
(2001) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4508 of 2000

Bhira @ Nada

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Haryana Panchayati Raj Election Rules, 1994 — Rule 14, 61, 61(2), 62, 69(2)

Citation : AIR 2001 P&H 289 : (2002) 1 ILR (P&H) 42 : (2001) 4 RCR(Civil) 124

Hon'ble Judges : V.S. Aggarwal, J; Amar Bir Singh Gill, J

Bench : Division Bench

Advocate : Mr. R.K. Gupta and Mr. R.K. Rana, for the Appellant; Ms Ritu Bahri, DAG, Dr. Balram Gupta and Mr. Surinder Garg, for the Respondent

Judgement

Amar Bir Singh Gill, J.—Whether the Election Commission can exercise the power of review in the absence of there being any such provision in the Haryana Panchayati Raj Act, 1994 by which it can review the order of re-poll and pass fresh orders for recounting of votes instead - is the question mooted for decision before this Court.

2. In the last election to the Gram Panchayats in the State of Haryana held on 16.3.2000, the petitioner alongwith respondents No. 5 to 9 contested the election to the office of sarpanch of Gram Panchayat of village Rajound which was reserved for scheduled caste candidate. On the date of polling i.e. on 16.3.2000, there was large scale violative including booth capturing and snatching of ballot papers etc. The matter was reported to the police and a case was registered. The petitioner also made a complaint to the Presiding Officer but despite this, the counting took place and the petitioner was declared elected. Since respondent No. 5 who was a candidate of Indian National Lok Dal i.e. the ruling party in the State and was supported by local M.L.A., respondent No. 4, exerted political pressure on the Presiding Officer to declare respondent No. 5 elected. The ballot papers including the other election material were snatched,

tampered with and the Presiding Officer, under the political pressure, subsequently, declared respondent No. 5 to have secured more votes than the petitioner on which the entire village came out in the streets and situation became tense. The Deputy Commissioner and Superintendent of Police also reached at the village and took stock of the situation. The Deputy Commissioner, after verifying the facts and going through the relevant material confirmed about the irregularities and errors in the procedure which vitiated the poll and on receiving the reports from all the Presiding officers, recommended for order of re-poll to the Election Commission. The Deputy Commissioner in the capacity of District Election Commissioner made recommendation and sent the same alongwith the reports of the Presiding Officer to the State Election Commission, Haryana-respondent No. 2 for taking the final decision in the matter. Respondent No. 2, after going through the records sent by the Deputy Commissioner and after discussing the matter with him, issued notification dated 17.3.2000, Annexure P-1, ordering re-poll in the village to the office of Sarpanch and fixing the date for the same as 18.3.2000. The District Authorities were informed to make arrangements for re-poll on 18.3.2000. However, the District Authorities informed that due to shortage of time and non availability of sufficient number of ballot papers, the date of re-poll be extended to 22.3.2000. However, before the re-poll could take place on 22.3.2000, on receipt of telephone call, it was known that the same had been postponed. The petitioner claims that in the meantime, respondent No. 5 exerted political pressure on the State Election Commission-respondent No. 2 and it, under the political pressure, without issuing any notice and without affording any opportunity of hearing to the petitioner and other candidates, reviewed its earlier decision of re-poll and ordered for recounting by subsequent notification dated 3.4.2000, Annexure P-2. The grievance of the petitioner is that because of the political pressure the State Election Commissioner changed the entire election record and Presiding Officers and Polling Officers were called in his office and statements were recorded afresh. Fresh reports were got prepared from the election staff to review the earlier decision of re-poll and on the basis of the changed record, respondent No. 2 issued the impugned notification, Annexure P-2 and acting on the impugned notification, re-counting was conducted at Kaithal on 6.4.2000 in the absence of the petitioner and the other candidates i.e. respondents No. 6 to 9 and respondent No. 5 was declared elected as Sarpanch. The petitioner claims that the action of respondent No. 2 is totally illegal, arbitrary, mala fide, politically motivated, unconstitutional and is liable to set aside. He seeks the issuance of writ, order or direction in the nature of certiorari for quashing the notification dated 3.4.2000, Annexure P-2 and of declaring respondent No. 5 elected to the office of Sarpanch of Gram Panchayat, Rajound and further to command respondents No. 1 to 3 to conduct re-poll for the office of Sarpanch of village Rajound.

