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Court : Jammu and Kashmir

Decided On : Nov-12-2002

Reported in : 2003(1)JKJ127

Judge : T.S. Doabia, J.

Acts : Panchayati Raj Act, 1989

Appeal No. : OWP No. 812/2001

Appellant : Lal Singh

Respondent : State and ors.

Advocate for Pet/Ap. : O.P. Thakur and; Kakkar, G. Advo. Rupinder Singh

Disposition : Petition dismissed

Judgement :

T.S. Doabia, J.

1. Challenge in this petition is being made to an order passed by the Appellate Authority constituted in terms of Section 43 of the Panchayati Raj Act, 1989. Election of returned candidate namely Sher AH was challenged inter alia on the ground that five votes of dead persons were permitted to be cast by way of impressonation. It was also pleaded that votes of some of the voters who were not

present at the time of polling were also casted. It was further submitted that 76 voters were not allowed to cast their votes as their names were not on the voter list. It was thus submitted that this had material by affected the result of the election. The major thrust of the argument was that as the name of the 76 persons was wrongly not shown in the voter list and as they could not cast their votes, this as indicated above, materially affected the result of the election.

2. The appellate authority however, taking note of all the facts and the circumstances of the case, did not find favour with the petitioner. The appeal preferred was dismissed. It is, as indicated above, against the said order passed by the appellate authority, the present petition has been preferred.

3. So far as the factual submission that the votes of five dead persons were allowed to be cast is taken as correct, and if these five votes are deleted, even then the margin of victory so far as respondent. Sher Ali is concerned would remain as 54. Therefore, this argument cannot be accepted. So far as non-inclusion of names of 76 persons as pointed out by petitioners is concerned, the appellate authority has rightly expressed a view that these are matters which cannot be made a ground of challenge in an election process. Even if the plea in this regard is taken note of, even then, it cannot be said that all 76 persons would have casted their votes in favour of the petitioner. The Supreme Court in the case of AIR 1969 SC 663 Paokai Haokip v. Rishang and Ors., has observed 'In our country, the burden is upon the election petitioner to show affirmatively that the result of the election has been materially affected'. Reliance was placed on an earlier decision of the Supreme Court reported as Vashist Narain Sharma v. Dev Chandra, AIR 1954 SC 513, in which decision following observation were made :-

'It is impossible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of the fact and has to be proved by positive evidence. If the petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand.'

3. It was further observed as under :-

'.... The casting of votes at an election depends upon a variety of factor and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognized that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged.'

4. Ultimately, it was concluded that merely because some voters could not cast their votes on account of shifting of polling booths would not affect the result of election. The situation in the present case is no better. It is difficult to indicate and by using the words as used by the Supreme Court 'predicate how many or which proportion of the votes will go to one or the other of the candidates'. This petition as such is without merit shall stand dismissed.

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