
(2010) 01 AHC CK 0080
In the Allahabad High Court

Anoop Singh

APPELLANT

Vs

Ranjeet Singh and Another

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Citation : (2010) 3 AWC 2785

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Shri K.S. Singh and Shri Ajay Bhanot, learned Counsel for the appellant and Shri Ravi Kant, learned senior counsel assisted by Shri P.K. Shahi for the respondent No. 1. Learned standing counsel represents respondent No. 2.

2. This first appeal under Rule 49 of U.P. Kshetra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994 has been filed challenging the judgment and order dated 12.11.2007, passed by District Judge/Election Tribunal, Banda. By the impugned judgment and order, the election held on 27.2.2006, as a result of which Anoop Singh was elected as Pramukh of Kshetra Panchayat, Mahua, district Banda has been declared as null and void and the election petition of Ranjeet Singh was allowed and he was declared to be legally elected Pramukh of the aforesaid block.

3. The election of Pramukh of Kshetra Panchayat, Mahua, district Banda was held on 27.2.2006 and Anoop Singh, the appellant, was declared elected and was administered the oath of office on 18.3.2006. Being aggrieved Ranjeet Singh had filed an election petition, registered as Election Petition No. 39 of 2006 of the aforementioned Rules of 1994. The said election was challenged on various grounds, indicated in the memo of petition, which is on record. Initially, the Election Officer counted 42 votes in favour of Anoop Singh and 41 in favour of Ranjeet Singh. As a result of this, Anoop Singh was declared elected. In the

election petition specific grounds were taken that five votes were wrongly rejected/declared invalid, His valid votes were wrongly included in the votes of the petitioner Anoop Singh in counting. All these allegations have been denied in the written statement filed by Assistant Election Officer, respondent No. 2. Anoop Singh has also filed cross-objections alongwith written statement indicating therein that the candidature of Ranjeet Singh was itself illegal, who was resident of Attara not of Mahua. Other infirmities in his candidature were pointed out. During the course of disposal of the election petition, an application was filed on 24.5.2006 for summoning the ballot papers and for recounting on the same day. Twenty five issues were framed covering the disputes. It is relevant to mention that on 17.4.2006, the Election Tribunal had accepted the service report and directed to proceed ex parte against Anoop Singh, the elected candidate. A Writ Petition No. 31545 of 2006, Ranjeet Singh v. State of U.P., was filed by Ranjeet Singh, respondent No. 1 seeking expeditious disposal of the election petition. This Court vide judgment and order dated 7.6.2006 issued directions that the election petition be disposed of within four months from the date of receipt of the certified copy of the Judgment. The application to recall the order dated 17.4.2006 filed on 3.7.2006 was allowed after hearing the election petitioner on 5.7.2006 and additional issues were framed on 15.7.2006. Initially, the matter was being dealt with by the Additional District Judge and amendment in the written statement in making counter-claim, challenging the candidature of Ranjeet Singh as Member of Kshetra Panchayat was sought and it was allowed. A transfer application was filed in this Court to transfer the election petition out of district Banda. It was dismissed on 29.7.2006. However, the election proceedings continues. The Ist Additional District Judge/Election Tribunal, Banda, had passed an order dated 26.3.2007 for recounting of votes on the ground that the parties have examined the witnesses and have led the evidence with regard to allegations in the writ petition and the recount of votes. A Writ Petition No. 19627 of 2007, Anoop Singh v. Ranjeet Singh and Ors. was filed in this Court on several grounds that the learned Addl. District Judge had not discussed the evidence at all and has directed the recount causing serious prejudice to Anoop Singh, petitioner in that case. The counsel of Shri Ranjeet Singh relying upon several judgments in Dileep v. State of Maharashtra and Ors. JT 2000 (Supp 1) SC 289 ; Shooabh Nath Vs. State of U.P. and others, and Smt. Saroj Sharma v. Smt. Imarta Saini and Ors. 2000 ACJ 1124, in support of his submissions and has submitted that where there are clear and specified pleadings and that entire case depends upon improper rejection of votes in favour of the election petitioner and illegal and improper acceptance of votes in favour of the returned candidates, the order may be passed without discussing the evidence.

