
(1996) 01 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 36210 of 1995

Munna

APPELLANT

Vs

Bhola and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Rule 26, 51, 14

Citation : (1996) 01 AHC CK 0047

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—In this case the petitioner has challenged an order passed by the prescribed Authority under Section 14 (2) of the U. P. Kshetra Panchayats and Zila Panchayats Adhiniyam Act, 1961 which is Annexure 6 to this writ petition. The petitioner contends that certain ballot papers which were rejected at the time of initial counting and on which basis he was declared elected were taken into account while recounting. In course of the trial of the said election petition, the District Judge passed a consent order for counting the ballot papers. Learned counsel for the petitioners contends that the election of two wards were being conducted at the same polling station and each ballot paper was marked by the ward number. The ballot papers in which no ward number was given were cancelled but the same were counted at the time of recounting. According to him the said indication of ward number is distinguishing mark which has been given pursuant to the direction of the State Election Commission under Rule 26 subclause (2) of U. P. Kshetra Panchayats and Zila Panchayats (Election of Members) Rules, 1994. In the absence of these distinguishing marks the ballot papers could not be counted. He further contends that he had given consent only for the purpose of recounting the valid ballot papers. He had never given consent for scrutinising the cancelled ballot papers. He further contends that issue No. 3 has been decided at all inasmuch as it is alleged by the petitioner that the ballot papers which were cancelled with the consent of the both parties therefore, who

has admitted the said fact in his own evidence before the prescribed authority.

2. Learned counsel for the respondents, on the other hand, contends that the election was held at the same polling station in separate room and with separate ballot boxes and, therefore, there cannot be any confusion with regard to the ballot papers of the other ward. According to him the ward number was not a distinguishing mark which is required to be given by the Returning Officer or the Presiding Officer and there was no such direction by the State Election Commission. According to him in view of Rule 51(1) the ballot papers were cancelled only on the ground specified in clauses (a) to (i). The alleged ground as contended by the petitioner do not come within the purview of the said provision. In case even if the ballot papers are cancelled with the consent of the parties but the same cannot be cancelled by reason of the said provision. In that event such consent cannot operate as an estoppel.

3. Heard Mr. B.N. Tiwari, learned counsel for the petitioner and Mr. K. N. Rai, learned counsel for the respondent No. 1. It appears from the Rule 26 that every ballot papers is to be stamped with such distinguishing marked as the State Election Commission may direct It does not appear from the record that any attempt was made by the petitioner to prove before the Election Tribunal that any such direction was given by the State Commission for using any particular distinguishing mark with regard to mention of the ward number. If the ballot papers were cancelled wrongly the same can very well be reopened and gone into in election dispute. Inasmuch as the rejection of ballot papers can be made only on the ground as stipulated in Rule 51 as under : y

(a) If it is a case that the ballot papers bear any mark or writing by which an elector can be identified ; or

(b) it is spurious ballot paper ; or

(c) it has been so damaged or mutilated that its identity as genuine ballot paper cannot be established ; or

(d) if it bears a serial number or a design, different from the serial number or design, as the case may be, of the ballot papers authorised for use at the particular polling place, or

(e) if votes are given on it in favour of more candidates than the number of seats required to be filled in a constituency ; or

(f) if no vote is recorded thereon.

4. Since Rule 51 prescribed the grounds on which the ballot papers can be rejected there cannot be any other ground on which a ballot papers can be said to be rejected. Therefore under the law a ballot paper cannot be rejected even if it is rejected with consent of the parties. The same cannot operate as estoppel on the principle that there cannot be estoppel against statute. The consent cannot give jurisdiction to the Presiding Officer or Returning Officer to reject the

ballot papers which cannot be rejected under the statute.

5. Therefore, I do not find any reason to hold that the Election Tribunal has exceeded jurisdiction in counting the rejected ballot papers and the consent of recounting given by the petitioner can only confine to the recounting of the ballot papers excluding the rejected ballot papers. That apart from Annexure 1 to the counter affidavit which is a copy of the order dated 16th November, 1995, it appears that the ballot papers were directed to be recounted by the said order. The said order is as under :

In the said order it was directed that all those votes be counted which bear the signature of the Presiding Officer and are authentic according to the ballot papers account.

6. It is not pointed out that the said ballot papers do not tally with the ballot papers account in respect of the said polling booth. The learned Tribunal had gone through record and they found the details about the record of the polling and has not come to any finding that these ballot papers do not tally with the account. It has also recorded that no objection was raised with regard to said ballot papers account. Therefore, the Tribunal had found that the said ballot papers would not have been cancelled and were accordingly, accounted for.

7. With regard to the other question, it was recorded as not pressed. Therefore the counsel's contention that the said issue has not been decided cannot be sustained.

8. The tribunal has arrived at particular findings of fact on the basis of material placed before him. This court while exercising jurisdiction under Article 226 of the Constitution is not supposed to interfere with finding of fact unless the same appears to be wholly perverse. I have not been able to persuade myself to find out any ground on the basis of which the said order can be interfered with. In that view of the matter this writ petition cannot be sustained and it is dismissed. No order as to costs.