

Smt. Mewa Devi Vs. the Civil Judge (Junior Division) and ors.

Smt. Mewa Devi Vs. the Civil Judge (Junior Division) and ors.

SooperKanoon Citation : sooperkanoon.com/628537

Court : Punjab and Haryana

Decided On : Jan-08-1998

Reported in : (1998)118PLR788

Judge : V.K. Bali, J.

Acts : [Haryana Panchayati Raj Act, 1994](#) - Sections 176

Appeal No. : Civil Writ Petition No. 5232 of 1996

Appellant : Smt. Mewa Devi

Respondent : The Civil Judge (Junior Division) and ors.

Advocate for Def. : R.S. Mittal, Sr. Adv. and; Aarti Gupta, Adv.

Advocate for Pet/Ap. : Bhoop Singh, Adv.

Disposition : Petition allowed

Judgement :

V.K. Bali, J.

1. Smt. Mewa Devi through present petition filed by her under Article 226 of the Constitution of India seeks a writ in the nature of certiorari so as to quash order dated 30.3.1996 (Annexure P-2) passed by the Civil Judge (Junior Division), Narwana whereby the election of the petitioner as Sarpanch of Gram Panchayat,

Udaypur has been set aside and respondent No. 2 Smt. Sheon Devi has been declared elected as Sarpanch of the Gram Panchayat.

2. Brief facts if the case reveal that election for the office of Sarpanch in village Udaypur was held on 15.12.1994 and the result of the election was declared on the same day. Petitioner was declared to have been elected. He secured 629 votes whereas respondent No. 2 secured 2628 votes. Respondent No. 3 secured only 6 votes and 40 votes were found to be invalid. Respondent No. 2 filed an election petition before the Civil Judge (Junior Division), Narwana (exercising the powers of the Election Tribunal Under Section 176 of the Haryana Panchayati Raj Act, 1994) challenging the election of the petitioner on various grounds. During the course of proceedings respondent No. 2 made a statement that she does not want to press other allegations and the case be decided after recounting of votes. The Counsel for the petitioner also made a statement that he would have no objection to the recounting of votes. In view of the statements made by the learned counsel representing the parties, the Election Tribunal summoned the votes polled in the election of Sarpanch of village Udaypur which were produced in Court by one Babu Ram, Patwari on 6.2.1995. There were total of four packets containing the votes polled in election. Out of these packets, one packet was not properly sealed and was torn from one side from which the votes can be put or removed as is the case of the petitioner. An objection was raised on behalf of the petitioner that since the envelope was in a torn form on one side and the possibility of the ballot papers having been tampered with could not be ruled out, there was no need for fresh counting as such. The Tribunal, however, vide his order dated 22.3.1995 held that there was no point to recount and scrutinise the total votes and proceeded on the basis that the decision of the Returning Officer was correct. Since there was no other ground on which election petition could proceed except recounting, therefore, the election petition was dismissed by the Tribunal vide order dated 22.3.1995. Being aggrieved respondent No. 2 filed Civil Writ Petition 10963 of 1995. The order dated 22.3.1995 passed by the Election Tribunal was set aside and the petition was allowed in the following terms:-

'For the reasons recorded above, this writ petition is accepted, impugned order of the trial Court dated 22.3.1995 is set aside. Parties through their counsel are

directed to appear before the trial Court on 11.3.1996. The trial Court is directed to proceed with the recounting as per the concession made by the parties. If it is found that the ballot papers had been tampered with while the same were in custody of the District Election Officer (Panchayat), it shall be open to the trial Court to draw its own inference and proceed in accordance with law.'

