

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2009
(Arising out of SLP (C) No.19564 of 2005)

Kedar Singh Kushwaha

... Appellant

Versus

Dhaniram & Anr.

... Respondents

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.
2. Appellant was the Sub-Divisional Officer Pichhore.

In the said capacity, he was a Specified Officer for determination of election disputes in terms of the provisions of Madhya Pradesh Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short, 'the Rules') framed in terms of Section 122 of the Madhya Pradesh Panchayat Raj Adhiniyam (for short, 'the Act').

3. Respondents 1 and 2 herein contested an election for the post of Sarpanch of Gram Panchayat, Khadoya, Block; Tehsil Pichhore. The second respondent was declared elected. Questioning the legality whereof, the first respondent filed an application for setting aside his election in the Court of Specified Officer, Pichhore. Upon hearing the parties, the Specified Officer directed recounting of all the votes polled in the said election. Relying on or on the basis of such re-counting, the election petition was dismissed.

4. Questioning the legality and/or validity of the said order, the first respondent filed a writ petition before the High Court contending that the Specified Officer had no jurisdiction to direct re-counting of votes only on the ground that no objection was raised by the parties as prior thereto and that he was required to arrive at the conclusion that sufficient evidence had been brought on record by the parties for the said purpose.

It was also urged that such a judicial power could not have been delegated in favour of the Tehsildar.

A learned Single Judge of the High Court by reason of a judgment and order dated 24.7.1996 allowed the said writ petition, setting aside the order of the Specified Officer and remitted the matter back to it directing the election petition to be decided within two months. It was furthermore directed that the Specified Officer should also decide the preliminary objections raised by the

respondent in the Election Petition. The parties were directed to appear before it on 19.8.1996.

5. Despite the said order, however, no action thereon was taken. Notices were issued only on 23.10.1997.

By reason of an order dated 30.12.1997, the appellant who was holding the post of the Specified Officer/Sub-Divisional Officer at the relevant time, again directed for recounting of ballot papers. On the premise that by reason thereof the appellant had disobeyed the order of the High Court dated 24.7.1996, a contempt petition was filed by the first respondent. It was pointed out that neither the preliminary objection was heard nor any evidence was recorded. It was furthermore pointed out that despite the fact that the period of two months expired on or about 18.10.1996 but without obtaining an order of extension from the High Court, he issued the said order for recounting of the votes.

6. The High Court issued Rule Nisi on the said application. Appellant was directed to remain present in the court. It, however, stands admitted that for one reason or the other, he did not appear before the Court and bailable warrants of his arrest were issued for his appearance on 6.5.1998.

Appellant filed a show-cause in the said contempt proceedings. Upon hearing the parties, the appellant was found guilty of willful disobedience of the

order of the High Court and a fine of Rs.1,000/- and his detention till the rising of the court, was directed.

7. An intra-court appeal preferred by the appellant thereagainst in terms of Section 19 of the Contempt of Courts Act, 1971 was dismissed by reason of the impugned order dated 17.5.2005.

8. Mr. Banthia, learned counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the matter came up before the appellant only in 1997 whereupon he took all necessary steps to dispose of the proceedings before him. It was urged that failure on the part of the appellant to appear before the high Court pursuant to the directions issued was occasioned by non-grant of permission therefor by the higher authorities. Our attention in this behalf has, inter alia, been drawn to an intimation given by the appellant to that effect before the Collector on 4.5.1998.

9. Indisputably, the appellant was the Specified Officer and in the said capacity was authorized to determine the election petition filed by the first respondent. The Election Petition filed by him was dismissed only on the basis of an order of recounting passed by the Specified Officer in respect whereof allegedly no objection was raised. The High Court, however, in its order dated 24.7.1996, in clear terms, pointed out that the prescribed authority has no

jurisdiction in that behalf even with the consent of the parties. Relying on or, inter alia, on the basis of a decision of this Court in P.K.K. Shamsudeen v. K.A.M. Mappillai Mohindeen & Ors. [AIR 1989 SC 640], the High Court made extensive reference to the Rules, to hold :

“From the aforesaid rules, it is clear that any order of recounting can be passed after conclusion of the trial and the recounting can only be ordered by the Sub-Divisional Officer who is a prescribed authority to decide the dispute. The sub-divisional officer has not acted properly, inasmuch as it acted illegally in delegating the powers of recounting to the Tehsildar. The authority is described as Sub-Divisional Officer as the authority to decide the election petitions, therefore, any act done by the Tehsildar of recounting cannot be said to be proper and on the basis of recounting by the Tehsildar, the Sub-Divisional Officer gravely erred in dismissing the election petition. The order dismissing the election petition is hereby set aside with a direction to Sub-Divisional Officer to decide the petition according to law and shall also decide the preliminary objections raised by the respondents before him. He cannot shirk from his responsibility and delegate his powers to subordinate authority.”

It was on that premise that the aforementioned directions were issued.

10. Indisputably, the said order was not complied with as the election petition was not disposed of within the period specified therefor by the High Court. Indisputably again, pursuant to the order of the High Court, the parties appeared on 19.8.1996. The appellant, in his order sheet dated 3.12.1997, recorded that the order of the High Court was received on 28.2.1997. Why, despite the same,

he did not take any step to issue notices to the parties and proceeded to determine the issue before him has not been explained. The appellant, in his order dated 23.12.1997, proceeded on the basis that the High Court need not be approached for obtaining further directions from it.

From a perusal of the order dated 13.1.1998, it appears that proceedings started at 4 pm on that day, the ballot boxes were opened and a direction for recounting of the ballot papers was made. Indisputably, preliminary objections of the parties had not been determined. Why an order of recounting was passed despite the clear finding of the High Court has not been explained. The effect of the decision of this Court in P.K.K. Shamsudeen (supra) was also not taken into consideration. The premise on which the High Court passed its judgment dated 24.7.1996 was neither noticed nor considered.

11. It is now well settled that an order directing recounting must be preceded by application of mind by the Prescribed Authority. [See M. Chinnasamy v. K.C. Palanisamy & Ors. [(2004) 6 SCC 341] and Chandrika Prasad Yadav v. State of Bihar & Ors. [(2004) 6 SCC 331]

It is, thus, idle to contend that the appellant did not understand the effect and purport of the order. The High Court, in our opinion, has rightly arrived at a finding that as a responsible and high ranking officer, the said plea was not available to him. He, therefore, could not have committed the same error as

was done by his predecessor in office. Even during the proceedings before the High Court, appellant's conduct was not above board. Why he could not appear before the High Court at the earliest possible opportunity has not been properly explained. In terms of the Rules framed by the High Court under the Contempt of Courts Act, the appellant has rightly been called upon to appear. He could not have ignored the same on the premise that the Collector did not give him permission therefor. Even otherwise, no order refusing such permission by the Collector has been brought on record.

12. Keeping in view the facts and circumstances of the case, we are of the opinion that no case has been made out for interference with the impugned judgment. This appeal is, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[S.B. Sinha]

.....J.
[Cyriac Joseph]

New Delhi;
August 4, 2009