

Rameshwar Vs. Munsiff and Judicial Magistrate and anr.

Rameshwar Vs. Munsiff and Judicial Magistrate and anr.

SooperKanoon Citation : sooperkanoon.com/756763

Court : Rajasthan

Decided On : Apr-16-1981

Reported in : 1981WLN(UC)130

Judge : K.D. Sharma, C.J.

Appeal No. : S.B. Civil Writ Petition No. 91 of 1981

Appellant : Rameshwar

Respondent : Munsiff and Judicial Magistrate and anr.

Advocate for Pet/Ap. : Mr. Kewal Chand

Disposition : Petition dismissed

Judgement :

K.D. Sharma, C.J.

1. This is a writ petition filed by Rameshwar under Articles 226 and 227 of the Constitution of India for issuance of a writ, direction or order in the nature of certiorari or mandamus or in any other appropriate form for quashing the impugned judgment of the Munsiff & Judicial Magistrate. First Class, Nokha, District Bikaner, by which the election of the returned candidate, i.e the petitioner to the office of Panch from Ward No. 4 of Gram Panchayat Kuchore Athuni was declared void and set aside with immediate effect and Ramchandra non-petitioner

No. 2 was declared elected to that office from the same ward.

2. The relevant facts giving rise to this writ petition may be briefly stated as follows: The petitioner contested the election to the office of Panch of Gram Panchayat Kuchore Athuni, which was held on February 5, 1978. The petitioner secured 114 valid votes while Ramchandra, non-petitioner No. 2, who also contested the election to the same office, got 113 votes only. Consequently, the petitioner was declared elected to the office of Panch of the said Gram Panchayat. The non-petitioner No. 2, thereafter, presented an election petition before the Munsiff & Judicial Magistrate, Nokha, challenging the petitioner's election. The election petition was heard and decided by the non-petitioner No. 1 on January 5, 1981, and election of the petitioner was declared to be void and the non-petitioner No. 2 was declared to have been duly elected as Panch, Gram Panchayat, Kuchore Athuni. Aggrieved by the decision of the non-petitioner No. 1, the petitioner has invoked extraordinary jurisdiction of this Court by way of this writ petition on the following grounds:

(a) the non-petitioner No. 1 had no jurisdiction to hear and decide the election petition because the election petition was submitted before the Munsiff, Bikaner, who had jurisdiction, to decide it under Rule 78 of the Rajasthan Panchayat & Nyaya Panchayat Election Rules, 1960, hereinafter referred to as the Rules. Consequently, the decision given by non-petitioner No. 1, being without jurisdiction, is liable to be quashed;

(b) the non-petitioner No. 2 committed an error apparent on the face of the record in recounting the votes without there being any justification for such an action, especially when he himself was of the view that there was no need for recounting of votes;

(c) the non-petitioner No. 1 acted arbitrarily in calling for the ballot papers during examination-in-chief of the non-petitioner No. 2 and in passing the impugned decision without affording any opportunity to the petitioner, to cross-examine the non-petitioner No. 2 and to produce his evidence in rebuttal.

(d) aggrieved by the arbitrary action taken by the non-petitioner No. 2 the petitioner filed a transfer application under Rule 86-A of the Rules before the District Judge, Bikaner, on or about December 8, 1980, in which a date i.e. January 21, 1981, was fixed for hearing. Because of transfer application, the petitioner did not take part in the arguments heard by non-petitioner No. 1 on December 23, 1980 and apprised him of the presentation of the transfer application before the District Judge, Bikaner, but the non-petitioner No. 1 gave his decision and quashed the election of the petitioner and wrongly mentioned in his decision that the petitioner admitted certain facts;

(e) the non-petitioner No. 1 committed an error apparent on the face of the record in wrongly rejecting the valid votes of the petitioner on flimsy grounds while ignoring the fact that order for recounting of votes can only be passed on existence of certain circumstances which were not present in the instant case.

3. The writ petition was admitted by this Court on January 8, 1981 and notices were issued to the non petitioners Nos. 1 and 2. On behalf of the ton-petitioner No. 2 a written reply was filed to the writ petition wherein it was alleged that the non-petitioner No 1 had jurisdiction to hear and decide the election petition which was presented before the Munsiff Magistrate, Bikaner, because a new court was established at Nokha to hear and decide cases arising in the territorial jurisdiction of Tehsil Nokha. Upon creation of anew court of the Munsiff and Judicial Magistrate, Nokha, the learned District Judge, Bikaner, withdrew the election petition pending in the court of the Munsiff & Judicial Magistrate Bikaner & transferred the same for hearing and decision to the court of the Munsiff and Judicial Magistrate, Nokha and so it cannot be safely contended that the impugned decision given by the non-petitioner No. 1 was without jurisdiction. It was further urged that the petitioner, himself expressed his unwillingness to produce any evidence on November 11, 1980 and so the election petition was fixed for arguments on November 17, 1980, as is evident from a bare perusal of the order sheet dated November 11, 1980. As for the recounting of votes, it was stated in the written reply that the learned Counsel for the parties agreed for inspection of the ballot papers and so the ballot papers were summoned by non-petitioner No. 1 and on receipt of the same the non-petitioner No. 1 inspected them in the