Pursuant to the orders passed by this Court as have been reproduced above; the Tribunal summoned the votes polled at the election from the office of the District Election Officer (Panchayat). The same were produced before the Tribunal on 23.3.1996 by the Accounts Clerk of the B.O. & P.O. Office, Uchana. The case of the petitioner is that the Tribunal without giving any opportunity to him to lead evidence regarding tampering of votes recounted the same and declared respondent No. 2 as having been duly elected by a margin of nine votes vide its impugned order dated 30.3.1996. It is this order as mentioned above that has been questioned in the present writ petition. Vide a detailed order dated 10.1.1997, this Court ordered recounting of votes by the Registrar (General). The recount was to take place in the presence of the parties and registrar was to submit his report. On the basis of recount done by the Registrar (General) of this Court pursuant to the orders referred to above when the matter came up before the Division Bench on February 5, 1997, the following order was passed:

'As ordered, Registrar (General) has done the recount. Report has been submitted by him along with the ballot papers in a sealed cover. According to the report, total votes were found to be 1295. There was no dispute regarding 618 votes each polled by the petitioner and respondent No. 2. Third candidate Goodi Devi polled 6 votes. 34 votes were declared to be invalid. There was a dispute regarding 19 votes between the parties. Registrar (General), after scrutiny, found that out of these 19 votes, contesting respondent got 14 votes and the petitioner got 5 votes. According to the report, respondent No. 2 polled 632 votes as against 623 votes polled by the petitioner. In the presence of the parties, we re-examined the 19 disputed votes and are of the view that out of these votes, petitioner has polled 5 valid votes as against 6 valid votes polled by the contesting-respondent. The rest were invalid. According to our counting, contesting-respondent had polled 624 votes as against 623 valid votes polled by the petitioner.

Returning Officer had found that 1303 votes were polled whereas at the time of recount in the trial Court only 1295 votes were found from the sealed envelope. Eight votes were found missing. Counsel for the parties seek an adjournment to address arguments as to what would be the effect of the missing votes on the result of the election.

Adjourned to 4.3.1997 for arguments. Sd/- Ashok Bhan Judge FEB 5, 1997. Sd/- N.C. Khichi, Judge.'

3. It is clear from the order reproduced above that petitioner has polled 623 votes whereas contesting respondent has polled 624 votes. It is also clear that eight votes are missing. It may be mentioned at this stage that at no stage the contesting respondent ever raised the issue with regard to total number of votes polled and therefore, it shall have to be held that 1303 votes were polled whereas at the time of recount before the Tribunal, only 1295 votes were found from the sealed envelope. Mr. Bhoop Singh, learned counsel representing the petitioner vehemently contends that once there is no allegation nor an issue ever raised with regard to total number of votes polled, it shall have to be held that in all 1303 votes were polled. He further contends that there is no option but for to hold that eight votes are missing and if that be so, it cannot be said that majority of eight votes which are missing would have definitely been polled in favour of the contesting respondent and unless such a conclusion can possibly be drawn, the margin of votes at this stage being only of one between the petitioner and the contesting respondent the election of the petitioner on the post of Sarpanch cannot possibly be set aside. Mr. R.S. Mittal, learned Senior Counsel representing the respondent could not controvert the contention of the learned counsel for the petitioner referred to above. This Court is also of the firm view that there being no challenge whatsoever with regard to total number of votes polled and it may be reiterated that as per returning Officer 1303 votes were polled and therefore, eight votes being missing and there being a margin of only one vote as per recount done by this Court, the election of the petitioner on this post of Sarpanch cannot be set aside. It requires to be mentioned that the moment packet containing votes are received by the Election Tribunal, petitioner has throughout been pleading that the same was torn and the possibility of tampering could not be ruled out. It is for this

precise reason that when earlier in point of time, writ petition filed by the contesting respondent was allowed, this court while remanding the case had clearly said that it shall be open to the trial Court to draw its own inference and proceed in accordance with law, if it was found that the ballot papers had been tampered with while the same were in custody of the District Election Officer (Panchayat). Tampering is apparent in view of the fact that at no stage it was ever pleaded by the contesting respondent that the total votes cast were not 1303. Once it is not known as to who polled majority of the missing votes, possibility cannot be ruled out that majority of the said votes was in favour of the petitioner. In other words, once it cannot be definitely said that majority of the eight missing votes were in favour of the contesting respondent, election of the petitioner on the post of Sarpanch cannot be set aside.

4. In view of the discussion made above, this petition is allowed and impugned order Annexure P-2 is Quashed thus upholding the election of the petitioner on the post of Sarpanen.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com