
(2006) 05 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 10350 of 2005

Smt. Kala Bai

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 122
Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 — Rule 21, 39, 40, 51, 61

Citation : (2006) 3 MPJR 396

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Prashant Singh, for the Appellant; Deepak Awasthi, Government Advocate for Respondent Nos. 1 and 2 and Paritosh Gupta, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.

This petition is directed against the order dated 31-8-2005 passed by Sub Divisional Officer, Bareilly, District Raisen in Election Petition No. 10/A-89 (21)/04-05 Smt. Gayatri Bai v. Kala Bai and Ors. by which the Election Tribunal allowed the election petition filed by Smt. Gayatri Bai u/s 122 of the M.P. Panchayat Raj and Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "Adhiniyam"), declared the election of Smt. Kala Bai as void and directed for re-election for the office of Sarpanch, Gram Panchayat, Khairbada Tehsil Bareilly.

The facts of the case are that the petitioner Smt. Kala Bai and Smt. Gayatri Bai and Smt. Leela Bai were rival contestants for the election of the office of Sarpanch, Gram Panchayat, Khairbada. Petitioner Smt. Kala Bai was allotted a symbol of Spectacles (Chashma), Smt. Gayatri Bai was allotted the symbol of Tumbler (gilas) and Smt. Leela Bai allotted the symbol of Coconut Tree. The election was held on 16-1-2005. At the time of polling, it revealed that the ballot paper is having 4 symbols while there were only three contestants. One extra

election symbol which was printed in the ballot paper was "Handpump" against which no name was appearing as a contestant candidate. No objection was raised by any of the contesting candidates during the course of voting. Thereafter the result was declared in which petitioner Smt. Kala Bai got 331 votes, respondent Smt. Gayatri Bai got 184 votes, Smt. Leela Bai got 140 votes while 34 ballot papers were rejected.

This election was challenged by Smt. Gayatri Bai respondent No. 5 on the ground that the ballot paper was having 4 election symbols. This has confused the voters and the entire election process has been affected by printing of extra symbol on the ballot paper. In the election petition, the petitioner was served, filed reply and as the point involved was the only one which was not in dispute, the SDO after hearing both the parties passed the impugned order and on the aforesaid ground the election of petitioner was set aside. This order is challenged in this petition.

Learned Counsel for the petitioner submitted that:

(i) That there is no provision under Rule 21 of the M.P. Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred as Election Petition Rules) to declare the election as void on the ground that one extra symbol was printed on the ballot paper.

(ii) That even if it is assumed that the ballot paper was wrongly printed, it has not affected the election substantially. Because, even if it is assumed that 34 votes which were rejected were cast in favour of Smt. Gayatri Bai, who was nearest rival of petitioner, the result of the election shall not change. It is submitted by petitioner that the impugned order passed by the Election Tribunal be set aside.

Learned Counsel appearing for respondent No. 5 Smt. Gayatri Bai supported the order and submitted that the Election Tribunal has rightly set aside the election as there was non-compliance with the provisions of the rules made for conduction of the election namely M.P. Panchayat Nirvachan Niyam, 1995 (hereinafter referred as "Nirvachan Niyam") and the ballot paper which was having one additional symbol has substantially affected the election and the Sub Divisional Officer has rightly declared the election void. It is submitted by the respondent No. 5 that this petition is without merit and may be dismissed.

In this petition, it is not in dispute that 4 election symbols were printed in ballot paper. The serial in which the name of rival contestants their symbols were printed on the paper, and votes received are as under:

Name of candidate Election Symbol Votes received (1) Smt. Kala Bai Spectacles 331 votes (2) Smt. Gayatri Bai Tumbler 184 votes (3) Smt. Leela Bai Coconut Tree 140 votes (4) - Hand-pump ? 34 ballot papers were rejected as found invalid by the Returning Officer in the election.

