
(2004) 01 RAJ CK 0047

In the Rajasthan High Court

Case No : (PIL) Civil Writ Petition No. 6420 of 2003

Indra Chandra Tiwari

APPELLANT

Vs

The Election Commission of India

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Citation : (2004) 3 RCR(Civil) 408 : (2004) 2 RLW 1302 : (2004) 2 WLC 378

Hon'ble Judges : Anil Dev Singh, C.J.;K.S. Rathore, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; B.C. Chirania and Ravi Chirania, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, C.J.—By this petition the petitioner seeks a direction to the effect that booth-wise counting of votes be declared to be illegal on the ground that it does not lead to free and fair polls. According to the petitioner, who appears in person the ballot papers from the polling booths should be brought to one place and then all of them should be mixed together before counting the same so that the trend of voting at a particular polling booth is not disclosed. ,

2. As per para 7 of the reply of the Election Commission of India, the Election Commission decided to use electronic voting machines (for short E.V.M.) in all the Assembly Constituencies in the State of Rajasthan and in the three other States, which went to poll on 1.12.2003. It is also pointed out that in the State of Mizoram in the poll, which was held on 20.11.2003, E.V.Ms. were used.

3. In para 12 of the reply it is stated that during general elections for the Rajasthan Legislative Assembly in 1998, E.V.Ms. were used in five constituencies, namely, 41-Hawamahar, 42-Johari Bazar, 43-Kishanpol Bazar, 95-Ajmer East (SC) and 96-Ajmer West. Even at the subsequent bye elections held in 2000 (from 12- Lunkaransar) and 2001 (from 103-Hindoli) E.V.Ms. were used and counting of votes was done polling station-wise at these elections.

4. It is not in dispute the E.V.Ms. automatically count the votes and keep the record thereof. It is not the case of the petitioner that the use of E.V.Ms. is not permitted by the provisions of the Representation of the People Act. This being so no illegality has occasioned due to the use of E.V.Ms. at the elections.

5. Learned counsel for the petitioner referred us to the decision rendered in the case of Election Commission of India through Secretary v. Ashok Kumar and Ors. (1). This was a case where the Election Commission decided, in the light of the prevailing situation in the State of Kerala and security of electors and with a view to preventing intimidation and victimisation of electors in the aforesaid State, that in all parliamentary constituencies except parliamentary constituencies 11-Ernakulam and 20-Trivandrum where Electronic voting Machines are required to be used, the ballot papers shall be counted by mixing instead of being counted polling station wise. The Supreme Court did not find any fault with the notification of the Election Commission. We are at loss to appreciate how, the decision of the Supreme Court is relevant to the instant case. It needs to be noted that the notification excluded its application to the constituencies where E.V.Ms. Were used. This means that constituencies in which E.V.Ms. were required to be used, the ballot papers were to be counted booth wise. Therefore, the decision is of no avail to the petitioner rather it goes against his plea.

6. In the circumstances, the writ petition fails and is hereby dismissed.