
(1992) 03 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 431 of 1992

Lachhman and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 12-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 2, Order 23 Rule 1
Constitution of India, 1950 — Article 226 , 227
Haryana Gram Panchayat Election Rules, 1971 — Rule 30(1)

Citation : (1992) 102 PLR 411

Hon'ble Judges : B.C. Verma, C.J.;V.K. Jhanji, J

Bench : Division Bench

Advocate : P.K. Palli and Ajai Lamba, for the Appellant; Arun Nehra, Addl. A.G. for Respondent Nos. 1 and 2 and S.S. Dalal and S.N. Singla, for Respondent Nos. 4 to 12, for the Respondent

Final Decision : Allowed

Judgement

B.C. Varma, C.J. and V.K. Jhanji, J.—Election for the offices of the Sarpanch and 8 Panches of Gram Panchayat Badnawar in Barwala Block of District Hissar was held on December 28,1991. There were four polling booths in one building. In one of them the Returning Officer was also the Presiding Officer. That was booth No. 1. It appears that there were some discrepancies in the number of votes found in the ballot boxes and the number of votes actually shown as having been polled. In fact, 883 votes were found while the record showed only 841 votes were polled. Annexure P. 1 indicates that the result of the election was declared and petitioner No. 1 was declared elected as Sarpanch while the three others were declared as Panches. Annexure P. 1 also indicates that there was some disturbance during the election for which reason the polling had to be suspended for about one hour. One of the defeated candidates, namely, Jagdish, appears to have made an application to the Deputy Commissioner complaining of malpractices/irregularities allegedly committed during the polling on December 28, 1991. One of the allegations in the complaint is that,—"the ballot boxes are

being tampered with." The complaint further indicates that certain malpractices were committed during the election. The request was that the polling be postponed and repoll be ordered. On this complaint, the Deputy Commissioner called for the report from the B. D. & P. O. He submitted his report on December 31, 1991, which is Annexure R. 2. The report says,-

".....some mischievous element with the help of polling officer after stealing the ballot boxes inserted them in the ballot boxes and tampered with the ballot boxes. For this reason excess ballot papers were found in the ballot boxes. In this way election process is violated."

Respondent No. 3 Bhale Ram Parocha also appears to have made a report, Annexure P. 6, to the B D. & P. O. the same day, that is, December 28, 1991. The statement there is that because of certain problem mentioned in that report, it was not considered feasible to continue the counting of votes as there was danger of the breach of the peace. On these premises and with these reports, the Deputy Commissioner passed the order, Annexure P. 3, dated January 1, 1992, By that order, the election held earlier has been held to be void and a repoll was directed. The repoll was directed to be held on January 3, 1992 between 8 A. M. and 5 P. M. without any break. Repoll was held then and on that date the petitioners were declared defeated while respondent No. 3 to 12 were declared elected.

2. It also transpires from the record that the petitioners before the repoll was held, rushed to the civil Court with a prayer that the repoll be withheld Since, however, the repoll actually was held on January 3, 1992 and the votes were recast, this suit was withdrawn on January 6, 1992. It is significant that none of the parties had placed on the record the copy of the plaint filed in that suit.

3. The petitioners in this writ petition challenge the order, Annexure P. 3, alleging it to be entirely without jurisdiction. What is alleged is that unless there is a finding that a particular ballot box or ballot boxes is or are either 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, the Deputy Commissioner does not have the jurisdiction to pass an order in terms of sub-rule (I) of rule 30 of the Haryana Gram Panchayat Election Rules, 1971, (hereinafter called the Rules). In our opinion, so far as this statement of law is concerned, the learned counsel for the petitioners is right. It appears from the order, Annexure P. 3, as also from the arguments advanced at the bar that in order to give jurisdiction to the Deputy Commissioner to take action u/s 30(1), one of the basis is that the ballot boxes were tampered with. Since much will turn upon the construction of rule 30(1) of the Rules, the same may be quoted :

"If at an 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, the polling to which the ballot-box or boxes relate shall be liable to be declared void by the Deputy

Commissioner."