4. Learned Counsel for the petitioner on the other hand has relied upon the Judgments in Beli Ram Bhalai v. Jai Behari Lal Kachi 1980 Supp SCC 53; Bhabhi Vs. Sheo Govind and Others, M.R. Gopalakrishnan Vs. Thachady Prabhakaran and Others, Vadivelu Vs. Sundaram and Others, and V.S. Achutanandan v. P.J. Francies (2001) 3 SCC 81 : 2001 (4) AWC 29 (SC) (NOC) and has submitted that

a candidate who seeks recount should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. In a democratic process of election the secrecy of ballot cannot be likely disturbed by mere allegations of illegality or irregularity in counting. The law laid down by this Court in the case of Smt. Hazzee Vs. Prescribed Authority under Panchayat Raj Act/Up-Zila Adhikari and Others, was also considered wherein the Court has summarised the law with regard to sufficiency of pleadings and evidence for recount of votes.

5. This Court had also taken note of various other decisions rendered in Suresh Prasad Yadav Vs. Jai Prakash Mishra and Others, Chanda Singh Vs. Choudhary Shiv Ram Verma and Others, and Bhabhi Vs. Sheo Govind and Others, while disposing of the writ petition filed by Anoop Singh. While dealing with the ratio laid down in these cases, the Court had given a detailed findings. Finally the Court has formed the opinion that the learned Additional District Judge had committed a gross error in exercise of his jurisdiction in failing to discuss the evidence in support of pleading. The evidence ought to have been discussed by the Court. This Court had given opportunity to Additional District Judge to hear the parties and to discuss the evidence before arriving at a finding for recounting of votes in the light of the law laid down in the referred judgment. The election petition proceeded further. An order was passed on 12.6.2007 partly allowing the application of Ranjeet Singh, calling further records relating to election from the office of the District Magistrate, Banda. A challenge was made by filing a Writ Petition No. 27377 of 2007 by Anoop Singh. The order dated 12.6.2007 was upheld. The records were summoned. The ballot papers and boxes were summoned. The election petition proceeds further. The petition was fixed for 16.6.2007. 23.6.2007. 3.7.2007 and 5.7.2007. The order passed by the District Judge, Banda dated 10.7.2007 was again challenged by filing a Writ Petition No. 31947 of 2007. The Court after hearing the parties had disposed of the writ petition with the following directions:

In the opinion of the Court, there is little or no necessity for the District Judge to transmit the record available with Court to the office of the District Magistrate, inasmuch as the District Judge may himself get the records, pertaining to the election of Block Pramukh, Mahua, segregated from all other records in the box and after such segregation the District Judge may get the box sealed transmitted alongwith records not relevant for the election of Block Pramukh Mahua to the office of the District Magistrate. He may retain the records pertaining to the elections of the Block Pramukh, Mahua in sealed envelopes or boxes, as the case may be, in his Court

6. It is relevant to mention here that Anoop Singh approached the Supreme Court of India by filing a SLP No. 10784 of 2007. Ranjeet Singh v. Anoop Singh, challenging the judgment and order passed by this Court on 15.6.2007. This Court had appreciated that Tribunal was empowered to look into the ballot papers whether they were rightly rejected or not and the record could be summoned in the circumstances of the case. A period of six months was

stipulated in the order for disposal of the petition. The SLP was dismissed by the Hon"ble Apex Court on 2.7.2007.

