

CASE NO.:
Appeal (civil) 9228 of 2003

PETITIONER:
Janak Singh

RESPONDENT:
Ram Das Rai & Ors.

DATE OF JUDGMENT: 11/01/2005

BENCH:
CJI G.P. Mathur & A.K. Mathur

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

The appeal is directed against the order passed by the Learned Single Judge of the Patna High Court dated September 26, 2003 wherein the Election Petition filed by the appellant was dismissed with costs of Rs. 1000/-. Hence, the present appeal has been filed by the appellant election petitioner against the aforesaid order.

The appellant was a contesting candidate in the State Assembly General Election from 38 Saraiya Assembly Constituency which took place on 17th February, 2000. In that election the appellant lost the election and the respondent No. 1 Ram Das Rai was declared elected. Therefore, the appellant filed the petition challenging the aforesaid election on the various grounds i.e. non-compliance of provisions of Act and Rules and also non-compliance of the directions given by the Election Commission of India. But the main ground of challenge was miscounting of ballot papers resulting in not counting the valid votes cast in his favour. The difference of votes between the election petitioner and the returned candidate i.e. respondent No. 1 was only 265 votes. Therefore, the appellant prayed that the election petition should be allowed and he should be declared as an elected candidate.

According to the polling schedule the last date for filing the nomination paper was January 31, 2000, the date of scrutiny was February 1, 2000, the last date for withdrawal of candidature was February 3, 2000 and the date of polling was February 7, 2000. (But the actual polling was held on February 17, 2000.) 17 candidates were in the fray after scrutiny and withdrawal of the candidates. The appellant Janak Singh was the official candidate of Bharatiya Janta Party having a symbol of Lotus. The returned candidate Ram Das Rai was an official candidate of Rastriya Janta Dal having a symbol of Lantern. Five other candidates were from All India Political Parties and they were having their official symbols. Nine of the candidates were independent and they were given the symbol of their choice. The actual polling took place on February 17, 2000 from 8.00 a.m. to 5.00 p.m. The elected candidate Ram Das Rai received 40,680 votes while the appellant Janak Singh received 40415 votes. It was alleged that the returning officer was not fair and impartial because respondent No. 1 Ram Das Rai the elected candidate was a Minister in the State Government at the relevant time and all illegal means were adopted to ensure the victory of this candidate. It was alleged that S.D.O. Marharwah was appointed as a returning officer at the instance of Respondent No. 1 to ensure his victory and the returning officer was asked to choose his own Assistant Returning Officer for alleged purpose. It was also alleged that counting staff was never approved by the District Election Officer they were all Assistants of the office of the S.D.O. It was alleged that respondent No. 1 manipulated through the returning officer in deployment of military and para-military forces at different polling booths. It was alleged that there was no fair

polling in respect of several booths and particularly in booth nos. 105, 106, 107, 225 and 249 as the ballots in those booths did not bear signature and seal of the Presiding Officer and the distinguishing marks of the booths. As regards the booth nos. 175 and 176, the first information report was received that respondent no. 1 had forcibly snatched away arms and ammunition of police personnel in order to commit rigging during the polls. However, all the illegalities committed by respondent no. 1 were informed by Fax message to the Election Commission of India and to other appropriate authorities.

It was also alleged that there was a great bungling in miscounting the votes inasmuch as votes of respondent No. 1 have been increased on false pretext of excess votes between votes polled and votes counted at the counting table. It was also alleged that the votes of the appellant have been reduced on false pretext of less number of ballot papers found in the ballot boxes than what had been polled. Certain illegalities were also alleged with regard to booth Nos. 249, 67, 32, 56 and 194.

The illegality in counting was alleged in respect of table Nos. 2, 3, 4, 7, 8, 9, and 12 in the 14th, 15th, 16th, 17th and 18th round of counting. As a result of which 700 votes were illegally counted in favour of respondent no. 1. The other illegalities pointed out were that markings against two names of the candidates and 100 ballot papers which were totally blank have been counted in favour of respondent no. 1 and the other ballot papers illegally rejected a chart thereof was given in para 27 and 28 of the election petition. In para 29 of the election petition a detail of 2379 invalid votes counted in favour of the respondent no. 1 were given. A separate chart was also annexed as Annexure-5 and Annexure -5A. It was also alleged that on 26th February, 2000 in course of counting a petition for recounting was filed under Rule 63 of the Conduct of Election Rules, 1961. But no recounting was held. It was also mentioned that the Election Commission stayed the declaration of the result and asked for explanations from returning officer and on getting distorted reply and suppressing of material fact the Election Commission gave permission to the returning officer to declare the result. It was also alleged that before the result was declared the appellant gave representation to the returning officer enumerating various irregularities and illegalities committed but all the efforts of the election petitioner proved futile. Under these circumstances the present election petition was filed.

