Trilokinath Vs. Vinod Kumar

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Court : Madhya Pradesh

Decided On : Apr-22-2003

Reported in : 2003(3)MPHT35; 2003(3)MPLJ422

Judge : S.K. Pande, J.

Acts : Madhya Pradesh Municipal Corporation Act, 1956 - Sections 441F

Appeal No. : Civil Revision No. 434/2003

Appellant : Trilokinath

Respondent : Vinod Kumar

Advocate for Def. : P.D. Tiwari, Adv.

Advocate for Pet/Ap. : N.S. Kale, Adv.

Disposition : Civil revision. Petition allowed

Prior history : From the Judgment and Order dated 29-3-2003 of the Court of Ist Addl. District Judge, Sagar,In E.P. No. 15/2000

Judgement :
ORDER

S.K. Pande, J.

1. Being aggrieved by order dated 29-3-2003 in Election Petition No. 15/2000 passed by Ist A.D.J., Sagar, whereby the election of the petitioner to the post of Speaker was set-aside instead the respondent was declared duly elected, the petitioner - a non-applicant has preferred this revision under Section 441-F of M.P. Municipal Corporation Act, 1956.

2. The facts in brief arc, petitioner Trilokinath and respondent Vinod Kumar were elected as Councillor of Municipal Corporation, Sagar. Including the Mayor total 49 persons were eligible to vote in the election to the post of Speaker. Petitioner-Trilokinath and respondent Vinod Kumar alone were the candidates for the election conducted by Returning Officer/ Collector, Sagar on 124-2000. On opening of ballot box 49 ballot papers in total were found, however, 5 ballot papers were tagged with Rs. 5/- currency note. Removing 5 currency notes, those 5 ballot papers were also counted in favour of petitioner-Trilokinath. It was objected upon by the respondent Vinod Kumar, making a statement to declare him elected as he obtained 24 votes as against 20 votes of Trilokinath. The Returning Officer/Collector, Sagar did not paid heed to the request and declared petitioner-Trilokinath as elected by one vote. Therefore, under Section 441 of the M.P. Municipal Corporation Act, 1956, respondent Vinod Kumar preferred Election Petition No. 15/2000. It was contended that by use of corrupt practice petitioner Trilokinath influenced 5 voters and to seek their identity asked them to enclose Rs. 5/- currency note in the ballot paper. The 5 ballot papers containing Rs. 5/- currency note ought to have been treated as invalid. The respondent Vinod Kumar should have been declared elected. The petition was resisted by the petitioner/non-applicant Trilokinath on the ground that Rs. 5/- currency notes were not found with any ballot paper. Petitioner Trilokinath secured 25 votes as against respondent who had secured 24 votes. Therefore, he was rightly declared as returned. Allegation of 5 ballot papers enclosed with Rs. 5/-currency note were bald, frivolous and after thought. Immediately after the counting, no allegation was made regarding the ballot papers having enclosed with Rs. 5/- currency notes.

The A.D.J., Sagar, vide order dated 29-3-2003 held that 5 ballot papers were found/enclosed with Rs. 5/- currency note. Therefore, these votes in favour of petitioner Trilokinath ought to have been treated by the Returning Officer as invalid. Accordingly, the petition under Section 441-F was allowed and respondent Vinod Kumar was declared as elected. Petitioner assails the order aforesaid on the ground that the allegations were frivolous and after thought and should not have been accepted in the evidence.