7. It is noteworthy that later on the District Judge, Banda had taken up the matter and he was dealing with the election petition. Orders were passed. The petition proceeded further and a detailed order was passed on 20.7.2007 taking note of the event. 25.7.2007 was fixed for further orders. Shri C.B. Singh, Assistant Election Officer was summoned to remain present in the Court. The representative of District Magistrate, Banda was also required to present on 25.7.2007. Thereafter 28.7.2007, 31.7.2007 was fixed by the District Judge/Election Tribunal. Another petition was filed by Shri Anoop Singh. i.e., 35111 of 2007. which was dealt with by the Court on 1.8.2007 and the same was dismissed. The Court has taken note that the ballot boxes were opened and petitioners were given opportunity to file objections. This order was taken note of by the District Judge, Banda. The petition was again taken up on 6.8.2007. A detailed order was passed, which is on record of this case. Next date 13.8.2007 was fixed. In the meantime, contempt petitions were filed by Anoop Singh, which were dismissed. Another Petition No. 37614 of 2007, Anoop Singh v. District Magistrate, Banda, was preferred against the order dated 6.8.2007, passed by the District Judge, Banda. The writ petition was dismissed. It was observed that the Election Tribunal may proceed further. Another petition was filed in this Court raising grievances against the District Judge, Banda. This Court on 27.8.2006 had dismissed the writ petition observing that there was nothing on record to show that the District Judge, Banda was biased against the petitioner Anoop Singh. The Hon"ble High Court had declined to transfer the case from District Judge, Banda/Election Tribunal. While dealing with the election petition, the District Judge, Banda had passed another order on 18.9.2007 dealing with the misc. applications, objections put-forth by Anoop Singh regarding ballot papers, tampering of votes and other allegations. Amendment application was also submitted. The District Judge, Banda had dismissed the application by writing a detailed order on 18.9.2007 running in several pages. This order dated 18.9.2007 was again challenged by Shri Anoop Singh in Civil Misc. Writ Petition No. 47234 of 2007, Anoop Singh v. State of U.P. This Court had dismissed the aforesaid writ petition on 28.9.2007. This Court in its Judgment and order dated 28.9.2007 had observed as follows:

I have considered the submissions and perused the record.

The events which took place in the election petition and facts which transpired after summoning of the electoral papers are on the record in the form of the evidence led in the case, the facts noted in the various orders passed by the District Judge, the objections filed by the parties and other reports. The District Judge has refused to allow the amendment application giving cogent reasons as noted above which in the opinion of the Court are valid reasons for rejecting the application. The amendment application filed by the petitioner is not a bona fide application and has been made with intent to delay the election proceeding. The

order passed by the District Judge on the amendment application does not suffer from any illegality warranting interference by this Court in exercise of its writ jurisdiction.

8. After the above order was passed by the Hon'ble High Court on 28.9.2007, the election petition further progressed and the District Judge, Banda had passed another order on 15.10.2007 dealing a Misc. Application No. 433 Ga-2 submitted by Anoop Singh. This application was rejected and the election petition was ordered to be listed on 25.10.2007 for final hearing. The District Judge had passed a specific detailed order on 12.11.2007, perused the envelopes containing valid and invalid votes. This order is an important order and the same is quoted below:

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fu.kZ; fy[kkrs le; eSaus lhYM cDIs esa ls lhYM cMs lQsn fyQkQs ftlesa izeq[k in {ks= iapk;r egqok ls lEcU/kr oS/k ,oa voS/k eri= j[ks Fks] fudkydj voyksdu fd;k A 6 voS/k eri= tks NksVs fyQkQs esa j[ks gq, Fks muesa eSaus ;g ik;k fd 2 eri= j.kthr flag ds xyr ax ls voS/k ?kksf"kr fd;s x;s gSa A mu 2 eri=ksa esa eSus ? e"K% vaxzsth ds v{kj Mh bZ eri=ksa ds ihNs yky L;kgh ls fy[kdj vius gLrk{kj dj fn;s gS rFkk mlds uhps fMfLV?DV tt] ckank esjs }kjk fy[kk x;k gS A okLro esa ;s nksusk eri= j.kthr flag ds i{k esa Mkys x;s Fks A ;s nksuksa eri= j.kthr flag ds i{k esa erx.kuk esa "kkfey fd;s tkus ;ksX; gS A ;g voS/k ugha ekus tk ldrs gSa A erx.kuk vf/kdkjh dks bu eri=ksa dks voS/k ugha ekuuk pkfg,A

