

Ashok Jain, Adv. Vs. Xiiiith Additional District Judge, Agra and Others

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Court : Allahabad

Decided On : Oct-15-1999

Reported in : 2000(1)AWC51; (1999)3UPLBEC2391

Judge : Alope Chakrabarti, J.

Acts : Uttar Pradesh Municipal Corporation Act, 1959 - Sections 6, 12(3) and 71

Appeal No. : C.M.W.P. No. 22305 of 1999

Appellant : Ashok Jain, Adv.

Respondent : Xiiiith Additional District Judge, Agra and Others

Advocate for Def. : Senior Counsel and ;Ratnakar Bharti, Adv.

Advocate for Pet/Ap. : Ravi Kant, Adv.

Judgement :

Alope Chakrabarti, J.

1. Challenging the order dated 22.5.1999 passed by the learned XIII Additional District Judge. Agra. directing Inspection of ballot papers, this writ petition was filed.

2. Admitted background facts are that there was an election for the office of Deputy Mayor of Nagar Nigam, Agra, on 21.6.1998. The petitioner was elected

therein. The respondent No. 2 filed election petition challenging the election of the petitioner wherein subsequently an application was filed by the respondent No. 2 for inspection of seven ballots, which were rejected as invalid at the time of counting.

3. The respondent No. 2 has filed counter-affidavit and has contested the proceeding.

4. Heard Mr. Ravi Kant learned counsel for the petitioner and Mr. Ratnakar Bharti learned counsel for the respondent No. 2

5. The contention of the learned counsel for the petitioner is that as the respondent No. 2 an election-petitioner did not make out any case either showing any illegality either in the pleading or in evidence the impugned order for inspection of ballots is bad in law. The learned counsel for the respondent No. 2 has contended that the pleadings and evidence of the respondent No. 2 were sufficient to satisfy the respondent No. 1 and. therefore, the appropriate order was passed which should not be interfered.

6. On behalf of the petitioner law In this regard has been relied on as contained in Section 71 of U. P. Municipal Corporations Act, 1959 and the law decided in the case decided by the Full Bench as reported in Ram Adhar Singfi v. District Judge Ghazipur, 1985 UPLBEC 317. Krishna Pal Singh v. Bhawani Singh, 1985 UPLBEC 794. Sheo Nath Rai Sharma v. Krishna Pal Singh. 1984 UPLBEC 1263 and Tarif Giri v. Additional Sub-Divisional-Officer, Hapur, 1986 UPLBEC 183.

7. On behalf of the respondent No. 2 reliance was placed on the judgments in the case of Suresh Prasad v. Jai Prakash, AIR. 1975 SC 376. I. V. Kesha Sema v. Hokishe Sema. AIR 1996 SC 1842. Era Sezian v. T. R. Balu. AIR 1990 SC 838 and Sethi Roop Lal v. Malti Thapar. 1994 (2) SCC 579.

8. Upon considering the aforesaid, it appears that admitted position in law as held in the case of Suresh Prasad (supra), is that such recounting or inspection of ballots In an election petition can be directed where :

'(a) the election-petition contains an adequate statement of all the material facts on which the allegation of irregularity or illegality in counting are founded.

(b) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting, and

(c) The Court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.'

9. In view of the aforesaid, the pleadings, as relied on by both the parties, are contained in paragraph 12 of the election petition itself which is as follows :

'12. That according to the respondent the petitioner has got the 47 votes in his favour and the respondent No. 1 has got 50 votes in his favour and the respondent Nos. 2 to 5 with the collusion of the respondent No. 1 illegally cancelled the 7 votes of petitioner inspite of clear and specific mark in front the name of the petitioner as well as in the column of the petitioner in the ballot paper, to give defeat to the petitioner in the election of Up Nagar Pramukh. On the other hand the respondent Nos. 2 to 5 with the collusion of respondent No. 1 got only 46 votes in the aforesaid election but the respondents with the collusion of each other allowed 2 votes illegally which cannot be accepted and has to be cancelled and elect the respondent No. 1 Up-Nagar Pramukh, Agra.'

