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Court : Rajasthan

Decided On : Sep-19-1983

Reported in : 1983WLN596

Judge : D.L. Mehta, J.

Appeal No. : S.B. Civil Writ Petition No. 112/1983

Appellant : ishar Ram

Respondent : Padamnath and ors.

Advocate for Def. : Mr. Kalla, Mr. B.N. Kalla

Advocate for Pet/Ap. : Mr. M.M. Singhvi

Judgement :

D.L. Mehta, J.

1. On 11th April, 1983, Court directed that the case may be listed on 6th May, 1983 for final disposal at the orders stage.
2. On 11th May, 1983, Mr. Kalla, learned Counsel for respondent No. 1, moved an application that the petitioner should be directed to implead the parties, as the necessary parties have not been impleaded.

3. Looking to the nature of the application, it was considered proper that assistance of some other advocate should be taken by the Court, so that interest of non-petitioner No. (sic) may not suffer for want of prosecution in the right direction, and Mr. M.R. Singhvi was requested by the court to assist the court.

4. Petitioner moved an election petition before the Tribunal, which was partly accepted and election of non-petitioner No. 1 was set aside. However, the petitioner was not declared elected.

5. Being aggrieved with the second part of the order, the petitioner has moved to this Court and has prayed that he should be declared elected.

6. Brief facts of the case are that the petitioner and respondent No. 1 contested the election and on the result pronounced by the Returning Officer, respondent No. 1 was declared elected on December 19, 1981. Present-petition challenged the election of respondent No. 1 by election petition on the ground that respondent No. 1 was not eligible/qualified to contest the election as he could not read and write Hindi as envisaged by Section 13 of the Rajasthan Panchayat Act. The petitioner also prayed in the election petition that the election of respondent No. 1 be set aside and the petitioner be declared duly elected as Sarpanch of Gram Panchayat. Poonarsar.

7. It is an admitted position that at the stage of contest, there were only two candidates, namely, the petitioner and non-petitioner No. 1 Padamnath.

8. Mr. M.M. Singhvi, learned Counsel for the petitioner, has invited my attention to the case of *Viskwanath Reddy v. Konopps Rudrappa Napouaa and Anr.* : [1969]2SCR90 . He submits that in the case of *Vishwanath*, seven candidates filed their nomination papers. Out of seven candidates who filed their nomination papers for election, five candidates withdrew their candidature, and Nagouda and Reddy were the only two candidates remaining in the field. Nomination of Reddy was challenged before the Returning Officer on the plea that Reddy was disqualified by virtue of Section 9A of the Representation of the People Act from standing as a candidate, but the objection was over-ruled and Reddy was declared elected as he secured more votes.

9. The Supreme Court, after considering the previous judgment of Keshav Lakshman Darkar v. Dr. Deora Lakshman Ananda A.I.R. 1960 S.C. 13, has held as under:

(1) The cases decided by the Courts in the United Kingdom, on appeal to have proceeded upon some general rule of election law that the votes came in favour of a person who is found disqualified for election may be regarded as thrown away only if the voters had notice before the poll of the disqualification of the candidate.

(2) But in our judgment the rule which has prevailed in the British Courts for a long time has no application in our country. Section 53 of the Representation of the People Act renders a poll necessary only if there are more candidates contesting the election than, the number of seats contested. If the number of candidates validly nominated is equal to the number of seats to be filled, no poll is necessary. Where by an erroneous order of the Returning Officer poll is held which, put for that order, was not necessary, the Court would be justified in declaring these contesting candidates elected, who, but for the order, would have been declared elected. The rule enunciated by the Courts in the United Kingdom has only the merit of antiquity. But the rule cannot be extended to the trial of disputes under our election law, for it is not consistent with our statute law, and in any case the conditions prevailing in our country do not justify the application of that rule, if the rule is applied in our country, the provisions of Section 34 read with Section 101(a) would practically be nugatory. Apart from the immense cost intimating each voter in the west electorate in the constituencies the rule that a defeated candidate may be declared elected only if he pleads and proves that the voters had notice of the disqualification would render the exception in the context of prevailing illiteracy and ignorance of large sections of the electorate in our country, is a dead letter. A very large percentage of the electorate in our country is unfortunately illiterate and sections thereof not infrequently speak a language different from the language of the Majority. It would be well-nigh impossible to give information of the disqualification of a candidate in a medium which the illiterate electors understand. We are again unable to see any logic in the assumption that votes cast in favour of a person who is regarded by the Returning Officer as validly nominated but who is in truth disqualified, could still be treated as valid votes, for the purposes of

determining whether a fresh election should be held. When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single cast, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected, in such a case, question of notice to the voters may assume significance, for the voters may put, if aware of the disqualification have voted for the disqualified candidate.