3. In the written statement filed by the State of Haryana and the Deputy Commissioner, District Kaithal, respondents No. 1 & 3, it is claimed that after the

inquiry conducted by respondent No. 2, it was not found a case for re-poll rather it was a case for recounting and accordingly impugned notification was issued.

4. The State Election Commission, Haryana-respondent No. 2 also filed separate written statement. Pre- liminary objection was taken that when the writ petition came up hearing on April 28, 2000 before this Court, respondent No. 5 had already been declared elected to the office of Sarpanch and as such his election cannot be challenged by way of the writ petition and the petitioner has appropriate remedy of filing the election petition under the Haryana Panchayat Raj Act within 30 days of the. declaration of the result of the election. On merit, it is conceded that initially on the reports received from the Deputy Commissioner-cum-District Election Officer (Panchayat), Kaithal, re-poll for election to the office of Panch of Ward No. 10 at polling booth No. 5 and for office of Sarpanch was ordered by respondent No. 2 which was to take place on 18.3.2000. However, newspaper report appeared in The Tribune on March 18,2000 about violence in Rajound on the night falling between 16th and 17th March. After newspaper reporting about the law and order situation at the time of polling besides that the result of the election to the office of Sarpanch of Gram Panchayat Rajound was declared and there was large scale violence was reported in the Tribune on 18.3.2000 and since law does not provide fresh poll and after declaration of result, the Deputy Commissioner was asked to send detailed report about reported declaration of result alongwith copies of Presiding Officer's diaries of all the polling both, reports of Returning officer and the Supervisor vide communication dated 18.3.2000, Annexure R-2/3. It was further made clear that final decision regarding re-poll would be taken after further examination of the matter. Respondent No. 2, however, denied that it had acted under political pressure and changed the entire election record. Relevant material relating to the polling held on March, 16.3.2000 was received from the Deputy Commissioner on 19.3.2000 and appropriate orders were passed on 3.4.2000 for re-counting of the votes to be held on 6.4.2000. It is also claimed that the petitioner at no stage sought any personal hearing from the answering respondent nor he submitted any complaint. The decision was taken on the material received from the deputy Commissioner, Kaithal. It is further claimed that there was no report of destruction of ballot boxes, damage/loss/tampering of ballot papers and other poll material and no booth capturing in the sense that any body forcibly detained the polling staff and forcibly took the ballot papers from them and stamped and put in the ballot boxes had been reported and as such fresh decision regarding re-counting was taken in the circumstances of the case and impugned notification was issued.

5. In his separate written statement, respondent No. 5 denied if he had received the help of local M.L.A. and had put political pressure on the election staff. He also denied if the ballot papers were tampered with by his supporters. Rather the supporters of the petitioner made the situation tense and the Deputy Commissioner, police and all other officials were under tension as the anti-social elements who were in support of the petitioner created chaos after declaration of

the result. He claimed that he was duly declared elected after counting of votes. FIR was falsely lodged after completion of counting and declaration of result.

Learned counsel for the parties have been heard.

6. It is the common case of the parties that polling for the office of Sarpanch of village was not peaceful. It is also not disputed that atmosphere became tense when initially the petitioner was declared elected and subsequently at the same place respondent No. 5 was declared to have secured more votes in the election which gave rise to resentment and atmosphere was surcharged on account of dubious play of the election officials in the completion of the election process in respect of election to the office of Sarpanch of village Rajound. So much so that a case was also registered with the police against Shri Jai Hind, polling officer and other residents of the village. News in respect of tampering with the ballot papers, booth capturing, snatching of ballot papers and bungling committed during the election were also reported in the newspapers. The Deputy Commissioner and Superintendent of Police were also present and the Deputy Commissioner himself sent the report to the Election Commission, after verifying the facts at the spot and also on receipt of the reports from all the Presiding Officers and was satisfied that the poll process was vitiated and the same was not conducted as per law.

