
(2014) 02 GAU CK 0036
In the Gauhati High Court
Case No : Writ Petition (C) No. 251 of 2014

Shri Ajoy Sarkar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Assam Panchayat Act, 1994 — Section 127 129(b)

Citation : (2014) 02 GAU CK 0036

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : D. Mazumdar, Mr. H.I. Choudhury, for the Appellant; K.K. Choudhury, GA. and Mr. B. Chakraborty, for the Respondent

Final Decision : Disposed Off

Judgement

Biplab Kumar Sharma, J.—Heard Mr. D. Mazumdar along with Mr. H.I. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Chakraborty, learned counsel representing the respondent No. 4. I have also heard Mrs. K.K. Choudhury, learned State Counsel. This writ petition is directed against the order dated 07/01/2014 passed by the learned District Judge, Karimganj acting as the Election Tribunal in Misc. (Election) Case No. 61/2013, by which allowing the prayer of the respondent No. 4 who has filed the said election petition, direction has been issued to the District Magistrate, Karimganj to send all the ballot boxes of the concerned Gaon Panchayat for recounting. In the instant case, we are concerned with the election pertaining to the post of President of 93, Bagbari Gaon Panchayat in the district of Karimganj. According to the election results, while the petitioner secured 957 votes, the respondent No. 4 secured 944 votes. Thus, there is difference of only 13 votes. It is the case of the respondent No. 4 that in fact he has secured 957 votes as against 944 votes secured by the petitioner. In the election petitioner that has been filed u/s 129(b) and Section 127 of the Assam Panchayat Act, 1994, the respondent No. 4 has inter alia contended as follows:--

4. That the counting of the said election started on 15-02-2013 at Karimganj College and when the counting of the said election of 93 Bagbari G.P. started all the 10 Nos. of counting agents of the petitioner were present in each of the counting table in the said counting hall and the petitioner being candidate himself was also present in the counting hall, that while counting started almost all the time the petitioner was leading in all the 10 Nos. of counting tables keeping far behind the O.P. No. 4. That from the trends of the counting the petitioner and his counting agents were confident that the petitioner will win as President of No. 93 Bagbari G.P. That the O.P. No. 4 on seeing the counting trend in favour of the petitioner, he with a view to illegal and wrongful gain with malafide intention in collusion with the O.P. No. 3 and his counting staff started illegally rejecting the valid votes of the petitioner with a false present that those impression of the stamp is not visible and incomplete, they also started rejecting some of the clear intention votes stamped in favour of the petitioner on falsely alleging that those are thumb impression.

5. That the O.P. No. 4 also made another designed in collusion with the O.P. No. 3 and his counting staff with regard to the total casting votes in each ward. With a view to defeat the petitioner as per example while poll was held on 12-02-2013 in Ward No. 4 of the Presiding Officer gave account of casting of votes 317 but the counting staff made the numbers 330 instead of 317 and thereafter while ending the counting of the said ward i.e. in Table No. 4 they makes it 335 in such way they make anomalies and variation in table No. 5, 9 and 10 and the showing excess votes most illegally counted in favour of the O.P. No. 4.

2. In paragraph 6 of the Election Petition it has further been stated that inspite of the anomalies and favouritism shown by the counting staff in favour of the petitioner, the respondent No. 4 could secure 957 votes as against 944 votes secured by the petitioner. It has further been stated that the official respondents did not issue any certificate or result sheet and advised the petitioner to collect the same later on. However, on 17/02/2013 when the petitioner collected the Xerox copy of the election result, he discovered that the official respondents in collusion with the petitioner, manipulated the results showing 7957 votes favour of the petitioner and 944 votes in favour of the respondent No. 4.

3. Responding to the election petition, the petitioner submitted written statement and was and so also by the official respondents i.e. the opposite party No. 1, 2 and 3. The respondent No. 4 also adduced evidence in the form of affidavits (total 3) and they were also cross examined. The petitioner also examined 3 witnesses including himself and they were also cross examined.

4. By the impugned order dated 07/01/2014, learned District Judge, Karimganj having ordered for re-counting of the votes and issuing direction to the District Magistrate, Karimganj to send the ballot boxes, the petitioner being aggrieved, has filed the instant writ petition. While Mr. D. Mazumdar, learned counsel for the petitioner submits that there is no material for order for recounting and that the impugned order dated 07/01/2014 being a non-speaking order, the same is

required to be interfered with by this Court. Mr. B. Chakraborty, learned counsel representing the respondent No. 4 placing reliance on the decision of the Apex Court reported in R. Narayanan Vs. S. Semmalai and Others, submits that when there is a prima facie case to order for recounting, the writ Court exercising writ jurisdiction will not interfere with the decision arrived at by the Election Tribunal in para 26 of the said judgement, it was observed thus:--

26. Finally, the entire case law on the subject regarding the circumstances under which re-count could be ordered was fully summarized and catalogued by this Court in the case of Bhabhi Vs. Sheo Govind and Others, to which one of us (Fazal Ali, J) was a party and which may be extracted thus:--

This court would be justified in ordering re-count of the ballot papers only where:--

(1) The election petition contains an adequate statement of all the material facts on which the allegations of irregularity of illegality in counting are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

5. Mr. B. Chakraborty, learned counsel for the respondent No. 4 further submits that although the learned District Judge has ordered for sending all the ballot boxes for re-counting that in fact the respondent No. 4 will be satisfied if the rejected ballots are only recounted. Be it stated here that altogether 307 votes have been rejected allegedly on the ground of indistinctness and having thumb impression, which according to the learned District Judge is against spirit of the provisions of Rules 56(2) 2nd proviso. It appears that for the post of President, Gaon Panchayat, total votes were 3793 and out of which 307 votes were rejected including some postal ballots. As it would appear on perusal of the impugned order, the petitioner had opposed the Election Petition and for that matter recounting of votes on technical ground. On the other hand, the Election Petition having disclosed a prima facie case, the learned Tribunal passed the impugned order. While doing so, he also appreciated the evidence adduced by the parties. Coupled with the same in the evidence of PW-1, the facts stated in the Election Petition was re-affirmed and reiterated. In the cross examination, the respondent No. 4 stated that around 38 Nos. of votes were illegally rejected in Ward No. 5. In his cross examination by the O.P. No. 1, 2 and 3, respondent No. 4 stated that around 30/35 ballots were rejected on the plea of indistinctness.

6. The learned District Judge in consideration of the pleaded case of the Election Petition and having ordered for recounting of the votes, I see no reason for interfering with the same exercising writ jurisdiction. However, as submitted by

Mr. B. Chakraborty, learned counsel for respondent No. 5, the order stands modified to the extent that such recounting will be limited to the extent of rejected 307 ballots. With the above direction and observation, the writ petition stands disposed of, without however, any order as to costs.