

CASE NO.:
Appeal (civil) 1912 of 2006

PETITIONER:
Gursewak Singh

RESPONDENT:
Avtar Singh & Ors

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & P.K. Balasubramanian

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 4237 of 2005)

S.B. Sinha, J.

Leave granted.

Gram Panchayat Ralla is situated in the District of Mansa in the State of Punjab. Election to the post of Sarpanch of the said Gram Panchayat was held on 29.6.2003. The Appellant and the First Respondent herein were the only two contestants, polling wherefor was held in four booths being Nos. 41, 42, 43 and 44. The Appellant was declared elected having polled 2004 votes as against 1900 by the First Respondent. 147 votes were rejected. The First Respondent herein allegedly made all attempts to disturb the counting process. He, however, did not lodge any complaint with the Returning Officer. The wife of the First Respondent incidentally was elected as Sarpanch in the earlier term.

An election petition was filed by the First Respondent on 28.7.2003 inter alia praying for the following relief:

"\005Therefore, the petition is presented it is prayed that the petition may kindly be accepted with costs and the recounting of the votes for the election of Sarpanch may kindly be ordered and election of Respondent No. 1 as Sarpanch may be set aside and the petitioner be declared as the elected Sarpanch of Gram Panchayat of Village Ralla."

In the said election petition, it was inter alia averred:

"That at the time of issuing the ballot paper every illiterate voter was required to mark his thumb impression, as a result of which the ink of the stamp pad would get affixed to the thumb of such voters. At the time of folding the ballot this ink would leave thumb impression on the ballot. 42 such votes which were polled in favour of the petitioner were wrongly declared invalid whereas 48 such votes which had been poled in favour of Respondent No. 1 instead of being declared invalid were considered as valid and counted in favour of Respondent No. 1. In this manner during the process of counting similar types of votes, different criteria were adopted which is completely wrong and illegal."

In the said proceedings by an order dated 4.6.2004, recounting of votes was directed whereagainst the Appellant herein filed a writ petition being CWP No. 9269 of 2004. The High Court summoned the original ballot papers. Upon inspection thereof, it was observed that everything was in a total mess stating:

"We have heard learned counsel for the parties at some length.

During the course of hearing it appeared to us that in the interest of justice we would direct the box containing the votes to be opened. Therefore, we directed seals of the box to be removed in presence of counsel for the parties and the Reader of Court. The seals were removed and box opened by the officials in their presence. It has been containing the votes, particularly, in relation to booth No. 41, which envelope was opened, clearly show that they are not being maintained in a proper way. There is no separate envelopes to indicate rejected votes. Wrongly counted votes and the votes in favour of each of the candidate to the election. At this stage, we would not make any further observations to avoid any prejudice to the rights and contentions of either party to these proceedings.

Arguments have been concluded. We direct that the envelope as well as the box be sealed in the presence of counsel for the parties and the seal should be clearly marked so as to establish its identity at a subsequent stage before the competent forum.

Judgment reserved."

By an order dated 2.9.2004, the writ petition was dismissed stating:

"In the back-drop of definite allegations in regard to irregularities, improper counting of votes and particularly, keeping in mind the fact that when boxes containing the ballot papers were opened before this Court it came to the notice that votes were not even being kept in a segregated manner in proper bundles, in our opinion, the respondent herein had made a prima-facie case for recounting of votes. The Tribunal has exercised jurisdiction vested in it within the purview and scope of Rules 33 and 37 of the Rules. Exercise of such jurisdiction neither suffers from a patent error of law nor is contrary to the record. In order to justify interference with such as interim order, heavy onus lay on the petitioners before us to show that the impugned orders ex-facie suffer from erroneous errors of law. In our opinion, the petitioners have not been able to exhibit any such error. The conclusions arrived at by the learned Tribunal are based upon the averments made in the petition, supported by oral evidence led by the parties during the course trial of election petition, which are no way contrary to the well established principles of law.

Consequently, we dismiss both these petitions leaving the parties to bear their own costs."

On or about 16.9.2004, an application was filed by the Appellant herein before the Tribunal making allegations against the First Respondent Baljinder Singh, the then BDPO Bikhi, Raghubir Singh, RO and Darshan Singh, Chowkidar contending that they were responsible for tampering with the records. By an order dated 12.10.2004, the said application filed by the First Respondent was dismissed stating:

"The inordinate increase in the number of rejected votes was brought to the attention of the undersigned by the ADC-cum-Counting Officer when detected during recounting, and the undersigned exercising supervision of the recounting process, as mandated by the Punjab State Election Commission Act, 1994, and various Court decisions, examined these 301 ballot papers, and after due examination, it was clearly seen that not only the colour and density of the ink used, but also the shape of the balloting stamp, bore no resemblance to each other, the candidates being only 2 in number. From this, it has been concluded that one of the stamps, whereby the vote in favour of Sh. Gursewak Singh, Respondent No. 1, has been sought to be rejected, has in fact been administered at a different place and time than the date of the actual polling on 29.6.2003. It can also be concluded that the same has been done by the interested persons after the conclusion of poll and after the declaration of the result, as the same has not been incorporated in the report of the ARO/Presiding Officer."

