
(2008) 04 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5006 of 2006

Rajesh Bhatia

APPELLANT

Vs

Chairman HN Municipalities Election Tribunal etc.

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Citation : (2009) 1 LLR 221 : (2008) 4 RCR(Civil) 36

Hon'ble Judges : Surya Kant, J

Advocate : Mr. Rajender Chhokar, Advocate with Mr. Navneet Chhokar, Advocate. Mr. I.P.S. Doabia, Advocate., Advocates for appearing Parties

Judgement

Surya Kant, J. (Oral)

1. This revision petition is directed against the order 10.8.2006 passed by the learned Election Tribunal, ordering recount of the votes, polled in respect of election from Ward No. 11 to the Municipal Corporation, Faridabad. It may, however, be noticed that the impugned order dated 10.8.2006 was passed by the Election Tribunal in continuity of the previous order dated 11.7.2006, which has also been assailed by the petitioner during the course of hearing.

2. The facts may be noticed briefly.

3. Election to the Municipal Corporation, Faridabad was held on 30.4.2005. The petitioner as well as respondent Nos. 2 to 13 contested the same from Ward No. 11. There were total 18519 votes in Ward No. 11 out of which 11181 were polled. While the petitioner got 2113 votes, respondent No. 2 the election petitioner received 2017 votes. 320 votes were rejected. The petitioner, thus, won the election by a margin of 96 votes.

4. Respondent No. 2 (Ashwani Azad) filed an election petition under Section 15 of the Haryana Municipal Corporation Act, 1994 (in short the Act) alleging various material irregularities in the process of conducting the election. He accordingly sought a declaration that the election of the petitioner from Ward No. 11 be declared illegal and set aside, and he should be declared as an elected candidate.

5. In the abovestated electionpetition, the second respondent also moved an application (Annexure P2) for recount of the votes. In para 4 thereof, he made the following averments :

4. That the applicant had met the respondent No. 14 and 15 and requested them for recounting of the votes, but my genuine request was ignored. Even the petitioner has moved an application before the Deputy Commissioner, Faridabad dated 3.5.2005 with copies to the Chief Election Commission of India and State Election Commissioner, Chandigarh but no action has been taken."

6. The petitioner contested the election petition as well as filed a separate reply to the application for recounting of the votes and opposed the said prayer.

7. Notwithstanding the petitioner's opposition, the Chairman of the Election Tribunal, however, passed one of the following impugned order dated 11.7.2006 :

"Shri H.K. Chetal, Adv. has requested that the petition may be decided only on the basis of recounting of ballot papers. He has drawn attention of this Tribunal to the statement made by him before Civil Judge (Sr. Divn.) Faridabad on 1st January, 2006 from which court, this petition was received on transfer basis.

The plea of recounting has been opposed by the winning candidate Shri Rajesh Bhatia on the ground that petitioner has not even asked for recounting of votes. This Tribunal does not find any weight in the plea of the contesting respondent. The petition will be decided on the basis of recounting of votes and no other point. Let election record be summoned for 10.8.2006.

Sd/ Chairman

MHET 11.7.2006."

8. On 10.8.2006, the Chairman of the Election Tribunal passed the following order :

"Election record produced by the departmental staff. Recounting will be done on 26th & 27th September, 2006 at 10.00 a.m. at headquarter at Chandigarh.

Sd/

Chairman

HMET 10.8.2006

Seal"

9. Aggrieved, the petitioner has filed this revision petition.

10. While issuing notice of motion, this Court vide order dated September 21, 2006, stayed operation of the impugned order.

11. I have heard learned counsel for the parties at length and have gone through the pleadings as well as the other material on record.

12. In order to effectively address the issue which arises for consideration in this petition, it may be noticed that Section 15(1) of the Act provides that no election of a member shall be called in question except by an election petition presented to the Authority as may be prescribed within 30 days from the date of publication of the result of the election. Subsection (2) provides that an election petition can be presented on one or more grounds specified in Sections 18, 19, 20, 21 and 22 of the Act by any candidate at such an election or by an elector of the ward concerned.

13. Section 17 of the Act which enumerates the grounds for declaring an election to be void, reads as follows :

"17. Grounds for declaring election to be void. (1) Subject to the provisions of subsection (2), if the authority as may be prescribed, is of the opinion

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member; or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election in so far as it concerns a returned candidate has been materially affected

(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than the candidate or his agent or a person acting with the consent of such candidate or agent; or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iv) by the noncompliance with the provisions of this Act, or any rules or orders made thereunder, such authority shall declare the election of the returned candidate to be void."

