
(2008) 02 RAJ CK 0055
In the Rajasthan High Court

Bhoma Ram

APPELLANT

Vs

District Election Officer (Panchayat Election) and Others

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Citation : (2008) 02 RAJ CK 0055

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—This petition has been filed by the petitioner challenging the order dated 16.1.2006 passed by the learned District Judge as Election Tribunal under Rule 80 of the Rajasthan Panchayati Raj (Election) Rules, 1994 (hereinafter referred to as the Rules of 1994). The Tribunal has set aside the election of the petitioner as Sarpanch of Gram Panchat Bagari held on 31st January, 2005. The main ground of setting aside the election is that nominations were to be filed on 30.1.2005 and 7 candidates filed their nomination for the post of Sarpanch in the said election namely Abdul Azeez, Arjun Singh, Kailash Singh, Puna Ram and Jiya Ram, the respondents No. 3 to 6 in the present writ petition, the present petitioner Bhoma Ram and one Balu Ram. The said election was challenged by these respondents in the election petition filed under Rule 80 of the 1995 Rules inter alia on the ground that one candidate Balu Ram did not withdraw from the said election after filing his nomination for the said election in accordance with the Rules and that is why the list of candidates with the symbols assigned to them was issued in form No. 5 prescribed under Rule 29 of the Rules which is Exhibit-1 on the record of Election Tribunal. The winning candidate, the present petitioner Bhoma Ram was at serial No. 7 in the said list with the symbol of camera assigned to him. The learned Tribunal found that despite withdrawal of the said candidate Balu Ram in the ballot papers issued for the election held on 31st January, 2005, the said ballot paper contained only 6 names with the name of Bhoma Ram mentioned at serial No. 6 with the symbol of Candles which was

earlier given to Balu Ram and the name of Balu Ram was deleted. The learned Tribunal, therefore, found that the entire election process was vitiated and the election of the present petitioner accordingly was set aside.

2. Mr. P.S. Bhati, learned Counsel for the petitioner submitted that as per Rule 80 of the said Rules of 1994 unless the petitioner could show that his election was materially affected by the alleged non-compliance of the provisions of the Act or any of these Rules, they could not successfully challenge the election of the present petitioner. Taking through the record of the case, he read before the Court the statement of withdrawing candidate Balu Ram, who deposed before the Tribunal that he withdrew his candidature on the stipulated date and before stipulated hour i.e. 3:00 PM on 30th January, 2005 and, therefore, his name was not included in the ballot paper. He submitted that merely because of by mistake in Exhibit 1 form No. 5, which is of course supposed to be proposed under Rule 29 after withdrawal of the name process is over, even if the name of said withdrawing candidate Balu Ram, who is shown as included that cannot vitiate the entire election process as the present respondents and the petitioners before the Election Tribunal, failed to establish that the name of Balu Ram with the symbol of Candles was included in the final ballot paper as well. He submitted that the present petitioner won the election with thumping majority and secured 1737 votes and was leading the other candidates by far more margin and the nearest second candidate scored only 789 votes out of total voters around 4700. He, therefore, submitted that no prejudice was caused to the present respondents by said irregularity in Exhibit 1 which was prepared on 30.1.2005 by Returning Officer by mistake, even if it is taken to be one, and since in the final ballot paper the name of Balu Ram was not included and other six names were clearly given with their respective symbols, the election of the present petitioner Bhoma Ram could not be set aside. He further submitted that by the change of symbol of Bhoma Ram, the present petitioner, if at all one could suffer in the election process, it is the petitioner or the withdrawing candidate Balu Ram but not the present respondents, whose symbols remained intact. He relied upon the judgment of Hon"ble Supreme Court in Ms. Krishna Mohini Vs. Mohinder Nath Sofat, , wherein the Hon"ble Supreme Court has held as under:

Choosing a wrong symbol, leaving blank the space meant for filling the choice of symbols and an error in describing the symbol are all defects not of substantial character. An independent candidate may mention as his preference the symbol reserved for a recognised political party, but that again will not be a defect of substantial character. Such deficiency in the nomination paper is saved by the proviso to Rule 4 of the Conduct of Election Rules, 1961.

He also relied on the judgment rendered in T.A. Ahammed Kabeer Vs. A.A. Azeez and Others, wherein the Hon"ble Supreme Court has held as under:

The task before an Election Judge is ticklish. It is often urged and also held that the success of a winning candidate should not be lightly set aside and the secrecy of ballot must be zealously guarded. On account of a rigid following of

these principles the election Courts are inclined to lean in favour of the returned candidates and place the onus of proof on the person challenging the result of election, insisting on strict compliance with the rules of pleadings and excluding such evidence from consideration as is in divergence with the pleadings. However, what has so developed as a rule of practice should not be unduly stretched; for the purity of the election process needs to be preserved unpolluted so as to achieve the predominant goal of democracy that only he should represent the constituency who has been chosen by the majority of the electors. This is the purpose and object of the election law.

3. On the side opposite, Mr. Y.R. Sonel submitted that the issuance of Exhibit 1 in prescribed form No. 5 under Rule 29 clearly shows that the said person Balu Ram had in fact never withdrawn from the election fray and despite this, issuance of prescribed form No. 5, if in the ballot paper, his name was not shown that rendered entire election process non est and vitiated and, therefore, the Election Tribunal was justified in setting aside the election of the present petitioner.

