
(2007) 11 MP CK 0007
In the Madhya Pradesh High Court

Smt. Birjha Bai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 MPHT 203 : (2008) 2 MPLJ 591

Hon'ble Judges : S.R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In this intra-court appeal preferred u/s 2(1) of the M.P. Uchcha Nyayalayay (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 the legal propriety of the order dated 12.9.2006 passed by the learned Single Judge in W.P. No. 15329/2005 is called in question.

The facts which are imperative to be enumerated are that the appellant-petitioner (hereinafter referred to as "the petitioner") filed an election petition No. 1A/89/2004-05 before the S.D.O. Baihar, the Prescribed Authority, under the provisions of Section 122 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short "the Act"). It was urged before the Election Tribunal that the election for the post of Sarpanch for Gram Panchayat, Kukrra was held on on 19.1.2005. In the said election there was a triangular contest wherein the petitioner-appellant obtained 320 votes and the respondents No. 7 and 8 secured 321 and 319 respectively. During the counting of votes for Booth Nos. 19 and 20 total 109 votes have been declared invalid. As there was irregularities and illegalities in the process of counting of votes the same were pointed out by the petitioner. It was putforth that one Santosh cast the vote on behalf of Shivilal who was not in village. On an objection being filed recounting was done and two votes were declared invalid in respect of Booth No. 19. In

booth No. 20 some valid votes were declared to be invalid and in the ultimate eventuate the respondent No. 1 was declared elected having secured one vote more than the appellant. Before the Election Tribunal the appellant sought recount of votes. An application was filed in that regard. The respondent No. 3, the Prescribed Authority, by order dated 14.11.2005 dismissed the said petition. Being dissatisfied by the aforesaid order the petitioner knocked at the doors of this Court under Article 226 of the Constitution of India.

The learned Single Judge noted the contentions of the learned Counsel for the petitioner. The contentions raised before him were two fold. First, in the initial counting the petitioner had received one vote more than the respondent No. 7 but after recounting the valid vote polled in favour of the petitioner was rejected by the Counting Officer and thereafter the respondent was declared elected, though there was no justification for rejection of the said valid vote; and second he had made a prayer for recount of votes in respect of the polling booth No. 20 but the said prayer was not considered by the Returning Officer and hence, it was obligatory on the part of the Election Tribunal to direct for recount of votes in respect of booth No. 20.

The learned Single Judge noted the submissions of the learned Counsel for the petitioner and thereafter opined that one of his witness, namely, Kapoor Chand has deposed that one valid vote of the petitioner has been erroneously declared invalid. He has scanned the evidence of witness Kapoor Chand in entirety and found that the said witness has accepted that in the initial counting one vote which was found valid in favour of the petitioner was found invalid on the recounting and thereafter the result was recorded. The learned Single Judge has expressed the opinion that on the proper reading of the deposition of the said witness the contention of the petitioner is sans substance.

To appreciate the validity of said conclusion we have carefully perused the statement of Kapoor Chand. We have also scrutinized the order of the Election Tribunal. On a perusal of the testimony of the said witness we are of the considered opinion if the entire evidence is read in proper perspective there can be no iota of doubt that the invalid vote has been properly rejected. It is not that the valid vote which was supposed to be accepted as valid has been rejected or treated as invalid in the recounting. It is worth noting that a single sentence of a witness cannot be treated as the gospel truth. His statement is to be read in entirety to lend credence to the same or not. Thus, we do not find any fault in the conclusion arrived at by the learned Single Judge on that score.

The second aspect which was highlighted before the learned Single Judge is that there should be recounting of votes in respect of polling booth No. 20 but the same has been erroneously rejected. The learned Single Judge upon perusal of the order of the Election Tribunal has recorded a finding that the stand that the petitioner had filed an application before the Election Tribunal was not substantiated and further no averments have been made warranting recount of votes in respect of polling booth No. 20. Being of this view he affirmed the order

of the Election Tribunal.

It is submitted by Ms. Divya Kirti Bohre, learned Counsel for the appellant that there is ample material available on record which warranted recount of votes in respect of polling booth No. 20. In paragraph 7 of the election petition certain aspects have been put forth with regard to polling of votes. English translation of the said paragraph reads as under:

7. That the Presiding Officer denied to accept the application for recount of votes in polling booth No. 20 from the agent of the petitioner and asked to submit the application to the Tehsildar, Baihar and then only there would be recounting. In this way the Presiding Officer neither took the application from polling booth No. 20 nor did he direct for recount. He did not give counting receipt to the agent of the petitioner. By adopting this procedure the Presiding Officer, denying the prayer for recounting, counted the votes in an illegal and unlawful manner as the Presiding Officer after the voting while the counting of the votes was about to commence, ousted all the agents including agent of the petitioner. The agent raised serious protest by shouting and then only he was allowed to remain present. Under these illegalities the process for counting was completed and the result was declared which is illegal and totally vitiated. Though the petitioner was to be an elected candidate on account of valid votes, yet he has been declared defeated in an illegal manner and the respondent No. 1 who should not have been declared elected has been declared so. The valid votes were rejected and counted as invalid votes. On legal grounds the petitioner should be declared as elected candidate.

On a perusal of the aforesaid paragraph it is quite clear that the election petitioner has really not stated about any irregularity or illegality in respect of the polling in booth No. 20. It is also worth noting that though a bald allegation had been made that she has filed an affidavit before the authority but nothing has come out in record. The Prescribed Authority rejected the prayer for recount. It is well settled in law that before the election tribunal evidence can be adduced making a case for recount. The question that emerges for consideration is whether there is adequate pleadings and ample evidence to direct recount. We may refer with profit to the decision rendered in the case of Tanaji Ramchandra Nimhan Vs. Swati Vinayak Nimhan and Others, wherein the Apex Court after referring to the decisions rendered in the cases of Mahendra Pal Vs. Shri Ram Dass Malanger and Others, , Chandrika Prasad Yadav Vs. State of Bihar and Others, and M. Chinnasamy Vs. K.C. Palanisamy and Others, has expressed the opinion that an order for recount cannot be ordered as a matter of course unless the election petition had laid the foundation and there was clinching evidence to support the case set up by the election petitioner. An election petition seeking a recount must contain a concise statement of material facts and clear evidence in support of the facts pleaded. Small margin of victory by itself is not a ground for ordering recount. A roving and fishing inquiry is not permissible while directing recount of votes. The requirement of maintaining secrecy of ballot papers has to

be kept in mind before directing a recount. The requisites for ordering re-count are a prima facie case and pleading of material facts detailing the irregularities in counting of votes.

Tested on the touchstone of the aforesaid enunciation of law we are afraid the pleadings and material brought on record do not meet the said requirement. What has been pleaded with regard to polling booth No. 20 does not really specifically state about irregularities committed in the counting. In the absence of absence of any specific pleading, there cannot be a direction for recount. Hence we concur with the view taken by the learned single Judge. However, the costs imposed by the learned single Judge is made easy.

In the result, the writ appeal, being devoid of substance, stands dismissed with the modification as regards the costs. There shall be no order as to costs in the appeal.