

(1995) 09 AHC CK 0134

In the Allahabad High Court

Case No : C.M.W.P. No's. 9799 and 159831 of 1995

Smt. Rekha Singh

APPELLANT

Vs

Returning Officer/Sahayak Returning Officer, Vikas Khand
Sarvan Khera and Another

RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Citation : (1995) 09 AHC CK 0134

Hon'ble Judges : Om Prakash, J;J.S. Sidhu, J

Bench : Division Bench

Advocate : Yogesh Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Om Prakash, J.—Both the writ petitions relate to the election of the office of Pradhan from the Gram Panchayat Villsaraya, Vikas Khand Sarvan Khera. Tehsil Akbarpur, district Kanpur Dehat. It is nothing but appropriate to decide both the writ petitions together and hence they are being disposed of by a common judgment.

2. An election programme, annexure "5" to the counter-affidavit filed by Sri T.K. Singh who was the returning officer in the Panchayat Election, 1995 for the aforesaid block, was declared by the Election Commission and pursuant to that, four nomination papers—one each by the Petitioners and two by others were filed. The case of Smt. Rekha Singh, one of the Petitioners is that upon scrutiny only her nomination paper was accepted and rest of the nomination papers including the nomination paper of Smt. Prema Devi, another petitioner were rejected and, therefore, she (Smt. Rekha Singh) was declared elected under Rule 72 of the Uttar Pradesh Panchayat Raj (Election of Members, Pradhans and Up-Pradhans) Rules 1994 (briefly, the Rules). Rule 72(1) of the rules states that "where on preparing the list under Rule 71 the Nirvachan Adhikari finds that there is only one contesting candidate, he shall forthwith declare him to be duly elected, and shall report to the District Magistrate the name of the candidate declared

elected." The case of Smt. Rekha Singh is that she was the only contesting candidate after the remaining nomination papers including the nomination paper of Smt. Prema Devi having been rejected and, therefore, she was declared duly elected as Pradhan from the aforesaid Panchayat.

3. Smt. Prema Devi filed her counter-affidavit in the writ petition of Smt. Rekha Singh stating that she filed her nomination on 27.3.95 that three more candidates including Smt. Rekha Singh also filed their nominations; that 28.3.95 was the date fixed for scrutiny but no scrutiny was held on that date "in front of the deponent or the other contesting candidates". It is averred in para 8 of her counter-affidavit that the returning officer remained busy on 28.3.95 and, therefore, no scrutiny was made on that date. In para 9 of the counter-affidavit, she stated that till 31.3.95 election symbols were not allotted and then her husband applied for allotment of election symbol on 31.3.95. In para 10 of her counter-affidavit, it is stated that election symbols were allotted on 31.3.95 pursuant to the application of her husband. In para 14 of her counter-affidavit, it is averred that later on it transpired that "the returning officer Sri T.K. Singh in collusion with the petitioner Smt. Rekha Singh had rejected the nomination papers of all the other candidates in back date and had declared Smt. Rekha Singh as elected unopposed." in para 19 of the counter-affidavit, Smt. Prema Devi stated that 7.4.95 was fixed for polling but on account of widespread violence, election was postponed and re-polling was ordered for 10.4.1995. It is further stated that poll was held on 10.4.95 and upon counting she (Prema Devi) was declared elected. Whereas on these facts Smt. Rekha Singh seeks quashing of the polling held on 10.4.1995, Smt. Prema Devi in her election petition seeks a writ of mandamus directing Respondent Nos. 1 and 2 to give charge of the office of Pradhan of the Gram Panchayat Villsaraya to her.

4. Sri T.K. Singh (returning officer) filed his detailed counter-affidavit in the writ petition of Smt. Prema Devi stating that nomination of Smt. Prema Devi and two others having been rejected. Smt. Rekha Singh alone was the contesting candidate and, therefore, she was declared duly elected on 28.3.1995 vide Annexure "6" to his counter-affidavit in view of Rule 72 of the rules. In para 6 of his counter-affidavit, it is stated that nomination papers of Smt. Raj Rani, Smt. Nanki and Smt. Prema Devi were found invalid "inasmuch as their names did not find place at the serial number of the voter list as mentioned in the nomination paper and hence all the three nomination papers were rejected." He further states that the "Result was that the nomination paper only of Smt. Rekha Singh was found valid and she was declared elected uncontested on 28.3.1995." in para 7 of his counter-affidavit, it is stated that on 31.3.1995 at about 3.30 p.m. Shiv Lakhan Singh, husband of Smt. Prema Devi went to the block office and then he submitted an application dated 31.3.1995 (Annexure "3" to the counter-affidavit) demanding the allotment of symbols to the candidates. It is stated that the said application was not accepted as Smt. Rekha Singh was already declared duly elected unopposed. It is further stated that at about 6 p.m. on 31.3.1995, some persons of village Villsaraya forcibly entered into the office and assaulted