7. Rule 61 of the Haryana Panchayati Raj Election Rules, 1994 (for short to be referred as "the Rules") provides the procedure for a fresh poll in certain constituency where, during the poll, destruction, loss or tampering with the votes, or booth capturing takes place. Rule 61 of the Rules reads as under :-

""61. Fresh poll in case of destruction etc. or ballot box-(1) If at any election -

(a) any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer (Panchayat), or is accidentally or intentionally destroyed or lost or is damaged or tampered, with to such an extent, that the result of the poll at that polling station cannot be ascertained; or

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station, the Returning Officer (Panchayat), shall forthwith report the matter to the State Election Commissioner, through the District Election Officer (Panchayat).

(2) Thereupon, the State Election Commissioner shall, after taking all material circumstances into account, either -

(a) declare that poll at the polling station to be void and appoint a day, and fix the hours, for taking a fresh poll at that polling station and notify the day so appointed and the hours so fixed in such manner as it may deem fit; or

(b) if satisfied that the result of a fresh poll at that polling station will not, in any way, effect the result of the election or that the error or irregularity in procedure is not material, issue such directions to the Returning Officer (Panchayat) as it

may deem proper for the further conduct and completion of the election.

(3) The provisions of the Act and of rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll."

8. The notification, Annexure P-1, was issued by respondent No. 2-State Election Commission, Haryana on receipt of the report from the District Election Officer. The notification was issued simultaneously in respect of some other polling stations on receipt of similar such reports from concerned District Election Officers. Relevant portion of the notification, Annexure P-1, is extracted as under :-

"Whereas reports have been received from the Deputy Commissioner-cum-District Election Officers (Panchayat), Faridabad, Gurgaon, Kaithal and Mahendergarh that due to certain errors and irregularities in procedure, eruption of violence, snatching of ballot papers and ballot boxes and destruction of ballot papers and result sheets and other election material at the concerned polling stations/polling booths in the aforesaid districts the poll process in respect of certain polling stations in the districts have been vitiated and the polls have not been conducted as per the provisions of the Haryana Panchayati Raj Act, 1994 and rules framed thereunder and as per directions issued by the State Election Commission from time to time.

Whereas the State Election Commissioner after having examined the recommendations received from the Deputy Commissioners-cum-District Election Officers (Panchayat), concerned Returning Officer (Panchayat) based on the reports of Returning Officer (Panchayat) and taking all material circumstances into account is satisfied that in the polling stations/polling booths of aforesaid districts, the poll process has been vitiated at various polling stations in the districts.

Now, the State Election Commissioner, Haryana in exercise of powers vested in him under rule 61 of the Haryana Panchayati Raj (Election) Rules, 1994, hereby declare the poll at these polling stations/polling booth to be void and orders for holding of fresh poll for the offices of Panches, Sar-panches, Members Panchayat Samitis and Zila Parishads at the polling stations/Polling Booths already notified as per details given hereunder:-

S.No.

Name of Distt/block.

Name of polling Stations/polling booth.

Date on which Fresh poll to be held.

Office for which poll shall be

1

2

3

4

5

XX

XX

XXX

XXXX

XXXXX

XX

XX

XXX

XXXX

XXXXX

13.

Kaithal

Polling Both No. 5 of Gram Panchayat Rajound.

18.3.2000

For Panch Ward No. 10 and Sarpanch."

The poll times shall be from 8.00 AM to 4.00 PM.

The State Election Commissioner also directs that counting of votes for the concerned Ranches and Sarpanches shall be taken up on the same day after the close of poll, counting of votes for the concerned wards of Panchayat Samitis and Zila Par-ishads shall be taken up after the close of poll on 18.3.2000 itself at places to be notified by the respective District Election Officer (Panchayat)."

9. It is also not disputed that the District Election Officer, i.e. the Deputy Commissioner, Kaithal on receipt of the notification, Annexure P-1, immediately informed the State Election Commissioner of his inability to hold fresh poll on 18.3.2000 and requested that date of re-poll be postponed to 22.3.2000. However, instead of directing for re-poll on the aforesaid date, impugned notification, Annexure P-2, was issued on 3.4.2000 by the Election Commissioner. The circumstances or the reasons leading to issuance of the said notification almost find place in the notification itself. A reading of the impugned notification, Annexure P-2, raises a question whether on the material so gathered by the Election Commission it was a case of fresh poll or recount in the given