The respondent No. 1 filed written statement denied the allegations and an objection was also raised that the material particulars were not given as required under Section 83(2) of the Act, and the petition was liable to be dismissed under Section 87 of the Act read with Order 6 Rule 16 of the Code of Civil Procedure.

It was also alleged that the election was peaceful and counting was done in orderly manner, all the allegations are nothing but concocted and imaginary.

On the basis of these allegations, the learned single Judge framed the following four issues which reads as under:

1. Whether the election petition, as filed, is maintainable in its present form?
2. Whether the election is liable to be rejected for non-compliance of Sections 81, 82, 117 and Section 83 of the Representation of People Act ?
3. Whether the election is liable to be rejected for non-compliance of Sections 81, 82, 117 and Section 83 of the Representation of People Act ?
4. Whether the irregularities and illegalities, as alleged in the election petition with its Annexures make a case of recounting

of ballots?

5. To what relief, if any, the election petition can be granted.

The appellant examined 11 witnesses and got large number of documents exhibited. The returned candidate, respondent No. 1, Ram Das Rai examined 12 witnesses including himself as PW-10. He also got number of documents exhibited.

Learned single Judge reviewed the testimony of all the witnesses and held that petitioner has failed to substantiate the allegation and dismissed the petition with costs. Hence, the present appeal.

Summary of evidence and its analysis

PW-1, Janak Singh, the election petitioner examined himself, he pointed out defects in the counting but he had no direct knowledge as he was only informed by the counting agent. The case of the appellant was not substantiated by the testimony of PW-1. However, PW-2 Pravin Kumar Singh was the counting agent of the petitioner at table No.1. According to him 7 votes were received in the 13th round of counting in favour of appellant Janak Singh but the same was reduced by one vote at the central table. Likewise, PW-3 Ranjit Kumar Singh he was a counting agent of the appellant at table No. 2. He alleged that the booth No. 2 which was counted on his table wherein 701 total number of votes were caste in favour of Janak Singh but at the central table 541 votes were counted in his favour. In respect of booth No. 30, 229 votes out of 690 votes were received by Janak Singh. Ultimately it was shown to have received only 226 votes. He also alleged with regard to reduction of votes in respect of 12th, 17th and 18th rounds. He only stated by his memory but he had not prepared any notes. PW-4 Mukesh Kumar Singh, he was a counting agent of independent candidate Jalim Singh. He was at table No. 6. According to him at Booth No. 20, Janak Singh received 71 votes but at central table only 10 votes were shown in favour of Janak Singh. The actual votes received by Janak Singh were reduced at central table. Likewise, he was given reduction of votes in respect of booth nos. 48, 62, 160, 174, 188 and 201. Similarly PW-5 Sanjeev Ranjan he was also a counting agent of Jalim Singh with regard to counting table No. 7. The same story was repeated by PW-6, Alok Ranjan was the counting agent of Jalim Singh. Similarly, PW-7 Sunil Sinha another counting agent of Jalim Singh had also alleged the same reduction. PW-8, Upendra Singh was the counting agent of election petitioner at table no. 7. He deposed that several ballots were not having signature and seal of the presiding officer and distinguishing mark of the booth concerned were missing but they were illegally counted in favour of respondent no. 1, he also deposed that number of votes of the appellant were reduced at the central table. PW-9, Badri Narayan Singh was a counting agent of Jalim Singh at table No. 9 had also deposed the same thing. PW-10 Sailendra Kumar counting agent of Janak Singh at table No. 4 had also deposed certain facts as to how the votes of Janak Singh were reduced at the central table. PW-11 Chandrika, the counting agent of independent candidate Mr. Bikari Sah had also deposed as to how the votes of Janak Singh were reduced at the central table.

The summary of this oral deposition shows that large number of witnesses produced by petitioner, namely, PW-4, 5, 6, 7, 9 and 10 were not his counting agents but of Jalim Singh, they had nothing to do with the election petitioner Janak Singh but they had come forward to oblige the appellant in making the allegation that Janak Singh's votes were reduced at the central table. Likewise, PW-11 Chandrika was a counting agent of candidate Mr. Bikari Sah he also came in witness box to oblige the election petitioner. No objection was raised by counting agent of Janak Singh petitioner at central table.

A scrutiny of aforesaid oral evidence shows that the appellant himself or his counting agent could not make out a case that the votes which were caste in favour of the election petitioner were counted less or

had been reduced in such a way that it could materially affect the result of the election petition. As against this the respondent no. 1, the returned candidate Ram Das Rai examined 12 witnesses including himself as DW-10, he alleged that there was no illegality in the conduct of election and all the votes which were caste in favour of the candidates were duly counted. There was some arithmetic error regarding difference of votes in Form Nos. 16(1) and 16(2) and that was corrected.