oS/k eri=ksa dk cM+k fyQkQk fudkyus ij eSaus ;g ik;k fd vuwi flag ds i{k esa 42 er j[ks Fks A bu eri=ksa esa ls 3 eri= oS/k ekudj erx.kuk vf/kdkjh us xyrh dh Fkh A bu rhuksa eri=ksa ds ihNs eSus ?e"K% vaxzsth ds v{kj ,- ch- lh- yky L;kgh ls vafdr fd;s gS ,oa vius buhf"K;y ?gLrk{kj? dj fMfLV?DV tt] ckWank fy[kk gS A okLro esa] bu rhuksa eri=ks dks erx.kuk vf/kdkjh }kjk oS/k ugh ekus tkuk pkfg, Fkk vkSj vuwi flag ds i{k esa ;s rhuksa eri= tksM+s tkus ;ksX; ugh gSA

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IQsn fyQkQs ,d cMs+ IQsn fyQkQs esa lhy djds j[k fn;s x;s gSa A bu fyQkQksa ij ykd dh lhy ds vykok fMfLV?DV tt] ckank dh jck LVkEi dh lhy yxkbZ xbZ gS ftl ij esjs }kjk gLrk{kj dj fn;s x;s gSa A bl fyQkQs dks iqu% NksVs cDIs ds rkys dks lhy dj fn;k x;k gS vkSj nksuks pkHkh;kWa j[kh gqbZ gSA

9. The District Judge, Banda had delivered its judgment and order on 12.11.2007 and the election petition of Ranjeet Singh was allowed with costs. The election of Anoop Singh as Pramukh of Kshetra Panchayat Mahua, district Banda, which was held on 27.2.2006 was declared to be illegal, null and void. Ranjeet Singh was declared elected as Pramukh of Kshetra Panchayat Mahua, district Banda. The counter-claim challenging the candidature of Ranjeet Singh was rejected. He has answered issues No. 1, 2, 4, 6, 7 and 9 against respondent Ranjeet Singh. 3 and 8 were decided in favour of Anoop Singh that he was not a defaulter. Most of the issues were decided against the appellant.

10. The judgment and order has been challenged on various grounds, spelt out in the memo of the writ petition. Shri Ajay Bhanot, learned Counsel for the appellant has led to this Court to various documents, materials in support of his submissions. According to him, the learned District Judge in the impugned judgment has not recorded any reason whatsoever for invalidation of the three votes, which were casted in favour of the appellant. He had not recorded any finding that the intention of the voter was to cast his/her votes in favour of the losing candidate/ election petitioner-respondent. In the absence of such finding or material on record, the learned Election Tribunal had illegally increased the number of votes of the losing candidate election petitioner/respondent. The findings of the District Judge are contrary to Rule 26 of the U.P. Kshetra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules. 1994. The District Judge, Banda had exceeded its jurisdiction in allowing the petition by opening sealed envelopes containing ballot papers. This exercise was done behind the back of the parties. The Election Tribunal had completely overlooked the procedure provided under Rule 45(b) of the aforesaid Rules, 1994. The findings recorded by the Tribunal are violative of the aforesaid provisions. The findings in respect of judgment and issues No. 11, 12, 14 and 15 were against weight of evidence and were not in consonance with the aforementioned Rules. Similarly, issues No. 13, 16, 17, 18, 19, 22 and 23 were recorded against the weight of evidence.

11. This Court highly appreciates the endeavours of Shri Ajay Bhanot, learned Counsel for the appellant in leading the Court to various pages of the paper book, statements, High Court's order, District Magistrate's report and various orders passed during the election proceedings while putting-forth his arguments. According to him, there was sufficient material that tampering was done in the ballot papers. Shri C.B. Singh's, report and statement were not properly dealt with by the Tribunal and an independent inquiry was required to look into the allegations levelled against the concerned authorities. Several infirmities in the proceedings of the Tribunal were pointed out by Shri Ajay Bhanot, learned

Counsel for the appellant in highlighting his submissions. According to him, tampering of the ballot paper after declaration of the election stood proved. He has read the memo of the election petition to show that pleadings were vague and indefinite. These lacked material facts and particulars about the evidence.

