
(1984) 01 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1412 of 1981

Rakha Ram

APPELLANT

Vs

Shri.A.R.Darshi and others

RESPONDENT

Date of Decision : 03-01-1984

Acts Referred:

Citation : (1984) ILR (P&H) 448 : (1985) PLJ 57 : (1985) RRR 118

Hon'ble Judges : S.S.Kang, J

Advocate : S.C. Sibal, Advocates., R.C. Setia, Advocates for appearing Parties

Judgement

S.S. Kang, J. (Oral)

1. Election to ward No. 7 of the Municipal Committee, Urmar Tanda, was held on June 10, 1979. Rakha Ram, petitioner, polled 268 votes against 267 votes polled by his rival candidate, Dev Raj, respondent No. 2. The petitioner was declared elected as a Municipal Commissioner by a margin of one vote. Dissatisfied Dev Raj, the defeated candidate, filed an election petition under rule 52 of the Punjab Municipal Rules, 1952 (for short "the Rules") against the election of the petitioner. In the election petition, it was inter alia pleaded that Kulwant Kaur wife of Sadhu Singh was residing in those days at Jhansi and Rakha Ram managed to get her vote polled by impersonation. Ballot paper No. 19347 did not bear the impression of the marking seal as prescribed under the rules. It bore a distinction mark with blue ink. This vote was polled in favour of the petitioner. The Presiding Officer wrongly counted this vote as a valid vote. There were other points of challenge to the election of the petitioner raised in the election petition but it is not necessary to recapitulate them because the impugned order nullifying the election is not based on them. These allegations have not been accepted to have been proved. The election petition was entrusted for disposal to Shri A.R. Darshi, Executive Magistrate, Hoshiarpur, who had been appointed a Commission by the State Government under section 247 of the Punjab Municipal Act, 1911 (for short "the Act").

2. After recording the evidence of the parties and hearing their learned counsel,

the Commission came to the conclusion that two valid votes had been cast in favour of the petitioner. Vote No. 19347 was invalid vote and the credit of the same should not have been given to the petitioner. Kulwant Kaur had not cast her vote in the elections and somebody else had impersonated her and cast vote in favour of Rakha Ram. The Commission excluded one vote from the votes polled in favour of Dev Raj holding that the same had been polled as a result of impersonation of Sheela Devi who was actually dead on the date of election. As a result he took out two votes from the total 268 votes by Rakha Ram, petitioner, and one vote from the total 267 votes polled by Dev Raj, respondent, and concluded that both the candidates had polled equal number of votes i.e. 266 votes each. He set aside the election of the petitioner and recommended that in accordance with the provisions of clause (b) of rule 40 of the Rules the result of the election should be decided between these two candidates by drawing lot. Aggrieved by this order, Rakha Ram filed the present writ petition.

3. It has been contended by Shri R.C. Setia, Advocate, the learned counsel for the petitioner, that the onus to prove that the election of a returned candidate is void because it has been effected by a material irregularity is on the election petitioner. This onus has to be discharged by him by independent, reliable and cogent evidence.

4. The procedure for determination of the election disputes has been provided in Chapter XIV of the Act. Under section 247 of the Act, the State Government is empowered to appoint a Commission to hold an inquiry in respect of an election under the Act. Under section 248 of the Act, the Commission has been given the powers, which are vested in a Court under the Code of Civil Procedure when trying a suit. The procedure in evidence Act is applicable to the inquiry held by the Commission. Under section 254 of the Act, the Commission after the conclusion of the inquiry submits a report of its findings to the State Government. Thereafter the State Government in exercise of powers under section 255 of the Act passes orders declaring the candidate duly elected or declaring the election to be void. Part III of the Rules is a complete Code for the trial and determination of the election petition, challenging the election of the Municipal Commissioner. Rule 51 provides a dictionary definitions and meanings. Clause (a) defines "corrupt practice" and clause (c) gives definition of "material irregularity". Rule 63 furnishes the grounds on which the election of a Municipal Commissioner can be declared void. The relevant part of the same is reproduced below :

