
(1997) 05 P&H CK 0206
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1294 of 1997

Smt. Kishan Piari

APPELLANT

Vs

Additional Civil Judge (Senior Division) and Others

RESPONDENT

Date of Decision : 01-05-1997

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 176

Citation : (1997) 117 PLR 56 : (1997) 2 RCR(Civil) 705

Hon'ble Judges : N.K. Agrawal, J;Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : M.S. Khaira and K.S. Bakshi, for the Appellant; Ajay Kumar Mittal, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Agrawal, J.—This is a petition under Articles 226 and 227 of the Constitution for quashing the order dated 25th January, 1987 whereby Additional Civil Judge (Senior Division), Palwal, while trying election petition filed u/s 176 of the Haryana Panchayati Raj Act, 1994 against the petitioner, directed that the votes cast in the election of Sarpanch be recounted.

2. Election to Gram Panchayat, Banswa, Tehsil Hodal, District Faridabad, was held on 19th December, 1994. Four women candidates had filed their nomination papers for election to the office of Sarpanch. Nomination of one candidate was rejected and the remaining three candidates, namely, Smt. Kishan Piari-Petitioner, Smt. Parsandi-respondent No.2 and Smt. Sunita-respondent No.3, remained in the field. The petitioner was declared elected as Sarpanch. Smt. Parsandi-respondent No.2 filed election petition challenging the petitioners' election before the Additional Civil Judge. Issues were framed by the trial Court (Additional Civil Judge) on 1st May, 1995 and three witnesses produced in evidence by Smt. Kishan Piari were examined. The trial Court, by order dated 13th May, 1996, ordered the recounting of the votes polled. Recounting of the votes at Booth Nos. 1, 3, 4 and 5 was done on 13th May, 1996. However, the

envelope containing the votes polled of Booth No. 2 was not traceable on that day and the matter was, therefore, adjourned to 21st May, 1996 by the trial Court for the counting of votes of Booth No. 2. The petitioner, Smt. Kishan Piari, filed a revision petition (No. 2002 of 1996) in the High Court challenging the order of recount. During the course of hearing, the learned Single Judge noticed that recounting had been ordered by the trial Court on the basis of the contents of an application filed by the Presiding Officer, Jawahar Lal, Sub Division Engineer, Haryana Urban Development Authority. The learned Single Judge found it appropriate to set aside the order of the trial Court with a direction to examine the Presiding Officer, Jawahar Lal, with reference to the contents of the application dated 21st November, 1995, filed by the said Presiding Officer in the trial Court. The petitioner was permitted to cross-examine the said witness, Jawahar Lal, so as to contravert the contents of the aforesaid application. Trial Court was directed by two learned Single Judge, vide order dated 24th July, 1996 to proceed with the matter in accordance with law.

3. In pursuance of the order of the learned Single Judge of this High Court, the trial Court recorded the statement of the Presiding Officer, Jawahar Lal, on 29th August, 1996. Thereafter, order for recounting of the votes was passed, vide order dated 25th January, 1997. The petitioner has challenged the second order of recounting, dated 25th January, 1997, through the present writ petition with the plea that there were no sufficient reasons justifying an order for a recount. The petitioner's argument is that respondent No.2, Smt. Parsandi, did not appear in the witness box to testify in support of her allegations that 20 votes were thumb-marked by the voters and were wrongly counted instead of being cancelled and that the petitioner's muscle-men had created such a situation at the time of counting that the counting of votes had to be postponed by the Presiding Officer to the next day.

4. Shri K.S. Bakshi, learned counsel for the petitioner has argued that an order of recounting of the votes cannot be passed as a matter of course. The party seeking recounting must show, by cogent evidence, that a bona fide dispute existed, questioning the counting already done. No dispute had arisen during the counting which took place immediately after the poll. It is argued by Shri Bakshi that there was no sufficient material on record, supported by adequate evidence, on the basis of which it could be said that the sanctity of counting was violated and recounting was necessary. The result had been duly declared on 19th December, 1994 itself, (the date of polling), and the result was never postponed to the next day (20th December, 1994).

5. The case of the respondent is that the petitioner had been wrongly and illegally declared elected as Sarpanch because she had actually secured 1117 votes as against 1132 votes cast in favour of respondent No.2, Smt. Parsandi. The election of the petitioner was challenged on various grounds, including the one that she had adopted corrupt practices by offering money and wine to the voters. It is also alleged that the petitioner spent more than the prescribed limit

in her election and that she got the names of certain persons entered in the voters" list of Gram Panchayat, who Were already registered voters of the Municipal, Corporation, Faridabad. It is alleged that there was a difference of only 15 votes between the votes polled in favour of the petitioner, Smt. Kishan Piari and the votes cast in favour of the respondent No. 2, Smt. Parsandi. It is also alleged that the petitioner had managed, in connivance with the polling authority, to throw away certain valid votes from the ballot boxes, which were cast in favour of the respondent. Four ballot papers were found next day behind a polling booth. Those ballot papers were produced in the trial Court. Those votes had been cast in favour of the respondent. It is also stated by the respondent that no counting of the votes took place on the date of the polling in the presence of the respondent or her agent. It was for these reasons that a recount was sought by the respondent and was allowed by the trial Court. "

