

(1998) 08 AHC CK 0105
In the Allahabad High Court
Case No : Writ Petition No. 1052 (M/S) of 1995

Kamlapat Singh and others	Vs	APPELLANT
State Election Commissioner, Panchayat and Sthaniya Nikaya and others		RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Constitution of India, 1950 — Article 243, 243K
Representation of the People Act, 1951 — Section 12BB, 66

Citation : (1999) 1 AWC 770

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : S.C. Misra, for the Appellant; Kapil Deo and Alok Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—The petitioners along with others filed nomination papers for four constituencies, viz., (i) Amund, (ii) Rigwara Khurd ; (iii) Kachhwakala and (iv) Karahi for the post of Pradhan on 26/27.3.1995 before Shri Dadu Ram. Gram Vikas Adhikari and Sri Shiv Ram Kushwaha, Returning Officer, Gohand who were appointed as Assistant Returning Officer and Returning Officer respectively. Sri Dadu Ram, Assistant Returning Officer. committed misconduct and absconded from duty and took away all the nomination papers along with him. The polling of the votes in all the four constituencies mentioned above was held on 12.4.1995 and counting of votes was held on 20.4.1995 and in view of the fact that Sri Dadu Ram, Assistant Returning Officer has absconded with the nomination papers in collusion with Sri Shiv Ram-Kushwaha who was then Returning Officer, according to the respondents the result was not declared. A complaint against Sri Dadu Ram and Sri Shiv Ram Kushwaha. were made by several persons. The District Election Officer, recommended the repoll of the above constituencies to the State Election Commissioner on 11.4.1995 and on some other dates. The letter was sent on 25.4.1995 by the District Election Officer. Hamirpur to the

State Election Commissioner, which was taken note by the State Election Commissioner and on 24.4.1995 and on 29.4.1995, the Deputy Election Commissioner Sri C. S. Bakshi passed an order directing the District Election Officer to conduct repoll in the above mentioned constituencies according to the instructions contained in letter No. 1013 dated 25.4.1995 issued by the State Election Commissioner.

2. In pursuance to the State Election Commissioner's directive contained in letter dated 29.4.1995, the District Election Officer passed an order dated 30.4.1995 for repoll in the above mentioned constituencies fixing schedule for filing nomination papers, scrutiny, withdrawal and conduct of election and declaration of results. The election took place on 10.5.1995 and counting of votes took place on 12.5.1995. On the very date after counting, result was declared on 12.5.1995 and Sri Chhatra Pal. Village Amund, 2. Sri Ram Het Lodhi, Village Rigwara Khurd. 3. Shri Jagdish, Village Kachhwa Kala and 4. Sri Bhanu. Village Karahi were declared elected, as Pradhan.

3. it was vehemently denied by the respondents that the result of the petitioners was ever declared. The result was not declared only for the reason that Sri Daduram with the connivance of Sri Shivram Kushwaha. who were appointed as Assistant Returning Officer and the Returning Officer absconded with the relevant papers including the nomination papers, so the Election Commissioner on the report of the Chief Election Commissioner ordered for the repoll.

4. On 10.5.1995 an Hon''ble single Judge of this Court ordered that the counting of votes in respect of the constituencies of the petitioners shall not be done and the result of fresh elections shall not be declared till next date of listing provided the petitioners had secured the highest number of votes in the counting of the petitioners election. In case the result is declared, the same shall not be given effect to.

5. The learned counsel for the petitioners submitted that inspite of the order passed by this Court, on the basis of the impugned notification.v elections were held and the results were declared.

