
(2006) 04 MP CK 0064
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2738 of 2005

Smt. Shyam Bai

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Madhya Pradesh Panchayat Election Rules, 1995 — Rule 60, 60(3), 76, 76(1), 76(2)
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 122

Citation : (2006) 3 MPLJ 554

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

Bench : Single Bench

Advocate : Sandeep Singh Baghel, for the Appellant; Jaideep Singh, Government Advocate for Respondents 1, 2 and 3 and A. Dadariya, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

This petition is directed against the order dated 27.4.2005 (P/1) passed by the Sub-Divisional Officer- cum- Prescribed Authority, Jaisingh Nagar, Dist. Shahdol (hereinafter referred to in short as "the Election Tribunal) by which the authority has directed for recounting of the votes for the election of Sarpanch, Gram Panchayat- Amjhor, Tehsil Jaisingh Nagar, Dist. Shahdol.

The petitioner has assailed this order on following grounds:

(i) That the application for recounting was not made before declaration of the result by respondent No. 4 Smt. Munni Bai but the application was filed at about 9.20 p.m. on the date of counting while the counting was concluded at 7.30 p.m.

(ii) That, specific grounds are to be stated in the election petition on which the recounting may be directed. The rejection of the ballot papers was as per Rule 76 of M.P. Panchayat Election Rules, 1995 (hereinafter referred to in short as " the Rules") and until and unless a specific ground is made out for recounting, the

Tribunal erred in directing the recounting,

(iii) That on the rejected ballot papers, there was mark of thumb impression on the basis of which, the concerned officer has rightly rejected them. As per Rule 76 of the Rules, if any mark of identification is found, the prescribed authority was justified in rejecting the ballot paper.

(iv) That respondent No. 4 or her election agent at the time of counting made no objection to the prescribed authority in respect of alleged rejection of ballot papers and for the first time, in the election petition, the aforesaid ground was raised and the Tribunal erred in entertaining the aforesaid ground. Reliance is placed to Mahender Pratap Vs. Krishan Pal and Others, and M. Chinnsamy v. K.C Polanisamy AIR 2004 SC 541 and submitted that the impugned order may be quashed.

Shri Anand Dadariya, the learned Counsel for respondent No. 4, supported the order and submitted that there are specific pleadings in the election petition and respondent No. 4 has adduced evidence in support of her contention. The objections against the rejection of the ballot papers were raised at the time of counting, but it was not considered. Respondent No. 4 immediately after counting submitted her application for recounting, which was rejected without assigning any reasons. Thereafter, respondent No. 4 again approached to the Returning Officer, but her application was not entertained on the ground that the result was already declared. Thereafter the election petition was filed.

It is submitted that this petition may be dismissed as having no merits.

Shri Jaideep Singh, the learned Counsel for State has also supported the impugned order.

To appreciate rival contentions of the parties, factual position in this case may be seen.

The petitioner and other private respondents were rival contestants in the election held on 16.1.2005 for the office of Sarpanch of Gram Panchayat Amjhor. After completion of the voting on the same day, the counting was done. In the counting, nearabout 156 ballot papers were rejected. The petitioner got 436 votes while respondent No. 4 Munnit Bai got 427 votes. The respondent Munni Bai on the same day filed an application to the Presiding Officer for recounting but this application was rejected by the Presiding officer with the short order "recounting rejected". Thereafter the result was declared.

Respondent No. 4 thereafter approached to the Election officer by filing an application for recounting. This application was filed on 19.1.2005, but it was rejected on 20th January, 2005 on the ground that the result of the election has been prepared and there is no such provision for recounting at that stage. So the original application itself was returned to respondent No. 4. Thereafter respondent No. 4 filed an election petition u/s 122 of M.P. Panchayat Raj Avam Gram Swarj Adhiniyam, 1995 (hereinafter referred to as "the Panchayat Act").

The Sub-Divisional Officer after recording evidence of both the parties recorded following findings which appears in para 6 of the impugned order.

(a) That certain ballot papers were rejected merely on the ground that the intention of the voters was not clear while the seal was affixed in such a manner which was showing the intention of the voters to cast his vote or to affix it on a particular election symbol.

(b) That certain ballot papers were rejected on the ground that it was bearing the ink of thumb impression.

(c) That certain ballot papers were rejected without . showing to the election agent, nor any reason was given at the time of rejection of the ballot papers.