circumstances besides whether the Election Commission could exercise the power of review by cancelling the notification Annexure P-1 and subsequently issuing the impugned notification, Annexure P-2. It is the case of the Election Commissioner-respondent No. 2 that on going through the news items in the Tribune dated 18.3.2000 wherein it was disclosed that the Presiding Officer declared Mr. Dana Ram elected by 196 votes and latter declared his rival (respondent No. 5) Sh. Surat Singh winner by 106 votes, it needed to verify whether the result was declared or not by the Presiding Officer besides the Deputy Commissioner was asked to clarify as to at what stage the reported snatching of ballot papers and tearing of ballot papers occurred, if so, whether the counted ballot papers were also snatched and torn. The Election Commissioner also summoned the Presiding Officers of booth Nos. 1, 2, 4 to 10, Returning officers Panchayt Samities, Rajound-cum-District Revenue Officer Kaithal and Addl. Deputy Commissioner and recorded their statements on 1.4.2000 and the Presiding Officer of polling booth No. 3 appeared on 3.4.2000 and that of Block Development and Panchayat Officer, Rajound on 2.4.2000. The Election Commission came to the conclusion, vide Annexure P-2, that the result of the Sarpanch was not declared by the Presiding Officer of polling booth No. 1 and it was not a case of fresh poll. The notification also mentions that it was not a case of re-counting and it was further observed therein as under :

"Whereas on the examination of the records and hearing the above mentioned officers, it is found that it is also not a case for recount as there is no record of any demand for recount, except that the presiding officer of booth No. 1 in this statement made before Commission on dated 1.3.2000 mentioned that one candidate asked for repoll at booth No. 5 but this is not substantiated by any other evidence or statement of any other officer."

The notification further mentions which reads as under:-

"Whereas it is unfortunate that result sheet for election of Sarpanch prepared in part-1 of Form 15 by the respective polling officers of the polling booths and consolidated on part-2 of Form 15 of the Presiding Officer of polling booth No. 1 are not made available to the Commissioner despite all request to the district authorities on the ground that those results sheets were not handed over by the presiding officer of booth No. 1 to the returning officer, Rajound who were the officers on duty to receive the poll material after close of poll and counting.

Whereas the Presiding Officer of booth No. 1 in his statement made before the commission on 1st and 2nd April, 2000 reported that these reports were given by him to the returning officer panchayat samiti-cum-Distt. Revenue Officer Kaithal but the B.D.O. Panchayat Samiti Rajound-cum-Distt. Revenue Officer had stated that these reports were not given to them. In the absence of the result sheet Part-1 of Form 15 prepared by Presiding Officer of polling booth and Part-II of Form 15 on which these result sheets consolidated by Presiding Officer booth No. 1, it is not possible to declare the result. Whereas in the circumstances there is no option left to the Commission except to order to reconstruct those result

sheets by recounting the votes polled for election to Sarpanch of the Gram Panchayat."

