

CASE NO.:
Appeal (civil) 6507 of 2004

PETITIONER:
Rupadhar Pujari

RESPONDENT:
Gangadhar Bhatra

DATE OF JUDGMENT: 05/10/2004

BENCH:
CJI R.C. Lahoti, G.P. Mathur & P.P. Naolekar

JUDGMENT:
J U D G M E N T

[Arising out of S.L.P. (C) No.6032/2004]

R.C. Lahoti, CJI

Leave granted.

Election to the office of Sarpanch, Pundosguda Gram Panchayat, Orissa was held in the month of February 2002 under the provisions of The Orissa Grama Panchayats Act 1964 (hereinafter 'the Act', for short). There were eight candidates out of whom six withdrew from the contest leaving only the petitioner and the respondent in the election fray. The polling took place on 21.2.2002. On 28.2.2002, the respondent was declared elected.

The respondent's election was put in issue by the appellant by filing an election petition under Sections 30/31 of the Act in the Court of Munsif having jurisdiction to try the petition. The relief clause in the petition is relevant as the controversy centres around it and hence is reproduced hereunder:-

"The Petitioner, therefore, prays the Hon'ble Court to be pleased to declare that the election of opposite party is invalid and declare the Petitioner as the only duly nominated candidate for the office of Sarpanch Pundosoguda in 2002 Gram Panchayat Election, in alternate declare a casual vacancy to have been created in the office of Sarpanch Pundosoguda GP and direct the Collector Koraput / such concerned authority to take proceeding to fill up the vacancy, award, the cost of the case and give such further relief/relief which the court deem fit and proper under the law in the interest of justice."

(emphasis supplied)

The learned Munsif found that the respondent was disqualified from contesting the election as he had more than two children on the date of his nomination, a disqualification within the meaning of clause (v) of sub-Section (1) of Section 25 of the Act. In view of that finding, the learned Munsif allowed the election petition, set aside the respondent's election and further declared that "Rupadhar Pujari being the single candidate has been duly elected to the post of Sarpanch of Pundosguda

Gram Panchayat".

The respondent preferred the writ petition in the High Court. The High Court has upheld the finding of the learned Munsif that the respondent was disqualified from being elected. However, the High Court has further held that in the relief clause of the election petition filed by the appellant he had not sought for any relief to declare him elected. Allowing the writ petition, the High Court, while upholding the setting aside of the election of the respondent, substituted the consequential direction in place of the one given by the learned Munsif and directed that it would be open to the authorities to proceed in accordance with law, i.e. by holding a re-election. Aggrieved by the judgment of the High Court, the appellant has filed this appeal by special leave.

Sections 34, 40 and sub-Sections (1) and (2) of Section 38 of the Act, which are relevant for our purpose, provide as under:-

"34. Relief that may be claimed by the petitioner ____ A petitioner, may, in addition to claiming a declaration that the election of all or any of the returned candidates is void claim a further declaration that he himself or any other candidate has been duly elected.

40. Grounds for which a candidate other than the returned candidate may be declared to have been elected ____ If any person who has lodged a petition, has in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the Munsif is of opinion

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by a corrupt practice the petitioner or such other candidate would have obtained a majority of the valid votes;

38. Decision of Munsif ____ (1) If the Munsif after making such enquiry, as he deems necessary, finds in respect of any person, whose election is called in question by a petition that his election was valid, he shall dismiss the petition as against such person and may award costs at his discretion.

(2) If the Munsif finds that the election of any person was invalid, he shall either ____

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected;

whichever course appears, in the circumstances of the case to be more appropriate and in either case, may award

costs at his discretion.

XXX

XXX

XXX

XXX"

The scheme of the fore-quoted provisions reveals that in an election petition the petitioner obviously lays challenge to the election of the returned candidate or candidates and while doing so he can claim a further declaration, consequent upon the election of the returned candidate or candidates having been annulled and avoided, that he himself or any other candidate has been duly elected. Sub-Section (2) of Section 38 confers jurisdiction on the Munsif to declare a casual vacancy to have been created in view of the election of any returned candidate having been invalidated. Equally, the Munsif has jurisdiction to declare any other candidate to have been duly elected. Which of the two alternate powers vesting in the Munsif shall be exercised depends on his forming an opinion as to which of the two reliefs would be more appropriate in the circumstances of the case. Applicability of Section 40 of the Act is attracted when looking to the nature of the case an enquiry is called for into the validity of votes so as to find out whether the petitioner or some other candidate would have received the majority of the valid votes. Depending on such finding such other candidate may be declared to have been duly elected over and above the declaration that the election of the returned candidate was void.

True it is that the relief clause in the election petition in the present case is not very happily worded. The election petitioner would have been better advised to specifically seek a declaration to the effect that he was elected. However, we cannot be oblivious of the fact that Panchayat elections are part of Gram Swaraj system. Most of the provisions relating to election and election petitions in the laws governing Panchayats are pari materia with the provisions contained in the Representation of the People Act 1951. Yet the procedural laws relating to Panchayat elections and election petitions cannot be allowed to be interpreted with too much of rigidity and by indulging in hair-splitting. A recent decision by a Constitution Bench in *Sardar Amarjit Singh Kalra (Dead) by Lrs. & Ors. Vs. Pramod Gupta (Smt) (Dead) by Lrs. & Ors., (2003) 3 SCC 272*, once again reminds us to remember that laws of procedure are meant to regulate effectively, assist and aid the object of doing substantive and real justice. Procedural laws must be liberally construed to really serve as handmaid of justice, make them workable and advance the ends of justice. Technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of the law inevitably necessitates it.

In the case at hand, there were only two candidates in the election fray. The respondent, though declared elected, was found by the learned Munsif to have been disqualified from contesting the election. He was, therefore, excluded from the contest. Deemingly there was only one candidate left, i.e. the appellant, and he was the only duly nominated candidate. There was no need to go for polling. Once he was found to be the only duly nominated candidate then he alone was to be declared elected. The constituency was not required to go to polls at all. The declaration of the appellant as duly elected candidate is the natural, obvious and inevitable consequence of his being the only duly nominated candidate. Ordinary, a plaintiff or petitioner should not be denied such relief to which he is found entitled on the facts established, simply because the relief clause is not very

happily worded. The learned Munsif was, therefore, right in declaring the appellant as the one duly elected in exercise of the powers conferred by sub-Section (2) of Section 38 of the Act consequent upon the election of the respondent, i.e. the only other candidate having been invalidated. In substance that was the relief which the election petitioner had sought for. The High Court has erred in interfering with and setting aside the well merited relief granted by the learned Munsif to the appellant herein.

For the foregoing reasons, the appeal is allowed. The judgment of the High Court is set aside and that of the learned Munsif is restored with costs throughout.