DW-10/a, the Returning Officer also came in witness box and deposed that he conducted the counting impartially and no illegality was committed. He deposed that all allegations made by the election petitioner were frivolous and baseless. It was also alleged that when the counting was over the election petitioner was pressing for recounting and for the recounting he consulted the election observer and also with the Election Commission of India and then he declared its result. He also alleged that all the objections raised were duly considered and rejected by a reasoned order in the order sheet maintained by him. He was also cross-examined at length but without any result. DW-11 Binod Prasad Singh, the Assistant Returning Officer was also examined and he supported what was deposed by the DW-10/a, the returning officer.

From the survey of the oral testimony, the learned Judge concluded that there was no irregularity or illegality committed by the Returning Officer or their staff in counting.

The learned Judge also examined the documentary evidence and after examination of the same he found that except arithmetical mistakes there was nothing much could be said in favour of the election petitioner.

The learned counsel appearing on behalf of election petitioner conceded before learned Single Judge that he does not want to press the allegations in Issue Nos. 1 and 2 with regard to corrupt practice against the respondent no. 1 that he illegally influenced the Returning Officer being a Cabinet Minister to twist the election in his favour and the learned counsel confined to inspection of ballots and declaration of election result.

However, learned counsel for the respondent tried to raise an preliminary objection that the election petition was not properly constituted as per Section 83 of the Representation of the People's Act. But all these objections were over-ruled by the learned Single Judge. Learned single Judge felt that sufficient particulars were already given in the petition and they were supported by large number of documents. Therefore, learned single Judge observed that the material facts were present for adjudication. Therefore, the requirement of Section 83(1)(A) was satisfied.

Issue No. 3 was pressed by the Learned Counsel for appellant and it was dealt with at length by Learned Judge because the main allegation was irregularities and illegalities in the counting of ballots. The counting is regulated by the election rules known as The Conduct of Election Rules, 1961. The Conduct of Election Rules, 1961 details how the counting is to be undertaken. Rule 63 of the Act contemplates that if during the course of counting it is found that ballots are not being properly scrutinized and counted the objection can be raised from the side of the candidates and that objection should be raised within the course of counting and if it is found to be correct then the returning officer can direct the recounting and after the recounting is over he shall amend the result sheet in Form 20 to the extent necessary after such re-count and shall announce the amendments so made by him. According to sub-rule 2, the candidate or his agent has a right to apply for re-count of votes either wholly or in part. Therefore, as per Rule 63 the re-counting can be ordered provided there are good reasons for it. Now, in the present case during the course of counting an application was made to the Election Commission of India as Annexure-5 and marked as exhibit-2 wherein it has been stated that there was difference in signature of the presiding Officer on the Ballot papers of Booth Nos. 105 and 106 and 107, it was alleged that Rastriya Janta Dal candidate had received 99% of the votes polled. In respect of another two booths there was another

application as Annexure-5/A, although the same could not be produced in original but there was allegation that there were irregularities in the signature of the Presiding Officer of Booth Nos.225 and 249. He filed another application for recounting before the Chief Election Commissioner, New Delhi which was marked as Ext.1 of Annexure 6 of the Election Petition wherein grounds raised that the appellant lost the election by a margin of 265 votes whereas number of votes rejected were 2002 and several votes were wrongly declared invalid. It was also alleged that there were irregularities in the signatures of the Presiding Officers of Booth Nos. 105, 106, 107 and 225. But learned Judge found that a new case was sought to be developed that huge number of Ballot papers of Booth Nos. 105, 106, 107 and 225 did not even bear the signatures of the Presiding Officers and there was no distinguishing marks of the Booths itself which was not the case when they filed the petition before the Returning Officer or the Election Commission of India. The learned Single Judge after examining the matter found that the ground which was raised before the Election Commission of India and the ground which were raised by the appellant for recounting before the Returning Officer were different. But after going through the matter he observed that the petition in order to substantiate the case for recount has to make a definite case with a specific allegation, before the Returning Officer and thereafter if he failed, before the Election Commission. He found that grounds sought to be raised before the Returning Officer and before the Election Commission were at variance. He further observed that if at the time of the counting the election agent raised objection and no good reasons were given by the Returning Officer for rejection then that could make out a case for recounting under Section 63 of the Act. But no such case was made out. Similarly, learned Judge found that allegation during the trial also were not substantiated by oral or documentary evidence.

It was also alleged that there was a difference in signature of the Returning Officer in the ballots. Subsequently, the case put up that the ballots did not bear the signature of the Presiding Officer at all and there was no distinguishing marks of the Booths in the ballots. Learned single Judge found that the attempt was made to improve the case from stage to stage, therefore, allegations lack bonafide and makes it doubtful. Learned single Judge has also found that allegations of missing ballots and double marking brought out in the election petition but no such evidence was lead in support of the allegations. Learned single Judge also examined the allegations regarding difference of ballots in respect of booth Nos. 32, 56 and 194, but difference was not found to be material.