10. The above details extracted from the impugned notification leave no manner of doubt that there were apparent glaring irregularities in the election process which vitiated the whole election, in the sense that even the Election Commission was unable to collect the material i.e. the result sheets etc. and it got the same reconstructed. Surprisingly, every thing was done by calling the election staff at Kaithal and, admittedly, no notice of any kind is proved to have been given to the petitioner nor he was present there when the records were got prepared or recounting was done. The impugned notification is based on the report, Annexure R-2/4 which is on the subject "Recommendation of Deputy Commissioner, Kaithal for fresh poll of elections to Sarpanch of Gram Panchayat Rajound, District Kaithal - order of recounting made by State Election Commission." It gives an interesting reading on the working of the State Election Commission. It is prepared after the recording of the statements of all the electoral officers and it would appear that statements have been tailored in order to make out a case of re-counting. According to this report, the Presiding Officers of booth Nos. 7, 8 and 9, in their statements before the Election Commissioner stated, that polling and counting at their polling booths were smooth and there were no disturbances of any type of polling and counting and that after the counting of votes, the result sheets of their polling booths for Sarpanch were handed over to the Presiding Officer of booth No. 1. They further stated that the Presiding Officers of booth Nos. 10, 6, 5, 8 and 2, however told that some persons entered the polling booth during the time of polling and tried to disturb the polling but with the help of their polling staff, they overpowered them and managed to protect/save the ballot boxes, ballot papers and other poll material from any damage. They further stated that one or two ballot papers on polling booth No. 10 were snatched by somebody but they were taken back. Further at polling booth No. 6, one or two counted ballot papers were torn by one counting agent but these ballot papers in two pieces were taken back and placed in a bundle of counted votes. They further stated that at polling booth No. 5, one bundle containing 70 ballot papers and 30 counterfoils were snatched and taken away by some persons but no ballot paper from this bundle was stamped and put in the ballot box. At polling booth No. 4, one person tried to snatch two ballot papers and in that incident, these ballot papers were spoiled but they were taken back. The Presiding Officer of Booth No. 6, however, clarified that by the words "booth per kabja kar liya" (the booth was captured), as mentioned in his diary, he meant that the crowd remained in the booth and that is why the polling was suspended. Besides this, they did not create any problem and no damage, destruction was done to the ballot boxes, ballot papers and other poll material. The Presiding Officer of polling booth No. 3, stated in his report that "Matpater phar diye" (ballot papers were torn) and further mentioned that while issuing the ballot papers and separating from the counterfoils, one or two ballot papers were torn from one side. However, there was no other damage or destruction caused

to the ballot boxes, ballot papers or other poll material. Shri Jai Hind, Presiding Officer of booth No. 1 who was assigned the work of Returning Officer for the purpose of consolidating the result sheets of all the booths and declaring the result of Sarpanch, made it clear that during the polling or counting, there was no disturbance of any type at his polling booth and the result sheets for Sarpanch from all the 9 polling booths were handed over to him before 9.00 AM and for booth No. 1 the result sheet was prepared by him. He further clarified that after consolidating the result sheets on Form-15, though he had completed the total but because of trouble and disturbance there, he could not announce as to which candidate has secured how many votes. He stated that the petitioner verbally asked for recounting but no re-counting was made. He had handed over the diary of the Presiding Officer of booth No. 1 to the Returning officer (Panchayat Samiti), Ra-jound-cum-DRO on 17.3.2000. He admitted before the Election Commissioner that the Presiding Officer's diaries were also got prepared afresh on 17.3.2000 from all the Presiding Officers at Panchayat Bhawan in Kaithal in the presence of Returning Officer. He was made to write one report in the PWD Rest House on 17.3.2000. He also told that his original Presiding Officer's diary which was given to the DRO was some-what different than the Presiding Officer's diary which he was made to write at Panchayat Bhawan in Kaithal. He also told that whatever has been recorded in his report which he was made to writ in the PWD Rest House, Kaithal was incorrect. The District Revenue Officer clarified that his report for recommending re-poll to the Deputy Commissioner was based on the report and the diary of the Presiding Officer of polling booth No. 1.

Result sheets for Sarpanch of Gram Panchayat Ra-jaund in Form Nos. 15 and 19 were not received by the Block Development and Panchayat Officer, Rajaund after close of poll and counting which were to be produced by Shri Jai Hind, Presiding Office of polling booth No. 1. The Additional Deputy Commissioner in his statement on 24.3.2000 specifically stated that there had been irregularities both in polling process and counting process and diaries of the Presiding Officer of booth Nos. 1, 2, 3, 4, 5, 6, 7 and 10 confirmed that there had been disturbances and incidents of snatching of ballot papers, booth capturing, destruction of ballot papers and irregularities in polling process and in counting process. The Additional Deputy. Commissioner confirmed that the problems started because of announcement made by the Presiding Officer of polling booth No. 1. The report further says as under :-

"It is surprising that the result sheets prepared on Form No. 15 by the Presiding Officers of all the 10 polling booths and Part-2 of Form No. 15 and three other rough sheets on which these result sheets of 10 booths were consolidated by the Presiding Officer of poiling booth No. 1 are not made available to the Commission despite the requests made to the district authorities."

It is further mentioned in the report which reads as under :-

It is also surprising that the Presiding Officer of Booth No. 1 had now made a

statement that the Presiding Officer's diary from all the 10 Presiding Officers were got written afresh on 17.3.2000.

