

(2022) 07 MP CK 0040
In the Madhya Pradesh High Court
Case No : Writ Petition No. 15147 Of 2022

Rekha

APPELLANT

Vs

Election Commission Through Commissioner Nirvachan
Bhawan And Others

RESPONDENT

Date of Decision : 07-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 — Rule 77(2), 77(4), 80(5)

Citation : (2022) 07 MP CK 0040

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Pankaj Ajmera, Kamal Airen

Final Decision : Disposed Of

Judgement

Subodh Abhyankar, J

Heard on the question of admission.

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

"1. That, this Hon'ble Court may please to issue an appropriate writ /order/ direction to the respondents to permit the 46 voters to cast their votes.

2. That, the respondents Election Commission be restrained to announce the Winning Candidate.

3. That, the election held at Gram Panchayat Ghodi Bujurg Tehsil-Jhirniya, District-Khargone may be declared as null and void.

4. That, this Writ Petition may kindly be allowed with cost.

5. That, this Hon'ble Court may further please to grant any other relief, if deem fit in present facts and circumstances."

2. The grievance of the petitioner is that she had contested the election at Polling Booth No.199 of Gram Panchayat, Ghodi Bujurg, Tehsil- Jhirniya, District-Khargone, which was held on 25.6.2022 and the petitioner came to know that 46 voters, who were present in the premises of the said Polling Booth, were not allowed to cast their votes by the Returning Officer and hence on 29.6.2022 she also submitted her application for an enquiry should be made for such irregularity.

3. In the petition the relief sought by the petitioner is that the 46 voters, who were not allowed to cast their votes, be allowed to do same and the said Polling Booth be also declared as void. It is further submitted that the application 29.6.2022 filed by the petitioner has been wrongly rejected by the Returning Officer on 29.6.2022. Thus, the petition be allowed.

4. The respondents No. 1 to 3 have filed their reply.

5. Shri Kamal Airen, counsel for the respondents/Election Commission has drawn attention of this Court towards the copy of Clause 21.22 and 21.23 of the Returning Officer's hand book, which clearly provides that any candidate or any representative can claim recounting of votes but the same can be done in the polling booth only.

6. Counsel has also drawn attention of this Court towards sub-rule (2) of Rule 77 and sub-Rule (5) of Rule 80 of the Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 and it is submitted that even in the aforesaid Rules the same provision of R.O. Hand Book finds placed wherein it is specifically provided under sub-Rule (5) of Rule 80 that after the total number of votes polled by each candidate has been announced under sub-rule (2) of Rule 77 or sub-rule (4), the Returning Officer or such other Officer authorized by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter. Thus, it is submitted that the application, which was filed on 29.5.2022, was itself filed after undue delay and even in that application there was no prayer for recounting of the votes but the prayer was of the irregularities committed by the respondents in not allowing the 46 voters, who were present in the Polling Booth to cast their votes. Thus, it is submitted that the petition deserves to be dismissed.

7. In support of his submissions, counsel for the respondents has relied upon the decision of this Court in the case of Rafik Khan vs. Sub Divisional Officer-cum-Prescribed Authority and others reported as 2007(3)JLJ 244 wherein also the Court has held that the recounting cannot be ordered without pleading and evidence thereon.

8. Considered the rival submissions and perused the documents filed on record. So far as Rule 77 (2) and Rule 80 (5) of the Panchayat Raj Evam Gram Swaraj Adhiniyam 1993, are concerned, the same read as under:-

"77. Counting of votes.-

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(2) After the counting of votes in respect of a polling station has been completed, the Returning Officer or such other officer authorised by him, shall make the entries in result sheet in Form 16 for Panchas and in Part one of the result sheet in Forms 17, 18 and 19 for Sarpanch, members of Janpad Panchayat and Zila Panchayat respectively and announce the total number of votes polled by each candidate.”

“80. Recount of votes.- (1) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under sub-rule (2) of Rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorised by him. for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.

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(5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of Rule 77 or sub-rule (4), the Returning Officer or such other officer authorised by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter :

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).”

(emphasis supplied)

9. This Court finds that no interference is called for in the present case, considering the fact that objection itself was taken by the petitioner on 29.6.2022 whereas the election took place on 25.6.2022, thus the application has been rightly rejected by the respondents and as such no interference is called for. Thus, the writ petition being devoid of merits, is hereby dismissed. However, with liberty reserved to the petitioner to take recourse of the remedy available to her under the law including filing of an election petition.

With the aforesaid, writ petition disposed of.