12. Learned Counsel for the appellant has placed reliance on various judgments rendered by the Apex Court in support of his submissions, which are as follows:

- (1) Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar,
- (2) O. Bharatan Vs. K. Sudhakaran and another,
- (3) Hari Ram Vs. Hira Singh and Others,
- (4) M. Chinnasamy Vs. K.C. Palanisamy and Others, and
- (5) P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and Others,

13. Shri Ravi Kant, learned senior counsel has resisted the appeal. He has taken the Court to various orders passed by the learned Additional District Judge and District Judge, Banda. Attention of the Court was drawn that the appellant had filed about twenty writ petitions including a contempt petition before this Court. Each and every issue, i.e., Issue Nos. 11, 12, 14, 15, 16, 17, 18, 19, 22 and 23 had been challenged in this Court and this Court had dealt with the submissions of the appellant and have dismissed the most of the petitions or directions were issued to the Election Tribunal, which were complied with. The Election Tribunal had to deal with the matter expeditiously as directed by this Court in its order dated 7.6.2006. The same observations were reiterated in Writ Petition No. 437 of 2006. The appellant was not satisfied with the proceedings being taken up in District Magistrate, Banda's office or even before the Court of District Judge, Banda, the Apex Court in the district. This Court had declined to interfere in the proceedings and had subsequently held that District Judge, Banda was not biased and the proceedings might go on and the election petition could be dealt with by the District Judge, Banda in accordance with law.

14. By giving a chronology of events and placing various interim orders passed by the Election Tribunal and the orders passed by this Court on various occasions. Shri Ravi Kant, learned senior counsel has submitted that every issue which was decided by the District Judge, Banda was challenged by filing writ petitions. Finally, the Tribunal had concluded the matter, taking into account the observations made by this Court in its various judgments and orders.

15. The learned Counsel for the respondent alongwith his objections have filed several orders passed by the Election Tribunal while dealing with the petition and the orders passed by this Court. These orders have been read in the Court. According to him, the findings and conclusions recorded by the District Judge, Banda are unassailable. He has placed reliance on the some judgments and an order passed by this Court (Hon'ble Mr. Justice Sunil Ambwani) in Writ Petition No. 19627 of 2007 on 17.4.2007. This judgment and other judgments cited by

the learned Counsel for the respondents were considered and dealt with. The observations contained in this Judgment have been followed by the Election Tribunal.

16. I have heard the learned Counsel for the parties, gone through the materials and evidence on record, Judgment rendered by the Election Tribunal and various orders, which were passed by the Tribunal and this Hon''ble High Court from time to time.

17. The Election Tribunal, i.e., District Judge, Banda and his predecessors, i.e., Additional District Judge, Banda had carefully dealt with the election petition. This Court has taken note of the fact that the Tribunal had passed various interim orders in dealing with the petition. Most of the orders were challenged by the appellant Anoop Singh in this Court. The details of the writ petitions and the orders passed by this Hon''ble High Court have been given in the foregoing paragraphs. All such orders passed by the Election Tribunal and the Hon''ble High Court have been placed on the record of this appeal. Shri Ravi Kant, learned Counsel for the respondent has placed almost all the aforesaid orders alongwith his counter-affidavit dated 3.2.2008. Through the order dated 7.6.2006 this Court had directed the Election Tribunal to proceed with the matter expeditiously and to decide the same within four months. Thereafter, six months time was allowed to conclude the controversy. The three applications submitted seeking transfer of petition from one Court to another or from district Banda to another district were rejected. Ultimately, vide order dated 22.5.2007 this Court had directed the District Judge, Banda to deal with the election petition and dispose of the same. There is a force in the submission of learned Counsel for the respondent that against each and every issue, which was decided by the District Judge/Election Tribunal, Banda, writ petition was preferred and orders were passed by this Court on various dates.