(d) The petitioner herself appeared in witness box. In her statement she has admitted this fact that the counting officer had not shown the reason for the rejection of the ballot papers nor the ballot papers were shown to the concerned election agent.

(e) That the application for recounting was rejected without assigning any reason and by non speaking order as "recounting rejected" while under Rule 83, it was necessary for the Presiding Officer to assign reasons for the rejection of the recounting. At Polling Booth No. 153 an application for recounting was given. Another application was also filed At Polling Booth No. 154 for recounting, but it was not decided, by the Presiding Officer. At Polling Booth No. 154, 95 ballot papers were rejected without assigning any reasons.

(f) At polling booth No. 155, the Presiding Officer refused to accept the application for recounting . Recording aforesaid reasons and considering the fact that there is difference of votes, while the rejected votes were 156, the Election Tribunal found it proper for directing recounting by the impugned order.

Before appreciation of the contention of the petitioner, it will be appropriate if the cases relied upon are perused. In *M. Chinnasamy v. K.C. Paianisamy* AIR 2004 SC 541 the Apex Court considering the question of irregularities during counting, it is held that the particulars in relation to alleged irregularities should have been given. Apart from this note books in which details regarding alleged irregularities in counting of votes were made by counting agents, shall be produced. In aforesaid circumstances, it is held that on the basis of general and bald allegations, no case is made out for recounting. In *Mahender Pratap Vs. Krishan Pal and Others*, , the Apex Court held that the election petitioner must show by leading evidence that there was serious flaw in counting procedure which materially affected result of the election. Merely the application for counting was filed will not be a ground to direct recounting by the Election Tribunal. The application, if was made after the declaration of the final result and signing of verification certificate, the election petition was rightly dismissed in view of intentional false p ea made therein.

Recently, the three-Judge of the Apex Court in *Sohan Lal Vs. Babu Gandhi and*

Others, has considered the question in reference to M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam 1993. The apex Court while considering the previous judgment of the Apex Court in Smt. Ram Rati Vs. Saroj Devi and others, held thus:

(10) Thus under Sub-rule (5) once the result sheet is completed and signed, no application for recount can be entertained.

(11) Rule 81 also provides that after the counting of the votes, the Returning Officer shall prepare a return and declare the candidate who has the largest number of votes to have been elected. Under Rule 83, a certificate is to be granted to the returned candidate who has been declared elected. Under Rule 81 after the certificate has been granted, the Election Officer or the Returning Officer can only correct clerical or arithmetical mistakes

(12) Thus after declaration of the results, the Returning Officer has no power either to direct recount or to change the results of the election. Once the result is declared the only remedy of an aggrieved party is an election petition under; Section 122.

(13) In this case, as stated above, the Appellant had been orally told that he had won. He only came to know that respondent No. 1 had been declared elected after the result was declared. At this stage, he could not have approached the Returning Officer for recount. The only remedy, therefore, available to the appellant was to file an election petition.

(14) In view of Section 122 and the Rules, we are unable to agree with the ratio laid down in Ram Rati's case. It is not correct to hold that, in an election petition, after the declaration of the result, the Court or the Tribunal can not direct recounting of votes unless the party has first applied in writing for recounting of votes. There is no prohibition in the Act or under the Rules prohibiting the Court or Tribunal to direct recounting of the votes Even otherwise party may not know that the recount is necessary till after the result is declared. At this stage, it would not be possible for him to apply for recounting to the Returning Officer. His only remedy would be to file an election petition u/s 122. In such a case, the Court or the Tribunal is bound to consider the plea and where case is made out, it may direct recount depending upon the evidence led by the parties. In the present case, there was obvious error in declaring the result. We, therefore, held that the ratio laid down in Ram Rati's case is not correct.

Now, in view of the recent pronouncement of the Apex Court -in Sohan Lal's case (supra) facts of the present case may be seen. The first allegation of the election petitioner before the Tribunal was that some of the ballot papers were rejected without showing to the agent and without assigning any reason to the election agent. This fact has been found proved by the Tribunal on the basis of the evidence produced before the Tribunal. Apart from this, the petitioner herself in her statement Annexure R-4/3 has Admitted that the Counting Officer rejected the ballot papers without assigning any reason or showing the ballot papers. This

is a material admission by the petitioner herself in respect of the illegalities committed by the Presiding Officer during the course of counting. Under Rule 76, if any ballot paper is to be rejected, the Returning Officer or such other officer authorized by him, shall allow each counting agent present a reasonable opportunity to inspect the ballot paper. It is apparent that Sub-rule (2) of Rule 76 of the Rules was not followed by the Counting Officer during the course of counting. Another ground on which -he SDO has directed recounting is certain ballot papers were rejected because there were having some marks of thumb impression on the ballot papers. Under Rule 60 of the Rules, the procedure has been prescribed for issuance of ballot papers which reads thus:

60. Issue of ballot paper

(1) No ballot paper shall be issued to any voter before the hour fixed for the commencement of the poll.

