
(1993) 08 P&H CK 0128
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 436 of 1992

Dhan Pat

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Haryana Gram Panchayat Election Rules, 1971 — Rule 30, 30(1), 44
Punjab Gram Panchayat Act, 1952 — Section 101

Citation : AIR 1994 P&H 19 : (1994) 108 PLR 589

Hon'ble Judges : N.K. Sodhi, J;G.R. Majithia, J

Bench : Division Bench

Advocate : H.S. Hooda and Sanjiv Shearon, for the Appellant; P.S. Kadian, DAG and P.S. Patwalia, for the Respondent

Judgement

G.R. Majithia, J.—The petitioner has challenged the order, dated December 31, 1991 of the Deputy Commissioner, Karnal ordering repoll for election of Sarpanch of Gram Panchayat, Kurana, District Karnal in this Civil Writ Petition under Arts. 226/227 of the Constitution of India.

1A. Facts first :

Election for the office of Sarpanch of Gram Panchayat, Kurana was held on December 24, 1991. There were four polling booths at the polling station. Each contestants was allotted a separate ballot box at every polling station. After the polling, counting started and after counting of votes of three polling booths having concluded, the counting of ballot papers of booth No. 47 commenced. The ballot papers were counted as per rules. When the ballot box of Raghbir Singh, respondent No. 3 at booth No. 47 was opened, it was found that out of the total ballot papers polled in his favour, only 213 were in countable position and the remaining had been destroyed by acid. The Presiding Officer did not announce the result and sent a report to the Deputy Commissioner. The Deputy Commissioner on receipt of the report ordered repoll in the entire Constituency.

This order has been challenged in this writ petition. The impugned order has not been produced by either of the parties. The factual position has also not been disputed by either of them.

2. The learned counsel for the petitioner submitted that even if the votes which were found to have been destroyed by acid had been counted in favour of respondent No. 3, even then the petitioner would have been declared elected having secured more votes than him and the Deputy Commissioner gravely erred in ordering the repoll. The assertion made by the learned counsel for the petitioner was not vouchsafed by the record. We, therefore, thought it proper to summon the Director, Development and Panchayats Department, Haryana, to examine the election records and submit his report if the assertion made by the learned counsel for the petitioner is correct. After consulting the election record, he submitted an affidavit, dated July 12, 1993. He has stated that 950 ballot papers were issued at booth No. 47, out of which 783 ballot papers were used. After opening of the ballot boxes of booth No. 47, the position of votes was as under :--

1.

Shri Dhanpat (petitioner)

162

2.

Shri Rajinder Singh (Respondent No.4)

13

3.

Shri Raghbir Singh Respondent No.3

213

4.

Shri Shamsher Singh (Respondent No.5)

25

5.

Shri Satyawar (Respondent No.6)

258

No ballot paper was found to be invalid. The total number of ballot papers, which were counted, comes to 671. The balance ballot papers numbering 112 were not in a countable position. If all these ballot papers had been counted in favour of Shri Raghbir Singh respondent No. 3, then he would have secured more votes than any of the contestants and had to be declared elected. The submission of

the learned counsel for the petitioner that even if the uncountable ballot papers were counted in favour of Raghbir Singh, even then he could not be declared elected as a Sarpanch is factually incorrect. The net result is that more than 112 ballot papers were recovered from the ballot box of respondent No. 8, which were not countable. In the background of this factual position, the Deputy Commissioner ordered repoll for the election of the office of Sarpanch of the Gram Panchayat.

3. Written statement on behalf of the State of Haryana and the Deputy Commissioner has been filed by the Deputy Commissioner, Panipat. In their written statement, they have taken a positive stand that the counting had taken place of the three booths and partly of the 4th booth. The Polling Agents and the Contesting candidates were present at the time of counting and had complete knowledge of the polled/counted votes and if he had ordered repoll only of the 4th booth, there would have been a possibility of bargain for the votes at a very high level. He felt that it would be unjust to order repoll of the 4th booth and ordered repoll of the election.

4. It is a peculiar case where the petitioner challenges the validity of an order without placing its copy on record. We are left guessing the reasons for the order of repoll.

The Deputy Commissioner in the written statement has given reasons for ordering the repoll in the entire Constituency and not of a particular polling booth. The Deputy Commissioner look action under Rule 30 of the Haryana Gram Panchayat Election Rules, 1971, for short. "The rules". The same reads thus:

Fresh poll can be ordered if at any election any ballot box or boxes is or are unlawfully taken out of the custody of the Presiding Officer or is or are in any way tampered with or is or are either accidentally or intentionally destroyed or lost....."