18. As far as controversy regarding declining the Tribunal to allow amendment sought by the appellant is concerned, that was set at rest by the Apex Court when the SLP of the appellant was dismissed by the Court. The orders for checking and rechecking of the ballot papers were challenged in this Court three times. The F.A.F.O. and the petitions were dismissed on 13.7.2007, 15.6.2007, 18.7.2007 and 25.7.2007 duly affirmed by the Supreme Court of India. By this order, this Court had approved that the District Judge, Banda could do the recounting. The District Judge, Banda was empowered and had rightly ordered for opening of the envelopes containing ballot papers and perusing the same. This Court had permitted the District Judge, Banda to carry on with the counting and the opening of the boxes to ascertain the truth. The learned District Judge, Banda has passed a specific order/Memorandum on 12.11.2007. While dealing with issues Nos. 1, 2, 4, 6, 7 and 9, the District Judge has rightly concluded that the Election Officer Shri C.B. Singh had committed serious irregularities in counting the votes. The District Judge/Election Tribunal had found that 41 votes were casted in favour of Ranjeet Singh. As far as six invalid votes, which were

kept in the small envelopes, the District Judge, Banda had found that two votes, which were casted in favour of Ranjeet Singh were in fact not invalid. Shri C.B. Singh, Election Officer had finally declared two valid votes as invalid votes. The District Judge, Banda had ordered for opening all the ballot boxes and envelopes and put signature with red-ink marking D and E. These two votes were to be counted in favour of Ranjeet Singh. Accordingly, (41+2) votes, i.e., 43 votes were casted in favour of Ranjeet Singh. According to the Election Officer, Anoop Singh had obtained 42 votes and was not entitled for three invalid votes out of six votes. Three invalid votes were counted in favour of Anoop Singh. By reducing three out of 42, Anoop Singh had got 39 votes. Naturally candidate in whose favour 43 votes were casted was to be declared elected in place of the other candidates who had obtained 39 votes. Illegalities and irregularities were found by the District Judge, Banda, which have been recorded in the judgment. It is noteworthy that the learned District Judge, Banda has written his judgment in 90 pages. He has dealt with the issues regarding valid and invalid votes in detail. He had rightly found that 43 votes were casted in favour of Ranjeet Singh and two votes, which were casted in favour of Ranjeet Singh were illegally declared to be invalid with ulterior motive, favouring Shri Anoop Singh. Unnecessary, technical objections have been raised in this appeal to confuse the issues. This appears to be the reason for the appellant in not accepting the orders of the Tribunal. He was insisting upon to avoid opening of ballot boxes, envelopes and carrying out recounting.

19. This Court in Writ Petition No. 31947 of 2007, was pleased to record a finding that there is no necessity for the District Judge, Banda to transmit the record available with Court to the office of the District Magistrate, Banda. The District Judge, Banda was given liberty by this Court to himself get the record pertaining to the election of Pramukh, Block Mahua. He was further allowed to segregate the relevant material from other record. Unnecessary irrelevant material, papers were to be sent back to the office of District Magistrate. The sealed envelopes boxes were permitted to be retained by the District Judge, Banda.

20. The findings have been recorded that the appellant had carried out malpractices in winning the election. With the connivance of the authorities concerned, the appellant got declared himself as elected as Pramukh of Kshetra Panchayat, Mahua. Certainly, invalid votes ought not to have been counted in favour of the appellant Anoop Singh. The wrong done by Shri C.B. Singh, Election Officer was taken note of by the Election Tribunal. If the fair counting would have been done, the respondent Ranjeet Singh should have been elected as Pramukh of Kshetra Panchayat, Mahua. The learned District Judge, Banda had not found any tampering in the ballot boxes and the sealed cover etc. Nothing has been placed before the Election Tribunal and this Court to substantiate the allegations of tampering of the documents etc. It is appreciated that the learned District Judge, Banda has carefully considered, dealt with the orders and acted as per directions issued by this Court from time to time. He has passed detailed reasoned and speaking order while dealing with the objections of the appellant at

all stages of the proceedings. In fact the appellant was trying to stretch the matter too-far in dealing with the disposal of the election petition. The appellant was given ample opportunity of putting-forth his evidence. He was allowed to remain associated with the proceedings of the Election Tribunal. The appellant has failed to substantiate his allegations regarding bias and this Court in one of its judgments had declined to interfere in the proceedings pending before the Election Tribunal/District Judge, Banda. The appellant has failed to make out a case for interference by this Court in this appeal.

The first appeal is accordingly dismissed. Interim order, if any, stands discharged.