It is then mentioned in the report as under :-

Another serious matter brought to the notice of the Commission is that a report was allegedly got written from the Presiding Officer No. 1 in the PWD Rest House on 17.3.2000 wherein it had been mentioned that in his diary of booth No. 1 he had shown that ballot papers from 154 to 200 were forcibly snatched and after forcibly stamped in favour of one candidate were put in the ballot box.

At the time of making statement before the Commission, he had said that he was compelled to writ such thing in that report in the PWD Rest House. He has also denied this in his statement made before the Commisison. He also said that such reports were not made by him in his original Presid-ing Officer's diary, as this was got written from him on the Presiding Officer's diary which were prepared afresh on 17.3.2000 in the presence of Returning Officer, Panchayat Samiti Rajound-cum-District Revenue Officer, Kaithal when the District Revenue Officer was sitting in the Manager's room in Panchayat Bhawan.

Further startling statements were made in the report which reads as sunder :-

"In this case, no ballot box used at the polling station has been unlawfully taken out of the custody of the Presiding Officer nor any ballot paper has been destroyed or lost or damaged or tempered. Similarly, no error or irregularity in the procedure which may vitiate the poll at the polling station. Hence, no case of fresh poll is made out in this case. It seems that diaries and reports of Presiding Officers, Returning Officer (Panchayat Samiti) etc. could not be properly examined in this case in the light of provisions of Rule 61 of the Haryana Panchayati Raj Election Rules, 1994 at the time of making recommendations forrepoll in Deputy Commissioner's letter dated 17.3.2000 and 18.3.2000. Further this does not work-out even a case of recount because nobody on record had asked for a recount and otherwise also there does not seem to be any justification for a recount. If the result sheets are made available by Presiding Officer of Polling booth No.1 or Block Development & Panchayat Officer or Returning officer, Panchayat Samiti, Rajound or the District Election Officer (P) office, what is now required is just to add/total the result sheets of Sar-panch of all the Polling stations in Part-2 of Form No. 15 if already not properly done and declare the result accordingly. But since the result sheets prepared by the respective Presiding Officers are not forthcoming, the result can be declared only after these result sheets are reconstructed."

Lastly, in the report, it is mentioned as under :-

"In these circumstances, there is no option left to the Commission except to order to reconstruct these result sheets by recounting the votes polled for election to Sarpanch of this Gram Panchayat at all the 10 booths. The order of fresh poll earlier issued vide Commission's notification No. SEC/

E-111/2000/8034, dated 17.3.2000 for Panch Ward No. 10 and Sarpanch Rajound are hereby cancelled and recount of votes for election to Sarpanch Gram Panchayat Rajound to be made on 6.4.20G9 at Panchayat Bhawan Kaithal is ordered. The Deputy Commissioner would inform through notice to all the candidates about the recounting and ensure full security. The recount would be made under the supervision of Additional Deputy Commissioner, Kaithal."

12. From a perusal of what has been stated above, it is manifestly clear that recall or cancellation of the order of re-poll is based on material referred to above which, on the face of it, confirms the belief of this Court in the earlier reports submitted by the electoral Officers including the Deputy Commissioner after the poll on 16.3.2000 depicting the factual position as to what had happened during the polling of votes for the office of Sarpanch in village Rajound. The very fact that the results were re-constructed from the material which was not available by the Presiding Officer of booth No. 1 gives a prop to the plea of the petitioner that all such documents and material were manufactured subsequently to make out a case of recount. It goes without saying that Forms 15 and .19 are prepared after counting of votes and declaration of results. Form-15 pertains to counting of votes for Sarpanch of village, in Part-I and Part-11, the specimen of which is as follows:

FORM-15

COUNTING OF VOTES FOR SARPANCH OF VILLAGE-----

Part I

"Polling Station No. -----

Serial number of wards included -----

Serial Number

Name of candidate

Number of valid votes cast in favour of the

(1)

(2)

(3)

Total number of valid votes -----

Total number of rejected votes-----

Total Number of votes polled-----

Place-----

Date-----

Returning Officer (Panchayat)/Officer
authorised by Returning Officer
(Panchayat)

Part II

S.No.

Name of Candidate.

Vote cast in favour of the Candidate

Total

Polling Station No. 1.

