

Azmat Khan

Vs

Khillan Singh and Others

Civil Appeal No. 236 of 1983

(E. S. Vankataramiah, Syed M. Fazal Ali JJ)

08.11.1983

ORDER

1. The election appeal arises out of the election held in 1980 from the constituency No. 56 called Hathin to the Legislative Assembly of the State of Haryana. At the counting held by the Returning Officer, the appellant secured 12,828 votes whereas respondent 1 Khillan Singh got 12,655 votes and one Ramjilal got 12,213 votes. Accordingly the appellant was declared as elected. Aggrieved by the result of the election, Khillan Singh and Ramjilal filed election petitions in the High Court. In the course of the election petition, the appellant filed a recrimination petition in which one of the grounds related to the errors committed in the counting of votes of respondent 1. All the parties agreed that the Court should order a recount and that the parties would be bound by the result of the recount. The recount was accordingly held as a result of which khillan Singh respondent 1 got 12,751 i.e. the highest number of valid votes and the appellant got 12,698 votes. In view of the higher votes secured by Khillan Singh respondent 1 at the recount ordered by the High Court, his petition was allowed, the election of the appellant was set aside and Khillan Singh was declared as elected. This appeal is filed against the decision of the High Court.

2. In support of the appeal, Mr. Bhandare with the usual ingenuity pressed only one point before us. He submitted on the basis of the judgment of this Court in Jabar Singh v. Genda Lal ((1964) 6 SCR 54 : AIR 1964 SC 1200) that even if the result had gone in favour of respondent 1 he could not have been declared elected. We have gone through this authority and we find that the facts of the present case are clearly distinguishable. In the decision referred to above the returned candidate did not recriminate as provided under Section 97 of the Representation of the People Act, 1951 and this was the important ground on which the Court said that it could not make any attack against the alternative claim made by the petitioner. In the instant case, the appellant had admittedly recriminated and in the recrimination petition one of the grounds taken related to the errors committed at the time of the counting of votes of the first respondent by the Returning Officer. The appellant had also agreed to the recounting of the votes secured by all the parties. In these circumstances, this case does not appear to be of any assistance to the appellant. The decision of the High Court is in accordance with the result of the recount ordered by it.

3. For the foregoing reasons, the appeal is dismissed but in the circumstances of the case there will be no order as to costs.

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