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Court : Rajasthan

Decided On : Feb-19-1986

Reported in : 1986WLN(UC)202

Judge : Suresh Chand Agrawal and; Inder Sen Israni, JJ.

Appeal No. : D.B. Civil Special Appeal No. 72 of 1985

Appellant : Kripal Singh

Respondent : Darshan Singh and ors.

Disposition : Appeal allowed

Judgement :

Suresh Chand Agrawal, J.

1. This Special Appeal is directed against the order dated February 19, 1985 passed by learned Single Judge whereby the writ petition filed by the appellant challenging the order dated October 11, 1982 passed by the Election Tribunal (Munsif Sri Ganganagar) has been dismissed.

2. The facts briefly stated are that the appellant Kripalsingh and respondent No. 1 Darshansingh had contested the election for the post of the Sarpanch of Gram Panchayat 18Z in Panchayat Samiti Sri Ganganagar. In the said election the appellant secured 381 votes and respondent No. 1 secured 374 votes and the

appellant was declared elected by a margin of 7 votes. Respondent No. 1 filed an election petition to challenge the election of the appellant. In the election petition respondent No. 1 has averred that the result of the election was vitiated on account of irregularities committed by the Returning Officer during the course of counting and that 20 valid votes cast in favour of respondent No. 1 have been improperly rejected and that 18 votes which were invalid have been improperly accepted in favour of the appellant. In the election petition it has also been alleged that at the time of the counting it had become dark and the lamp was extinguished during the course of counting by the supporters of the appellant and as a result of which 50 ballot papers out of the ballot papers containing votes in favour of respondent No. 1 were mixed in the ballot papers of the appellant and were counted in favour of the the appellant. The appellant in his written statement denied the aforesaid averments contained in the election petition. The Election Tribunal framed 4 issues. Issue No. 1 was as to whether the returning officer had improperly rejected 10 valid votes cast in favour of the respondent No. 1 and had improperly accepted 18 invalid votes in favour of the appellant. Issue No. 2, was as to whether on account of there being darkness at the time of counting due to the lamp being extinguished by the supporters of the appellant a total of 50 ballot papers containing votes in favour of respondent No. 1 were removed and mixed with the ballot papers of the appellant Issue No. 3 was as to whether the aforesaid issues being decided in favour of the respondent No. 1, it was necessary to order recounting of votes. After recording the evidence adduced by both the parties, the Election Tribunal passed the order dated October 11, 1982. In the said order the Election Tribunal decided issue No. 2 against respondent No. 1 and held that the allegations made by respondent No. 1 with regard to removal of bundle of 50 papers from the votes of respondent No. 1 and the same being mixed with the ballot papers of the appellant were groundless. With regard to issue No. 1 the Election Tribunal has found that respondent No. 1 in the election petition as well as in his evidence had stated that 20 valid ballot papers have been improperly rejected and 18 ballot papers were improperly accepted which fact has been denied by the appellant. The Election Tribunal has also held that at this stage the statement of respondent No. 1 could not be held to be groundless and that only after the recount of valid papers it can be said as to whether 20 valid votes were

improperly rejected and 18 ballot papers were improperly accepted. In these circumstances, the Election Tribunal directed that it was necessary to order the recounting of votes. In taking The aforesaid view, the Election Tribunal has placed reliance on the decision of this Court in Amarsingh v. Munsif Magistrate Jadhpur 1967 RLW 224. The Election Tribunal was of the view that the decisions of the Supreme Court on which reliance has been placed by the appellant were not applicable because they related to election for the State Legislative Assembly and Lok Sabha and the conditions of the election held for those bodies are different from the conditions which prevail at the time of election for the Panchayats because in election for the Lok Sabha and State Legislative Assembly literate people take part in the process of counting but in the Panchayat elections this is not so.

