
(2006) 03 AHC CK 0098
In the Allahabad High Court
Case No : C.M.W.P. No. 266 of 2006

Smt. Kamlesh

APPELLANT

Vs

Mukhya Nirwahan Ayukt and Others

RESPONDENT

Date of Decision : 30-03-2006

Acts Referred:

Citation : (2006) 2 AWC 1720 : (2006) 3 UPLBEC 2337

Hon'ble Judges : Dilip Gupta, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : Vivek Prakash Mishra, for the Appellant; P.N. Rai and Rajendra Singh Parihar, S.C., for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—This petition involves a substantial question of law as to whether after declaration of the result by the Returning Officer and issuance of the certificate of declaration in favour of a successful candidate, the Returning Officer has the competence to order for recount of the votes or issue a certificate in favour of any other candidate on the ground that certain votes had not been counted before the declaration of the result.

2. The facts and circumstances giving rise to this case are that the petitioner was a candidate for the post of member of Block Development Committee (hereinafter called the "B.D.C.") for Kshetra Panchayat Swar, district Rampur. The election was held on 23.10.2005 and after the counting of votes, it was found that the petitioner secured 378 votes while the respondent No. 3 Smt. Surja secured only 337 votes and another candidate Geeta could secure only 24 votes. On the basis of this counting, the Returning Officer, respondent No. 2 declared the petitioner successful, and the certificate to that effect dated 26.10.2005 (Annexure-1) as required under the Rules was also issued to her. The Returning Officer, subsequent thereto, declared the respondent No. 3 as a successful candidate and also issued the certificate to that effect on the same date on the ground that the. votes relating to polling booth No. 132 had not been

counted and could not be taken into consideration while making the declaration in favour of the petitioner. As after counting all the votes, respondent No. 3 secured 463 votes and petitioner could secure only 414 votes, respondent No. 3 was declared successful. Petitioner filed Writ Petition No. 74495 of 2005 to challenge the certificate issued in favour of respondent No. 3. This Court, vide order dated 8.12.2005, dismissed the writ petition as withdrawn but granted permission to file a fresh petition. Hence this petition.

3. Heard Shri Vivek Prakash Mishra, learned Counsel for the petitioner, Shri P. N. Rai, learned Counsel appearing for respondent Nos. 1 and 2 and Shri Rajendra Singh Parihar for respondent No. 3.

4. It has been submitted by learned Counsel for the petitioner that once the result had been declared, the Returning Officer had become functus officio. He, therefore, had no authority under law to count other votes for any reason whatsoever and declare respondent No. 3 as a successful candidate.

5. Shri P.N. Rai and Shri Rajendra Singh Parihar, learned Counsel appearing for the respondents have submitted that in order to rectify a factual error, the Returning Officer found it necessary to do so in the interest of justice for holding a fair election, and as the result declaring the petitioner successful had been made inadvertently, the same was rectified by the Returning Officer and hence the petition is liable to be dismissed.

6. We have considered the rival submissions made by learned Counsel for the parties and perused the record.

7. The learned Counsel for the respondents have admitted in their counter-affidavit that the result was declared by the Returning Officer on 26.10.2005 and petitioner was declared a successful candidate and the certificate to that effect (Annexure-1) was also issued to her. While entertaining the writ petition, this Court passed an interim order in favour of the petitioner and she is still holding the post under the interim order of this Court.

8. The law on the issue involved in this petition is well-settled. The election law is too technical ; equity, justice etc. have no role in such matters. The result had been declared by the Returning Officer. The petitioner had been declared successful and the certificate to that effect was also issued in her favour. In such circumstances the Returning Officer had become functus officio and the mistake, if any, in declaring the result without counting some of the votes, could be rectified only at the intervention of the Election Tribunal/Court but it was not legally permissible for the Returning Officer on any ground, whatsoever, to review his earlier order. The order passed by him is therefore without jurisdiction and the certificate declaring respondent No. 3 as a successful candidate cannot be given effect to.