At this stage, it will be appropriate to refer certain provisions of Nirvachan

Niyam, which are relevant in this petition. Rule 39 of Nirvachan Niyam provides allotment of symbol for election. For ready reference Rule 39 reads thus:

39. Allotment of symbols for election.? (1) Where a poll becomes necessary the Returning Officer shall assign to each candidate any one of the symbols determined by the Commission in the manner prescribed by it.

Rule 51 of Nirvachan Niyam, provides for the form of ballot paper which reads as under:

51. Form of ballot paper.? (1) Every ballot paper shall have a counterfoil attached thereto and shall be in such form and have such particulars as may be determined by the Commission.

(2) The ballot paper shall contain the names of candidates in Hindi in the Devnagri Script arranged in the same order in which they appear in the list of contesting candidates, against their election symbols.

Rule 61 provides voting procedure, for ready reference Rule 61 reads thus:

61. Voting procedure.? (1) A voter on receipt of the ballot paper shall forthwith proceed to the voting compartment; there make a mark on the ballot paper with the instrument supplied for the purpose in or near the symbol of the candidate for whom he intends to vote; fold the ballot paper so as to conceal his vote; insert the folded ballot paper into the ballot box and quit the polling station.

(2) No voter shall remain in the polling station longer than what is reasonably necessary for casting his vote.

As per Rule 39, the Returning Officer is empowered to assign each candidate any of the symbols determined by the Commission in the manner prescribed by it. Under Rule 40 of Nirvachan Niyam, after the allotment of election symbols, it shall be published by affixture on the notice Board in the office of Returning Officer and a copy of such shall be supplied to each contesting candidate or his election agent. In this case, it is not in dispute that under Rule 40 of Nirvachan Niyam, the list which was published of the contesting candidate showing their symbol, was not containing any fourth symbol, which reflects from the perusal of list published by the Returning Officer and is available on Page 15 of the record of the Trial Court but it appears that at the time of election the ballot paper which was provided and made available to the voters was having fourth symbol on which nobody was contesting the election. Though it ought not to have been done, but merely on the ground of publication of fourth symbol on the ballot paper, whether it has affected the election substantially or not ? and on this ground election of petitioner may be declared as void ? is to be seen. In this case, only 34 ballot papers were rejected at the time of counting, though there is no finding by the Election Tribunal that all these 34 ballot papers were those on which the voters had affixed the seal on the 4th symbol, namely Hand Pump. Even for the purposes of argument, if it is assumed that the aforesaid all the 34 votes were those on which the seal was affixed on the symbol of Hand Pump and

were rejected on the ground that the seal was affixed on a symbol on which nobody was contesting the election, whether the election is substantially affected by this. In this case, the petitioner is return candidate who has achieved 331 votes, while the nearest rival of the petitioner was Smt. Gayatri Bai who received 184 votes. For the sake of arguments, if the aforesaid 34 rejected votes are included in the votes received by Smt. Gayatri Bai, the total votes which she would get would come to 218. While the margin between Smt. Gayatri Bai and Smt. Kala Bai is 147 votes. In these circumstances, merely by publication of fourth symbol has not affected the election materially. Until and unless there is some evidence that because of print of fourth symbol on ballot paper, voters have confused or a large number of voters have cast votes on that symbol, which has effected the election substantially, on this ground election cannot be declared void. Apart from this margin of votes between returned candidate and nearest rival is too much and on the basis of this no such inference can be drawn.

Now the argument of respondent No. 5 may be seen. Her contention is that the election may be declared as void as it was in non-compliance with the provisions of the election rules, but which provision has been violated has not been explained. Though there is provision for allotment of the election symbol but in this peculiar circumstance, whether there is non-compliance of any of the rule is not proved. The matter may be examined only with the angle whether the publication of fourth symbol has affected the election substantially or not. While considering the first question, this question is decided in favour of the petitioner. In view of the aforesaid, the Election Tribunal wrongly declared the election of the petitioner as void and the order passed by the Election Tribunal is not sustainable under the law. Consequently, the order passed by the Election Tribunal is hereby quashed and it is held that the petitioner shall be treated as elected Sarpanch of Gram Panchayat, Khairbada. This petition is allowed with costs.