(13) The view that we are taking is consistent with the implication of Clause (b) of Section 101. When in an election petition which complies with Section 84 of the Act it is found at the hearing that some votes were obtained by the returned candidates by corrupt practices, the Court is bound to declare the petitioner or another candidate elected if, but for the votes obtained by the returned candidate by corrupt practice, such candidate would have obtained a majority of votes. In cases falling under Clause (b) of Section 101 the Act requires merely proof of corrupt practice, and obtaining votes by corrupt practice, it does not require proof that the voters whose votes are secured by corrupt practice had notice of the corrupt practice. If for the application of the rule contained in Clause (b) notice to the voters is not a condition precedent, to see no reason why it should be insisted upon in all cases under Clause (a). The votes obtained by corrupt practice by the returned candidate, proved to be guilty of corrupt practice, are expressly excluded in the computation of a total votes for ascertaining whether a majority of votes had been obtained by the defeated candidate and no fresh poll is necessary. The same rule should, in our judgment, apply when at an election there are only two candidates and the returned candidate is found to be under a statutory disqualification existing at the date of the filing of the nomination paper.

10. He has further cited the case of *Thirumalaiah v. Subramanyam* AIR 1977 SC 1724 and has invited my attention to para 59 of the judgment, which reads as under:

(59) The ratio decided of Vishwanath v. Kanappa AIR 1969 SC 604 is applicable only where (a) there are two contesting candidates and one of them : is disqualified, (b) and the election is on the basis of single non-transferable vote. Both these conditions do not exist in the present case; As already discussed, Shri Subramanyam appellant was not the sole surviving continuing candidate left in the field, after exclusion of the disqualified candidate, Shri John. The election in question was not held by move of single transferable vote, according to which a simple majority of votes of cured ensures the success of a candidate, but by proportional representation with single transferable vote, under which system the success of a candidate normally depends on his securing the requisite votes.

He has further invited my attention to the case of Narain Singh v. M.M. Sundi and Ors. 1983 RJR 551. This Court has considered the provisions of the Rajasthan Panchayat Act, 1953 and Rajasthan Panchayat & Nyaya Panchayat Election Rules, 1960. In Rule 85(1)(c), it has been mentioned that when there are only two contestants and out of which one, disqualified then another is entitled to be declared elected and as such tribunal committed no error in declaring the opposite party.

11. Mr. B.N. Kalla, learned Counsel for the respondent No. 1, has invited my attention to the case of Hukam Chand Goyal v. The State of U.P. and Ors. : AIR 1978 All 176 . He has further invited my attention to paras 6 and 7 of the aforesaid judgment. He submits that because of other persons have withdrawn their candidature, so the petitioner should not be declared as elected.

12. From the perusal of the Vishwanath's case (supra), it is clear that there were in all seven candidates. Out of them five withdrew their candidature and there remained only two contestants. Thus, the argument advanced by the learned Counsel for respondent No. 1 does not get support from any other authority of the Supreme Court. This Court has already taken the view that if there are two contestants and one has been found to be disqualified, then other person should be declared elected.

13. Mr. M.M. Singhvi, learned Counsel for the petitioner, has invited my attention to the case of Madan Lal v. Hira Singh Pal : AIR 1968 Delhi 110 . Head Note 'A'

leads as under:

The practice apart, Election law as such recognizes only a candidate at the election, and is neither concerned with nor does it recognize a 'covering' or a 'substitute' candidate. In the eye of law, every person whose name is entered as an 'elector' in the relevant 'electoral roll' and who is otherwise qualified to be a member of the Legislative body for which he puts himself forward as a candidate at the election and who files a nomination paper, is a candidate. It may be that after filling a nomination paper, is a candidate. It may be that after filing a nomination paper he may withdraw from the contest but as long as his nomination paper has not been rejected or he has not himself withdrawn it, he remains a candidate and if his nomination paper is improperly or illegally rejected, whatever be his object and whatever be his motives he has the right to call in question the election of the returned candidate, no matter who prompts or instigates him and from where he gets the means to do so.

He submits that the case has been approved by the Supreme Court in *Hira Singh Pal v. Madan Lal* : [1968]2SCR778 .

14. In the facts and circumstances of the case, as non-petitioner No. 1 has been declared disqualified by the Tribunal below and for this reason he could not make out any case why petitioner not be declared elected.

15. The writ petition is accepted and the petitioner is declared elected. The order (Anx. 1) dated 6-12-82 passed by the Learned Munsif Magistrate, Ratangarh is modified the election petitions of the petitioner is accepted and the petitioner is declared duly elected as Sarpanch of Gram Panchayat, Punrasar. The parties shall bear their own costs.

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