While interpreting rule 30, we have to keep practical aspect of the matter in view. If in any ballot box, acid is poured and ballot papers are wholly or partly destroyed and are in uncountable position, Rule 30(1) of the Rules will be attracted. The rule has to be interpreted in a manner which should advance the cause of justice. Tampering of a ballot box will include the tampering of votes in it. If the votes polled in a ballot box are destroyed by acid, its implication will be that the ballot box itself stands tampered with and the rule will be attracted. It is not disputed that the counting of ballot papers of three polling booths had concluded. The counting of the ballot papers of the 4th booth had also partly concluded. The ballot boxes of all the contestants at booth No. 47 (4th booth) had been emptied and the votes had been partly counted. In the ballot box of respondent No. 3, 112 ballot papers were not countable as these were destroyed by acid. The trend of the election result had become known to the Contestants. If the Deputy Commissioner had allowed repoll only at one of the polling booths, as stated by him, the Contestants would have bargained for the votes in order to

succeed at the poll. The Deputy Commissioner in order to avoid that eventuality had ordered repoll at all the booths. The rule under which repoll had been ordered has not been rigidly construed. It has to be construed in a manner so as to advance the cause of justice and not to thwart it. On the proved facts of the case, we do not think that the Deputy Commissioner had exceeded his jurisdiction. He acted fairly.

5. The learned counsel for the petitioner placed strong reliance on *Lachhman v. The Deputy Commissioner, Hissar* 1992 PLJ 134 in support of his submission that the Deputy Commissioner should have ordered repoll only at polling booth No. 47. In *Lachhman's* case, the facts were that election for the offices of the Sarpanch and 8 panches of Gram Panchayat, Badhawar was held on December 28, 1991. There were four polling booths in one building. Discrepancies in the number of votes found in the ballot boxes and the number of votes actually shown as having been polled at booth No. 1 were detected. The record showed that only 841 votes were polled, but 883 votes were found from the ballot boxes. After counting, the result was declared. The defeated candidate made an application to the Deputy Commissioner complaining of malpractices/irregularities allegedly committed at the polls. The Deputy Commissioner called for a report from the Block Development and Panchayat Officer and after receipt of the report, he declared the election as void and ordered repoll. This order was challenged in the writ petition held that before ordering repoll, the Deputy Commissioner ought to be satisfied on the basis of the material on record that the conditions mentioned in Rule 30 of the Rules were satisfied. The Bench found that under the rule, the Deputy Commissioner could exercise jurisdiction if he had come to a definite conclusion that the ballot box or ballot boxes were tampered with as was the contention in that case. The Bench found in that case that there was no material before the Deputy Commissioner to enable him to exercise jurisdiction under Rule 30. The Bench observed thus:

"We are, therefore, clear in our view that the conclusive facts were not before the Deputy Commissioner to entitle him to exercise jurisdiction under Rule 30(1) of the Rules. For this reason alone, the impugned order, Annexure P-3, has to be quashed."

The Bench quashed the order of the Deputy Commissioner as "it found that there was no material before the Deputy Commissioner enabling him to exercise jurisdiction under Rule 30(1) of the Rules." In the present case, as stated earlier, the Deputy Commissioner had the factual data before him and also visualised that if he ordered repoll in one of the polling booths, bargaining for votes could not be ruled out. This conclusion of his cannot be said to be either unfounded or misconceived. He being the head of the District, visualised the situation that ordering repoll in one booth will enable the parties to bargain for votes. He wanted to avoid that situation and he rightly ordered repoll at all the 4 booths. We do not find that the discretion exercised by the Deputy Commissioner was not proper. Even if the order of repoll is strictly not within the four corners of the

rule, it is just order and we are not inclined to interfere in exercise of extraordinary writ jurisdiction under An. 226 of the Constitution. We will not interfere with an order in exercise of extraordinary writ jurisdiction, which otherwise found by us to be just and proper. Apart from this, we do not want to disturb the election which has taken place pursuant to the order of repoll passed by the Deputy Commissioner. Indisputably, respondent No. 3 has been elected as a Sarpanch at the repoll with a considerable majority. If the petitioner was aggrieved that the election of respondent No. 3 suffers from any infirmity, he could have challenged the same by way of election petition under Rule 44 of the Rules.

6. In fairness to the learned counsel for the petitioner, it is necessary to deal with his last submission that the petitioner should have been afforded an opportunity of hearing by the Deputy Commissioner before ordering repoll. In support of his submission, he has relied upon the observations made in Lach-hman's case (supra). It is correct that the Bench had observed in the judgment that before taking any action under rule 30 of the Rules, the Deputy Commissioner would give an opportunity of hearing to the concerned parties, but the Bench quashed the order of the Deputy Commissioner ordering repoll only on the ground that there was no material before the Deputy Commissioner to come to the conclusion that the conditions mentioned in the rule were satisfied. The observation regarding grant of opportunity of hearing to the affected parties before ordering repoll is in the nature of obiter dicta. However, in the instant case we are of the opinion that the order of the Deputy Commissioner ordering repoll cannot be assailed on the ground that the principle of audi alteram partem was violated. It is not the case of the petitioner that failure to provide him with an opportunity of hearing has caused him any prejudice. The counting had taken place in the presence of the petitioner. The facts which came to light during counting have not been disputed by the petitioner on the basis of the undisputed facts, repoll was ordered. The order of repoll cannot be invalidated merely on technical ground.

7. For the reasons stated above, we find no infirmity in the action of the Deputy Commissioner ordering repoll. The writ petition is devoid of any merit and the same is dismissed.

8. Petition dismissed.