4. A reading of this rule makes it obvious that in order to clothe the Deputy Commissioner to exercise the jurisdiction under that rule, "he has to reach a definite conclusion that the ballot-box or the ballot-boxes were tampered with, as is the contention in this case. The complaint made to the Deputy Commissioner on- which he has taken action under rule 30(1) does, not speak of tempering with of any ballot box. What is stated is that in booth No. 1 more ballot papers were found than were actually polled. It may be because certain persons might have illegally put in some ballot papers which they may have either stealthily or spuriously obtained. May be that forged ballot papers were put in the ballot box. There can as well be a mistake in preparing the record as to the number of votes polled in the poll. Be that as it may, one has to reach a precise finding that the ballot box or the ballot boxes was or were tampered with. On a reading of the entire record and the order of the Deputy Commissioner, we are clear that none of the authorities muchless the Deputy Commissioner has reached the conclusion that the ballot boxes were tampered with. The learned Additional Advocate-General appearing for respondent No. 1 specifically stated before us that he supports the finding that the ballot boxes were tampered with only on the strength of a circumstance that more votes were found in ballot boxes in booth No. 1 than were shown as having been polled. To our mind this fact by itself is not sufficient to warrant a finding that the ballot boxes were tampered with. The Deputy Commissioner himself does not return a finding in Annexure P. 3 that the ballot box or the ballot boxes in booth No. 1 were tampered with. What he has returned is a general finding that the ballot boxes were tampered with. This finding on the argument advanced by the learned counsel is wholly unwarranted and is based on no evidence. 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.

5. There is yet another reason why that order cannot be sustained. All that the rule permits the Deputy Commissioner is to declare void the polling relating to the particular ballot box or ballot boxes, which may be found to be tampered with. It does not give jurisdiction to the Deputy Commissioner to direct re-poll afresh. Polling has to be directed only in respect of the ballot box or ballot boxes found to have been tampered with. The result shall have to be declared in accordance with law on the basis of the repoll regarding the given ballot box or ballot boxes which has or have been found to be tampered with. In our opinion, therefore, the Deputy Commissioner has exceeded the jurisdiction in directing repoll in the way the finding is arrived at in Annexure P. 3.

6. We are further of the view that jurisdiction under sub-rule (1) of rule 30 of the Rules is quasi-judicial in nature. This necessarily implies a hearing to the party adversely affected by that order. In the instant case while the petitioners averred that there was no hearing before the order. Annexure P. 3 was passed, this fact

has not been controverted. This is an additional reason why we are inclined to set aside the order, Annexure P. 3.

7. Although certain arguments were advanced on the issue whether the election result was actually declared, a reading of Annexure P. 1 and the affidavit, Annexure P. 7 of the Returning Officer show that the result of the election was declared and the petitioners were declared elected. Annexure P. 1 gives a vivid description of the declaration of the result. It indicates the votes cast in favour of each candidate declared elected. In a separate column, the result is shown as either elected or not elected and then it also indicates at one place the person who was declared elected unopposed. The last column shows that the election was suspended for some time because of certain disturbance. All the same, even if one were to hold that the result was not declared, then rule 30 of the Rules was not attracted and the Deputy Commissioner would have no jurisdiction to direct repoll.

8. The learned Additional Advocate-General, relied upon the fact that petitioner No. 1 had filed a civil suit seeking injunction regarding repoll on January 3, 1992. That suit was withdrawn without permission to file a fresh suit and, therefore, the present writ petition was barred either on the principle of res judicata or at least under Order II rule 2 of the CPC read with Order XXIII rule I of the said Code. We are not inclined to accept this contention. Although such an argument is raised, a copy of the plaint indicating the cause of action and the relief claimed has not been filed. There can be no substitute to the filing of such documents before such a plea can be called in aid. That apart what appears is that one of the petitioners rushed to the civil Court only for a direction that a repoll be not held. When that was done, the purpose frustrated and the suit was not continued. What is challenged in the present writ petition is the order of the Deputy Commissioner directing repoll and that too also by the persons who were not parties to the civil suit. On these premises, the withdrawal of the civil suit is no impediment to the filing of this writ petition which we have entertained and are inclined to allow.

9. This writ petition is allowed, with costs. The order Annexure P. 3 is set aside. All consequences as a result of the repoll are also hereby quashed. We uphold the result of the election declared vide Annexure P. 1. The costs to be paid by the private respondents are quantified at Rs. 1000/-.