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Court : Rajasthan

Decided On : Jul-26-1996

Reported in : 1996WLC(Raj)UC256; 1996(2)WLN213

Judge : B.J. Shethna, J.

Appeal No. : S.B. Civil Writ Petition No. 1537 of 1996

Appellant : Atma Ram

Respondent : Mana Ram and ors.

Disposition : Petition allowed

Judgement :

B.J. Shethna, J.

1. The petitioner alongwith four others including the non-petitioner No. I. Mana Ram contested the election from 'Nirvachan Kshetra No. 19' of Panchayat Samiti Revdar held on 20th January, 1995. The petitioner was a candidate of B.J.P. and non-petitioner No. I. was a Congress Candidate and rest were independents. The counting took place on 22.1.1995 and the petitioner was declared successful by a margin of one solidatory vote. The petitioner secured 1053 votes and non-petitioner No. 1 secured 1052 votes. Other three candidates secured 367, 292 and 76 votes and 109 votes were declared invalid. The non-petitioner No. 1, Mana

Ram filed election petition on 8.2.1995 before the Court of Distt. Judge, Sirohi and challenged the election of the petitioner mainly on two counts: (i) that Inder Singh, Sub Registrar, Abu Road played mischief in the last recounting by taking out five votes from the bundle of rejected votes and added in the petitioners total. Thereby, the petitioner got 1053 votes as against that the non-petitioner No. 1 got 1052 votes and (ii) the Polling Officer instead of issuing ballot papers meant for ward No. 19 issued to the voters of ward No. 18 and thereby, dis-entitle 29 voters from voting for ward No. 19 election.

2. Out of the above two objections the election Tribunal rejected the second contention. However, by an order dated 2.5.96 the re-counting was ordered by the Tribunal as the first ground appealed to it. Aggrieved by this order passed by the Election Tribunal on 2.5.96 the petitioner has filed this petition challenging the order of recount.

3. Learned Counsel Shri Mehta for the petitioner vehemently submitted that regarding the mal practices played by the Sub- Registrar, Indra Singh was never raised either before the counting officer or returning officer during the counting in writing. Even in a representation made to his Excellency the Governor of Rajasthan also the specific allegations were not made against Indra Singh and such allegations came to be made for the first time by the non-petitioner No. 1 only in a election petition, which was filed on 2.5.96 i.e. about ten days of the result of election. He submitted that on the statement of material fact which should be established at least prima facie the court can order recount otherwise it would affect the secrecy of ballot paper and in a small village like this the situation may turn violent and take ugly turn if the recount order is granted. He submitted that on the facts of this case the learned Election Tribunal committed a grave error in ordering recount. He submitted that the learned Tribunal has swayed away with the act that there was a difference of only one vote and, therefore, in the interest of justice recount should be ordered. In support of his contention, the learned Counsel Shri Mehta cited number of decisions of Supreme Court as well as of this Court and submitted that in the instant case the non-petitioner No. 1 failed to establish prima facie material for recounting and therefore, the learned Tribunal ought not to have passed the order of recount. He therefore, submitted that the

impugned order of recount be quashed and set aside. As against this, learned Counsel Shri Singhvi appearing for the non-petitioner No. 1 vehemently submitted that the election tribunal has rightly passed the order of recount and this Court in its limited jurisdiction under Article 226 and 227 of the Constitution should interfere with such orders. In support of his contention he has also relied upon two decisions of Supreme Court on the point of granting recount when there is difference of votes is very less.

4. For considering the rival submissions few facts are required to be stated which are as under:

5. Polling took place on 20.1.95. The counting started on 22.1.95. According to the non-petitioner No. 1 Mana Ram, the petitioner Atma Ram secured 1048 votes and he (non-petitioner No. 1) secured 1051. Thus, three votes more than Atma Ram. Though he was told that he was going to be declared winner by three votes but the result was not declared and recounting started, at that time also his votes were more than his rival, Atma Ram. Still the result was not declared. It was almost at 1.15 pm in the night and they were under the impression that the result would be declared at any time but within half an hour they were called back inside where the recounting was going on by Inder Singh. Sub-Registrar, who had come for the purpose of counting votes from Abu Road, who was not the counting Officer. Inder Singh declared five invalid votes valid and included in the votes of Atma Ram because of that his tally rose to 1053. The non-petitioner No. 1 tally rose to 1052. The non-petitioner No. 1 did lodge the protest about two votes but as they were not on the lotus flower, therefore, they should not be counted in favour of the other side, but he was not heard on it and the result was declared and Atma Ram was declared successful candidate. In the course of examination he has stated that if Inder Singh had not included those votes then he would have won the election but he has not lodged any objection about this before the counting officer. He has also stated that he had not sent the copy of the letters Ex.3 to the Governor or to the returning officer. He has not signed Ex.5 as Dhaga Ram was the man who received that Ex.5 and he does not know about it. Shri Pradeep Charan was the counting officer and Permeshwar Lal was the returning officer. He has not lodged any complaint in writing to SDM. Recounting was done three times. In first