3. Feeling aggrieved by the aforesaid order dated October 11, 1982 passed by the Election Tribunal the appellant filed the writ petition in this Court. The said writ petition has been dismissed by the learned Single Judge by the order dated Feb. 19, 1985. The aforesaid order of the learned Single Judge has referred the decision of the Division Bench of this Court in Chandra Mohan Gupta v. Kanhaiya Lal and Ors. D.B. Civil Special Appeal No 301 of 1983 decided on January 2, 1984 where in it has been held that the exercise of the jurisdiction under Article 226 of the Constitution cannot be refused solely on the ground that the impugned order is an inter-locutory order. The learned Single Judge further observed that although in para 3ga of the Election Petition specific particulars of the ballot papers have not been given on the basis of which it is asserted as to why the ballot papers have been improperly rejected and accepted but for that reason along the prayer for recounting could not be refused particularly in the state of pleadings which we find in the moffussil areas. The learned Single Judge has also observed that no doubt the requirement of law that a conscise statement of material facts must be stated in the election petition but where definite assertion with regard to improper acceptance and rejection of the votes has been made in relation to the candidates it can be taken that the requirements of law are satisfied and the pleadings should not be void in a too much legalistic and technical manner. In taking the aforesaid view the learned Single Judge has placed reliance on his earlier judgment in Purshottam Singh v. Mahendra Singh and Ors. S.B. Civil Writ Petition No. 2027 of

1982 decided on January 8, 1985.

4. In Purshottam Singh's case S.B. Civil Writ Petition No. 2027 of 1982 decided on January 8, 1985 the learned Single Judge has held that the election petition must contain the concise statement of material facts and if it is lacking then no triable issue will arise and it can be said that no cause of action has been alleged by the petitioner and the petitioner can be non-suited on that very basis. At the same time learned Judge has observed that it cannot be lost sight of that in the election of Sarpanch at the time of counting it cannot be expected that no counting agents may be sitting at the time of counting and that they may not have been too literate and that the position is different in case of Assembly and Parliamentary elections. The. learned Judge has also observed that the area limited and the number of votes polled is also very small and on that basis it can be said that the particulars of each ballot paper can be recorded and may be stated in the petition. But the difficulty is that they are not in a position to do so. The learned Judge has expressed the view that that course cannot be oblivious of prevailing social and literacy condition and that reality cannot be ignored and that when the margin of votes is very narrow for true democracy it is always proper that the result must be declared after correct counting of votes. The learned Single Judge has also observed that for the exercise of powers under Article 226 of the Constitution, the Court should be guided primarily by the consideration of justice and equity, and the technical aspect should have no place and that the order of the Election Tribunal in that case was just, proper and equitable which will infuse faith in democracy.

5. Feeling aggrieved by the aforesaid order passed by the learned Single Judge the appellant has filed this special appeal.

6. Shri M.M. Singhvi, the learned Counsel for the appellant has submitted that the learned Single Judge was in error in making a distinction between elections for the Panchayat and the elections for the State Legislative Assemblies and the Lok Sabha in the matter of ordering recounting of votes or inspection of ballot papers. Shri Singhvi has submitted that this material has been considered by this Court in a number of decisions and this Court has applied the principles laid down with

reference to recount of votes and inspection of ballot papers, in the context of election for the Lok Sabha and the State Legi lative Assembly to the Panchayat Elections. In support of his aforesaid submission, Shri Singhvi has placed reliance on the decision of this Court in Damodar Prasad v. Civil Judge Sambhar 1967 RLW 73, Mangtu Ram v. Palaram 1982 WLN (UC) 330, as well as the decisions of the Division Benches of this Court in Manohar v. Khangarsingh and Ors. D. B. Civil Special Appeal No. 41 of 1979, decided on 16th April, 1979 and Palaram v. Mangtu Ram 1984 RLR 247. Shri Singhvi also submitted that the mere fact that the appellant was elected by a narrow margin of votes was by itself not a ground for ordering the recount of votes. In this connection he has placed reliance on the decision of the Supreme Court in N. Narayana v. Semmalal : [1980]1SCR571 . Shri Singhvi has taken us through the averments contained in the election petition filed by respondent No. 1 and has submitted that the election petition does not contain the necessary averments as required for ordering the recount of votes on the basis of the law laid down by the Supreme Court and this Court.

7. Shri Sandhu, the learned Counsel for respondent No. 1 has supported the reasons given by the learned Single Judge and has urged that elections for the Panchayat cannot be equated with the elections for Lok Sabha and State Legislative Assemblies and the principles which have been laid down in the matter of recount of votes or inspection of ballot papers in elections for Lok Sabha and State Legislative Assemblies cannot be made applicable to Panchayat election. Shri Sandhu has also submitted that the averments contained in the election petition satisfy the test laid down by the Supreme Court for inspection of ballot papers and recounting of votes when the Election Tribunal after recording the evidence was prima facie satisfied that a case for recounting has been made out and this Court in exercise of its jurisdiction under Article 226 of the Constitution should not interfere with the said decision of the Election Tribunal.