presence of the learned Counsel for the parties on November 11, 1980 and prepared an inspection note which was signed by the counsel for the parties. It was further submitted in the reply that neither the petitioner, nor his counsel Shri Panna Lai Advocate raised any objection to the inspection of the ballot papers by the court as the inspection was done in pursuance of an agreement of both the parties. It was also alleged in the Written reply that the petitioner presented a transfer application before the District Judge, Bikaner, for the purpose of delaying the decision of the election petition and so the learned Counsel for the petitioner wilfully remained absent at the time of arguments. Lastly, it was urged in the written reply that the non-petitioner No. 1 critically examined and inspected the ballot papers and arrived at a correct conclusion. Nobody appeared on behalf of the non-petitioner No. 1

4. I have carefully perused the record and heard Mr. Kewal Chand, learned Counsel for the petitioner, and Mr. R.N Bishnoi appearing on behalf of the non-petitioner No. 2. Firstly, it was contended on behalf of the petitioner that the Munsiff and Judicial Magistrate, Nokha, had no jurisdiction to hear and decide the election petition because initially the election petition was presented before the Munsiff, Bikaner, who alone, being a persona designate, had jurisdiction to hear the election petition filed against the petitioner. The above contention has no force, because all that Rule 78 of the Rules lays down is that the election of any person as Panch of the Panchayat maybe called in question by presenting a petition to the Munsiff or, where there is no Munsiff, to the Civil Judge within whose jurisdiction the headquarters of the Panchayat is situated. In the instant case, the election petition was no doubt presented before the Munsiff, Bikaner, who proceeded to hear it, but by an order of the District Judge, Bikaner, dated February 12, 1980, the election petition was transferred for trial to the court of the Munsiff Nokha. The District Judge passed an order of transfer because of creation of a new court of the Munsiff and Magistrate at Nokha within whose jurisdiction the headquarters of the Gram Panchayat, Kuchre Athuni, are situated. After the creation of the new court of the Munsiff and Judicial Magistrate, Nokha, the election petition was rightly withdrawn from the court of the Munsiff, Bikaner, and transferred to the court of the Munsiff Magistrate, Nokha, because under Rule 78 of the Rules, the Munsiff, within whose jurisdiction the headquarters of the

Panchayat are situated, has jurisdiction to hear and decide the election petition. It is not disputed before me that the head quarters of Gram Panchayat, Kuchore Athuni lay within the jurisdiction of the newly created court of the Munsiff, Nokha. Consequently, I am unable to hold that the Munsiff, Nokha, had no jurisdiction to hear and decide the election petition.

5. Another contention put forward by the learned Counsel for the petitioner is that the impugned judgment Ex. 1 was passed by the non-petitioner No. 1 without affording the petitioner an opportunity to adduce his evidence. The above contention is not tenable in view of the order-sheet dated November 11, 1980, which was written by non-petitioner No. 1 in the course of the trial of the election petition. The order-sheet reads as follows:

इकदकु e; vfHkHkkod mi0 इकदकु dh mifLFkfr es eri=ks dk voyksdu fd;k o इकदकु dks Hkh dj;k A fjijs ZV voyksdu vyx ls rS;kj dh A vkosnd इक o vukosnd इक us fjijs ZV ij gLRkk{kj dj, Avkosnd इक vU; dksbZ lk; is'k ugh djuk pkgrk A vukosnd इक Hkh dksbZ lk; is'k ugh djuk pkgrk A

okLrs cgl fnukad 17&11&80 dks is'k gks A

From a bare perusal of this order-sheet, it is obvious that both the parties declined to adduce any evidence before non-petitioner No. 1. Hence, it is not open for the petitioner to contend in this writ petition that he was not afforded a reasonable opportunity to adduce his evidence by non-petitioner No. 1.

