

Smt. Shati Devi Vs. Additional Distrist and Sessions Judge, Karvi and Others

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Court : Allahabad

Decided On : Sep-02-1998

Reported in : 1998(3)AWC2297; (1999)1UPLBEC772

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 12C and 12(C)(2); Uttar Pradesh Panchayat Raj (Election of Members, Pradhans and Up-Pradhans) Rules, 1994 - Rules 53 and 54

Appeal No. : C.M.W.P. No. 24382 of 1998

Appellant : Smt. Shati Devi

Respondent : Additional Distrist and Sessions Judge, Karvi and Others

Advocate for Def. : S.C., ;G.S. Dwiwedi and ;N.C. Tripathi, Advs.

Advocate for Pet/Ap. : S.K. Singh and; V. K. Singh, Advs.

Judgement :

S. R. Singh, J.

1. Petitioner, Smt. Shanti Devi and respondent, Smt. Babua alias Butuwa amongst others were horn-locked in election for the office of Pradhan of Gram Panchayat, Kotilihayi. Vikas Knand Manikpur, district Banda, held in the year 1995. The

petitioner and the third respondent both secured 187 votes each which is the highest number of votes polled amongst the contesting candidates. In an effort to break the stalemate, the respondent No. 3 moved an application before the Returning Officer, suggesting that the decision between the two candidates be taken by means of 'toss'. A copy of the application has been annexed as Annexure-1 to the petition. It would appear that the suggestion was not demurred to by the petitioner as a result of which the Returning Officer was induced to the expedient of toss and get the result accordingly. On the coin being flipped, it turned the wheel in favour of the petitioner and against the respondent No. 3 and the result was declared accordingly vide Order dated 20.4.95. The matter, however, escalated into institution of an election petition under Section 12C of the U. P. Panchayat Raj Act, 1947, before the Prescribed Authority, who allowed the petition by means of the Order dated 30.3.98 on the ground that declaration of result by toss was contrary to rules. The Returning Officer was accordingly directed by the Prescribed Authority to relegate himself to draw of lots for decision on the result between the petitioner and the 3rd respondent. The petitioner preferred a revision against the order of the Prescribed Authority. The revision came to be dismissed by the learned Addl. District Judge (Chatrapad Sahu Ji MaharajNagar) vide judgment and order dated 17.7.1998. These are the two orders which are sought to be quashed by certiorari.

2. I have heard Sri S. K. Singh, appearing for the petitioner and Sri N. C. Tripathi, appearing for the third respondent. The other respondents are mere formal parties and as such notices were not issued to them.

3. Counsel appearing for the petitioner canvassed, inter alia, that the third respondent having opted for the result of the election by way of toss, was estopped arguing the toss and articulating in her own interest a self-created illegality after the result went against her. In any case, contended the learned counsel, the result of the election in the present case was not materially affected merely because it was declared by tossing of a coin and not by draw of lot. Sri N. C. Tripathi, appearing for the contesting respondent submitted, in repudiation, that Rule 54 of the U. P. Panchayat Raj (Election of Members. Pradhans and Up-Pradhans) Rules, 1994, implicitly provides that if after the counting of votes is

completed, it is found that any of the candidates have secured equal number of votes and addition of one vote would turn the wheel in favour of any of these candidates, the Election Officer shall forthwith decide between those candidates by draw of lot and proceed as if the candidate on whom the lot falls, had an additional vote and the Returning Officer illegally decided to toss for it ; the rule of estoppel by conduct would not operate against statute ; the declaration of result by flipping a coin would not meet the standard of practicability in the event of more than two candidates securing equal number of votes : and, therefore, the Prescribed Authority was justified in setting aside the election of the petitioner. The nub of the submission made by the learned counsel is that in the event of contestants securing equal number of votes, the declaration ought to have been made in the manner prescribed by Rule 54 of the Rules aforesaid and any declaration made in contravention of the Rules, would wear the taint of invalidity on its forehead.