the Election Officers including the Assistant Returning Officer Sri R.P. Chaturvedi and they forcibly removed "sufficient record from the office". The Assistant Returning Officer then sent a letter dated 1.4.1995 to the deponent (Returning Officer) intimating the unfortunate incident which took place on 31.3.1995 in the former's office. He has further stated that letter of the Assistant Returning Officer dated 1.4.1995 was then sent by him to the Station Officer, Police Station Gajnor, district Kanpur Dehat on 2.4.1995 and on the basis of that letter, a first information report was lodged on 2.4.1995 against the three women candidates whose nomination papers were rejected. In para 8 of the counter-affidavit, it is stated that on 31.3.1995, the persons who indulged in the assault, got their nomination papers accepted "after scoring out the earlier rejection order under threat and pressure from the Reserved Assistant Returning Officer Sri P.C. Misra" who put his signature while accepting the three nomination papers under duress. In para 9 of the counter-affidavit, it is stated that the election was then held on 7.4.1995. After having received the ballot boxes, it is stated that the deponent submitted a radiogram to the District Magistrate, Kanpur Dehat on 8.4.1995 informing that election at four polling stations at the aforesaid block were not completed. It is also deposed in para 9 of the counter-affidavit by the Returning Officer that the District Magistrate, Kanpur Dehat whom Sri Shiv Lakhan Singh, husband of Smt. Prema Devi approached, passed an order on 8.4.1995 at 4.15 p.m. directing the deponent to hold the poll on 10.4.1995 and to allot the symbols to all the four candidates. As the District Magistrate, Kanpur Dehat directed to hold poll on 10.4.1995 in the Gram Panchayats including Villsaraya, re-poll was held on 10.4.1995, though Smt. Rekha Singh was declared duly elected unopposed from that Gram Panchayat on 28.3.1995. In para 12 of the counter-affidavit, it is stated that under the orders of the District Magistrate on 8.4.1985 passed on the application dated 31.3.1995 of Sri Shiv Lakhan Singh itself symbols were allotted to all the four candidates under compulsion" and then the re-poll was held on 10.4.1995. In the re-poll, Smt. Prema Devi secured highest vote and she was declared elected. The deponent in para 16 of his counter-affidavit reiterated that Smt. Rekha Singh was duly declared elected unopposed to the office of Pradhan on 28.3.1995. In para 17 of the counter-affidavit, it is stated that the election of the relevant Gram Panchayat was held "under pressure on 10.4.1995".

5. The question for consideration is whether Smt. Rekha Singh was duly declared elected as the lone contesting candidate on 28.3.1995 and, if so, whether re-poll could be legally held on 10.4.1995 under the orders of the District Magistrate. Upon perusal of the counter-affidavit of the Returning Officer, it is established beyond doubt that the nomination papers of the three remaining candidates were rejected and the nomination paper of Smt. Rekha Singh was accepted on the date of scrutiny as per the election programme and, therefore, under Rule 72 of the Rules, Smt. Rekha Singh was declared duly elected as the only contesting candidate. Smt. Rekha Singh having been declared elected on 28.3.1995, the whole election process had come to an end and the re-poll on 10.4.1995 as

ordered by the District Magistrate, Kanpur Dehat on the application dated 31.3.1995 submitted by Sri Shlv Lakhani Singh, husband of Smt. Prema Devi, was wholly illegal and a nullity. Therefore, there is no reason to disbelieve the version of the Returning Officer. There is a presumption of official acts being done in the ordinary course of business. In his counter-affidavit, the Returning Officer unequivocally deposed that Smt. Rekha Singh was declared duly elected on 28.3.1995 being the lone contesting candidate and that re-poll was held on 10.4.1995 under pressure and compulsion.

6. It is not denied by Smt. Prema Devi that the remaining nomination papers including her own were rejected. However, her averment is that her nomination paper and nomination papers of two other candidates were rejected in the back date by the Returning Officer Sri T.K. Singh in collusion with Smt. Rekha Singh. A heavy burden lies on Smt. Prema Devi to prove this fact. There is no evidence whatsoever on the record to discharge such onus and, therefore, her version that remaining three nomination papers including her own were rejected by the Returning Officer in collusion with Smt. Rekha Singh is not correct.

7. On these facts, the petition of Smt. Rekha Singh deserves to succeed and the writ petition of Smt. Prema Devi has to be rejected.

8. We are dismayed by an order dated 8.4.1995 passed by the District Magistrate, Kanpur Dehat on the application dated 31.3.1995, submitted by Sri Shiv Lakhani Singh, husband of Smt. Prema Devi (Annexure "9" to the counter-affidavit of the Returning Officer). Such an order was in utter disregard of law. When election process had come to an end on 28.3.1995, when Smt. Rekha Singh being the lone contesting candidate was declared elected, how re-poll for 10.4.1995 could be ordered by the District Magistrate on 8.4.1995. Such an order of District Magistrate codes faith of the public in the election system. Election either it be the election of the Gram Panchayat or the Parliament, is an event full of sanctity and the authorities are required to comply with the rules and the procedure relating to election, strictly. If the re-poll is ordered in the manner as it was done in the Instant case by the District Magistrate, Kanpur Dehat, then there would be no sanctity of an election. Such illegal orders passed by the highest district authorities not only give rise to avoidable litigation in the higher tact is. Such a belief will destroy the faith of the public in the democracy. To make democracy stronger, it is the duty of the authorities to comply with the election law strictly and Impress upon the public that no deviation in election law will be made.

9. In the result, the Writ Petition No. 9799 of 1995 filed by Smt. Rekha Singh succeeds and is allowed and the Writ Petition No. 15983 of 1995 filed by Smt. Prema Devi falls and is dismissed. Smt. Prema Devi is directed to pay Rs. 1,000 as costs to Smt. Rekha Singh.