
(1997) 08 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 1220 (M/S) of 1996

Prahlad Singh

APPELLANT

Vs

Sub-Divisional Officer, Bahraich/Assistant Collector Ist Class,
Bahraich and another

RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Panchayat Raj Act, 1947 — Section 12C, 12C(6)

Citation : (1998) 1 AWC 214

Hon'ble Judges : R. H. Zaidi, J

Bench : Single Bench

Advocate : L. P. Misra, for the Appellant; C. S. C., H. S. Sahai and R. D. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—By means of this petition under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction mainly in the nature of certiorari quashing the order dated 15.5.1996 whereby the Election Tribunal constituted under U. P. Panchayat Raj, (for short the Act) framed the preliminary issue regarding counting of votes and order dated 17.6.1996 whereby the respondent No. 1 directed for recounting of votes.

2. The brief and relevant facts of the case as unfolded in the affidavits filed by the parties are that the petitioner contested the election for the post of Pradhan of Gram Panchayat, Rajapur Kalan, Post Payagpur, district Bahraich and was declared elected as Pradhan of the Gram Panchayat on 20.4.1996. Respondent No. 2, the defeated candidate filed an election petition u/s 12C of the Act challenging the validity of the election of the petitioner which he has won by 27 votes, within the time prescribed under the law.

3. On receipt of the notices from Election Tribunal, the petitioner has filed his written statement denying the allegations made in the election petition. It was on

8.1.1996 that an application was filed on behalf of respondent No. 2 for recounting of votes mainly on the ground that one Sri Ram Chander Shukla, was illegally and unauthorised permitted to participate in the election and to act as supervisor in the counting of the votes. Sri Ram Chander Shukla, illegally, invalidated several votes cast in favour of respondent No. 2 and large scale bungling was done by him in the counting of votes. It was, according to her, therefore, necessary to recount the votes.

4. Petitioner objected to the application filed by respondent No. 2. It was urged that no relevant material and specific allegations necessitating recounting of the votes were made in the election petition. Even the application filed for recounting of the votes was based on vague allegations. It was further urged that the election petition did not contain the allegations made in the application dated 8.1.1996.

5. It may also be noted that Writ Petition No. 231 (M/S) of 1996 was filed by the respondent No. 2 which was finally disposed of by this Court vide order dated 1.2.1996 with a direction to respondent No. 1 to decide the application of the petitioner expeditiously preferably within a period of three months.

6. The respondent No. 1 on 15.5.1996 framed the following issues on the basis of the application and the objections referred to above :

Whether any irregularity has been committed in the counting of votes in Gram Panchayat Rajapur Kalan? if so? its effect?

According to the petitioner, some affidavits were filed by the respondent No. 2 in support of her case without permission of the Election Tribunal. The said affidavits according to the petitioner were inadmissible in evidence. Petitioner filed a revision challenging the validity of the order dated 15.5.1996 before the revisional authority ; but the said revision was dismissed by the District Judge, Bahraich vide order dated 22.6.1996 as not maintainable. On 17.6.1996 the respondent No. 1 passed the impugned order and directed for recounting of the votes. The petitioner, thereafter, filed the present petition challenging the orders referred to above passed by respondent No. 1.

7. This Court by its order dated 19.6.1996 directed to put up this case on 24.6.1996 for final disposal. In the meanwhile, further proceedings of the case before respondent No. 1 were stayed.

8. Learned counsel appearing for respondent No. 2 filed the counter-affidavit denying the allegations made in the writ petition. It was also pleaded that Sri Raj Kishore, husband of respondent No. 2 was Pradhan of the village in the previous term. In the year 1992-93 a bridge (culvert) was constructed by Sri Yogendra Singh, contractor under the supervision of Sri Ram Chander Shukla, Junior Engineer, Rural Engineering Service. After completion of the construction of the culvert, in the very first rain, it was badly damaged consequently one Sri Hausala Prasad Jaiswal filed a complaint against Sri Ram Chander Shukla, which was

forwarded by Sri Raj Kishore, husband of respondent No. 2. The said complaint resulted in reconstruction of the culvert at the cost of Sri Ram Chander Shukla. Since then Sri Ram Chander Shukla bore ill-will and animosity towards Sri Raj Kishore and his family members. Sri Ram Chander Shukla illegally participated in the counting of the votes and got cancelled several votes cast in favour of respondent No. 2, therefore, the respondent No. 2 had to file election petition and an application for counting of votes before the respondent No. 1. On the said application respondent No. 1 rightly framed the preliminary issue and rightly directed for recounting of votes after recording reasons for the same. The writ petition according to her was, therefore, liable to be dismissed.

9. The learned counsel appearing for the petitioner vehemently urged that recounting of votes cannot be ordered as a matter of course, and the secrecy of the ballots is to be maintained. There must be definite and specific pleadings and proof, to justify the recounting. The Election Tribunal has got no right to conduct fishing and roving enquiry in the election petition. It was further urged that the facts on which the application for recounting of votes was filed were not even pleaded in the election petition. Therefore, there was no justification for respondent No. 1 to direct recounting of votes. On the other hand learned counsel for respondent No. 2 has submitted that the Judgment and order passed by respondent No. 1 was quite valid. According to him respondent No. 1 has recorded cogent reasons to justify his order to recount the votes. The orders impugned in the present petition, therefore, did not suffer from any infirmity and illegality. The writ petition was liable to be dismissed.

10. I have considered the rival submission made by learned counsel for the parties and carefully perused the records of the case.

