

Anuradhika Vs. Additional District Judge, Azamgarh and anr.

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Court : Allahabad

Decided On : Jan-04-2002

Reported in : 2002(1)AWC622

Judge : R.R. Yadav, J.

Acts : Uttar Pradesh Kshetra Panchayats (Election of Pramukhs and Up Pramukhs and Settlements of Election Disputes) Rules, 1994 - Rule 26(3)

Appeal No. : C.M.W.P. No. 43947 of 2001

Appellant : Anuradhika

Respondent : Additional District Judge, Azamgarh and anr.

Advocate for Def. : R.K. Yadav, Adv. and ;S.C.

Advocate for Pet/Ap. : A. Khare and ;J.P. Singh, Advs.

Disposition : Petition dismissed

Judgement :

R.R. Yadav, J.

1. Heard the learned counsel for the petitioner.

2. Perused the order Impugned dated 13.12.2001 passed by the Election Tribunal, a copy whereof is filed and marked as Annexure-7 to the writ petition.
3. By filing the Instant writ petition, the petitioner questions the legality and validity of the order impugned passed by Additional District Judge (Court No. 1), Azamgarh, whereby inspection of ballot papers is directed in an election petition filed by respondent No. 2.
4. With the assistance of the learned counsel for the petitioner Sri Ashok Khare. I have gone through the order passed by the Election Tribunal. The Election Tribunal has given cogent and convincing reasons in support of its order Impugned. I am objectively satisfied that the order Impugned passed by the Election Tribunal is eminently Just and proper. By passing the Impugned order, the Election Tribunal intended to do material justice between the parties. The Election Tribunal has committed no error in passing the order impugned relying on catena of decisions rendered by High Court and Supreme Court.
5. It is submitted by the learned counsel for the petitioner that indefinite allegations cannot be basis for directing inspection of ballot papers. It is urged by the learned counsel for the petitioner that inspection of ballot papers in an election petition can be ordered only if election petition contains an adequate statement of all the material facts on which the allegation of irregularity or illegality in counting is founded, supported with evidence to prima facie believe that there has been mistake in counting. Lastly, it is submitted that Election Tribunal can order for inspection of ballot papers only in such a situation where passing such order is Imperatively necessary to decide the dispute and to do complete Justice between the parties. In support of his aforesaid contention, he placed reliance on a decision rendered by the learned single Judge of this Court in case of Ashok Jain, Advocate v. XIIIth Additional District Judge, Agra and Ors., 2001 (1) AWC 51 : 2000 (1) JCLR 281 (All).
6. There is no quarrel with the aforesaid submissions made by the learned counsel for the petitioner, but in the facts and circumstances of the present case, all these conditions precedent are satisfied. It is revealed from perusal of Election Petition (Annexure-2 to the writ petition) that it is specifically averred in the Election

Petition that during counting of votes four ballot papers were found with special marks by which electors of these votes can be identified. Out of four votes, one vote was rejected, but three votes were counted in favour of petitioner which is per se illegal within the meaning of Rule 26 (3) (d) of U. P. Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994. For ready reference, the aforesaid Rule is quoted hereInbelow :

'Rule 26. Procedure at the counting.--(1)

(2)

(a)

(b)

(c)

13) A ballot paper shall be rejected as Invalid on which--

(a)

(b)

(c)

(d) any mark is made by which the voter may afterwards be identified.'

7. From discussion made hereinabove, there is adequate statement of all material facts onwhich the allegation of irregularity in counting is established and upon which impugned order for inspection of ballot papers is founded.

8. Coming to the second condition precedent as suggested by the learned counsel for the petitioner Sri Ashok Khare to the effect that the allegations are to be proved for believing that there has been a mistake in counting. Suffice it to say in this regard that expression 'proved' is defined under Section 3 of Indian Evidence Act which reads thus :

'Section 3. Proved.--A fact is said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists'.

In the present case from attending facts and circumstances, the Election Tribunal has committed no error in believing that there was irregularity in counting of votes.

9. As regards last condition precedent about prima facie satisfaction of the Election Tribunal directing inspection of ballot papers imperatively necessary to decide the dispute to do complete and effective justice between the parties, it is held that the Election Tribunal for its prima facie satisfaction has given cogent and convincing reasons, with which I am at one.

10. My aforesaid view is buttressed from a decision rendered by Full Bench of this Court in case of Ram Adhar Singh v. District Judge. Ghazipur and others, 1985 All CJ 196. wherein the learned Judges constituting the Full Bench ruled in paragraph 12, which reads thus :

Paragraph 12--

'In the case of Bhabhi v. Sheo Govind and Ors. AIR 1975 SC 2117. the Supreme Court approved the principles for inspection of ballot papers laid down in Ram Sewak's case, (supra) and after noticing its decisions in the cases of Dr. Jagit Singh v. Giani Kartar Singh, AIR 1966 SC 773 ; Jitendra Bahadur Singh v. Krishna Behari, AIR 1970 SC 276 ; Shashi Bhushan v. Prof. Balraj Madhok, AIR 1972 SC 1251 ; Sumitra Devi v. Sheo Shanker Prasad Yadav, AIR 1973 SC 215 ; Beliram Bhalaik v. Jai Behari Lal Kachi, AIR SC 283 : Baldeo Singh v. Teja Singh. AIR 1975 SC 693 and Suresh Prasad Yadav v. Jai Prakash Mishra, AIR 1975 SC 376. the Court observed thus :

Thus, on a close and careful consideration of the various authorities of this Court from time to time, It is manifest that the following conditions are imperative before a Court can grant Inspection, or for that matter sample inspection of the ballot papers :

(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and Indefinite allegations ;

(2) That before Inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts ;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount ;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection, U is necessary and imperative to do fu' justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to Indulge in a roving inquiry with a view to fish materials for declaring the election to be void ; and

(6) That on the special facts of a given case, sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.'

11. From the discussions made hereinabove, the Election Tribunal has committed an error in arriving at a conclusion that to do full justice between the parties order for Inspection of ballot papers is necessary and imperative. The Election Tribunal instead of taking idealistic view, it has taken pragmatic view directing inspection of ballot papers to do full Justice between the parties. In the case on hand, it cannot be said that inspection of ballot papers has been ordered by Election Tribunal for fishing and roving inquiry, therefore, I decline to issue a prerogative writ making the order Impugned dated 13.12.2001 Ineffective.

12. Upshot of the aforesaid discussions is that the instant petition lacks merit and it is hereby dismissed in limine.