3. In election petition Para 7 it was stated that petitioner/non-applicant adopted corrupt practice by asking the voters, to enclose Rs. 5/-currency note at the time of casting vote in his favour so as to be identified subsequently. Further allegations of corrupt practice were not pleaded. On the basis of the evidence of alleged Rs. 5/- currency note not being found enclosed with 5 ballot papers, the Court below recorded a finding that the petitioner/non-applicant adopted corrupt practice. The allegation of corrupt practice must be clear and specific and should not be left for Court to infer by adopting process of involved reasoning. A charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It vitiates election of the candidate concerned. Pleadings to the instances of corrupt practice must therefore be adequately pleaded. The standard of proof must be strict, has been laid down in the judgment reported in AIR 1975 SC 667. Learned Counsel for the respondent/ applicant during the course of argument rightly conceded that in the absence of adequate pleadings of corrupt practice in election petition, the question of corrupt practice being adopted could not have been gone into and the respondent/applicant as such has failed to substantiate the allegations of corrupt practice. With this the only question that remains for determination is, whether at the time of counting of votes 5 ballot papers were found carrying Rs. 5/- currency notes enclosed with them.

4. Section 441-B (1) (d) (iii) of M.P. Municipal Corporation Act lays down that for improper acceptance or refusal of any vote which is void, the Court shall declare the election of the returned candidate to be void. Vinod Kumar (P.W. 1) has stated that on opening of ballot box 5 ballot papers were found/containing Rs. 5/- currency note tagged with. These votes were casted in favour of petitioner/non-applicant Trilokinath. The Returning Officer/Collector was requested not to count these votes in favour of petitioner/non-applicant Trilokinath. Ignoring the request the Returning Officer/Collector removed the currency notes and counted the votes

in favour of petitioner/non-applicant Trilokinath. Harinarayan Yadav (P.W. 3) was said to be election agent of Vinod Kumar (P.W. 1) at the time of counting. Vishnu Kumar Khatik (P.W. 4) belongs to the political party of P.W. 1. These witnesses have stated that they were present at the time of counting and 5 votes casted in favour of petitioner/non-applicant Trilokinath were carrying Rs. 5/- currency note tagged with them. These votes were also counted in favour of petitioner/non-applicant. As against this Trilokinath (D.W. 1) has stated that none of the ballot paper enclosed with Rs. 5/- currency note was found in the ballot box. The statement of Vinod Kumar (P.W. 1), Harinarayan Yadav (P.W. 3), Vishnu Kumar Khatik (P.W. 4), to the effect are false. Statement of Trilokinath (D.W. 1) has been supported by Ajay Kumar Parmar (P.W. 2), Ajay Kumar Bhardwaj (D.W. 3). In support of his statement Vinod Kumar (P.W. 1) has referred to certain news paper clipping marked at Ex. P-3, Ex. P-4, Ex. P-5. These clippings were read by the Court below in favour of statement of Vinod Kumar (P.W. 1). In the judgment reported in AIR 1988 SC 1274, it has been laid down that facts stated in news item published in a news paper is an hearsay in nature. Such a news item would not be admissible in evidence. Judicial notice of facts stated in news item cannot also be taken. The correspondent of any of the news paper (Ex. P-3, Ex. P-4, Ex. P-5) was not examined to state the source of news item published in local Hindi Daily the next day of the counting on 13-1-2000. In Ex. P-3 news item it has been made clear that at the time of election-counting correspondents were not permitted to remain present. Therefore, the Court below has erred in reading Ex. P-3, Ex. P-4, Ex. P-5 in support of the contention raised by Vinod Kumar (P.W. 1).

5. The election of Speaker was conducted by the Returning Officer/Collector under the M.P. Municipal Corporation (Election of Speaker) Rules, 1998. Rule 11 is as under :--

'The presiding authority shall open the ballot box and proceed to scrutinise the ballot papers. If on any ballot paper there is 'x' mark against more than one name or there is any mark or sign on a ballot paper by which the voter can be identified, such ballot papers shall be invalid and shall not be counted. The decision of the presiding authority shall be final in this respect. The valid votes shall then be counted by the presiding authority and ballot paper arranged in respect of each candidate.'