9. Shri P.N. Rai, learned Counsel for the respondent Commission has submitted that the Election Commission has plenary and all necessary powers for smooth,

free and fair conduct of the election subject only to a valid law and in exercise of its residual power, such a course is permissible. To fortify his submission, reliance has been placed by Shri Rai on the judgments of the Hon''ble Apex Court in Union of India (UOI) Vs. Association for Democratic Reforms and Another, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , wherein it has been held that the Commission is competent, in an appropriate case, to pass an appropriate order to meet a particular fact situation in exercise of its powers under the statute though the order is to be passed on receiving the reports from the Returning Officer with regard to any situation arising in the course of an election and the powers has to be exercised with promptitude. The aforesaid contention has to be rejected for the reason that in Mohinder Singh Gill (supra), the Hon''ble Apex Court has held that the power of the Commission and its officers can be exercised to hold free and fair election till its culmination in the formal declaration of the result. The Court held as under:

Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culmination in the final declaration of the returned candidate.

(Emphasis added)

10. Similar view had earlier been taken by the Apex Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others,

11. From the above, it is evident that election comes to an end on declaration of the result of the election, i.e., when the certificate is issued to a particular candidate declaring him successful. Thus, in the instant case, the election had come to an end the moment the certificate was issued in favour of the petitioner and all subsequent proceedings taken by the Returning Officer are without any authority /competence.

12. More so, recounting of votes is permissible on limited grounds, by the Returning Officer only prior to the declaration of the result. He has no competence to order for recount the votes after declaration of the result of the election. If the respondent No. 3 was so aggrieved she could have filed an election petition seeking direction for recounting of votes from the Election Tribunal but it was not permissible for the Returning Officer to provide the remedy to the respondent No. 3 as he was not the appropriate forum to adjudicate upon the controversy, at all.

13. It is settled legal position that once result of the election is declared, it can be challenged only before the Election Tribunal. (Vide N. P. Ponnuswami (supra) ; Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, Brundaban Nayak Vs. Election Commission of India and Another, Mohinder Singh Gill (supra); Krishna Ballabh Prasad Singh Vs. Sub-divisional Officer Hilsa-cum-returning Officer and Others, and Election Commission of India Vs. Shivaji and Others,

14. In exceptional circumstances, where the facts are not in dispute, the

controversy regarding disqualification etc. can also be agitated in writ jurisdiction. (Vide K. Venkatachalam Vs. A Swamickan and Another, and Lal Chand Vs. State of Haryana and Others, Manda Jaganath Vs. K.S. Rathnam and Others, and Harnek Singh Vs. Charanjit Singh and Others,

15. Thus, in view of the above, the Returning Officer had lost the competence to deal with the issue further once the result had been declared.

16. We also find no force in the submissions made by Sri Rai that in such a fact situation, Election Commission and its officers had a legal obligation/implied powers to rectify the mistake made inadvertently. Legal maxim "Quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest" means when the law gives some one anything, it gives him also that without which the thing cannot exist, does not apply in the facts of the instant case for the reason that immediately after declaration of the result and issuance of the certificate, the election came to an end, and the Returning Officer became functus officio, i.e., after discharging the duties of the Returning Officer, his authority stood terminated automatically. Thus, the Returning Officer had lost the competence to deal further even if some votes were left to be counted inadvertently. Thus, the order passed by the Returning Officer cannot be sustained in the eyes of law.

17. The issue involved herein has been examined by various Division Benches of this Court in Smt. Ram Kanti v. District Magistrate and Ors. 1995 AWC 1465 and Shambhu Singh v. State Election Commissioner and Ors. 2000 (4) AWC 2777 : 2000 (91) RD 619 wherein it has been held that declaration of the result once made cannot subsequently be cancelled. Once the election process comes to an end, the Authority becomes defunct.

18. In view of the above, petition succeeds and is allowed. The certificate issued in favour of respondent No. 3 declaring her as a successful candidate (Annexure-CA 2) is hereby quashed and consequently the earlier certificate declaring the petitioner successful stands revived. It will, however, be open to the respondent No. 3 to approach the appropriate forum, i.e., the Election Tribunal for seeking appropriate remedy, if she is so advised.

19. A copy of this order may be issued to the learned Counsel for the parties by 1.4.2006 on payment of usual charges.