8. With regard to inspection of ballot papers and recount of votes the law is well settled that an order for inspection of ballot papers for recount of votes can only be passed if two conditions are satisfied, namely, (i) that the petition for setting aside an election contains an adequate statement of material facts on which the petitioner relies in support of his case; and (ii) that the court or tribunal trying the

election petition is prima facie satisfied that in order to do complete justice between the parties inspection of ballot papers is necessary. In Palaram's case 1984 RLR 247 a Division Bench of this court has considered at length the various decisions of the Supreme Court on this issue and has arrived at the aforesaid conclusion. We are fully in agreement with the aforesaid decision which is also in consonance with the recent decision of the Supreme Court in Hariram v. Heerasingh and Ors. : [1984]1SCR932 . The same principles have been applied by this Court to Panchayat elections in number of cases. In this connection it may be mentioned that Palaram's case 1984 RLR 247 referred to was a case relating to Panchayat election. In that case the learned Judges have referred to the earlier decision of the learned Single Judges of this Court in Damodar Prasad's case 1967 RLW 73, Ramniwas v. Sardar Singh AIR 1980 Raj 142 and Shivram v. Radhakishan 1968 RLW 30 and Vasudeo v. Ram Kishan . In this context it may also be stated that in Palaram's case 1984 RLR 247 the Division Bench of this Court has taken note under provisions contained in rule 78 of the Rajasthan Panchayat and Nyaya Panchayat Election Rules, 1960 here in after referred to as the Rules which prescribes the manner of challenging an election or co-option under the Rules.

9. As to whether the principles applicable for inspection of ballot papers and recounting of votes in the elections for the Lok Sabha and the State Legislative Assemblies can be applied to the Panchayat elections, it may be stated that in Amarsingh's case 1967 RLW 224 the learned Single Judge (Hon'ble Jagat Narayan, J. as he then was) had expressed the view that the conditions in the Panchayat elections cannot be equated with those prevailing in a parliamentary election in the sense that in the parliamentary elections candidates are generally literate and are assisted by number of agents most of whom are lawyers whereas in the Panchayat elections only the candidates are allowed to be present at the time of counting and the candidates for the office of Sarpanch possesses qualification of being harely literate in Hindi and are not in a position to note down the serial number of any ballot paper and the same learned Judge who decided Amarsingh's case 1976 RLW 224 in his latter judgment in Damodar Prasad's case 1967 RLW 73, D.B. Civil Special Appeal No. 301 of 1983 decided on January 2, 1984 Shivkishan's case 1968 RLW 30 has applied the principles laid down by the

Supreme Court in the matter of inspection of ballot papers and recounting of votes in partliamentary elections to inspection of ballot papers and recounting of votes in the Panchayat election.

10. It may also be mentioned that in Manohar's case D. B. Civil Special Appeal No. 41 of 1979, decided on 16th April, 1979 an argument was raised before the Division Bench of this Court that the principles laid down by the Supreme Court in the matter of inspection of ballot papers and recounting of votes in the context of parliamentary elections cannot be applied to the Panchayat elections. It was submitted that in parliamentary elections an agent is provided to each candidate at the time of counting and in this connection reference was placed on the decision of the learned Single Judge of this Court in Amarsingh's case 1976 RLW 224. The learned Judges of the Division Bench of this Court rejected the said contention with the observations:

In our opinion, this distinction is wholly unsubstantial.

11. In view of the decision of this Court referred to about it must be held that no distinction can be drawn between the election for Lok Sabha or State Legislative Assembly and Panchayat election.

12. The next question which arises for consideration is as to whether the rigour of the law with regard to the pleadings should be relaxed in the case of Panchayat Elections on the ground that the said pleadings are drafted by lawyers in moffuasil areas. It is true that the election petitions challenging the election for the Panchayat are filed in the court of Munsif in muffasil areas but that by itself cannot be a ground for holding that the pleadings in the election petitions need not satisfy the tests laid down by the Supreme Court and this Court for ordering inspection of ballot papers or recount of votes, namely, that the election petition should contain an adequate statement of material facts on which the petitioner relies. In this context it may be mentioned that similar to the provision contained in Section 83 of the Representation of the People Act, 1951 that an election petition shall contain a concise statement of the material facts on which the petitioner relies, there is a provision in Rule 80 of the Rules which prescribes that the petition shall contain precise statement of the material facts on which the petitioner relies. This shows

