
(1995) 09 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 15387 of 1995

Balwant Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 04-09-1995

Acts Referred:

Citation : (1995) 09 AHC CK 0092

Hon'ble Judges : Palok Basu, J and S.Rafat Alam, J

Final Decision : Dismissed

Judgement

Palok Basu, J.—This writ petition has been filed by Balwant Singh with the prayer that respondents be commanded to resume the poll from the stage it was postponed and also that a mandamus should issue declaring Rule 31 of the Rules null and void and the added reliefs do not require any special mention at this stage.

2. The facts lie in a narrow compass. The petitioner Balwant Singh and three others, namely, Smt. Raj Bala, Sri Rajendra Singh and Smt. Suman were the four candidates for the Office of Adhyaksh Zila Panchayat, Hardwar which was held on 2251995. Bereft of the details of events which happened on 2251995, the relevant fact to be stated is that the polling began and nine voters had already exercised their franchise when some commotion took place as a result of which a large crowd intervened, came inside the polling booth and the Returning Officer closed the polling and postponed it to a future date to be fixed. The Returning Officer in his turn informed the State Election Commission. In paragraph No. 18 of the writ petition the specific averment of the petitioner is that he had sent a Fax message to the Election Commission and also to the Governor of Uttar Pradesh and that the said Fax message was despatched dated 1.05 p. m. on 2251995, a true copy of which has been filed as Annexure 11 to the writ petition. It transpires that by letter dated 2751995 the Election Commission through its letter No. 1010 Ra.Ni.Aa.Anu.5/95 called upon the District Election Officer (District Magistrate) Hardwar to fix a date for repelling and intimate the Election

Commission on priority basis the said date. The aforesaid letter has been filed as CA8 to the counter affidavit filed by one Sri R. V. Dinkar who was Assistant District Election Officer ID Hardwar in the Paochayat Elections of 1995. The relevant averments concerning AnnexureCA 1 exist in paragraph No. 28 of the said counter affidavit which have been replied by the petitioner in paragraph No. 31 of the first rejoinder affidavit by a general statement that the averments in paragraph No. 28 of the counter affidavit are not admitted.

3. With this factual background the petitioner rushed up to this Court through this writ petition on 305J 995. After this writ petition was entertained notice was issued to the opposite parties who were five in number being State of Uttar Pradesh through State Election Commissioner Uttar Pradesh, Lucknow, District Magistrate, Hardwar Cum Returning Officer, Sub Divisional Magistrate cum Asstt. Returning Officer, Hardwar, Sri Bhagat Singh Verma, District Magistrate Hardwar cum Returning Officer and Sri Shashi Dhar Bhatt, Sub Divisional Magistrate cum Assistant Returning Officer, Hardwar. During the pendency of this writ petition Rajendra Singh had moved an application for impleadment as opposite party No. 6. After hearing learned counsel for the parties the aforesaid applicant was permitted to argue in opposition through his counsel Sri G. C. Bhattacharya. Consequently, the impleadment application has to be allowed.

4. Sri Ravi Kant, Advocate has appeared on behalf of the petitioner Balwant Singh and it must be said to his credit that he has not left a single point of fact or law uncovered during the course of his learned arguments. Sri Aditya Narain Singh has appeared on behalf of State Election Commission. It may be stated here that the stand of the State Election Commission is that repoll order means and should be interpreted to mean that fresh poll all together has to be held. The Standing Counsel Sri H. R. Misra and Sri C. K. Rai have appeared on behalf of the officials noted above. It may further be mentioned here that two counter affidavits, one by R. V. Dinkar and the other by Sri Shashi Dhar Bhatt, opposite party No. 5 have been filed to which two separate rejoinder affidavits have been filed. A detailed counter affidavit along with impleadment application of Rajendra Singh has also been filed to which a suitable reply has been given by the petitioner. Prolonged hearing on the arguments of Sri Ravi Kant and Sri O. C. Bhattacharya had preceded this judgment in open Court. For short it may be mentioned here that though primary arguments shall be adverted to concerning the legal position, but this case should turn on facts rather than on questions of law raised by the learned counsel for the petitioner.

