

(2008) 01 GAU CK 0055
In the Gauhati High Court

Jalanta Sen Gupta and Another

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 30, 57

Citation : AIR 2008 Guw 88 : (2008) 1 GLT 937

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Elections to the Panchayats, in Assam, was notified by the State Election Commission, Assam, (in short, "the Election Commission"), in terms of the provisions contained in the Assam Panchayat Act, 1994, and the rules framed thereunder, namely, Assam Panchayat (Constitution) Rules, 1995. Pursuant to the notification, so issued, panchayat elections have been held, in Assam, in three different phases. Initially, the date for counting of the votes polled was fixed on 14.01.2008. Following, however, objections raised by a section of the electorates alleging illegal omission to make reservation of seats in their favour, the elections, in the district of Darrang, could not be held on the scheduled date, because an interim order had been passed, in this regard, by the High Court. As the interim directions restraining the Election Commission from holding poll on the scheduled date, in the district of Darrang, was, later on, vacated by the High Court, the date for polling was announced anew and the polling is being held, in the district of Darrang, to-day, i.e., 24.01.2008. The deferred date for counting of the votes has been accordingly scheduled to be held on 28.01.2008. In the district of Hailakandi, there are altogether 621 polling stations. Out of these 621 polling stations, polling, in as many as 390 polling stations, had to be adjourned on the ground of allegedly snatching away of the ballot papers and ballot boxes by miscreants. No date for re-poll of the adjourned polls has been announced so far by the Election Commission.

2. The grievance of the petitioners, in the present writ petition, is that the adjourned polls aforementioned must be held before the counting of votes of the panchayat elections, already held in remaining parts of Assam, takes place. In the alternative, the petitioners contend that the counting of votes, in the remaining districts of Assam, be kept deferred until the time, the adjourned polls, in the said 309 polling stations, are completed. By making this application under Article 226 of the Constitution of India, the petitioners, who are the functionaries of two different political parties of the district of Hailakandi, have sought for, inter alia, issuance of appropriate Writ (s) commanding the respondents, particularly, the Election Commission, to fix, notify and announce the date of re-poll of the said adjourned polls at the said 309 polling stations and also to hold the poll adjourned before the scheduled date of counting, i.e., 28.01.2008, or, in the alternative, until the time such re-poll takes place, the counting of votes cast at the panchayat elections, already held in different parts of the State of Assam, be kept deferred.

3. I have heard Mr. D.K. Mishra, learned Senior counsel, and Mr. R. P. Sharma, learned Senior counsel, appearing on behalf of the petitioners. I have also heard Mr. M. U. Mahmud, learned Standing counsel for the Election Commission, and Mr. N. Dutta, learned Senior counsel, for the private respondents, who have been subsequently impleaded in this writ petition.

4. Appearing on behalf of the petitioners, Mr. D. K. Mishra, learned Senior counsel, has submitted that according to the scheme of the Representation of the People Act, 1951 (in short, "the ROP Act") as applicable to the panchayat elections in Assam, the counting of votes cast at the polling stations, where the polling have already taken place, shall be kept deferred until the time the adjourned polls, if any, are held and completed. Reliance in support of this submission is placed, on behalf of the petitioners, on Section 57 of the ROP Act. It is also contended, particularly, by Mr. R. P. Sharma, learned Senior counsel, that since in the district of Darrang, counting of votes had been deferred by the Election Commission due to its failure to hold the polling on the scheduled date, similar steps must be taken by the Election Commission in respect of the polling at the said 309 polling stations, in the district of Hailakandi, where the polling had been adjourned.