that in the matter of election petitions challenging the election to the Panchayat also the same principles about pleadings as are applicable to elections for the Lok Sabha and the State Legislative Assembly have been made applicable and for that reason the election petition challenging an election to the Panchayat must satisfy the tests laid down by the Supreme Court and this Court with regard to inspection of ballot papers and recount of votes. It may be mentioned that the aforesaid requirement with regard to pleadings in an election petition as contained in Section 83 of the Representation of the People Act, 1951 and Rule 80 of the Rules is akin to the requirement of pleadings in Civil suits as contained in Order VI, Rule 2 CPC where also prescribe that every pleading shall contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence. The lawyers handling civil litigation in moffusil areas are fully familiar with this requirement of the law of pleadings and it cannot be said that legal aid and advice available in the mofussil areas is not adequate enough and for that reason the pleadings in election petition to challenge a Panchayat election need not satisfy the requirement of the law relating to pleadings. In this connection it may also be observed that the rule making authority can be presumed to be aware of level of legal facilities available in the mofussil areas when it framed the Rules, including Rule 80, and with that knowledge it has not made a departure in the matter of requirement of pleadings in an election petition for elections to the Panchayats and has prescribed the same requirement for the pleadings in such election petitions as are prescribed for election petitions for challenging the election to the Lok Sabha and the State Legislature. We are, therefore, unable to subscribe to the proposition that in view of the stage of pleadings which is found in the moffusil areas an order for recount or inspection of ballot papers can be made by the Election Tribunal in an election petition challenging an election to the Panchayat even though the said election petition does not contain a concise statement of material facts with regard to the alleged improper acceptance and rejection of votes.

13. It has next to be seen as to whether the election petition filed by respondent No. 1 satisfies the aforesaid test with regard to statements in the pleadings as laid down by the Supreme Court and this Court for inspection of ballot papers and recount of votes. In this regard it may be mentioned that the Election Tribunal has

ordered for recount of votes on the basis of his finding on issue No. 1 relating to improper rejection of 20 valid votes caused in favour of the respondent No. 1 and improper existence of 18 invalid votes cast in favour of the appellant. The averment in relation to the aforesaid irregularity in counting is contained in para 3(ga) of the election petition. In that said para respondent No. 1 has alleged that 20 valid votes cast in favour of respondent No. 1 were rejected illegally and contrary to the Rules and that 18 invalid votes cast in favour of the appellant have been counted in favour of the appellant contrary to the Rules and that if the aforesaid valid ballot papers and invalid ballot papers had been counted properly in accordance with the Rules respondent No. 1 would have been declared elected as Sarpanch. In other words in the aforesaid paragraphs respondent No. 1 has alleged that 20 valid votes cast in his favour had been wrongfully rejected and 18 invalid votes had been counted in favour of the appellant. Respondent No. 1 has not stated as to how the 20 valid votes cast in his favour were improperly rejected and he has not disclosed the ground on which the said ballot papers were rejected by the returning officer. Respondent No. 1 was admittedly present at the time of the counting and he should have known the reasons why the 20 valid ballot papers referred to by him were rejected by the returning officer. Similarly respondent No. 1 could make a statement with regard to defects in the 18 ballot papers which according to him were invalid and which have been counted in favour of the appellant. No such averments are however contained in the election petition and there is only a bare assertion that 20 ballot papers, where contained votes in favour of the respondent have been improperly rejected and 18 ballot papers which are invalid have been counted in favour of the appellant. In our opinion the aforesaid averment is a vague allegation and it does not satisfy the test which is laid down by the Supreme Court and this Court for ordering inspection of ballot papers or recount of votes in as much as it does not contain an adequate statement of matrial facts to show that 20 ballot papers containing votes in favour of the respondent No. 1 were improperly rejected and 18 invalid papers were counted in favour of the appellant. In this connection it may be pointed out that in Jitendra Bahadur Singh v. Krishana Behari and Ors. : [1970]1SCR852 the election petitioner had stated in the election petition that a particular number of votes of the Congress candidates were imporperly rejected and a particular number of invalid

votes were counted in favour of the returned candidate. The Supreme Court held that the election petition did not satisfy the requirement that in stand contains an adequate statement of material facts. The Supreme Court has observed:

In the instant case apart from giving contain figures whether true or imaginary, the petitioner has not disclosed in the petition then basis on which be arrived at those figures.