Polling Station No. 2.

Polling Station No. 3.

(1)

(2)

(3)

(4)

(5)

(6)

Total number of valid votes in village -----

Total number of rejected votes in village -----

Total number of votes polled in village -----

Place: Returning Officer(Panchayat/Officer)

Date: authorised by Returning officer, (Panchayat)

Form 19 pertains to return of election for Sarpanch Gram Panchayat, the specimen of which reads as under :-

FORM 19

FORM OF RETURN OF ELECTION FOR SARPANCH

GRAM PANCHAYAT -----

Election for Sarpanch-----

S.No.

Name of candidate.

Number of valid votes cast in favour of every candidate in polling Station No. 1 2
3 4 5

Total Number of valid votes.

(1)

(2)

(3)

(4)

1.

2.

3.

4.

5.

6.

7.

Total number of valid votes -----

Total number of invalid votes -----

Total number of polled votes -----

Address-----

has been duly elected.

Signature of Returning Officer(Panchayat/Officer

authorised by Returning Officer (Panchayat)

Dated the-----day of-----19 "

13. Admittedly, the Presiding Officers of different booths have prepared Form-15 for counting of votes which were to be consolidated for the purposes of declaration of result. However, similar Form was also prepared by the Presiding Officer of booth No. 1 and according to the Additional Deputy Commissioner that the diaries prepared by Presiding Officers of booth Nos. 1,2,3,4, 5,6,7 and 10 confirmed about the disturbances and incidents of snatching of ballot papers, booth capturing, destruction of ballot papers and irregularities in polling process and in counting process and Form 15 prepared by the Presiding Officers of all the 10 polling booths and in Part-II of Form-15 and three other rough sheets on which these result sheets of 10 booths were consolidated by the Presiding Officer of polling booth No. 1, were not made available to the Commission. One fails to comprehend as to how and in what manner these documents were re-

constructed and that too in the absence of the candidates or their agents by the polling/ staff sitting at Guest House at Kaithal. The report, aforesaid, nowhere says or mentions if the number of votes polled and found in the ballot boxes were tallied at any time and in the absence of which even reconstruction of any such result was not possible.

14. Strange enough, the Election Commission recorded the statements of all the electoral officials but did not examine the Deputy Commissioner i.e. the District Returning Officer under whose supervision the entire election process was gone into and was present at the time of election in the village and after verifying the poll process, he had himself recommended to the Election Commission for holding re-poll on account of the poll having been vitiated for the reasons given in the recommendation. Annexure R-2/4 in substance reveals that the Election Commission relied upon the statements of the polling officers who admittedly changed their reports and statements made to the Deputy Commissioner facilitating the case of recount. It is strange that the statement of the polling officer who in his previous report stated "booth per kabja kar liya" gave another meaning to it in his statement before the Election Commissioner saying he meant that the crowd remained in the booth and that is why the polling was suspended. Likewise, the statement of polling officer of booth No. 3 that "matpater phar diye" meant that while issuing the ballot papers and separating from the counterfoils, one or two ballot papers were torn from one side, apart from that, there was no damage or destruction caused to the ballot papers have been accepted which, on the face of it, carry the meaning of booth capturing and destroying of ballots.

15. As already observed above, the statements recorded at Panchayat Bhawan, Kaithal of the electoral officials i.e. the Presiding Officers of different booths apparently were tailored one to make out a case of recount on the basis of that since the result was declared by the Presiding Officer of booth No. 1 who was authorised to do so, no fresh poll was necessary. However, when the statements of the Presiding officers were changed giving a new meaning to their earlier statements, such evidence should not have been made the basis of a decision by the Election Commission much less to review its earlier order. In a democratic set up like the one we have in India, the Election Commission is entrusted the responsibility of conducting the election to various electoral bodies. In the discharge of its functions, it performs the constitutional obligation of conducting the elections. Section 212 of Haryana Panchayati Raj Act provides for constituting State Election Commission by the State Government for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Gram Panchayats, Panchayat Samitis and Zila Parishads in the State. Rule 14 of Haryana Panchayati Raj Election Rules, 1994 empowers the State Election Commissioner to issue such or special or general orders or direction which may not be inconsistent with the provisions of the Act and fair and free elections. The object of the constitution of the Election Commission and the authority of Election Commissioner is solely for the purpose of holding/

conducting free and fair elections. The conduct of poll in village Rajound for the office of Sarpanch in the manner and in the circumstances elaborated above, cannot be accepted as in consonance and in accordance with the duties of the Election Commissioner.

