

Rakib Mohammad Vs. the District Collector and Specified Officer and ors.

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Court : Madhya Pradesh

Decided On : May-02-2002

Reported in : AIR2003MP39; 2002(5)MPHT487; 2002(3)MPLJ415

Judge : Bhawani Singh, C.J. and ;Ajit Singh, J.

Acts : Madhya Pradesh Panchayat Raj Adhiniyam, 1994 - Sections 95; Madhya Pradesh Panchayats Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 - Rule 3

Appeal No. : L.P.A. No. 217 of 2002

Appellant : Rakib Mohammad

Respondent : The District Collector and Specified Officer and ors.

Advocate for Def. : Naman Nagrath, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Vivek Rusia, Adv.

Disposition : Appeal dismissed

Judgement :

Bhawani Singh, C.J.

1. Order of single Judge dated 27-3-2002 passed in W. P. No. 1151 of 2002 (Raqib Mohammad v. District Collector, Raisen and others) has been challenged

through this Letters Patent Appeal under Clause 10 of the Letters Patent,

2. Petition under Articles 226/227 of the Constitution of India was preferred by Raqib Mohammad for quashing impugned order dated 25-2-2002 whereby Collector. Raisen allowed Election Petition filed by Jtnesh Singhai and ordered recount of votes cast in the polling booths of ward No. 1 Janapad Paiachayat, Gairatganj. For membership of Janapad Panchayat, Gairatganj, Raqib Mohammad and Jinesh Singhai were contesting candidates. Votes were cast on 20-1-2001. Raqib Mohammad was declared successful securing 1358 votes and Jinesh Singhai secured 1341 votes. Ballot papers account submitted in Form-15 under Rule 67 of the M.P. Panchayat Nirvachan Niyam, 1995 (1995 Rules) mentions number of ballot papers inserted in the ballot boxes 3213 while result sheet in Form-18 under Rule 177 (2) of 1995 Rules shows that the result was declared on 3179 votes only, with discrepancy of 34 votes, while the difference between votes secured by Raqib Mohammad and Jinesh Singhai was 17, Jinesh Singhai applied for recount of votes under Rule 80 (1) of 1995 Rules but the Returning Officer permitted recount of only rejected ballot papers to which Jinesh Singhai did not agree, Consequently, Jinesh Singhai submitted an Election Petition under the M.P. Election Petitions (corrupt Practices and Disqualification for Membership) Rules. 1995 (Election Petition Rules), the Collector. Raisen held the counting invalid and directed recount on 4-3-2002 by the Returning Officer in the presence of all the candidates.

3. Claim of Jinesh Singhai is that while counting was in progress, electricity failed thrice but counting was continued in the candle light which was insufficient. This resulted in wrong counting. He objected and claimed recounting of votes in writing immediately after announcement of counting under Rule 80 (1) of 1995 Rules but he was not heard. While Raqib Mohammad claims that at the most discrepancy was of three votes only in ballot paper account of Booth No. 50 which was not material and did not affect the result declared. He has alleged that 31 invalid votes of Booth No. 47 were not considered while tallying the account. There existed no real discrepancy. Smt. M.D. Dahiya, Presiding Officer of Booth No. 47 had explained the discrepancy. Collector, after recording the evidence of both the sides, held that there existed discrepancy of 34 votes between the number given

in the ballot paper account in Form-15 and the number of votes of which result was declared in Form-18 and ordered recount.

4. Single Judge finds that in this case, total ballot papers used were 3213. Ballot Papers found in boxes including the invalid votes were 3179 on which result was based, Difference between the votes secured by Raqib Mohammad and Jinesh Singhai was only 17. Therefore, the Collector was justified in ordering the recount. It is also found that besides this discrepancy in the number of votes, evidence on record clearly points out that the counting was being done in electric light. Electricity failed at least twice and candle light was used for counting of votes, This circumstance was sufficient to provide opportunity for incorrect counting. Therefore, to remove the doubt, recounting was necessary.

5. Through this appeal, Raqib Mohammad assails the impugned order by reiteration of contentions once raised and decided by single Judge, while Jinesh Singhai opposes these contentions vehemently alleging that Raqib Mohammad should not stick to pleas which had been rejected by Collector and confirmed by single Judge. Matter is such, a clear case for recounting is made out to get at the justice, otherwise fairness in counting and doubt with respect to actual number of votes, polled in favour of the parties would continue to exist. With this background. Collector has rightly passed the impugned order for recounting of votes and this decision having been confirmed by single Judge of this Court should not be disturbed, counsel for Jinesh Singhai contends.

6. Catena of cases decided by Apex Court (Vadivelu v. Sundaram (2000) 8 SCC 355 : (AIR 2000 SC 3230): Jitendra Bahadur v. Krishna Bihari AIR 1970 SC 276 and P. K. K. Shamusdeen v. K.A.M.M. Mohindeen, AIR 1989 SC 640 hold that preservation of security of the ballot is a sacrosanct principle which cannot be lightly or hastily disregarded unless there is a prima facie genuine need for the same. But whether case for recount is made out, facts of the case are of great significance. Jinesh Singhai has pleaded, proved and established case for recount, Justification in his plea has been found by the Collector and learned single Judge. After all. In a case of this nature, it is necessary to see what has actually happened and what exact number of votes each of the candidates to the

contest has polled. In the facts of this case, Apex Court decision in Mahendra Pal v. Ram Dass Malanger (2000) 1 SCC 261 : (AIR 2000 SC 16) aptly applies. The Apex Court said (at pp. 21 and 22 of AIR) :

'In the present case, it is not disputed, as indeed it cannot be, that in Form 20-A, Ex. P-2, it is recorded that the total number of votes found in the ballot boxes of 82 polling stations pertaining to this constituency were 35,310 whereas a perusal of the statement of roundwise detailed result counting, certified copy whereof is Ex. P.3, records that the total number of valid and rejected votes counted for the purpose of declaring the result were 35,318. A difference of 8 votes had been projected in Annexure. P. 2 and Annexure. P.3. The margin of difference between the votes polled by the election petitioner and the returning candidate, in the present case, was only 3 votes. Unless a satisfactory explanation was furnished during the trial about the discrepancy, there would be need to inspect the ballot papers to clarify doubts regarding the excess counting of 8 votes, allegedly in favour of the returned candidate. This was also necessary to dispel doubts about the allegations of irregularity in counting. Had the Returning Officer, instead of rejecting the application for recount made a test check, soon after the declaration of result, he could have silenced the scepticism and removed all doubts but since that was not done, the learned Designated Judge ought to have considered the matter in its correct perspective.'

Therefore, there is clear case for recount, rightly so found by Collector and learned single Judge. No other point was urged.

7. Consequently, there is no merit in this appeal and the same is dismissed.

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