In Sumitra Devi v. Sheo Shanker Prasad : [1973]2SCR920 the Supreme Court, while upholding the order of the High Court rejecting the prayer for inspection of ballot papers, stressed that no definite particulars were given as to the illegalities alleged to have been committed in the counting of ballot papers. Similarly in Damodar Prasad's case 1967 RLW 73 there was a similar averment in the election petition that valid votes of the petitioner were illegally rejected and invalid votes were counted for the elected candidates. This court however held that the said averments were vague and no inspection of the ballot papers can be allowed on the basis of such vague allegation.

14. At this stage we may refer to the contentions urged by Shri Sandhu taking into consideration the conditions which prevail at the time of counting of votes for Panchayat elections it is not possible for the candidate to note down the precise number of the ballot papers in respect of which objection is being raised in the election petition. It may be that the candidates may not be able to note down the serial number of the ballot papers in respect of which objections about improper rejection or improper acceptance are being raised in the election petition. But at the same time we find that under Rule 38(5) of the Rules a candidate has to be afforded a reasonable opportunity to inspect without handling the ballot papers which he considers to be liable for rejection and, therefore, it is possible for the candidate who is present at the time of counting to note precisely the reasons why a ballot paper has been rejected and to make the necessary averment in the election to assail the ground on which a particular ballot paper has been rejected. In other words even if it is not possible for the candidate to note down the serial number of the questioned ballot paper he can at least say as to on what ground the questioned ballot papers were rejected and why the decision is wrong.

Similarly in relation to improper acceptance of ballot paper it is open to the petitioner to state in the election petition the grounds on which he is assailing the validity of the ballot paper. We are, therefore, unable to agree with Shri Sandhu that the necessary statement of material facts with regard to the improper rejection or improper acceptance of the ballot papers cannot be furnished in the election petition relating to the Panchayat Elections.

15. As regards the observations of the learned Single Judge in Purshottam Singh's case S.B. Civil Writ Petition No. 2027 of 1982 decided on January 8, 1985 where a candidate has been declared elected with a narrow margin recount may be ordered. We may say that the narrowness of the margin of victory cannot, by itself be a ground for allowing inspection of the ballot papers and recounting of votes and the inspection of ballot papers and recounting of votes can be ordered only if the tests laid down by this Court and the Supreme Court are satisfied. We may in this connection refer to the decision of the Supreme Court in Chanda Singh v. Shiv Ram 1975(4) SCC wherein it has been observed as under:

The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only a few hundred votes as here, to ask for a recount. Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection of reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting wide spread scope for reopening of declared returns, unless the Court restricts recourse to recount to cases of genuine apprehension of misconduct or illegality or other compulsion of justice necessitating such a drastic step.

Again in R. Narayanan's case : [1980]1SCR571 the Supreme Court has observed that the fact that the margin of votes by which the successful candidate was declared elected was very narrow, though undoubtedly an important factor to be considered would not itself vitiate the counting of votes or justify recounting by the Court and that the Court would be justified in ordering the recount only where the election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded and on the basis

of the evidence adduced such allegations are prima facie established affording a good ground for believing that there has been a mistake in counting and the court trying the petition is prima facie satisfied that making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

16. Once it is held that the Election Tribunal was not justified in law in making an order for recounting of votes, the conclusion is inevitable that the appellant was entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution and the appellant cannot be denied relief. The law is well settled that the statutory requirement of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the success of a candidate who has won at an election should not be lightly interferred with and any petition seeking such interference must strictly conform to the requirements of the law. Jagannath v. Jaswant Singh : [1954]1SCR892 . There is therefore, no scope for applying principle of equity to deny relief under Article 226 of the Constitution to a returned candidate against an illegal order passed by the election tribunal in an election petition challenging his election. In the circumstances, the appeal must succeed and the order dated October 11, 1982 passed by the Election Tribunal allowing for reconting of the votes must be set aside.

17. In the result, the Special Appeal is allowed the order passed by the learned Single Judge is set aside and the writ petition filed by the appellant is allowed and the order dated October 11, 1982 (Ex 7 to the writ petition) passed by the election Tribunal (Munsif Sri Ganganagar) is set aside. Keeping in view the facts and circumstances of the case the parties are left to bear their own costs.

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