

Ram Niwas Vs. Pooran and Others

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Court : Madhya Pradesh

Decided On : Jul-24-2001

Reported in : AIR2002MP31; 2001(3)MPHT347

Judge : Mr. S.P. Srivastava and ;R.B. Dixit, JJ.

Acts : Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 - Sections 122

Appeal No. : Letters Patent Appeal No. 222/2001

Appellant : Ram Niwas

Respondent : Pooran and Others

Advocate for Pet/Ap. : Shri R.D. Jain, Sr. Adv. and ;Shri S.K. Jain, Adv.;Shri Jitendra Maheshwari, Adv.

Disposition : LPA dismissed

Judgement :

ORDER

S.P. Srivastava, J.

1. Heard the learned counsel for the appellant as well as the learned counsel representing the contesting respondents.

2. Perused the record.

3. The election petition challenging the election of Pooran who had been declared as Sarpanch of Gram Panchayat, Sirsod was allowed by the Sub Divisional Officer/Vihit Adhikari, Panchayat, with the direction requiring recount of the polled votes. The aforesaid order was challenged by Pooran by means of a writ petition, which has given rise to the present Letters Patent Appeal.

4. The learned Single Judge of this Court vide the impugned order allowing the writ petition, quashed the order of the Sub-Divisional Officer. Besides quashing of the order of the Sub-Divisional Officer, the learned Single Judge also issued certain directions covering the matter relating to the appointment of the officers authorised to deal with the election petitions and entrusted with the duties cast in this regard upon the Sub-Divisional Officer, Revenue, as envisaged under Section 122 of the M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993.

5. In a decision, in the case V.S. Achuthanandan v. P.J. Francis and another, reported in (2001) 3 Supreme Court Cases 81, the Apex Court had emphasised that the secrecy of the ballot is sacrosanct and shall not be permitted to be violated lightly and merely for asking or on vague and indefinite allegations or averments of general nature. At the same time purity of election process has to be preserved and therefore, inspection and recount shall be permitted but only on a case being properly made out in that regard. It was also emphasised that the election petitioner must produce trustworthy material in support of the allegations made for a re-count enabling the Court to record a satisfaction of a prima facie case having been made out for grant of the prayer. The Court must come to the conclusion that it was necessary and imperative to grant the prayer for inspection to do full justice between the parties so as to completely and effectually adjudicate upon the dispute. It was indicated in clear terms that the power to direct inspection and recount shall not be exercised by the Court to show indulgence to a petitioner who was indulging in a roving enquiry with a view to fish out material for declaring the election to be void.

6. In the aforesaid decision in the case of V.S. Achuthanandan (supra), the Hon'ble Supreme Court has indicated that once a recount is validly ordered the

statistics revealed by the recount shall be available to be used for deciding the election dispute. However, if the validity of an order, permitting inspection of ballot papers and directing a recount is brought in issue, the facts revealed by recount cannot be relied upon by the election petitioner to support the prayer and sustain the order for recount if the pleadings and material available on record anterior to actual recount did not justify grant of the prayer for inspection and recount.

7. In the aforesaid decision, the election petitioner was not found to have made out a case for recount. It was also found that the petitioner had indulged in a roving enquiry and had tried to fish out materials in the hope that the recount, if allowed, may probably twist the balance of votes in his favour.

8. In the present case, the learned Single Judge has carefully examined the pleadings of the election petitioner and the procedure adopted by the Sub-Divisional Officer in dealing with election petition.

9. We have carefully perused the

JUDGMENT / ORDER

of the learned Single Judge. The findings returned against the election petitioner could not be demonstrated to be vitiated in law. The findings returned by the learned Single Judge are amply supported by the pleadings and evidence brought on record. Since the order of recount of the polled votes has been found to be unwarranted in law, it is obvious, that the election petitioner can not derive any advantage out of the result of recounting done pursuant to such an order, which itself has been found to be without jurisdiction and has been set aside on cogent grounds.

10. No justifiable ground has been made out for interference in the impugned order passed by the learned Single Judge.

11. This Letters Patent Appeal, in the circumstances, deserves to be and is hereby dismissed.

12. Letters Patent Appeal dismissed.