(2) No ballot paper shall be issued to any voter after the hour fixed for the closing of the poll except to those voters who are present at the polling station at the time of the closing of the poll. Such voters shall be allowed to cast their votes even after the time for the poll is over.

(3) Every ballot paper, before it is issued to a voter and the counterfoil attached thereto shall be stamped on the back with such distinguishing mark as the Commission may direct, and every ballot paper, before it is issued, shall be signed in full in its back by the presiding officer

(4) At the time of issuing a ballot paper to a voter, the polling officer shall--

(a) record on its counterfoil, the electoral roll number of the voter as entered in the marked copy of the voters' list;

(b) obtain the signature or thumb impression of that voter on the said counterfoil and

(c) underline the entry relating to a voter in the marked copy of the voters' list to indicate that a ballot paper has been issued to him, without however recording therein the serial number of the ballot paper has been issued to him, without however recording therein the serial number of the ballot paper issued to that voter;

Provided that no ballot paper shall be delivered to a voter unless he has put his signature or thumb impression on the counterfoil of that ballot paper.

(5) No person in the polling station shall note down the serial number of the ballot paper issued to a particular voter.

(6) in a polling station set up for more than one ward of a Gram Panchayat, a voter shall be provided with the ballot paper meant for the ward of which he is a voter and of no other ward.

Sub-rule (1) of Rule 76 provides the grounds for rejection of ballot papers. For

ready reference Rule, 76(1) reads thus:

(76)Scrutiny and rejection of ballot papers (1)

A ballot paper contained in a ballot box shall be rejected if-

- (a) it bears any mark or writing by which the voter can be identified; or
- (b) it is a spurious ballot paper; or
- (c) it has been so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or
- (d) it bears a serial number, or is of a design, different from the, serial numbers of, as the case may be or design of the ballot paper authorized for use at the particular polling station; or
- (e) it does not bear any mark which it should have borne under the provisions of Sub-rule (3) of Rule 60 or
- (f) it has not been marked; or
- (g) it has been marked in the columns of more than one candidate; or
- (h) it has been marked by an equipment and in the manner other than the equipment and the manner prescribed for that purpose.

Provided that where Returning Officer or such other officer authorised by him, on being satisfied that any such defect as is mentioned in Clause (d) or Clause (e) has in respect of all or any ballot papers used at a polling station been caused by the mistake or failure on the part of the Presiding Officer or Polling Officer concerned, has directed that the defect should be over-looked, a ballot paper shall not be rejected only on the ground of such defect under Clause (d) or Clause (e).

The aforesaid provision provides that a ballot paper should be rejected if it bears any mark or writing by which the voter can be identified. But when the election process itself provides that the thumb impression of voter shall be obtained on counter- foil of the ballot paper by the Presiding Officer, then it was the duty of the Presiding Officer to take care that after affixing thumb impression, the ink on thumb is wiped out by using cloth or tissue paper, so that the ballot paper should not carry any mark of the ink. But it appears that the aforesaid care was not taken by the Presiding Officer. Even if there was some mark of thumb on the ballot paper, then until and unless a case is made out that the voter can be identified by the aforesaid mark, the ballot paper under Rule 76(1) of the Rules cannot be rejected.

In view of the aforesaid, the Sub Divisional Officer has rightly held that because of the aforesaid impression of ink of thumb, ballot papers were rejected, which was contrary to Rule 76(1) of the Rules.

Another ground for recounting which has been assigned by the Tribunal is that the application for recounting was rejected without assigning any reason. Rule 80 of the Rules provides for recount of votes. For ready reference Rule 80 of the Rules may be referred which reads thus:

(80) Recount of votes (i) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under Sub-rule (2) of Rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorised by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.

(2) On such an application being made the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Returning Officer or such other officer authorised by him, under Sub-rule (2) shall be in writing and contain the reasons thereof.

(4) If the Returning Officer or such other officer authorised by him, decides under Sub-rule (2) to allow an application either in whole or in part, he shall-

(a) count the ballot papers again in accordance with his decision:

(b) amend the result sheet to the extent necessary after such recount; and

(c) announce the amendment so made by him.