recounting he secured 1051 votes and Atma Ram secured 1048 votes. He does not know how many votes were declared invalid. Second counting was also done by Shri Pradeep Charan, counting officer. In second recounting he secured 1050 votes and Atma Ram secured 1048 votes. Third recounting was done by Inder Singh in which he secured 1050 votes and Atma Ram (Petitioner) secured 1051 votes, and the result was declared accordingly. In support of his case non-petitioner No. 1, Shri Mana Ram examined Sona Ram, who has stated almost the same thing in his chief examination which was stated by Mana Ram. Bhagaram was also examined who has tried to support the non-petitioner No. 1. Bhaga Ram was one of the candidate who had lost by very big margin. Gulab Singh Deora was also examined by Mana Ram and tried to support the case of Mana Ram. As against that Atma Ram has examined himself. In his cross examination he has clearly ruled out the presence of Inder Singh. Dinesh Nath and Mohan Nath, agent of Bhaga Ram was examined by Atma Ram.

6. He stated that no invalid votes were counted during counting. No question was put to him about the presence of Inder Singh.

7. The learned Election Tribunal after appreciating the evidence before it and rejected the first objection of the election petition filed by the non-petitioner No. 1, namely that the Polling Officer instead of issuing ballot papers meant for ward No. 19 issued the same for ward No. 18 and disentitled 29 voters from voting, by holding that not a single witness was examined to show that he was given ballot papers of another ward and neither the 'Pheethaseen Adhikari' nor any employee was examined by which it can be proved that the voters of ward No. 19 were given ballot papers of ward No. 18. Bhaga Ram himself was a candidate of ward No. 19 who lodged the complaint regarding the same but the applicant (Mana Ram) himself had not lodged any complaint regarding the said irregularities to the election officer and the complaint lodged by Bhaga Ram was found to be baseless and, therefore no action was taken in the matter.

8. However, after appreciating the evidence of applicant Mana Ram and his witnesses the Election Tribunal has come to the conclusion that according to document Ex.3 it is proved that the irregularities were committed during counting

of votes, therefore, he ordered recounting. For arriving at that conclusion the Tribunal was much impressed about the presence of Inder Singh being shown in the letter addressed by the applicant Mana Ram to his Excellency The Governor of State of Rajasthan. He accepted the evidence of the applicant Mana Ram and his witnesses on the point that initially the applicant Mana Ram was winning but inspite of it result was not declared and in the third recounting the result was declared and Atma Ram was declared successful. The Tribunal also held that when the applicant was called back in the room at that time one more recounting was going on and at that time irregularity was committed.

9. Ordinarily, this Court would not go into the appreciation of evidence and would not interfere with the finding of facts recorded by the Election Tribunal and the view taken by it particularly when there is a difference of only one vote. This Court would have upheld the decision of the Election Tribunal if it was in accordance with law and in ordinary circumstance would have granted atleast one more recounting when there was a difference of one vote only. But, we must born in mind one fact that it was a panchayat election of a small village. The total votes casted were even not more than 2500. If the recount is ordered then it will loose the secracy of ballot papers and people will come to know who voted for whom which will created bitter situation. If there was only one issue regarding the irregularity committed during counting and if the Tribunal had come to the conclusion in favour of the applicant that there was irregularities committed at the time of counting then this Court would not have interfered with the same. But, in this case the election was challenged on two grounds (i) on the ground of irregularity committed at the time of counting and (ii) also on the ground that the Polling Officer instead of issuing ballot papers meant for ward No. 19 issued it to the voters of ward No. 18 and dis entitle 29 voters from voting their right. On that second ground the Learned Tribunal has not relied upon the evidence of the applicant Mana Ram and his witnesses and decided the same against the applicant Mana Ram on the ground that no independent witness was examined and not a single witness from other ward was examined to show that he was given ballot paper of other ward and Residing Officer nor any employee was examined to prove that the voters of ward No. 19 were given ballot papers of ward No. 18. Having held against the applicant Mana Ram on this ground the Election Tribunal

