
(1995) 10 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2733 of 1995

Smt. Rajwati

APPELLANT

Vs

Smt. Rajesh Kumari and Others

RESPONDENT

Date of Decision : 13-10-1995

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 176, 176(4)

Citation : (1996) 113 PLR 141 : (1996) 3 RCR(Civil) 396

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : R.S. Sihota, for the Appellant; C.B. Goel and R.N. Raina, D.A.G. for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This revision petition has been filed to quash the order dated 24.7.1995 passed by the Additional Senior Sub Judge, Nuh, in exercise of his powers u/s 176(4) of the Haryana Panchayati Raj Act, 1994 (for short the Act").

2. In the election held for the office of Sarpanch, Gram Panchayat, Kurthala, Tehsil Nuh, District Gurgaon, on 29.12.1994, the petitioner was declared elected as Sarpanch on having secured 415 votes as against 414 votes secured by respondent No. 1. An election petition u/s 176 of the Act filed by respondent No. 1 for challenging the election of the petitioner is pending in the Court of Additional Senior Sub Judge, Nuh. By the impugned order, learned Additional Senior Sub Judge has ordered recount of the votes polled in the election.

3. Argument of the learned counsel for the petitioner is that the impugned order is contrary to the provisions contained in the Haryana Panchayati Raj Act, 1994, the Haryana Panchayati Raj Election Rules, 1994, as well as the principles of natural justice. Learned counsel submitted that the order for recounting of the ballots has been passed without there being any material on the record to show any illegality or irregularity in the counting of the votes. Learned counsel

submitted that u/s 176(4) of the Act, an order for scrutiny and computation of the votes can be passed only after a proper inquiry and as no such inquiry has been made the impugned order is liable to be declared as without jurisdiction. He relied on the decision of the Supreme Court in P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and Others, Learned counsel further argued that if Section 176(4) (b) of the Act is interpreted in the manner the learned Additional Senior Sub Judge has done, the same would be open to the attack of arbitrariness and unreasonableness. Learned counsel for the respondents argued that in the absence of any challenge to the constitutional validity of Section 176(4)(b) of the Act, this Court should not examine the propriety etc. of the provision. According to Shri Goel, on a plain reading of Section 176(4), it is clear that in every case where validity of an election is in dispute between two or more candidates other than on the ground of corrupt practice, the Court is duty bound to undertake the scrutiny and computation of the Votes recorded in favour of each candidate and declare the candidate who is found to have secured the largest number of polled votes as elected.

4. By virtue of seventy-third amendment of the Constitution, Part IX and Part IX-A have been added. Part IX relates to Panchayats and part IX-A relates to Municipalities. Article 243B mandates that Panchayats at the village, intermediate and district levels Shall be constituted in every State except that Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs. Article 243C empowers the State Legislature to make law with respect to the composition of Panchayats. Rule 243-K relates to the elections of the Panchayats. This article envisages constitution of a State Election Commission with wide powers vesting in the State Election Commission in relation to the election of the Panchayats. Clause (4) of this article confers powers on the State Legislature to make law with respect to the matters relating to the elections of the Panchayats. In exercise of its powers under Article 243C and 243K, the Legislature of the State of Haryana has enacted the Haryana Panchayati Raj Act, 1994. Chapter XX of this Act contains provisions relating to elections. Section 176 of the Act contains provisions regarding determination of the validity of the election. This section reads as under :

"176. (1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Up-Sarpanch, or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the civil Court having ordinary jurisdiction in the area within which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following persons :-

(a) Where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates ;

(b) Any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of member to represent the same electoral division is in question, shall be heard by the same civil Court.

(4) (a) If on the holding of such inquiry the civil Court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added "to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the Judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view, to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person ; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise of individual profit or holds out any threat of injury to any person; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1 :- A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with

reference to the election.

Explanation 2 :- The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanically power or otherwise, and whether used for drawing other vehicles or otherwise."

5. The Government of Haryana has made the Haryana Panchayati Raj Election Rules, 1994, by exercising of powers conferred u/s 209(1) and (2) of the Act. Chapter X of these Rules contains Rules 62 to 71. The Rules relate to the counting of votes. However, neither the Act nor the rules framed thereunder contain procedure which is required to be followed by the Civil Court before whom a petition is presented u/s 176 of the Act to challenge the validity of the election.

6. The Legislature of the State of Haryana must be deemed to have been cognisant of the law laid down by the Supreme Court on the question of inspection/recount of the ballot papers in the context of the provisions of the Representation of the People Act, 1951 and various other statutes. It must be presumed to be aware of the fact that the Supreme Court has time and again laid down the principles which govern the inspection/recount of votes, namely, that order of inspection/recount of votes should not be granted as a matter of course and the secrecy of the ballots should be preserved. The Legislature of Haryana despite the law laid down by the Supreme Court has in its wisdom not laid down any condition precedent for scrutiny and computation of votes. In contradistinction, Clause (a) of Section 176(4) which envisages of holding of inquiry by the Civil Court to find out whether a candidate has committed corrupt practice within the meaning of sub-section (5) of Section 176, Section 176(4)(b) does not contemplate an inquiry by the Court. On a plain reading of Clause (b) of Section 176(4), it becomes clear that it has been made obligatory for the Court to make a scrutiny and computation of votes recorded in favour of each candidate in all those cases where validity of an election is in dispute between two or more candidates and where the challenge is not founded on an allegation of corrupt practice. The Court is under an obligation to declare such candidate as duly elected who is found to have the largest number of valid votes in his favour. The deliberate omission by the Legislature of requirement of an inquiry as a condition precedent to an order for scrutiny and computation of votes shows that the Legislature intended that instead of finally depending on the counting of votes made by the Returning Officer in the changed election scenario in the country, the Court should be vested with the power and a duty to scrutinize and compute the votes polled in an election held for Panchayats where the election is subject to challenge by way of petition u/s 176 of the Act. In a way, the Court has been made the final arbiter on the question of number of votes polled by the candidates in an election to the Panchayat. The use of word "scrutiny and computation" shows that it is for the Court to scrutinise each ballot paper and then compute the votes recorded in favour of each candidate and then declare the result in favour of the person who secures the largest number of valid votes.

7. In view of the above explained legal position, it must be held that the learned Additional Senior Sub Judge has not committed any illegality in directing the recounting of the votes.

8. The revision petition is held to be without merit and is, therefore, dismissed.

9. After the order was pronounced, Shri Goel stated that now a date may be fixed for further proceedings before the trial Court. Keeping in view the fact that the matter relates to election to the Panchayat, I direct that both the parties should appear before the Additional Senior Sub Judge, Nuh. on 2.11.1995, who shall now take further proceedings in accordance with law.