(5) After the total number of votes polled by each candidate has been announced under Sub-rule (2) of Rule 77 or Sub-rule (4) the Returning Officer or such other officer authorised by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter;

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by Sub-rule (1).

(6) The counted ballot papers shall be bundled and kept in the manner mentioned in Sub-rule (3) of Rule 77.

(7) Result sheets in form 16, 17, 18 and 19 for Panch, Sarpanch, Member of Janpad Panchayat and Member of Zila Panchayat respectively, prepared by such other Officers as are authorised by the Returning Officer, shall be submitted by them in separate envelopes to the Returning Officer for compilation and tabulation of votes polled by each candidate.

(8) The Returning Officer on receipt of result sheets under Sub-rule (7) shall enter of cause to be entered the total number of votes polled by each candidate

contesting for a seat of Sarpanch, Member of Janpad Panchayat or Member of Zila Panchayat at each polling station of the concerned constituency in subsequent part or parts of Form 17, 18 and 19 respectively and complete and sign the result sheet:

Rule 80 of the Rules provides the grounds on which the recounting may be demanded. Sub-rule (2) provides that on receiving the aforesaid application, the authorised officer shall decide the application and may allow the application in whole or in part or may reject it in toto, if it appears to him to be frivolous or unreasonable. The words "frivolous" and "unreasonable" are very material in Sub-rule (2). At the time of counting, if such an application is filed, not only the Presiding Officer, but the Counting Officer, the election agent and the candidates present in counting are having fresh memory in respect of events during counting. In these circumstances only when the allegations are frivolous or unreasonable, prayer for recounting may be rejected otherwise if the application is in accordance with the ground enumerated in Sub-rule (1) of Rule 80, it has to be allowed by the Returning Officer. But in this case, the Returning Officer has not assigned any reason in writing for rejecting the application. At the time of hearing of the election petition, the election Tribunal has to consider the reason on which the prayer of recounting was rejected or allowed, if there is a decision on merits with reasons. But in absence of this, the Tribunal has to examine the case on merits and if it is found that the grounds enumerated in Sub-rule (1) of Rule 80 of the Rules were existing at the time of prayer of recounting and the application ought not to be rejected by the Counting Officer, then the entire approach of election tribunal will be different because the application was wrongly rejected.

The learned Counsel for petitioner submitted that in respect of Polling Booth No. 155 there are no specific averments in the election petition, but the Presiding Officer has directed recounting in respect of Polling Booth No. 155 also. He has drawn attention of this Court towards paras 4 and 5 of the election petition in which there are specific allegations in respect of Polling Booth Nos. 153 and 154 and it is submitted that there are no allegations in respect of Polling Booth No. 155.

The learned Counsel appearing for respondent No. 4 submitted that in paras 3 and 8 of the election petition, there are specific allegations in respect of polling booth No. 155. At polling booth No. 155, 49 ballot papers were rejected illegally and the difference of votes between petitioner and respondent No. 4 is only of nine votes. There are allegation in respect of this polling booth also. Apart from this, from the perusal of affidavits which are filed with the election petition, of Amrat Lal Kachhi, Bhalendra Kachhi, and counting agent Govind Brahman, the aforesaid averment has been specifically made. From the perusal of the aforesaid, it appears that respondent No. 4 also made allegations in respect of Polling Booth No. 155. In the application for recounting, Annexure R-4/12 of dated 19.1.2005 there are allegations in respect of rejection of votes at polling

booth No. 155. In the same application, it is alleged that on rejecting the ballot paper, the Election Agent raised objection in writing, but the Presiding Officer refused to issue receipt of the objection. Thereafter, the application for recounting was also not entertained by the Counting Officer at polling booth No. 155. In view of the aforesaid averments in the petition and also in the application and affidavits, the aforesaid contention also cannot be accepted. Apart from this, 156 ballot papers were rejected in all three booths. In the peculiar facts and circumstances of the case, it will be proper, if the entire recounting is made by the Election Tribunal.

In this case, the Tribunal has considered all the material and after recording its satisfaction that in the counting there were serious illegalities causing serious prejudice to the election petitioner. The Election Tribunal has rightly directed recounting of the votes, in the order there is no jurisdictional error warranting interference of this Court. This petition is without merit, accordingly it is dismissed with costs. The Election Tribunal shall now proceed in the matter in accordance with law.

Certified copy as per Rules.