14. In exercise of its powers conferred by Section 32 of the Act, the State Government has framed the Haryana Municipal Corporation Election Rules, 1994 (in short the Rules) to regulate the election of the members. Rule 62 of the Rules pertains to recount of votes and reads as follows:

"62. Recount of votes. (1) After the announcement under subrule (2) of Rule 61 a candidate or in his absence his agent may apply in writing to the Presiding Officer or the Returning Officer to recount the votes either wholly or in part stating the grounds on which he demands such recount.

(2) On such an application being made, the Presiding Officer or the Returning

Officer, as the case may be, shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Presiding Officer or the Returning Officer as the case may be, under subrule (2) shall be in writing and contain the reasons therefor.

(4) If the Presiding Officer or the Returning Officer, as the case may be, under subrule (2) to allow a recount of votes either wholly or in part, he shall :

(a) arrange recounting of the ballot papers in accordance with his decisions;

(b) amend the result sheet in form 7 to the extent necessary after such recount; and

(c) announce the amendments so made by him and transmit the same to the Returning Officer.

(5) No application for recount shall be entertained after the declaration of results under Rule 63."

15. Rule 62 reveals that as soon as the counting of all the ballot papers is complete and the Presiding Officer signs the result of the counting in Form 7 [as provided in Rule 61(2)], a candidate or his agent may apply in writing to the Presiding Officer/Returning Officer to recount the votes by specifying the grounds on which such demand is made. If any such application is moved by a candidate or his agent, the Presiding Officer/Returning Officer is obligated to decide the same by passing a written and reasoned order.

16. Similarly, once the result of a candidate has been declared under Rule 63, no application for recount is maintainable. From the averments made by the petitioner in para 4 of his application for recounting of the votes, it is apparent that he or his agent did not move any application before the Presiding Officer/Returning Officer before declaration of the result, for recount of the votes. He, however, claims to have moved an application after four days of the election i.e. on 3.5.2005 before the Deputy Commissioner, Faridabad, who, under the Scheme of the Rules, is not a competent Authority to order any recount.

17. During the course of hearing, it is the conceded position that no evidence whatsoever has been led in the election petition by either of the parties. Only the pleadings have been completed.

18. Section 17 of the Act does not confer any power express or inherent upon the Election Tribunal to order recount of the votes. The Tribunal of course can declare election of a successful candidate as void if the election petitioner proves any of the grounds contained in Section 17 of the Act. Since, the procedure to be followed by the Election Tribunal for disposal of an election petition would be the same as provided in the Code of Civil Procedure, 1908 (Section 18 of the Act), in my considered view, it was imperative upon the Election Tribunal firstly to ask the parties to lead their evidence and then only to form an opinion as to whether

or not any material irregularity has been committed in the election process while declaring the petitioner a successful candidate from Ward No. 11.

19. At this stage, it may be profitable to refer and reproduce Rule 78 of the Rules which pertains to an "election petition" and reads as follows :

"78. Election petition. (1) No election member shall be called in question except by an election petition presented to the Tribunal.

(2) An election petition against the return of a candidate to an election or against the return of Mayor or Senior Deputy Mayor or Deputy Mayor or against unsuccessful candidate with a view to his disqualification on the ground of a corrupt practice or material irregularity in the procedure shall be in writing signed by a person who was a candidate at such election or an elector."

(emphasis applied)

20. Thus, the substantive provisions of the Act or the Rules framed thereunder do not empower at all the Election Tribunal to order recount of the votes without arriving at a factual finding that the election process was tainted with such procedural irregularity which has materially affected the same or that the returned candidate or his agent or any other person with his consent had committed and "corrupt practice". No such finding can be inferred by the Tribunal without there being even an iota of evidence on record. Mere bald allegations made by the second respondent in his election petition which have been refuted by the petitionerthe returned candidate in his written reply could not be taken as gospel truth by the Tribunal to order recount of the votes.

21. For the reasons aforesaid, this revision petition is allowed; the impugned orders dated 11.7.2006 as well as 10.8.2006 are set aside. The Election Tribunal is accordingly directed to proceed with the petition in accordance with law and make an endeavour to dispose of the same as early as possible and preferably within six months.

22. No order as to costs. Dasti.