During the said recounting process, the Counting Officer brought the said fact to the notice of the Tribunal whereupon ballot papers were closely inspected and the following questions were put to Shri Tejpal Rishi by the Tribunal which are as under:

"a. Whether the ballot papers pertaining to Booth 41 which have been found now to be liable to rejection on account of double stamping of election seal, contain his signatures on the reverse?
b. Whereas as per your own record and declaration of results pertaining to Booth 41, only 47 number of votes were shown as rejected, whether now, in view that as many as 301 more ballot papers of Booth 41 have got double stamping, it does not show your collusion with one of the parties in view of the fact that you did not show these votes as invalid at the time of original counting?"

The Tribunal has recorded the response of Shri Tejpal Rishi to the said queries in the following terms:

"In response to the first question, the concerned official admitted that the signatures on the reverse of the ballot papers were his. As to the second question put to him, alleging his collusion and negligence, he has strongly refuted the imputation, and reiterated that at the time of counting of votes on 29.6.2003, only 47 votes had been found liable to be rejected. No corrupt practice was done by

him. He states that there is no question of these 301 votes as now shown as invalid, being present at the time of counting. Rather the double stamping is most likely to have occurred after 29.6.2003. He acknowledges that 200 ballot papers of booth 41 which were in favour of Avtar Singh petitioner, have been recovered from the packed of Booth 43. Finally, he states that whatever tampering with record has admittedly been made, has been done only after the election material was deposited before the higher authorities. The statement of Sh. Kulbir Singh, Asst. Presiding Officer, Booth 41, is also on the same lines."

The Tribunal, taking into the said facts, therefore, opined:

"\005In the present case, no charges have been proved against the returned candidate, viz., respondent 1, rather the method and manner in which the ballot papers have been found to have been tampered, thereby attempting to influence the final result of the election, points, on the other hand, to the petitioner or those who acted in his aid. Thus Tribunal has not come across any such blatant case where tampering of polled votes has taken place after the declaration of results, in order to create an unassailable position in case of recounting of votes. It is a measure of the level of degree of lawlessness and desperation which a defeated candidate can go to get himself declared selected\005"

The High Court, however, reversed the said judgment and order of the learned Tribunal opining that even if 301 double stamped votes are counted in favour of the Appellant herein, the First Respondent would still get 68 more votes. As regards the statement of Shri Rajpal Rishi, it was held that the same was recorded behind the back of the First Respondent herein and, therefore, no reliance thereupon could have been placed.

The learned counsel appearing on behalf of the Appellant would submit that the High Court committed an error, having regard to the specific findings of fact arrived at by the learned Tribunal in reversing the said decision and declaring the said Respondent elected.

Mr. J.L. Gupta, learned senior counsel appearing on behalf of the First Respondent would, however, support the judgment of the High Court.

Before advertng to the rival contentions raised in this appeal, certain disturbing features may be noted. 4063 ballot papers were issued for holding the election but only 4051 votes were found to have been polled and 12 ballot papers were missing. In the counting held on 29.6.2003, it was found as under:

Booth
Votes found
Gursewak
Avtar Singh
Rejected
41
1147
708
392
47
42

966
463
474
29
43
902
397
486
19
44
1036
436
548
52
TOTAL
4051
2004
1900
147

After the recounting, pursuant to the order of the Tribunal dated 12.10.2004 as also the judgment of the High Court in CWP No. 9269 of 2004, the position stood, thus:

"Booth
Gursewak
Singh
(Appellant)
Avtar Singh
(First
Respondent)
Rejected
Votes
Total
41
354
231
360 (incl.
301 doubly
stamped
ballots)
945
42
467
474
25
966
43
397
685
20
1102
44
423
578
22
1023

1641
1966
429
4036"

The discrepancies in the ballot papers as found in respect of booth

Nos. 41 and 43 are as under:

"Booth No.
Gursewak
Singh
(Appellant)
Avtar Singh
(First
Respondent)
Rejected
Votes
Votes for the
Booth
(A) 41
(B) 41
354
708
231
392
360
47
945
1147
(A) 43
(B) 43
397
397
685
486
20
19
1102
902"

As regard booth No. 44, the position was found to be as following:

"Booth No.
Gursewak
Singh
(Appellant)
Avtar Singh
(Respondent)
Rejected
Votes
Votes for the
Booth
(A) 44
(B) 44
423
436
578
548
22
52
1023
1036"

Thus, upon recounting, 1641 votes were found to be in favour of the Appellant, 968 votes in favour of the First Respondent and 427 votes were found invalid.