16. The decision of the Election Commissioner which is open and subject to judicial review, in these circumstances, not only was illegal but it was wrong on facts as well. The State Election Commissioner is an authority amenable to writ jurisdiction under Article 226 of the Constitution. It is also to be considered whether the Election Commissioner can exercise power of review of his earlier orders. The Haryana Panchayati Raj Act, 1994 nowhere refers to any such power of review with the Election Commissioner. No such power can be claimed by the Election Commissioner as an inherent in his authority. It is well settled that the power of review can be exercised only if the same is expressly conferred on it by the statute under which it derives its jurisdiction. As already observed above, the Haryana Panchayati Raj Act or Haryana Panchayat Raj Election Rules, 1994 nowhere mention any such jurisdiction with the Election Commissioner to exercise his power of review. The impugned notification passed by the Election Commissioner of cancelling his earlier notification directing re-poll and substituting the same by an order of re-count being, thus, beyond jurisdiction is not tenable under law. Right to contest the election is a statutory right of every citizen of India. Any order passed by the Election Commission which has a bearing on the electoral right of the citizen is by itself quasi-judicial in nature. Any such quasi-judicial authority cannot review its own orders unless it enjoys the power of review under the Act. For reliance, decision of Supreme Court in *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*, and decision of this Court in *Deep Chand and another v. Additional Director, Consolidation of Holdings, Punjab, Jultundur and another* 1964 .65 P.L.R. 318 are referred. As indicated above, by undertaking the exercise of reconstruction of the election results or even recounting, no notice to the petitioner was issued nor any such order has been placed on record. Admittedly, recounting under the impugned notification was done at the back of the petitioner which is totally against the express provision of the Haryana Panchayati Raj Election Rules, 1994. Chapter X of the Rules provides procedure for counting of votes. Rule 62 entitles the candidate or his counting agent to be present at the time of counting and rule 69(2) entitles the candidate or his agent for recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount. Sub-rule (6) of rule 69 provides as under :-

"(6) After the total number of votes polled for each candidate has been announced under sub-rule (1) or sub-rule (5) the Returning Officer (Panchayat) or the officer authorised by him, shall complete and sign the result sheet and no application for a recount shall be entertained thereafter :

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and counting agents present at the completion

thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2)."

17. The presence of a candidate or his authorised agent at the time of count or re-count of votes, in the circumstances, can not be dispensed with. Any omission in this respect on behalf of the Polling/Returning Officer to call or allow the candidate or his authorised agent at the time of count or re-count of votes vitiates the result of the election. Admittedly, in this case, the petitioner was not even issued any notice of re-count of votes asking him to be present himself at Kaithal where the result sheets were prepared de novo and after re-count, impugned election of respondent No. 5 was declared.

18. It can also not be ignored that the notification dated 17.3.2000, Annexure P-I, by which the date of re-poll was ordered and fixed, was never challenged by respondent No. 5-Surat Singh which implies that re-poll was acceptable to the contesting candidates as well in view of the manner and situation in which the polling was conducted by the electoral staff on 16.3.2000.

19. In view of the facts and legal position discussed above especially when there is no provision in the Haryana Panchayati Raj Act, the question whether the Election Commission/Commissioner can exercise the power of review has to be answered in the negative. The Election Commissioner does not enjoy the power of review of his own earlier orders and he acted beyond his jurisdiction while cancelling the "notification, Annexure P-1 and passing a fresh order of re-count by way of notification dated 3.4.2000, Annexure P-2.

20. In view of what has been stated above, notification, dated 3.4.2000, Annexure P-2 directing re-count is hereby quashed. The State Election Commissioner Haryana-respondent No. 2 is hereby directed to hold re-poll for the office of Sarpanch of village Rajound as per notification, Annexure P-1. Needful shall be done within one month of the receipt of a certified copy of this order.

21. Order accordingly.