10. As according to the law as contained in Section 71, the grounds for challenge as contained In the election petition are also relevant, such grounds as contained in paragraph 13 of the election petition are also set out hereinbelow :

'13. That the declaration of election of the respondent No. 1 is illegal on the following grounds :

(a) Because the act of the respondent Nos. 2 to 5 in collusion of the nominated members in electoral list is against the facts procedure and law of the U. P. Municipal Corporation Act.

(b) Because the respondents have violated the provisions of U. P. Municipal Corporation Act.

(c) Because the conferment of voting rights on the nominated member is contrary to the express provisions of Sections 6 and 12 (3) of the Act.

(d) Because clear cut bar of voting right in the election of Up Nagar Pramukh on the nominated members.

(e) Because the election of Up Nagar Pramukh is held at an election meeting of the corporation and being a meeting the nominating members have no right to cast their votes.

(f) Because the nominated members did not come in the definition of the proportion representative.

(g) Because the respondent Nos. 2 to 5 illegally accepted the ballot paper which cannot be accepted.

(h) Because the respondents have illegally accepted the votes of nominated members.

(i) Because the vote of nominated members are void as they have no right to cast their votes.

(j) Because the respondents have not obeyed and has not complied the provisions of the U. P. Municipal Corporation Act.'

11. The evidence has also been available here at Annexure-8 to the writ petition being the evidence of the respondent No. 2.

12. Upon a perusal of the aforesaid, it appears that in paragraph 12 of the election petition the relevant pleading relating to the aforesaid seven votes is as follows :

'.....The respondent Nos. 2 to 5 with the collusion of the respondent No, 1 illegally cancelled the seven votes of petitioner inspite of clear and specific mark in front of the name of the petitioner as well as in the column of the petitioner in the ballot

paper to give defeat to the petitioner in the election of Up Nagar Pramukh.'

13. In the grounds as contained in paragraph 13 of the writ petition, apparently the grounds (a) to (f) and (h) to (j) are all relating to votes of nominated members which were not directed to be inspected and are not subject-matter for consideration here. The only other ground available in the pleading is ground (g) which states that the respondent Nos. 2 to 5 illegally accepted the ballot paper which cannot be accepted. It does not appear that the same in any event related to the presently disputed seven ballot-papers as those seven ballot-papers admittedly had not been accepted.

14. In the evidence also, the respondent No. 2 has stated that seven votes in favour of the respondent No. 2 were rejected illegally but he was unable to tell which seven votes were so rejected. The respondent No. 2 was unable to produce any copy of the complain made after the counting and he also stated that during counting he only made oral objection and no written complain was made at that stage. In his evidence, the respondent No. 2 also stated that neither he got it noted on the ballot paper nor he wrote any written complain as regards the marks on the disputed ballot papers. In course of cross-examination, the respondent No. 2 admitted that if proper mark is not affixed against the appropriate vacant space in front of the name of the candidate, the ballot becomes invalid.

15. The only other material which requires consideration is the application for inspection a copy whereof is at Annexure-5 to the writ petition. The said application does not disclose any particular in respect of the disputed seven votes.

16. In view of the above discussion, it is apparent that pleading relating to seven votes in dispute does not disclose material particulars on which allegation of irregularity can be founded. There is no ground at all taken in the election petition relating to the said disputed seven votes. From the evidence also, neither any particulars of the ballots nor of complaint have been stated categorically for the purpose of making out a case satisfying the law requiring inspection of ballots.

17. Law is settled that privacy of ballots is of great importance and unless providing pleading and evidence sufficient case is made out against a particular

ballot, no inspection of ballots should be made affecting the secrecy of ballots.

18. In view of the aforesaid finding, the writ petition is allowed and the Impugned order dated 22.5.1999 at Annexure-9 to the writ petition is hereby quashed.

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