5. This writ petition has been resisted, at its very threshold, by Mr. N. Dutta, learned Senior counsel, on the ground of maintainability. It is pointed out by Mr. N. Dutta that when the election process commences by publication of notification, in this regard, Article 243O of the Constitution of India bars exercise of jurisdiction by all Courts, including the High Court, in the election matters, which may arise subsequent to commencement of the election process and this constitutional bar continue until culmination thereof by announcement of the result of the votes polled. In fact, in support of his contention that even in respect of panchayat elections, the High Court's power under Article 243O stands barred under Article 243O if the election process has already commenced

by publication of requisite notification, Mr. Dutta has placed reliance on Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, As far as Mr. Mahmud, learned Standing Counsel for" the Election Commission, is concerned, his submission is that this writ petition is not maintainable as the election process has already commenced and, further, that in the facts and circumstances of the present case, it is not feasible to keep the counting of votes, already polled in various districts of Assam and the results thereof, deferred until polling, at the said 309 polling stations in the district of Hailakandi, takes place.

6. Before I deal with the rival submissions made before me, it may be pointed out that it is not seriously disputed before this Court that in the light of the provisions of Article 243O, no step taken or omitted to be taken, in the process of election, can be called in question, in any Court of law, after the election process commences.

7. The word election, occurring in Article 243O, connotes the entire process of election commencing from the stage of issuance of notification under Rule 30 and culminating in the declaration of the result of the election. This aspect of the law has no longer remained *res integra* as can be seen from the authoritative pronouncement of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . This Constitution Bench decision has been followed in various other decisions of the Supreme Court, namely, *Lakshmi Charan Sen v. A.K.M. Hussain Uzzaman* AIR 1985 SC 1233, *State of U. P. v. Pradhan Sangh Kshettra Samiti* AIR 1995 SCW 2303.

8. In *Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others*, , which Mr. Dutta has placed reliance upon, a three-Judge Bench of the Supreme Court has made it clear that to even the panchayat elections, the bar, placed by Article 243O, does not permit the Courts, including the High Court, to interfere with an election process, which has been set in motion. In short, thus, if I reiterate, the law, in this country, has been that election covers the entire process from the date of issuance of notification calling for nomination and culminating into announcement of the result of the declared candidate and once the election process, even in a panchayat election, commences, the bar, under Article 243O, starts operating and the Courts, including the High Court, cannot, then, interfere with such matters during the progress of the election. The remedy of an aggrieved party lies in challenging the election by way of an election petition as may be made by the legislature in terms of the powers given to it under Article 243O. Wherever the legislature does not make any provision to give relief to an aggrieved party in an election process, such a challenge is possible by way of a writ petition. (See *Mahammadul Hague Laskar v. State of Assam* reported in 2002 (3) GLT561). In the present case, since the provisions for adjournment of poll and for holding of re-poll and also the provisions for declaring the result of the votes polled at a given polling station and holding of fresh polls have been made under the Panchayat Act and the Panchayat

(Constitution) Rules, there is no scope, at this stage, for the High Court to invoke the provisions of Article 226 of the Constitution of India and interfere with what the Election Commission has been doing.

9. Notwithstanding the fact that it could not be disputed by the learned Counsel for the writ petitioners that with the publication of the notice, when the election process is set into motion, the embargo placed by Article 243O, on the powers of the Courts, including the High Court, to interfere with the election matters, starts operating, it is nevertheless submitted, on behalf of the petitioners, that since Section 57 of the ROP Act makes it mandatory for the Election Commission to keep the counting of the polls, already held, deferred until the adjourned poll is completed, it is imperative that in the present case too, the Election Commission keeps deferred the counting of the votes, already polled, until the time the adjourned polls have been completed and since the Election Commission has decided to proceed with the counting of votes in various districts of Assam, such counting is wholly illegal and may be interfered with by this Court by invoking its extra -ordinary jurisdiction under Article 226.