4. I have bestowed my anxious consideration to the submissions made across the bar. Section 12C of the U. P. Panchayat Raj Act. 1947, envisages that the election of a person as Pradhan or as a member of the Gram Panchayat, etc. shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground (a) that the election has not been a free election by reason that corrupt practice of bribery or undue influence has extensively prevailed at the election, or (b) that the result of the election has been materially affected--(i) by the improper acceptance or rejection of any nomination or ; (ii) by gross failure to comply with the provisions of the Act or the rules framed thereunder. Sub-section (2) of Section 12C of the Act defines the terms 'corrupt practice of bribery' and 'undue influence' for the purposes of the Act but these are the terms not germane to the controversy involved in this petition. In the present case, the question of improper acceptance or rejection of any nomination papers is also not involved and the only question that begs answer is whether declaration of result of the election by the expedient of toss and not by draw of lot, could be a facet involving gross failure to comply with the provisions of the Act so as to warrant declaration of the result being set aside by means of an election petition under Section 12C of the Act. Rules 53 and 54 of the U. P. Panchayat Raj (Election of Members. Pradhans and Up-Pradhans) Rules, 1994,

being germane to the controversy involved in this petition, are excerpted below :

'53. Declaration of result.--The Nirvachan Adhikari shall declare the candidates securing the highest number of votes in their respective constituencies to be duly elected.

54. Equality of votes.--If after the count of the votes is completed, an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of those candidates to be declared elected, the Nirvachan Adhikari shall forthwith decide between those candidates by lot and proceed as if the candidate on whom the lot falls had an additional vote.'

5. Equality in votes admittedly existed between the petitioner and the third respondent and according to Rule 54 of the Rules aforesaid, the Returning Officer was enjoined in law to decide between the two candidates by lot and proceed as if the candidate on whom the lot falls, had an additional vote as visualised by Rule 54 but the question is whether non-compliance with Rule 54 vitiated the declaration of the result of the election. The word 'lot' has been defined in the Law Lexicon, inter alia, to mean 'anything used in determining a question by chance ; or without men's choice or will ; a resort to chance for the determination of question or for arriving at a result'. Toss' on the other hand has been defined in the New Lexicon Webster's Dictionary to mean as under ;

'to flip a coin into the air and let it fall heads or tails as a method of letting fate decide whether the course of action previously agreed on if the coin falls heads is to be put into operation or that agreed on if it falls tails, to agree with someone to let a matter be settled in this way.....'

6. It is thus deducible that there is no noticeable difference between the term 'lot' and 'toss'. Both the terms used in the context connote determination of something by chance. Rule 54 of the rules, indubitably, envisages the result of election in the event of equality of votes, to be decided by draw of lot but upon regard being had to the fact that equality of votes in the present case was between two candidates only, it cannot be said that declaration of result by toss materially affected the result of the election so as to warrant interference under Section 12C (1) (b) (ii) of

the Act. Declaration by toss would have, no doubt, materially affected the result of the election. If there had been an equality of votes between three or more candidates but in the present case the equality of votes was between two candidates only and, therefore, decision taken by the Returning Officer by toss would not materially affect the result of election which was not liable to be called in question except on the ground, inter alia, that the result of the election has been materially affected by gross failure to comply with the provisions of the Act and the rules made thereunder. Neither the Prescribed Authority nor the revisional court addressed itself to the question whether the result has been materially affected merely because the Returning Officer decided the fate of the petitioner and the third respondent by flipping a coin on the application moved by the third respondent herself. True, 'estoppel' cannot prevent or hinder the performance of a statutory duty or exercise of a statutory discretion which is intended to be performed or exercised for the benefit of the public or a section of the public' and 'it is impossible in law for a person to allege any kind of principle which precludes him from alleging the invalidity of that which the statute has, on grounds of general public policy enacted shall be invalid' but regard being had to the element of uncertainty equally involved, both in 'toss' and 'lot' and the language employed in Section 12C of the Act, I am of the considered view that the declaration of the result of election by 'toss' in the event of equality of votes between two candidates, would by itself not Invalidate the declaration in that the result cannot be said to have been materially affected merely because it was declared by toss. The third respondent was herself a privy to the illegality if at all committed by the Returning Officer in not proceeding in accordance with the provisions of Rule 54 of the Rules and it is still uncertain if she will win the election provided the result is declared by drawing lot as prescribed by Rule 54 of the Rules. She was, therefore, not entitled to get the election of the petitioner set aside under Section 12C of the Act.

7. In the result, the petition succeeds and is allowed. The impugned orders dated 30.3.98 and 17.7.98 are quashed.