4. I have heard learned Counsels and perused the record. It would be worthwhile to reproduce the relevant rules 28, 29 and 80 of the aforesaid Rules of 1994. The same are quoted below:

28. Withdrawal from candidature.- (1) Any candidate [may] withdraw his candidature by notice in writing in duplicate signed by him or bearing his thumb impression and delivered in person to the Returning Officer on the date and by the hour appointed under Sub-clause (c) of Clause (ii) of sub-rule (1) of Rule 23.

(2) No notice of withdrawal shall be entertained after the day and hour referred to in sub-rule (1).

(3) A candidate who has withdrawn his candidature shall not be allowed to cancel the notice of withdrawal.

(4) The Returning Officer shall, on receiving a notice of withdrawal under sub-rule (1), causes, as soon as may be, one copy thereof to be exhibited at some conspicuous place at the office of the Panchayat or in any conspicuous place at the headquarters of the Panchayat where no Panchayat Office is established.

29. Subsequent procedure to be observed by Returning Officer.- (1) Immediately after the time fixed by sub-rule (1) of Rule 23 has expired, the Returning Officer shall, for each ward cause to be prepared a list in Form V showing the names of the candidates whose nomination papers have been accepted and have not been withdrawn.

(2) If there is only one candidate in a ward and his nomination has been accepted the Returning Officer shall declare him to be duly elected.

(3) If the number of candidates to be elected from a ward is more than one, the Returning Officer shall, out of the symbols mentioned in Schedule I to these rules:

(i) assign a symbol to each such candidate out of the symbols mentioned in

Schedule I to these rules:

Provided that in case the symbols specified in Schedule I are found to be short of requirements, the Returning Officer may allot such other symbols [in the manner laid down by the Commission out of the additional list of symbols prescribed by it, but not reserved for a political party by the Election Commission of India and inform the Commission and the District Election Officer (Panchayats) concerned.

(ii) have the names of all such candidates in Hindi alphabetical order published, along with symbol assigned to each, by being affixed at the conspicuous place in the word,

(iii) direct that a poll shall be taken on the date and between the hours appointed under subclause (d) and (e) respectively of Clause (ii) of sub-rule (1) of Rule 23.

(iv) proceed to make further arrangements necessary for the holding of the poll.

(4) (a) The ballot papers shall be in such form as the Commission may direct and the particulars therein shall be written in Hindi in Devnagri script.

(b) The names of candidates shall be arranged on the ballot papers in the same order as they appear in the list in Form v.

(c) If two or more candidates bear the same names they shall be distinguished by addition of their father's or husband's name, as the case may be, or in some other manner, as the Returning Officer may deem fit.

80. Manner of challenging an election under the Act.-An election under the Act or under the Rules may be called in question by any candidate at such election by presenting a petition to the District Judge having jurisdiction within thirty days from the date on which the result of such election is declared, on any one or more of the following grounds:

(a) that on the date of election, a returned candidate was not qualified or was disqualified, for such election, or

(b) that any corrupt practice was committed by a candidate or by any other person with the consent or connivance of the candidate, or

(c) that any nomination was improperly rejected, or

(d) that the result of the election in so far as it concern the returned candidate was materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interest of the candidate by a person other than candidate or by a person acting with the consent or connivance of such candidate, or

(iii) by improper reception, refusal or rejection of any vote or the reception of any vote which was void, or

- (iv) by any non-compliance with the provisions of the Act or of these rules, or
- (e) that in fact the petitioner or some other candidate received a majority of the valid votes, or
- (f) that, but for votes obtained by the returned candidate by corrupt practices, the petitioner or some other candidate would have obtained a majority of the valid votes.

5. It is true that the burden lies upon the applicants, the petitioners, who seek to set aside the election of the elected candidate and such burden is heavy, therefore, unless they establish in term of Rule 80 quoted above that the election was materially affected by any of the defect, or non-compliance with the provisions of the Act or Rules, the election in a democratic set up where majority rules, cannot lightly be set aside.

6. The sheet anchor of the arguments of the learned Counsel for the respondents Mr. Sonel is that even after withdrawal of the name by the respondent No. 2, Balu Ram, his name was shown in Exhibit 1. Form No. 5 under Rule 29, therefore, how could his name be omitted in the final ballot paper and on the election day on 31st January, 2005. It would be noteworthy to see that the said person Balu Ram not only has filed the reply in this Court supporting the case of the present petitioner and stating on oath that he withdrew his candidature within stipulated time and date given for withdrawal of his candidature i.e. on 30th January, 2005 before 3:00 PM, but he has already given the same version in his statement before the Election Tribunal. The present respondents, the petitioners before the Election Tribunal, have also not brought anything on record to establish that on account of change of symbol and withdrawal of the name by said person Balu Ram, the said election was materially affected in any manner. On the other hand, it is seen that it is the present petitioner, who only could have suffered on account of the change of symbol from 30th January, 2005 till the actual date of election on 31st January, 2005. The symbols as well as the names of the present respondents and the petitioners before the Election Tribunal remained intact. Thus viewed in the light of thumping majority that the present petitioner got in the said election, it is not worth believing that the non-inclusion of name of said person Balu Ram in the ballot paper has materially affected the result of the election, who goes on record to say that he withdrew in favour of present petitioner Bhoma Ram. There is also no dispute that the present respondents and other candidates in the election were far behind him as far as the number of votes in their favour are concerned. Therefore, this Court is of the clear opinion that the Election Tribunal had erred in setting aside the election of the present petitioner by impugned order dated 16.1.2006.

7. Consequently, this writ petition is allowed and the impugned order Annex.1 dated 16.1.2006 is set aside. No order as to costs.