10. While dealing with the submissions noted above, it needs to be pointed out that Section 57 of the ROP Act falls under Part-V, which relates to conduct of elections. Part-V stands divided into eight Chapters. Chapter-1, which commences with Section 30, speaks of nomination of candidates. A close reading of Section 30 makes it abundantly clear that the provisions with regard to notification calling for election, as embodied in Section 30, relate to individual constituency to elect a member or members. Thus, election, as perceived u/s 57, relates to individual election and not elections, in general. If in a State, there are 60 constituencies, result of counting of votes, in all constituencies, need not be stopped and it will be enough compliance of law if the counting of the votes in respect of the constituencies, where the polling has been adjourned, is kept deferred until the time adjourned polls are completed. The contrary view may lead to devastating consequences. For a moment, let us assume that polling, in the general election of Parliament, is held all over India, but polling, at one of the polling stations, in one of the constituencies, in one of the States in India, had to be adjourned. Will it be appropriate, on the part of the Election Commission of India, to keep the counting of votes all over India deferred until the time the adjourned poll is completed? Similarly, in such a general election, if elections could not be held in some of the constituencies, in one of the States, would it be appropriate, on the part of the Election Commission of India, to keep the counting of votes, in the remaining parts of the India, deferred till an unknown date, when such adjourned polls are held and completed? Such an approach, to my mind, would not advance a democratic process, which the Constitution of India perceives.

11. Be that as it may, the question of all the questions, in the present writ petition, is this: whether Section 57 of the ROP Act is at all applicable to the panchayat elections in Assam. While considering this aspect of the present case,

what is extremely important to note is that there is no provision, under the Panchayat Act or the Panchayat (Constitution) Rules, applying provisions of the ROP Act to the panchayat elections. Rule 54 of the Panchayat (Constitution) Rules lays down that in respect of those matters, which are not covered by the Panchayat (Constitution) Rules, the relevant Rules, framed under the ROP Act, shall be applied for the purpose of guidance. Rule 54, thus, makes it clear that such matters, in respect whereof no provisions have been made under the Panchayat (Constitution) Rules, the provisions of the Rules, framed under the ROP Act, would be applicable. Thus, the provisions of the ROP Act do not prevail upon the Panchayat Act and the Panchayat (Constitution) Rules. The Election Commission, however, remains free, under the Panchayat (Constitution) Rules, to take help of the Rules, framed under the ROP Act, in respect of those matters with regard to which no provisions, under the Panchayat (Constitution) Rules, have been made. Reliance, therefore, placed by the petitioners, on Section 57, for seeking to get the counting of the votes, as a whole, in all the constituencies in Assam, deferred until the adjourned polls are completed, is misconceived. It is also of immense importance to note that the right to cast vote and/or the right to contest an election are governed by statutes and the rules framed thereunder. There is no dispute before this Court that Section 33 of the Panchayat Rules make provisions for adjournment of poll. As the provisions of Rule 33 are of great significance in the present case, it is reproduced hereinbelow:

33. Adjournment of poll in Emergencies- If at an election, the proceedings at any polling station, are interrupted or obstructed by a riot or open violence, or if it is not possible to take the poll at any polling station on account of any natural calamity or any other sufficient cause, the Presiding Officer of such polling station shall announce the adjournment of the poll to a date to be notified by the State Election Commission later and shall immediately report to the Deputy Commissioner or Sub-Divisional Officer as the case may be, the circumstances which compelled him to adjourn the poll. The Deputy Commissioner or the Sub-Divisional Officer as the case may be, shall announce the date re-poll in the particular station, as may be fixed and notified by the State Election Commission. The Deputy Commissioner or the Sub-Divisional Officer as the case may be, shall arrange to publish such notification immediately at the office of the Gaon Panchayat or Anchalik Panchayat or the Zilla Parishad concerned and in such other places as may be considered necessary.

12. A careful reading of Rule 33 shows that this Rule relates to re-polling at those polling stations, where the polling, in consequence of interruption or obstruction by riot or open violence, could not be held or when polling, at any given polling station, was not possible on account of any natural calamity or any other sufficient cause. In such circumstances, Rule 33 empowers the Presiding Officer of such a polling station to announce adjournment of the poll to a date to be notified by the Election Commission later and it is, thereafter, that the re-poll, in terms of the directions of the Election Commission, shall be held at those polling stations, where the polls have been adjourned. Rule 33 does not, thus,

conceive of deferring of counting of votes at polling stations of other constituencies, where polls have already been held.