Learned single Judge further observed that while examining the documents and exhibits produced by the petitioner in the Form 20 there was interpolations. The learned Judge observed that there is no scope of giving any relief to the election petitioner moreover there is direct allegation against petitioner that he alongwith his persons had made this interpolations. The observation made by the learned single Judge in para 29 of the Order does not cast any reflection on petitioner. He did not examine the matter in detail with reference to the original records. Though learned Judge found that there were some difference in the votes and such difference was an arithmetic error and it does not materially affect the result of election. He also observed that Form 20 bears the signatures of the elections petitioner and his counting agents and no such objection was raised. Once a signature of the election petition or counting agent is there in Form 20 which is the result sheet round-wise prepared then there is no scope left for a grievance. Though the appellant, in his examination in chief had stated that the signature was obtained by force but in a cross-examination he admitted that he never lodged any protest or complaint in this regard before any officer which definitely suggest that this plea was only an after thought.

Learned Judge also examined the allegation that in some of the ballot boxes ballots increased and in some decreased. Learned Judge examined this aspect and found that this discrepancy in number of ballots can be an

error on the part of the presiding officer in calculating the votes. But he found that no allegations were made that ballots were increased or decreased by the counting agents or counting supervisors and he further found that since there was no such allegation made by the counting agents nor was there any satisfactory oral evidence to justify this. Whereas the evidence is to the contrary, ballots of different booths were being opened in the counting table from the boxes which had a intact seal and signature. Learned Judge found that this is not a case of recount and in our opinion rightly so. Issue No.3 was rightly decided by the learned Judge. An application was filed by the other side for contempt proceedings being initiated for swearing a false affidavit. That was rejected and rightly so. The issue No. 4 was decided against the respondent.

Suggestions

During the course of the arguments before us, learned counsel has given certain suggestions for consideration of the Election Commission in order to introduce maximum transparency and fairness in the election to the Legislative Assembly and to the Parliamentary Constituencies looking to the irregularities which has come to the light in this case.

i. It is suggested the Election Commission may consider the increase in the number of the election observers in addition to what has been said reported in the PUCL's case { 2003(4) SCC 408 }.

ii. It is also suggested that suggestions given by the Goswami Committee should be pursued that the Election Commission of India should be given the supervisory powers to deal strictly with the lapses on the parts of Returning Officer, if any, on administrative side and also take disciplinary action against them including their black-listing for future role in the process of elections.

iii. Some of the observers should be appointed from general public, the men of integrity and independence.

iv. The deployment of Central Para-military Forces should not be confined to the law and order situation outside polling booth but some of them be posted inside the Polling stations and vote counting centers as well, so that local administrative staff cannot use the powers available to them in favour of any candidate.

v. The officials from the department which have less administrative powers likes employees of Medical, Education and Welfare Departments should be given preference for being deployed on polling duties as against the deployment of officials from the rank of administrative departments

vi. The installation of electronic gadget for video recording and its exhibition, close circuit camera should be installed. This will minimize the booth capturing and rigging and intimidation of voters.

vii. Finally, it is suggested that it shall be open to the contesting candidates to provide for electronic recording and Video recording of the process of polling and counting of the votes at their cost wherever they apprehend any malpractice in any of the polling and counting centres as a safeguard for fair polling and counting of the votes.

These are some of the suggestions which were given by the learned counsel for the respondent No. 1. But before parting with the case, we would like to suggest that the Election Commission should consider posting of some personnel of Para-military force inside the polling booth in addition to the law and order duty outside the polling booths. Some cameras should be installed in the polling booths to keep a vigilance on the local staff on duty. It has come to our notice that sometimes local staff which is appointed to conduct the election become party to the unfair and illegal practice. The para-military staff outside the polling booth maintains law and order situation outside but what transpires inside the polling booth is beyond their reach. Therefore, the Election Commission may consider some measures to appoint some of the personnel from para-military force to be deputed inside the polling booth so as to keep eye on local staff who are entrusted to conduct the election. This will have sobering effect on staff that they are under vigilance of para-military force.

It has also come to our notice that the money which is allotted for the

conduct of election is utilized for other purpose that is other than for the conducting of the election like purchasing odd items. The Election Commission should insist the State to utilize the amount made available to them for conduct of election and for no other purpose. Some of the funds have also been utilized for entertainment of the election observers. This should be taken care by the Election Commission and strict instructions should be given to observers not to accept undue hospitality of State because that would unnecessarily compromise their objectivity and transparency.

In view of the above discussion, we are of the opinion that the view taken by the Learned single Judge is correct and there is no ground to interfere in this appeal and accordingly the Civil Appeal is dismissed with no orders as to costs.

JUDIS