6. Another contention put forward on behalf of the petitioner is that non-petitioner No. 1 committed an error in inspecting the ballot papers or recounting the votes as there was no justification for inspection and as it should not have been made lightly or as a matter of course. In support of his above contention, Mr Kewal Chand relied upon an authority of the Supreme Court, Beliram v Jai Behari Lal : AIR 1975 SC283 . I have gone through the aforesaid authority. Their Lordships held in this case that where material facts on which the allegations of illegality in counting are based are not pleaded precisely in the petition and the allegations are general and vague founded on suspicion and beliefs of the petitioner, no order of recount and inspection of ballot papers can be made. But in the instant case the

allegations in the election petition were not general and vague but, on the other hand, in para No. 3 of the election petition, it was specifically alleged that upon counting of votes it was found that each party got 114 valid votes. Thereupon, Rameshwar asked for recounting of the votes and the Returning Officer acceded to his request and recounted the votes. Upon recounting the Returning Officer wrongly rejected 1 valid vote of each party and, in this manner, the valid votes secured by each party were declared to be 113. Ramestiwari, thereupon, asked the Returning Officer to count the votes again. The Returning Officer, however, favoured Rameshwar by counting one invalid vote in favour of the latter and thus declared him to be elected to the office of Panch by a margin of one vote only. It was further alleged in para No. 4 of the election petition that out of 114 votes declared to have been secured by Rameshwar two votes were such in which seals were put on the straight line dividing the compartment of Ramchandra and Rameshwar in the ballot papers and so the intention of the two voters to vote for Rameshwar was not clear. Rameshwar, on the other hand, stated in his reply to the election petition that the allegations made by the election petitioner were not correct. In a case like this where the difference in the votes polled by the two rival candidates was only one, the dispute about the number and the nature of invalid votes that had been counted in favour of Rameshwar can only be settled after inspection of the ballot papers. Hence, in my opinion, the non-petitioner No. 1 committed no error in calling for the ballot papers and inspecting them in the presence of the parties and their counsel. Consequently, the contention of the learned Counsel for the petitioner that the allegations made by the election petitioner were vague and no definite particulars about the number and nature of invalid votes were given so as to justify a case for recounting, cannot be accepted, because, as held by this Court in *Amar Singh v. Munsiff Magistrate, Jodhpur* 1967 RLW 224, the candidates in Panchayat elections are not in a position to note down the serial number of any ballot paper which has been wrongly accepted or rejected like candidates in a parliamentary election, who are generally literate and are assisted by a number of agents. The following observations, made by this Court in the referred to above case, are quoted below:

4. The conditions prevailing in a Panchayat election are different from those prevailing in a parliamentary election. In the latter the candidates are generally

literate and are assisted by a number of agents most of whom are lawyers. In a parliamentary or assembly election therefore the election petitioner is in the position of giving much better particulars than in a Panchayat election. At the counting of votes in a Panchayat election only the candidate is allowed to be present vide Rule 38(3). Candidates for the office of Sarpanch possess the qualification of being barely literate in Hindi. They are not in a position to note down the serial number of any ballot paper, which has been wrongly accepted or wrongly rejected for the simple reason that these serial numbers are printed in English figures. The candidates for the office of Panch are mostly illiterate. If the Tribunal is satisfied on the basis of material before it that a prima facie case for recount is made out, then this Court cannot interfere in the exercise of its writ jurisdiction with the decision of the Tribunal to recount the votes....

7. It is not disputed before me that the non-petitioner No. 1 has jurisdiction to inspect ballot papers if he was satisfied upon material before it that a prima-facie case for recount is made out. It is also note-worthy that when non-petitioner No. 1 proceeded to inspect the ballot papers in the presence of the parties and their learned Counsel, no objection was taken on behalf of Rameshwar, petitioner, to the recounting of votes. The learned Counsel for Rameshwar, petitioner, however, invited my attention to the inspection note prepared by non-petitioner No. 1 on November 11, 1980, and contended on its strength that the learned Counsel for the petitioner had objected to the recounting of votes, as is evident from the observations made by the non-petitioner No. 1 in his note itself. The above contention has no force, in view of the order-sheet written by the non-petitioner No. 1 in the case file on August 19, 1980. The order-sheet reads as follows:

i{kdkjks ds vfHkHkkod mi0 xokg jkepUnz ds c;ku gq,& ftjg fjtoZ jch&c;kuksa dks le>us ds fy, pquko eri=ks dks ns[kuk vko';d izrhr gksrk gS Avr% ftjg ls iwoZ eri= bl ;kfpdk ds IEcU/k es tks gks eaxok, tkos fuokZpu vf/kdkjh dh rgjhj tkjh gks A

ewy uksfeustu Jo.k o gyQukek odhy izkFkhZ ryc djkos xokg jkepUnz dks ikcUn fd;k fnukad 30-9-80 dks is'k gks

If the learned Counsel for Rameshwar had taken any objection to the inspection of ballot persons, there would have been a note to this effect in the order-sheet dated