13. For a moment, we may also consider Rule 34, which reads:

34. Fresh Poll in the case of Destruction etc. of Ballot Boxes-(1) If at any election any ballot box used at the polling station or at a place fixed for the poll is unlawfully taken out of the custody of the Presiding Officer or in any way tempered with or is accidentally or intentionally destroyed, lost or damaged and the Deputy Commissioner or the Sub-Divisional Officer as the case may be, is satisfied that in consequences thereof the result of the polling at that polling station or place cannot be ascertained he shall-

(a) Declare the polling at the polling station to be void;

(b) Report the matter forthwith to the State Election Commission;

(c) Request the State Election Commission to appoint a day for fresh poll at such polling station.

(2) The provisions of the Act and of any rules or orders made thereunder shall apply to the original poll.

14. A cautious reading of even Rule 34 shows that it conceives of repolling only at such a polling station (s), where the polling, already held, has been declared void as a result of taking away of ballot box from the custody of the Presiding Officer or when ballot box is tempered with or is accidentally or intentionally lost or damaged and the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, is satisfied that in consequence thereof, the result of the polling, at the polling station, cannot be ascertained. In such a case, the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, shall declare the polling, at such a polling station, to be void and report the matter forthwith to the Election Commission and as per the date, which may be appointed by the Election Commission, fresh poll, at such-a polling station, shall be held.

15. Coupled with the above, it is worth mentioning that at the time of hearing of this writ petition, Mr. Mahmud has produced before this Court a report submitted by the Secretary, Assam State Election Commission. This report shows that alleged snatching away of ballot boxes and ballot papers by miscreants has resulted in adjournment of poll at the said 309 polling stations. In fact, even the petitioners rely on the report, submitted by the Returning Officer, which indicates that polling, at the said 309 polling stations, had been adjourned due to alleged snatching away of ballot boxes and ballot papers by miscreants. Irrespective of the fact as to whether the report of snatching away of the ballot paper/ballot boxes is or is not true, the fact remains that in the facts and circumstances of the present case, polling has been adjourned under Rule 33 and the Election Commission has to proceed with the matter in accordance with Rule 33. If, however, the Election Commission is satisfied that to the case at hand, provisions of Rule 34 are applicable, they may even choose to hold poll, at the said 309

polling stations, by declaring the polling, held at the said 309 polling stations, or some of these polling stations or one of these polling stations as void.

16. What is also of great significance to note is that according to the report, which Mr. Mahmud has produced, most of the Strong Rooms/Counting Halls are located in various educational institutions in this State and as the Higher Secondary and High School Leaving Certificate Examinations are scheduled to commence from around 15.02.2008, the counting of votes of the constituencies, other than those of Hailakandi, are, according to the report, required to be completed on or before 01.02.2008 so that the premises, which have been taken over by the Election Commission, can be handed over to the school/educational institution concerned on 2nd or 3rd February, 2008. The reasons, thus, assigned by the Election Commission, in the present case, for going ahead with the counting of votes, in rest of the State of Assam, cannot be said to be arbitrary or discriminatory. Thus, on the face of the reasons assigned by the Election Commission, as indicated hereinbefore, even, on merit, the Election Commission does not appear to be unjustified in going ahead with the counting on the scheduled date, i.e., on 28.01.2008. What can also not be ignored is that interference by this Court in a matter, such as the present one, would have, apart from the constitutional bar, devastating consequences as already pointed out above.

17. Because of what have been discussed and pointed out above, I find that apart from the fact that this writ petition with the relief (s), which the petitioners have sought for, is not tenable in law, even, on merit, the counting of votes, at all the polling stations other than the ones, where the polling have been adjourned, cannot be directed to be stayed or deferred.

In the result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed.

No order as to costs.