Ex. P-6 are the minutes of election dated 12-1-2000 held by Returning Officer/Collector, Sagar. There is nothing to indicate that as alleged 5 ballot papers were found carrying identification mark as they were enclosed with Rs. 5/- currency note each. Vinod Kumar (P.W. 1) has stated that he objected to the counting of aforesaid votes in favour of petitioner/non-applicant Trilokinath. Such an objection in writing was not given and even if made oral ought to have been found place in the minutes of proceedings dated 12-1-2000 (Ex. P-6). Written complaint (Ex. P-1) was sent to the Returning Officer/Collector on 13-1-2000 under certificate of postings (Ex. P-2) was rightly pointed out by the petitioner/non-applicant that taking advantage of created news item published in local Hindi Daily Ex. P-3, Ex. P-4, Ex. P-5 sending Ex. P-l proposed on 13-1-2000 was frivolous and after thought. The statement of Vinod Kumar (P.W. 1), Harinarayan (P.W. 3), Vishnu Khatik (P.W. 4) were wrongly evaluated having in centre the news item published in local Hindi Daily Ex. P-3, Ex. P-4, Ex. P-5. The finding recorded by Court below cannot be said to be legal. Balram Dhobi (P.W. 2) himself was a voter. He has stated that only 4 ballot papers each containing Rs. 5/- currency notes were found in the ballot box. From the statement of this witness no certainty to the statement of other Vinod Kumar (P.W. 1), Harinarayan (P.W. 3), Vishnu Kumar Khatik (P.W. 4) could have been attached as Vinod Kumar (P.W. 1), Harinarayan (P.W. 3), Vishnu Kumar (P.W. 4) belong to the same political party and are highly interested and seeking to set-aside the election of the return candidate as the same would make Vinod Kumar (P.W. 1) as duly returned. The entire election cum counting ought to be seen from the minutes Ex. P-6. There is nothing that any ballot paper was found containing an identification mark having been enclosed with Rs. 5/- currency note. The votes were rightly counted by the Returning Officer in favour of petitioner/non-applicant Trilokinath.

6. Before the Court below an application was filed by the respondent/applicant to direct the Returning Officer to produce the ballot papers before the Court for its inspection. This application was rejected by the Court below vide order dated 4-8-2000. The similar application has also been filed by the respondent/applicant for seeking production of the ballot papers. Rule 14 of M.P. Municipal Corporation

(Election of Speaker) Rules, 1988 is to the effect of maintenance of secrecy of voting.

It speaks that every person who performs any duty in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy. Secrecy of vote may be kept in mind, being the paramount consideration request for recounting viz-a-viz production of ballot papers in Court should be considered/scrutinized. Judgment rendered in 1995 (Suppl) 2 SCC 101, must therefore be read to support the order dated 4-8-2000 to negative the request made by the respondent/applicant. With reference to secrecy of ballot paper tinkling of not to be permitted lightly is the decision rendered in AIR 1993 SC 367. Accordingly it is not necessary for this Court in the circumstances of the present case to seek production of ballot papers. Ex. P-6 minutes does not speak of any grievance whatsoever as alleged subsequently by the respondent/applicant.

7. Under Section 441-F of M.P. Municipal Corporation Act, 1956 the decision of the Court below shall be deemed to be final, however, the decision if contrary to law could be set aside in revisional jurisdiction exercised by this Court. The finding of allegation of improper acceptance of 5 votes said to be void, was recorded by the Court below partly on the basis of statements of highly interest witnesses and partly on inadmissible evidence. Therefore, the finding aforesaid deserves to be set-aside.

8. Consequently the revision succeeds. The impugned order dated 21-3-2003 setting-aside the election of returned candidate to the post of Speaker of Municipal Corporation, Sagar, passed by Ist A.D.J., Sagar in Election Petition No. 15/2000 is set-aside. The election petition under Section 441 as filed by the respondent stands dismissed.

9. Respondent/applicant shall bear his cost and pay the cost of the petitioner/non-applicant. Counsel fee as per rule or certificate (whichever is less).