August 19, 1980. Apart from this the observations made in the inspection-note dated November 11, 1980, and relied upon by the learned Counsel for the petitioner in support of his above contention are quoted below:

fooknk/khu er i= ftlds fy, ;kfpdknkrk dk dFku gS fd bles ernku dh eksgj nksusk i{kdkjks ds dkye es vafdr gS ds ckjs es vizkFkhZ dk dFku gS fd ernku dh eksgj dk dksbZ Hkh va'k jkepUnz mEehnokj ds dkWye es vafdr ugh gS A ernku dh eksgj dk rhj dk dqN fgLIk jkepUnz mEehnokj ds dkWye es izR;{k vk;k gqvk n`f'Vxkspj gksrk gS] fo}ku vfHkHkk'kd dk vlgefr uksV okil fd;k tkrk g SA

These observations, when read and considered in the context in which they are made, clearly indicate that the learned Counsel for Rameshwar expressed his disagreement with the view of the non-petitioner No. 1 that a part of the seal put on the ballot paper appeared to have expressly fallen within the compartment of Ramchandra candidate. It does not appear from the note of non-petitioner No. 1 dated November 11, 1980, that the learned Counsel for the petitioner had objected to the inspection of the ballot papers or counting of votes. Hence, it is not now open to the petitioner to raise an objection before this Court that no case for recounting was made and the non-petitioner No. 1 should not have inspected the ballot papers or recounted the votes. The petitioner having failed to raise any objection to the inspection of the ballot papers or to the recounting of votes before non-petitioner No. 1 could not be permitted to take such an objection in this writ petition.

8. The learned Counsel further contended that the petitioner presented an application for transfer of the election petition under Rule 86A of the Rules to the District Judge, Bikaner, on the ground that non-petitioner No. 2 wrongly wrote in the order sheet dated November 11, 1980 that the parties did not want to produce evidence, but, inspite of the transfer application pending in the court of the District Judge, Bikaner, the non-petitioner No. 1 quashed the election of the petitioner without hearing his arguments and so the impugned judgment passed by him is liable to be quashed on this ground also I am unable to accept the above contention also, because the petitioner ought to have obtained an interim order from the District Judge staying the proceedings before the non-petitioner No. 1.

The mere presentation of an application for transfer in the court of the District Judge, Bikaner, did not entitle the petitioner to have the proceeding before the Tribunal stayed, especially when the petitioner himself agreed before non-petitioner No. 1 that if he failed to bring a stay order upto December 23, 1980, he would participate in the arguments and would co-operate in the decision of the election petition. The relevant portion of the order sheet dated December 20, 1980, is quoted below:

vukosnd us Li'Vr% ;g Lohdkj fd;k gS fd ;fn og 23 rk0 rd jksdkns'k ;k vUrj.k vkns'k ykdj izLrqr ugh djsxk rks og bl ekeys es vkxsZ fuLrkj.k gsrq cgl es Hkkx ysxk vksSj QSlyk djkus es ;ksx djsxk A

It is not disputed before me that the petitioner could not obtain the stay order from the court of the District Judge, Bikaner, upto December 23, 1980. Hence, the Tribunal was justified in hearing arguments of the other side and thereafter in giving a decision on the election petition.

9. Lastly, it was urged on behalf of the petitioner that the Tribunal committed an error apparent on the face of the record is wrongly rejecting the valid votes of the petitioner on flimsy grounds. The above contention also is devoid of substance, because both the parties agreed before the Tribunal that out of 234 total votes polled, 112 valid votes were polled in favour of Rameshwar and 113 valid votes were secured by Ram Chandra and 7 votes were rightly rejected as invalid by the Returning Officer. The dispute was about two ballot papers only but the parties agreed that both of those ballot papers ought to have been rejected. There was difference of opinion about the other ballot paper. The contention of Rameshwar was that this other ballot paper ought to have been counted in his favour while Ram Chandra, on the other hand, contended that the seal on this other ballot paper fell within the compartments of both the candidates and so the intention of the voter to vote for Rameshwar was not clear. The Tribunal after inspecting this disputed ballot paper was of the view that it should have been rejected, because the seal put on this ballot paper by the voter fell within the compartment of each candidate & so the intention of the voter to vote for Rameshwar or Ram Chandra was not clear. Consequently, the Tribunal held that the two ballot papers were

wrongly counted in favour of Rameshwar. Accordingly the Tribunal held that Ram Chandra secured 113 valid votes and Rameshwar got 112 valid votes only and the number of votes rejected as invalid would have been 9. No fault can be found with the above finding of the Tribunal. Thus, there is no apparent error on the face of the impugned judgment justifying interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. As Ram Chandra polled a majority of valid votes, the Tribunal committed no error in setting aside the election of the petitioner of the office of the Panch of the aforesaid Gram Panchayat and in declaring Ram Chandra to be elected to the office.

10. Consequently, the writ petition has no force and is hereby dismissed. In the circumstances of the case, I leave the parties to bear their own costs of this writ petition.

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