6. The trial Court has ordered recounting after recording the statement of the Presiding Officer, Jawahar Lal, on 29th August, 1996. The statement of the witness was recorded twice and, since he gave a detailed account of what had happened during the course of counting, in his second statement, the trial Court was persuaded to order the recounting. The Presiding Officer, Jawahar Lal, informed the trial Court, after giving his statement on oath, that he was not allowed to speak the truth though he wanted to do so. Thereupon, the trial Court settled down on record the statement of Jawahar Lal again on the same day so as to find out as to what was the truth. Jawahar Lal informed the Court that, when he was preparing the result after the poll, some people raised objections and a hue and cry took place. It was stated by those persons that counting of votes had not been done properly at the other booths. There were five booths, each supervised by a Presiding Officer. Jawahar Lal was looking after Booth No. 1. Counting had been done at each polling booth by the respective Presiding Officer of the Booth. The result was being prepared by Jawahar Lal after he had received the result of the other booths in sealed envelopes from the respective Presiding Officers. Jawahar Lal alleged in his second statement that he had been threatened by the people that he would not be allowed to take away the ballot boxes and the ballot papers with him if he declared the result on the spot. He then prepared a notice in the Presiding Officer's book for recounting at Hodal. He left the place under police escort and reached Hodal. He was, however, asked by the superior officers, concerned with the elections at Hodal, to announce the result on the basis of the counting already done. He therefore, declared the result at Hodal.

7. The trial Court, on the basis of the statement of Jawahar Lal, reached a conclusion that the counting of votes had not taken place at the place of polling properly and the result had been declared by the Presiding Officer, Jawahar Lal, under undue pressure from the higher authorities. There was prima facie evidence that gross irregularities had taken place in the counting of votes. He, therefore, proceeded to complete the recounting.

8. It has been held by the Supreme Court in *Satyanarain Dudhani Vs. Uday Kumar Singh and Others*, , that secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order or recount cannot be granted as a matter of course. In that case, no objection whatsoever was raised during the counting and no irregularity or illegality was brought to the notice of the Returning Officer. A cryptic application, claiming recount, was made by the contestant before the Returning Officer. It was, therefore, held that recounting of votes was not to be followed in that case.

9. It has to be noticed that recounting of votes of four polling booths (Nos. 1, 3, 4 and 5) has already been done and it was the recounting of votes at Booth No. 2 only which has been now ordered. The recounting had been earlier challenged by the petitioner by filing a revision petition in this High Court, whereupon the trial Court was required to look into the allegations made by the Presiding Officer in his application filed before the trial Court. The evidence of the Presiding officer, Jawahar Lai, was, therefore recorded and, on the basis of the peculiar facts emerging from the two statements of Jawahar Lal, recorded by the Trial Court, that the recounting has again been ordered by the trial Court. A perusal of the statement of Jawahar Lal makes out a case for recounting inasmuch as objections had been raised before declaring the result on the spot. The Presiding Officer could move out from the village with the help of police only without declaring the result. He had, before leaving, given notice for recounting but, when he reached Hodal, he declared the result under instructions from the superior officers. It is correct that recounting cannot be ordered without sufficient reasons. However, in the present case, there is sufficient material on record, supported by evidence, on the basis of which recounting has been ordered by the trial Court. Since counting had been done by five Presiding Officers at five different polling booths, serious allegations were made by the defeated candidate-respondent No.2 against the counting. The Presiding Officer had agreed immediately after the poll, for recounting of votes to be done on the next day at 2.00 P.M., at the Government High School, Hodal. This itself gives sufficient material to raise a suspicion that counting of votes on the day of the polling had left much to be decided. The evidence of both the parties has already been recorded by the trial Court and thereafter the trial Court found it expedient to order the recounting of votes so as to determine the controversy between the parties. The difference between the votes polled by the winning candidate and the votes cast in favour of the defeated candidate is very small, and, therefore, the trial Court has proceeded to do the recounting of votes. The evidence of Jawahar Lal makes out a clear case that he was under great pressure not only at the time of counting but also when he appeared before the trial Court. It was for that reason that, after completing his first statement in the Court, he expressed his desire to speak the truth. The trial Court proceeded to examine him again with permission to cross-examine him by the parties. Therefore, recounting cannot be challenged as it is based on sufficient material on the record.

10. In the result, the writ petition is found to have no force and it is dismissed.

The trial Court shall proceed further to decide the election petition in accordance with law. No order as to costs.