6. A counter-affidavit has been filed by the Returning Officer in the month of May, 1995 wherein it was indicated that in pursuance to the order contained in the letter dated 29.7.1995 addressed to the District Election Officer by Sri C. S. Bakshi. Deputy Election Commissioner. U. P. Lucknow, directed for the repoll in the said four constituencies, namely, (i) Amund, (ii) Rigware Khurd, (iii) Kachhwakala and (iv) Karahi was held on 10.5.1995 and under his supervision and the counting was held on 20.4.1995. Soon after on the very date, the Returning Officer declared the result of the duly elected Pradhans. No copy of the stay order passed by this Court by an Hon''ble single Judge in this writ petition was delivered to the Returning Officer by any of the petitioners of this writ petition. It was further averred that even according to the own admission of the petitioners, they applied for the issue of certified copy of the order on 10.5.1995

and a certified copy of the order was delivered on 16.5.1995, Thus, on 12.5.1995, the Returning Officer had no knowledge of passing of the order dated 10.5.1995 passed by an Hon"ble single Judge of this Court.

7. As the Returning Officer had no knowledge about the passing of the interim order, his conduct in holding, the election and declaring the result cannot be faulted. Once a notification has been issued and the process of the election has been set into motion, the election took place and the result declared, nobody raised any grievance against such an election because an alternative remedy is provided to file an election petition.

8. The learned counsel for the petitioners has cited the precedents of the Division Bench of this Court in the case of Smt. Ram Kantt v. District Magistrate, Hamirpur/Returning Officer and others. Writ Petition No. 10105 of 1995 (Allahabad), decided on 22.5.1995, wherein the Division Bench after considering the decision of Hon"ble Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , as well as Krishna Ballabh Prasad Singh Vs. Sub-divisional Officer Hilsa-cum-returning Officer and Others, , has observed that in view of the provisions contained in Section 66 of the Representation of People Act, a candidate can only be declared in the manner provided by the Rules made thereunder and the manner having been provided in Rule 64, a candidate cannot be said to have been duly elected unless the declaration is made in Form 21C. It was further laid down that in the absence of declaration in the said form, even the grant of certificate of election in Form 22 cannot be of any help to a candidate because such certificate can only be issued after the candidate has been declared elected in the manner prescribed, namely, in Form 21C. It was accordingly held that election process comes to an end only after declaration in Form 21C has been made.

9. From the aforesaid observations, it is evident that the said precedents is against the case of the petitioners because the result of the petitioner"s election was never declared as stated by the Returning Officer whose, affidavit is on record, hence the following the observations in the decision of the Division Bench in Smt. Ram Kanti v. District Magistrate, Hamirpur and others, would not be applicable to the facts of the present cases :

"After the petitioners were declared elected as Pradhans, the election process came to an end, with the result, the State Election Commissioner, the District Magistrate and the Election Officer ceased to have any jurisdiction over the matter and the impugned orders, passed by them cannot be sustained."

10. In view of the fact that the result of the petitioners was never declared as stated by the Returning Officer, the authority is vested to the Chief Election Commissioner to hold a fresh election.

11. Article 243K of the Constitution deals with the powers of Election Commissioner which is reproduced as under :

"243K. The election of the Panchayats.--(1) The superintendence, direction and control of the preparation of the electoral rolls for and the conduct of, all elections of the Panchayats shall be vested in State Election Commission consisting of a State Election Commissioner to be appointed by the Governor."

12. Section 12BB of the Act. contains the similar provisions which is reproduced hereunder :

"12BB. Superintendence, etc. of the election.--The Superintendence, direction and control of the conduct of the election to the Office of Pradhan, Up-pradhan or members of the Gram Panchayat shall be vested in the State Election Commission."

13. Thus, the words superintendence, direction and control of the conduct of elections, are of wide amplitude and exercising that power on the accommodation of the Chief Returning Officer, the State Election Officer. Uttar Pradesh considered the fact that the Assistant Returning Officer with the connivance of the Returning Officer has absconded and have taken away all the nomination papers hence he counter mended the election and set the process of election into motion again by Issuing a fresh notification.

14. Section 243-O of the constitution bars the jurisdiction of the Court in the matter of election of Panchayat and no election can be assailed which can be challenged by an election petition.

15. In view of the constitutional bar as provided under Article 243O of the Constitution. I am of the view that this writ petition is not maintainable which is accordingly dismissed.

16. The interim order stands vacated.