"R. 63. Grounds for declaring election void. (1) Save as hereinafter provided in these rules if in the opinion of the Commission

(a) the election of a returned candidate has been procured, or induced or the result of the election has been materially affected, by a corrupt practice, or

(b) any corrupt practice specified in subclause (i), (ii), (iii) or (iv) of clause (a) of rule 51 has committed, or

(c) there has been any material irregularity, or

(d) the election has not been a free election by reason by the large number of cases in which the corrupt practices specified in subclause (i) or (ii) of clause (a) of rule 51 have been committed by a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent or any person who is not a candidate or an agent of such candidate or a person acting with the connivance of a candidate or such agent, the Commission shall report that the election of the returned candidate shall be deemed to be void.

(2) If the Commission reports that a returned candidate has been guilty by an agent of any corrupt practice which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abatement or personation, and if the Commission further reports that the candidate has satisfied it that :

(a) no corrupt practice was committed at such election by the candidate and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate, and

(b) such candidate took all reasonable means for preventing the Commission of corrupt practices at such election, and

(c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character and did not materially affect the result of the election, and

(d) in all other respects the election was free from any corrupt practice on the part of such candidate,

then the Commission may report that the election of such candidate should not be deemed to be void.

Explanation For the purpose of this subrule "treating" means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object directly or indirectly of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting."

5. There is no dispute that Kulwant Kaur was registered as a voter. A vote issued in favour of Kulwant Kaur was found to have been polled in favour of the petitioner. The sole question for determination is whether this vote was actually cast by Kulwant Kaur or the same had been cast by somebody else. The only evidence led by Dev Raj on this aspect of the case was his own statement. He had stated that Kulwant Kaur resided with her husband at Jhansi. She did not cast her vote in the elections on June 10, 1979. It is true that while determining the validity of the finding of the Commission under section 254 of the Act, this Court in exercise of the jurisdiction under Articles 226/227 of the Constitution of India does not sit as a Court of Appeal. It is not open to this Court to reappraise

the evidence and reach a different conclusion. However, if the findings of the Commission on any vital issue are not supported by any evidence or they are perverse or the conclusions are such that no prudent person instructed in the relevant law shall reach those conclusions, this Court surely can examine the finding. As noticed earlier, the onus to prove that Kulwant Kaur, the real voter, had not cast the vote was on Dev Raj, election petitioner. Apart from making his own bald statement, he has not chosen to lead any other evidence to support this allegation. He in the very nature of things as a candidate could not all the time remain near the Presiding Officer to know as to which of the voters had cast their votes. It is difficult to believe that Dev Raj could know as to which particular persons, who had been registered as voters, had actually cast their votes. If Dev Raj had known that Kulwant Kaur had not polled her vote and somebody else had impersonated for her, Dev Raj would have at that moment brought this fact to the notice of the Presiding Officer who would have held a summary inquiry and given a decision as to whether the person trying to cast the vote was in fact Kulwant Kaur or not. This did not happen. Dev Raj did not contend that he had protested to the Presiding Officer that he had issued a ballot paper to a wrong person. The best evidence could be provided by Kulwant Kaur. The petitioner did not examine her as a witness. The Commission has commented to this aspect and stated that the petitioner should have examined Kulwant Kaur. To say the least this was an wholly erroneous approach. It was not the duty of the petitioner to produce Kulwant Kaur. It was for Dev Raj to examine her to prove his allegations. There was no evidence on the file to warrant the conclusions that Kulwant Kaur had not cast her vote on that date. The conclusion of the Commission that the vote cast by Kulwant Kaur was invalid is perverse and cannot be accepted.

6. If Kulwant Kaur's vote is not excluded then the total of the votes polled by the petitioner comes 267 whereas the valid votes polled by Dev Raj numbered only 266. So, the petitioner had been validly declared elected.

7. For the foregoing reasons this writ petition is allowed and the order dated March 6, 1981 passed by the Commission (Annexure P3) is set aside. There shall, however, be no order as to costs.