was wholly in error in accepting the evidence of the applicant Mana Ram and his witnesses regarding the interference and mal practices adopted by Inder Singh in the 3rd counting in which five invalid votes were alleged to have been added as valid votes in favour of the Atma Ram (petitioner). It may be stated that according to the case of the applicant initially in first counting he secured 1051 votes and the present petitioner secured 1048 votes and ultimately he secured 1052 votes and Atma Ram secured 1053 votes in view of five invalid votes added in his favour by Inder Singh, Sub Registrar. Thus, one more vote was also added in total of the applicant in the counting. This point has not at all been considered by the Election Tribunal in the entire Judgment. The Election Tribunal ought to have appreciated this fact also. The applicant failed to led independent evidence of Election Officer or any other employee. By accepting such interested evidence the Election Tribunal has accepted such a serious allegation made against Shri Inder Singh, Sub Registrar, without giving him any opportunity to explain the same. This was highly improper on the part of the Election Tribunal. Therefore, the imugned order passed by the Tribunal is in clear violation of principle of natural justice. When two sets of evidence were there before the Election Tribunal then it was not proper on the part of the Election Tribunal to rely upon one set of evidence led by the applicant particularly when the same was not admitted by the other side, in absence of any independent evidence in favour of the applicant. Particularly when on the other point the Election Tribunal did not prefer to rely upon the evidence of the same witnesses i.e. the applicant Mana Ram and his witnesses in absence of any independent witness examined by the applicant Mana Ram though they were easily available.

10. It is also true that the difference is of only one vote and in ordinary circumstances when there is a marginal difference of one vote only then in the interest of justice also one opportunity could have been given to the parties. But, this was a different type of case. As stated earlier if the order of recounting was upheld then the secracy of ballot papers would have been lost. It would have created tense situation in a small village. The case of the applicant Mana Ram that Inder Singh interfered at the time of Illrd recounting cannot be accepted particularly when he has not preferred to examine Inder Singh examined any other independent witness like Presiding Officer or counting Officer or other employee

who were present at the time of counting. It is also to be noted that no objection in writing was ever taken either at the time of recounting or immediately after the declaration of the result. Before filing the election petition, which was filed after 10 days of the result, the applicant Mana Ram made an application to his Excellency the Governor which was not provided under the law. It appears that as an after thought to create a case in his favour this sort of application was made to his Excellency later on. The most important part of it which is over-looked by the Tribunal while granting order of recounting is that in what manner Inder Singh has played mischief or committed irregularity has not at all been stated. It is neither stated in the application made before the Governor nor in the election petition that Inder Singh had any relation with Atma Ram. He appeared at 1.00 pm in the mid night at the time of counting is totally unfounded. If at all Inder Singh wanted to play mis-chief he would have remained present right from the beginning at the time of counting of votes, that is not the case of the applicant Mana Ram. No other independent witnesses nor any oral or documentary evidence is produced by the applicant Mana Ram before the Election Tribunal to show the presence of Inder Singh at 1.00 pm in the mid night. All these aspects have been over-looked by the Election Tribunal while ordering recount. As stated earlier number of authorities were cited, but I have refrained from referring any of them as the law is very well settled that recounting can be ordered only on the production of material facts which establish a prima facie case to order recount. In detail I have set out the evidence and the findings recorded by the Election Tribunal. The material which is tried to be produced by the applicant Mana Ram before the Election Tribunal did not establish a prima facie case on which recounting could be ordered. If the recounting is ordered then it would affect the secrecy of the ballot papers which would have created ugly situation in the small village.

11. In view of the above discussion, there is no alternative left to this Court except to exercise its extra ordinary jurisdiction under Article 226 of the Constitution and to interfere with the impugned order passed by the Election Tribunal ordering recount is wholly unsustainable.

12. In view of the above discussion, this petition has to be allowed for the reasons stated above and accordingly this petition is allowed and the impugned order

dated 2.5.96 passed by Shri M.L. Gaur, Civil Judge (Senior Division) Sirohi in election petition No. 1/95 is set aside. In the facts and circumstances of the case there shall be no order as to costs.

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