11. The facts relating holding of election, declaration of result, filing of election petition are not in dispute. The question involved in the present case is as to whether on the facts and circumstances of the present case, respondent No. 1 could pass the order dated 17.6.1996 for recounting of votes, it is not disputed by learned counsel for the petitioner, that the respondent No. 1 had the jurisdiction to pass the order for recounting of the votes. According to him before passing such an order, it was obligatory upon the Election Tribunal to record definite findings regarding irregularities alleged to have been committed during the course of counting of votes and to justify recounting of votes, as recounting cannot be ordered as a matter of course.

12. In the present case, there were neither specific pleadings nor proof to Justify the recounting of votes. The facts relating to participation/supervision of Sri Ram Chander Shukla were not even pleaded in the election petition, Therefore, there was no justification for respondent No. 1 to entertain the application for the recounting of votes on the basis of alleged supervision and participation of Sri Ram Chander Shukla in the counting of votes. Further, by the time the impugned order dated 17.6.1996 was passed the parties did not produce the evidence oral and documentary, for and against. The question as to whether irregularities were

committed during the course of counting of votes or not was a question of fact. The issue framed by respondent No. 1, referred to above could not be treated as preliminary issue as the same did not raise--the question of Jurisdiction of the authority concerned or bar created by any statute. Such an issue could be decided only after conclusion of the evidence of the parties.

13. By the Apex Court of the country and by this Court, it has consistently been ruled that recounting of votes cannot be ordered as a matter of course as secrecy of ballots is to be maintained. The Tribunal which deals with the election petition cannot conduct fishing and roving enquiry and to direct, the votes to be inspected or recounted on the basis of vague allegations. Reference in this regard made in Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, , wherein it was ruled by the Hon"ble Supreme Court of India as under :

"An order for inspection may not be granted as a matter of course, having regard to the insistence upon the secrecy of the ballot papers, the Court would be Justified in granting an order for inspection provided two conditions are fulfilled:

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case ; and

(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

14. Similar view was taken by Hon"ble Supreme Court in Bhabhi Vs. Sheo Govind and Others, , wherein it was ruled as under:

"Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a Court can grant inspection or for that matter sample inspection of the ballot papers :

(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations ;

(2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts ;

(3) The court must be prima facie satisfied on the material produced before the Court regarding the truth of the allegations made for a recount;

(4) That the court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties ;

(5) That the discretion conferred on the court should not be exercised in such a way as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper."

15. A Full Bench of this Court while considering the question regarding powers of Election Tribunal constituted under U. P. Panchayat Raj Act, 1947 to direct inspection or recounting of ballot papers after examining almost all relevant decisions of Hon"ble Supreme Court and this Court on the subject, in Ram Adhar Singh v. District Judge. Ghazipur and others 1985 UPLBEC 317, was pleased to rule as under:

"Applying the principle with regard to inspection of ballot paper enunciated by the Supreme Court in cases arising under the Representation of People Act to an election petition dealt with under the provisions of the U. P. Panchayat Raj Act, there is no escape from the conclusion that before an authority hearing the election under the said Act can be permitted to look into or to direct inspection of the ballot papers, following two conditions must exist :

(1) that the petition for setting aside an election contains the grounds on which the election on the respondent is being questioned as also summary of the circumstances alleged to Justify the election being questioned on such ground : and

(2) the authority is prima facie satisfied on the basis of the materials produced before it that there is ground for believing the existence of such ground and that making of such an inspection is imperatively necessary for deciding the dispute for doing complete Justice between the parties.

It, therefore, follows that in the absence of any specification with regard to the ground on which the election of the respondent is being questioned together with summary of the circumstances alleged to justify the election being questioned on such ground, it is not open to the authority dealing with an application u/s 12C of the U. P. Panchayat Raj Act, either to look into or direct inspection of ballot papers merely on the ground that it feels that it would be in the interest of

justice to look into or permit inspection of the ballot papers. In the context, such satisfaction has necessarily to be based on specific averments made in and the materials indicated in the election petition which could, prima facie, satisfy the authority about the existence of the ground on which the election is sought to be questioned."

16. As in subsequent decisions the ratio of the decisions referred to above has been followed. I do not consider it necessary to deal with and refer to other decisions cited at the bar.

17. Testing the impugned order in the light of the aforesaid decisions and the settled law on the subject, it is evident that the respondent No. 1 has not passed the impugned order in accordance with law. Respondent No. 1 has simply observed that the result sheet of the election in question appeared to have been prepared by Sri Ram Chander Shukla. The said findings is not based on any relevant evidence on the record but on surmises and conjectures inasmuch as there was neither any pleading nor any evidence to support the said finding. He has directed to recount the votes--wholly illegally and excess of his jurisdiction. The said order does not fulfill the conditions necessary for inspection or recounting of ballot papers as laid down by the Apex Court of the country and by this Court in the aforesaid decisions.

18. In view of the aforesaid discussions, the order dated 17.6.1996 passed by the respondent No. 1 is liable to be quashed. It would also not be out of place to mention that the revisional authority has rightly dismissed the revision filed against the order dated 15.5.1996, whereby only an issue was framed by the respondent No. 1, as the said order was an interlocutory in nature as no revision lies against an interlocutory order u/s 12C (6) of the Act and it was also discretionary for the Tribunal to frame an issue to be decided as a preliminary issue or not to frame the same. Reference in this regard may be made to a Full Bench of this Court in *Sunni Central Board of Waqfs and others v. Sri Gopal Singh Vtsharad and others* 1990 (8) LCD 417.

19. The writ petition succeeds and is allowed in part. The order dated 17.6.1996 is quashed. It is however, directed that the election petition shall be decided within a period of four months from the date a certified copy of this order is produced before respondent No. 1. It is further directed that after receiving the evidence of the parties, if the respondent No. 1 comes to the conclusion that the case for recounting of votes has been made out and that recounting of votes is necessary for the ends of justice in the present case, he after recording reasons for the same may pass appropriate orders in this regard, in accordance with law.