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Court : Jammu and Kashmir

Decided On : Nov-05-2011

Judge : Mohammad Yaqoob Mir

Appeal No. : OWP. No.848 of 2011

Appellant : Ghulam Rasool

Respondent : State and Others

Judgement :

1. Petitioner and respondent No.5 have contested the election of Panch under the Panchayati Raj Act for Ward No.6 Trankle-B. out of polled 157 votes, both secured 78 votes each, whereas one vote contained marking in the blank area, same was rejected by the counting Supervisor, but the Returning Officer accepted the same in favour of the petitioner. Aggrieved thereof, respondent No.5 filed an appeal before the authority i.e., Appellate Authority, (Sub Divisional Magistrate, Bhaderwah, under the JandK Panchayati Raj Act.

2. The Appellate Authority while considering the position of the doubtful ballot paper has opined that on scrutiny beyond all shadow of doubt the vote was required to be rejected, as it bears the marking in the blank area. It is added that in case the Returning Officer would have referred the Returning Officer's Hand Book p. 77 15.71, iii(b), which would provide that when the mark is in the blank area i.e., entirely in the shaded area, vote would have been rejected. Therefore, the vote in

any case has to be rejected, so is rejected. Resultantly, both the two candidates have 78 votes each, so a tie.

3. In the order, it is further clarified that the candidates expressed their willingness and also gave in writing that the position will be acceptable to both of them on the result of tossing of coin.

4. In the most transparent manner, the Appellate Authority has conducted the proceedings. The outcome of the tossing went in favour of the respondent No.5. The Returning Officer as such was directed to issue the Certificate in favour of the respondent No.5 as a winning candidate and also to complete all other formalities. The proceedings conducted by the Appellate Authority have been videographed.

5. Learned counsel appearing on behalf of the appellant contends that to declare the result on the result of tossing of the coin is unknown. As according to him, in terms of Section 43 of the JandK Panchayati Raj Act, the authority could interfere in appeal only on satisfaction that election was not fair due to corrupt practice or undue influence, or that the result has been materially affected by improper acceptance or rejection any nomination or by gross violation to the provisions of the Act or the Rules framed there-under. The tossing of the coin or the question or re-examination of the doubtful vote was not open to question.

6. Refuting the said contention, the learned counsel for respondent No.5 referred to Rule 43 of the JandK Panchayat Raj Rules. The Appellate Authority in terms of sub-rule (3) of Rule-43 has to hear the appeal and pass such orders as it may deem fit. In addition, referred to Rule 47 of the said Rules, which reads as under:-

“47. Counting of votes.

(1) The Sarpanch shall cause the votes to be counted there and shall declare the Panch having secured the largest number of votes to be duly elected.

(2) In case of equal number of votes, being given in favour of two or more Panches, selection shall be made by draw of lot.

(3) The Secretary shall forward the names of Naib Sarpanch to the respective Block Development Officers for information.”

7. Sub-rule (2) of the Rule 47 answers the contention of the learned counsel for the petitioner. As it is clear that in case of equal number of votes, selection has to be made by draw of lot. The Appellate Authority, while rejecting the doubtful vote, has clearly resorted to sub-rule (2) of Rule 47, that too with clear consent of the contestants i.e., the petitioner and the respondent No.5. Petitioner, while losing in the process, has turned around to say that he was not a consenting party and has also started to say that the tossing of coin is an unknown method.

8. The only question which survives for consideration is as to whether on the basis of tossing of coin fate of the candidates could be sealed? Answer is to be in affirmative because sub-rule (2) of Rule 47 of the JandK Panchayat Raj Rules clearly provides the mode of selection when there are equal number of votes in favour of the candidates. The words “draw of lot” as employed in sub-rule (2) of Rule 47 of the JandK Panchayat Raj Rules, are to be liberally construed. There is no hard and fast rule for adopting a particular method vis--vis “draw of lot”. “Draw of lot” would take into its sweep tossing of coin as well.

9. After losing in the process and method as adopted in accordance with sub-rule (2) of the Rule 47 of the JandK Panchayat Raj Rules, that too when the petitioner was a consenting party to the method of tossing of the coin, petitioner cannot be permitted to back-track.

10. Petition, in the aforesaid background, is found to be without any merit as such, is dismissed along with connected CMP.

Petition dismissed.

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