5. Sri Ravi Kant, learned counsel for the petitioner vehemently argued that those nine votes which had already been polled should be retained and the maximum that is possible on the facts and circumstances of the present case is that the whole polling should be taken to be adjourned polling and, therefore, the votes to be cast on the adjourned date should be after those nine votes, i.e., it should begin from 10th onward. It may be mentioned that it is not denied that there are only 16 member voters who will cast votes in exercise of their right to vote for

the office of Adhyaksh, Zila Panchayat Hardwar. Readily it should be recorded here that these elections were held under the provisions of U. P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (for short, the Act) and that concerning election of two members the election petitions have been filed in which some interim orders have been passed and those voters had some rigor on the said exercise of their right. The aforesaid matter is neither being touched here nor should be adverted to because the election petitions which were pending then may be taken to challenge still further as the State Election Commissioner has informed the Court that those two election petitions have been dismissed. Therefore, no further observation requires to be made. It may be mentioned that regarding the state of affairs at the polling, reference has been made to the F.I.R. as also the detailed report of the Returning Officer by both sides counsel.

6. Sri Ravi Kant argued that there is no prohibition in the Act or the Rules in adjourning the poll if there is some commotion, natural calamity or criminal activity. It is argued that unless the Returning Officer makes a specific report about tampering of the votes polled it will not be just or proper to interpret the adjournment of poll as an authority justifying repoll from the very beginning. In this connection attention of the Court was drawn to the guidelines issued by State Election Commission, copy of which has been filed as AnnexureCA7 to the counter affidavit of Sri R. V. Dinkar. In guidelines No. 5 it is stated that when the adjourned poll is recommenced, the voters be asked to cast their votes from the number after the last voter had exercised his franchise on the last date. It has further been provided in the said guidelines that though the voters who had already exercised their franchise shall not be permitted to vote a new or afresh, the concluding portion of guidelines No. 6 says that the Returning Officer should abide by the directions of the District Returning Officer concerning the repolling and then follow the Rules and Regulations applicable. Sri Ravi Kant, relying upon those guidelines drew the attention of the Court to the letter of the Returning Officer addressed to the State Election Commission on 22/5/1995 and said that nine votes which had already been polled should be permitted to remain in the ballot boxes and voters from serial No. 10 onwards should be permitted to cast their votes. In this connection he has referred to the following paragraph of the aforesaid letter of the District Magistrate which, translated into English, would read as follows :

"The circumstances which came to exist would justify the decision of the Asstt. Returning Officer/Presiding Officer to stop the polling and I fully concur with the said decision. At the time when the polling had been stopped, out of 15 voters nine had cast their votes. The ballotbox etc. have been put under seal cover and then kept in the Treasury under double lock."

As stated the only controversy now is as to whether the aforesaid order dated 27/5/1995 should mean that polling has to commence from 10th voter onward or that it should include a repoll beginning from 1 to 16.

7. On behalf of the Election Commission and the State as also on behalf of the newly added respondent Rajendra Singh it was vehemently argued that the decision of the Election Commission as conveyed to this Court through the aforesaid AnnexureCA8 leaves no room for doubt that a fresh polling has been directed to be held and, therefore, this Court should not try to interpret the aforesaid order of fresh poll as an adjourned polling permitting the polling on the adjourned date to commence) from the remaining voters existing in the voters list. The argument proceeds that election process is on and this Court's powers to interfere with the election process are circumscribed by law and more so by the celebrated decision of the Supreme Court in Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978, SO, 851. Passages after passages from the said decision were relied upon by either side, one saying that in case of such recounting this Court's power to issue necessary directions are served and the other side contending that once the election process is on all powers of this Court under Article 226 of the Constitution of India are taken away. Fortunately, however, since in the instant case, as noted above already, the petitioners grievance and his reliefs noted above have to be judged as per his own admitted communication as to the sacredness and truthfulness of the votes polled, this question as to whether under Article 226 of the Constitution of India may or may not be used at this stage is only a matter of academic importance. But before advertng to the said discussion it may be pointed out that Sri Ravi Kant has drawn the attention of the Court to the following two decisions of the Supreme Court reported in AIR 1979 SC 1628 Ramana Dayaram Shelly v. The International Airport Authority of India and others and 1955 SC 1512 State of U. P. and others v. Pradhan Singh Kshetira Samiti and others. He also drew the attention of the Court to certain parallel Rules existing in the Representation of People Act and the Rules framed thereunder particularly Rules 44A and Rule 48(2). To be specific Sri Ravi Kant drew the attention of the Court to the provisions ID Sections 57, 58 and 58A of the Representation of the People Act in order to argue that adjourned polling is a distinct possibility which need not necessarily be inferred as repelling.

