
(2002) 03 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4386 of 2002

Virender Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 176(4), 176(4)
Haryana Panchayati Raj Election Rules, 1994 — Rule 17

Citation : (2002) 4 RCR(Civil) 325

Hon'ble Judges : Jawahar Lal Gupta, J;J.S. Narang, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner along with respondent Nos. 3 and 4 contested the election to the office of Sarpanch held on 12th March, 2002. The 3rd respondent was declared elected. Aggrieved by the declaration, the petitioner filed an election petition u/s 176 of the Haryana Panchayati Raj Act, 1994. The petition was tried by the Civil Judge (Senior Division), Faridabad. It was dismissed vide order dated 4th January, 2001. The petitioner filed an appeal before the District Judge, Faridabad. It was allowed. The case was "sent back to the learned Lower Court for passing the order with regard to the scrutiny and computation of the votes for after recounting in view of the provisions of Section 176(4Xb) of the Haryana Panchayati Raj Act and for deciding the matter accordingly". The matter was then placed before the Additional Civil Judge (Senior Division), Faridabad. On recount, the authority found that respondent No. 3 had secured 143 valid votes. The petitioner had got 141 valid votes. The third candidate had 128 votes, 16 votes were found to be invalid. Thus, the result as already declared, was held to be valid. The election petition was dismissed. Copies of these three orders have been produced as Annexures P. 15, P. 16 and P. 17 respectively. The petitioner prays that the orders at Annexures P. 15 and P. 17 be quashed.

2. Shri O.P. Sharma, counsel for the petitioner has made a two-fold submission.

Firstly, it has been contended that invalid votes polled in favour of respondent No. 3 had been wrongly counted in his favour. Reference has been made to the finding of the authority in para 12 of the order at Annexure P. 17. According to the counsel, the voters had put their thumb impressions. Thus, the ballot papers should have been rejected. Secondly, the counsel has submitted that under the Act, an appeal was not maintainable. The order passed by the Additional District Judge was void. Thus, even the order passed by the Additional Civil Judge (Senior Division) on recount is vitiated.

3. The contentions cannot be accepted. A perusal of the order passed by the authority shows that the ballot papers were examined. It was found that "rubber stamps are visible, though the same are weak in impression". Thus, it is clear that the petitioner's contention that the voters had thumb marked the ballot papers has not been accepted. The finding recorded by the authority is clear and categorical. The rubber stamp had been used. The authority had merely to see as to whether or not the voter had made his intention manifest. Apparently, there was no violation of the prescribed procedure. Even though the impression was found to be weak, the intention was obvious. That being the position, the authority has committed no error in accepting the claim of the respondent and in counting the votes in his favour. Faced with this situation, the learned counsel for petitioner has submitted that the entire process of recount as conducted by the authority in pursuance to the directions given by the Additional District Judge, Faridabad vide order dated 24th September, 2001 is void. Thus, the order at Annexure P. 17 should be quashed.

5. It is the admitted position that the petitioner had himself filed an appeal against the order-dated 4th January, 2001 passed by the Additional Civil Judge (Senior Division), Faridabad. The petitioner's appeal was allowed in pursuance to the order. The petitioner had participated in the proceedings before the authority and allowed it to proceed to recount the votes. This having happened, the petitioner cannot now be permitted to retrace his steps and contend that the order passed by the prescribed authority is vitiated. It appears that the petitioner was sitting on the fence. He approached a Forum to challenge the order passed by the prescribed authority. He had succeeded. He had accepted the order. He had allowed it to be implemented. Now, when the result has gone against him, he is seeking a declaration that the order was void.

6. In the circumstances of the case, we are unable to accept the contention as raised by the counsel. A person who sits on the fence and takes a chance, would be bound by the consequences which follow his own action. In our view, the petitioner is estopped from raising this contention.

7. Finally, it has been contended by the counsel that the result was wrongly declared by the Sub Divisional Magistrate. The contention is that the ballot papers had been counted by the Presiding Officer. The result was declared by the S.D.M.,

who had been appointed as the Returning Officer. Thus, there was violation of Rule 17 of the Haryana Panchayati Raj Election Rules, 1994.

8. We have perused Rule 17. It inter alia provides that "the Returning Officer (Panchayat) or the Assisting Returning Officer shall.... declare.... the result". In the present case, it is admitted by the counsel for the petitioner that the S.D.M., Ballabgarh had been appointed as the Returning Officer. It is also the admitted position that the result was declared by him. That being so, the action was in strict conformity with the provisions of Rule 17. The result having been declared by the Returning Officer, we find no infirmity in the action.

9. No other point has been raised.

10. In view of the above, we find no merit in this petition. It is consequently dismissed in limine.

Sd/- J.S. Narang, J.