreme Court held that if there is some evidence to support the Income-tax: Appellate Tribunal's finding of fact, it is not open to the Court to discard it even if, on a review of the evidence, the court might arrive at a different conclusion. It must, however, appear that the Tribunal had considered the evidence covering all the essential matters and had not misdirected itself in basing its conclusion upon some evidence ignoring other essential matters. Finally the Supreme Court observed that if the Appellate Tribunal did not consider the evidence covering all the essential matters and based its finding upon some evidence only, ignoring other essential matters, that would amount to a misdirection in law and the finding would give rise to a question of law.

6. In the instant case the finding that the ballot papers had not been tampered with may be a finding of fact but such a finding can be successfully assailed in a writ petition, if it can be shown that the Sub-Divisional Officer had recorded that finding on the basis of some evidence leaving out of consideration other material evidence or circumstances.

7. The real question, that, however, arises is as to whether the four circumstances relied upon by the appellant or any one of them was an essential circumstance. In our opinion, circumstances Nos. 1 to 3 are plainly immaterial and non-essential. The only circumstance which can be said to be directly material is the one mentioned at serial No. 4, namely, that the envelopes did not bear the signatures of the Block Development Officer or the Judicial Officer. We asked the learned counsel to show if there was any provision in the Panchayat Raj Act or its rules which requires the signature of the officer concerned to be affixed on the envelopes besides the seal. Learned counsel for the appellant has not been able to point out any statutory provision in that behalf. We have ourselves gone through the rules and find that there is no rule which requires the envelopes containing the ballot papers to be signed. Rule 21-C of the Panchayat Raj Rules requires that the

box containing the polled ballot papers should be sealed. There is no requirement that the signature of the officer concerned should also be affixed on the box. There is no direct rule dealing with the sealing of the envelopes containing the counted ballot papers. However, we can safely assume that such envelopes should be properly sealed. But in the absence of any express provision for the signature upon them, we do not think that the want of signature would be a material circumstance.

8. We, therefore, see no force in this appeal and the same is dismissed. But in the circumstances of the case, we make no order as to costs.

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