It is also disturbing to note that in relation to booth No. 41, 200 more ballot papers were found whereas in respect of booth No. 43, about 200 less were found. How and in what manner, the ballot papers of the two booths

got mixed up is not known. Who is responsible therefor is also not known. What evidence was adduced in support of the respective contentions is also not known. As regard booth No. 44, the Tribunal recorded:

"The case of booth 44 is slightly more complex as only 1023 ballot papers have been recovered from the packet against 1036 shown at the time of the original counting, 30 votes which were shown as rejected were decided in favour of the petitioner, that 13 votes further of the respondent 1 were found rejected. As to booth 41, where the maximum irregularities have been noted, originally 47 votes were shown as rejected. During recounting, however, apart from this, 12 more votes were shown to have been rejected, and 301 such ballot papers also were found which were having double stamps, these were kept apart and counted in the list of rejected votes for the time being. Upon close examination of the 2 stamps on the 301 ballot papers, however, it was clearly visible to the naked eye that not only the shape and size of the swastika stamp, but also the density and colour of the ink were at significant variance with each other. Statements of the ARO/ Presiding Officer of booth 41 confirmed that one of the stamps, vide which the ballots favouring Sh. Gursewak Singh, Respondent 1, were sought to be rendered invalid, was administered at a later date and time than the day of counting."

The High Court did not go into the correctness of the aforementioned findings of the Tribunal at all. It was, in our opinion, essential to go into the said question and arrive at a positive finding on analyzing the evidence on record.

Although we need not go into the law of recounting, as the said question does not arise before us, we may notice a decision of this Court in Chandrika Prasad Yadav v. State of Bihar and Others [(2004) 6 SCC 331], wherein it is stated:

"It is well settled that an order of re-counting of votes can be passed when the following conditions are fulfilled:
(i) a prima facie case;
(ii) pleading of material facts stating irregularities in counting of votes;
(iii) a roving and fishing inquiry shall not be made while directing re-counting of votes; and
(iv) an objection to the said effect has been taken recourse to."

The said dicta has been reiterated in M. Chinnasamy v. K.C. Palanisamy and Others [(2004) 6 SCC 341], Hoshila Tiwari v. State of Bihar and Others [(2005) 12 SCC 342] and Tanaji Ramchandra Nimhan v. Swati Vinayak Nimhan & Ors. [2006 (2) SCALE 81]. The reason why we referred to the said decisions is that at every level, in case of a challenge to an election, pleadings of the parties have been held to play a significant role.

The Tribunal inter alia held that there had been no allegation of corrupt practices against the Appellant. There was no pleading as such in this behalf in the election petition. The High Court, however, held:

"Going through the petition and the evidence on file, allegations of mal-practice have been prima

facie alleged and proved against Respondent No. 1 and the officials (Respondents 2 to 5), who had helped Respondent No. 1 in manipulating the election."

There was no basis for arriving at the said finding. It was not supported by any cogent reason. No material on record was referred to for arriving at the said finding.

While interfering with an order of the Election Tribunal, particularly, in view of the purport and object for which such Tribunals had been constituted, the High Court had an obligation to assign sufficient and cogent reasons. The High Court, as noticed hereinbefore, proceeded on the basis that the Appellant was responsible for the mess created in the matter of maintenance of records. There are items of evidence on record to show that ballot papers had not been properly kept. Some were kept in loose sheets. They had been counted separately. The Tribunal noticed how ballot paper envelopes were found in suspicious circumstances.

Instead of breaking the seals at one end, large number of ballots were found in loose condition. 200 ballot papers of booth No. 41 were found in the bag of booth No. 43. The Tribunal, therefore, came to the conclusion:

"\005From a comparative analysis of the position (booth-wise) of the results after recounting, as given tabular form on page 13 above, it is apparent that there is no issue as pertaining to the counting process in Booth 42, as the total number of ballots polled (966) is same, and there is rather a decrease of 4 rejected votes, which have now been counted in the tally of the Respondent 1, thereby increasing his tally of booth 42 to 467 from 463. Similarly, in relation to Booth 43, if one takes into account that 2-ballot papers in favour of the petitioner which pertained to Booth 41 have somehow managed to enter the packet containing ballot papers of Booth 43 then the matter is somewhat regular, as the total votes polled in the booth 43 is similar at 902, and there is only marginal difference of 1 extra vote which was polled in favour of petitioner being declared rejected\005"

We have noticed hereinbefore the observations of the Tribunal as regard booth No. 44.

We are, therefore, of the opinion that the High Court should have examined the case more closely. The impugned judgment, therefore, cannot be sustained. It is hence set aside. The appeal is allowed and the matter is remitted to the High Court for consideration of the matter afresh. It may, however, be place on record that we have deliberately not adverted to the other contentions raised at the bar, lest it may prejudice any of the parties herein.

Before parting, however, we may record some disturbing features. By an order dated 7.3.2005, this Court directed status quo to be continued as prevailing on 23rd February, 2005. During pendency of this petition, even in the absence of the authority, having the jurisdiction in the matter, oath was supposed to have been administered to the First Respondent herein. The officer who attested the signature of the First Respondent in the requisite papers has been placed under suspension by an order dated 2.3.2005.

In view of the fact that we have set aside the judgment of the High Court and the matter is remitted back to the High Court, we direct that during pendency of the appeal before the High Court, the Appellant herein shall be reinstated as Sarpanch in the Gram Panchayat, Ralla. However, the

High Court is requested to consider the desirability of disposing of the matter as expeditiously as possible, preferably within a period of two months from the date of communication of this order.

The First Respondent shall bear the costs of the Appellant in the appeal. Counsel's fee assessed at Rs. 10,000/-.

JUDIS