8. After all, fairness of election process is by and large the basis for judging the election results. A party fighting an election is always empowered to countenance or contradict the said process and lay his cards open on the basis of which this Court may be asked to formulate its opinion as to the need of hour, i. e., whether the claiming of the petitioner concerning the facts stated by him should further his reliefs or not. In this connection the petitioner's own communication which has been referred to above shakes his case from the very foundation. For correct appreciation of the aforesaid aspect the said communication dated 2251995 said to have been dispatched at 1.05 p.m. on 2251995 itself has to be noted here as a whole : (Translation by Court):

"To,

The Chief Election Commissioner,

U. P. Government, Lucknow.

Dear Sir,

Today i. e. 2251995 when three other voters had entered the polling booth at 11.05 a.m. after nine votes had already been cast for the Office of Adhyaksh, Zila Panchayat Hardwar, the Returning Officer/District Magistrate, Hardwar, without any justification or justifiable reason, postponed the polling indefinitely and after stopping the polling while putting seal on the ballot box did not permit any candidate to put his seal or signature and that there is every apprehension of tampering of the votes polled.

"And today selection has thus been arbitrarily postponed by the Asstt. Returning Officer with the connivance of the District Magistrate, Hardwar. It is worth mentioning that the polling had proceeded peacefully and there was no altercation nor any untoward incident has happened nor any F.I.R. has been lodged at any police station by any one.

"The District Magistrate, Hard war ^has, noticing the defeat of the party in power, stopped the polling. Necessary action is prayed for.

Sd/ Balwant Singh 2551995

1.05 p.m.

Candidate for the Office of Adhyaksh Zila Panchayat,
Hardwar.

Copy to Sri R. D. Sonkar,

Chief Election Commissioner, Lucknow."

9. It is, therefore, more than apparent that so far as Balwant Singh, petitioner is concerned he had already doubted the correctness of the votes which had been polled prior to the adjournment of the polling. Once this is so the petitioner cannot be permitted to blow hot and cold together. I he doubts that because the Election Officer had then not put his seal after getting the seal or signature of the candidates present and, therefore, he has every apprehension that the votes may have been tampered with, he cannot be permitted to claim that those votes should be continued to be maintained as they are and the repelling should be interpreted to mean that voters from serial No. 10 on wards may be permitted to cast their votes. On this short question, therefore, the petitioner must not be permitted to challenge the aforesaid order of the fresh polling for which a date was asked to be fixed by the District Magistrate. During the course of the arguments, it was pointed out by the counsel for the Election Commission that as soon as a date will be intimated by the District Magistrate the polling for the Office of Adhyaksh, Zila Panchayat Hardwar shall be held in accordance with law. It was also pointed out that in defence to the proceedings of this Court the Election Commission did not direct the election to be held and was awaiting the

result of the writ petition. The impleadment application has already been allowed and no further orders are necessary in this case because it is hoped that the Election Commission shall proceed to get the election held in accordance with law as expeditiously as possible.

10. In view of the aforesaid discussion the writ petition fails and is dismissed. No orders as to costs. A certified copy of this order may be made available to the learned counsel for the parties on payment of usual charges within three days.