

Ambika Prasad Dubey

Vs

Distt. Magistrate, Allahabad and others.

Civil Appeal No.1371 of 1991 (arising out of S.L.P. (Civil) No.7564 of 1990

(K. Jagannatha Shetty, Yogeshwar Dayal JJ)

10.04.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.:-

1. Leave granted.

2. The election to Pradhan of the Gaon Sabha, Gedurahi, was held on 5th July 1988. The petitioner and respondent No. 4 were rival candidates. The counting was held on 6 August 1988. During the counting there was sudden breakdown of electricity supply and consequently the counting has to be stopped till the electricity was restored. During the interregnum some more ballot papers were mixed up in the bundle belonging to respondent-4. When the recounting was started, it was discovered upon scrutiny that the mixed up ballot papers were not issued by the Presiding Officer at the time of polling. The Assistant Returning Officer by his report recorded the serial numbers of such papers which were in all 46 but in the counter affidavit of the Assistant Returning Officer filed in this Court, it is stated that there were only 41 such ballot papers. At the end of counting, the respondents-4 was declared to have secured 484 votes including that 41 ballot papers as against 456 secured by the petitioner. There was, however, no declaration of the result of the election. Instead, fresh poll was ordered by the District Magistrate, Allahabad on report of the Assistant Returning Officer. The fresh poll was ordered in exercise of powers vested in him under R. 21G(3) of the U. P. Panchayat Raj Rules ("Rules"). The petitioner challenged the validity of the District Magistrate's order before the Allahabad High Court. The High Court has dismissed the Writ Petition. It has expressed the view that it was well within the powers of the District Magistrate to direct repoll and his order does not suffer from any error of law. The petitioner being aggrieved now appeals to this Court.

3. The question for consideration is whether the fresh poll was justified under law on the aforesaid facts. In our considered opinion, it is wholly unjustified, illegal and without jurisdiction.

4. Rule 21 -G which has been relied upon by the District Magistrate for directing fresh poll provides for adjournment of poll in emergencies. It states that if at an election the proceedings at the polling place are interrupted or obstructed by any riot or violence or if it is not possible to take the poll on account of any natural calamity or any other sufficient cause, Matdan Adhyaksh for such polling place shall announce an adjournment of the poll to a date to be notified later and where the poll is to adjourn the Matdan Adhyaksh shall forthwith inform the Nirvachan Adhikari. The Nirvachan Adhikari shall immediately report the circumstances to the District Magistrate and shall as soon as may be with his previous approval appoint a day for the taking of the fresh poll and fix the place at which and the hours during which a fresh poll shall be taken and notify the same in such manner as

may be specified by the District Magistrate.

5. Rule 21-H provides that if at any election any ballot box is unlawfully taken out of the custody of the Nirvachan Adhikari or of any Matdan Adhyaksh, or is in any way tampered with, or is either accidentally or intentionally destroyed or lost, the polling at the election to which such ballot box relates shall be void.

6. Rule 21-F sets out grounds for rejection of ballot papers. The ballot papers could be rejected on the ground among others, if it is spurious, or if it has been so damaged or mutilated that its identity as genuine ballot paper cannot be established, or if it bears a serial number or a design different from the serial number or design of the ballot papers authorised for use at the particular polling place. The ballot paper could also be rejected if votes are given on it in favour of more candidates than the number of seats required to be filled in a constituency or if no vote is recorded thereon.

7. It will be seen from these Rules that the fresh poll could be ordered only when there is irregularities in the polling as provided under Rules 21-G and H. The present case is not concerned with the circumstances provided under Rr. 21-G and H. But it is concerned with the irregularities at the time of counting of ballot papers. The case, in other words, is covered by R. 21 -F. It has been found at the counting that 41 ballot papers were mixed up on the bundle of respondent 4 when the electricity went off and those 41 ballot papers upon scrutiny were found to have been not⁷ issued by the Polling Officers. In other words, they have not been used at the polling. They ,ought to have been, therefore, discarded. They ought not to have been included in favour of respondents-4. If those 41 ballot papers are excluded from the total number of votes held by respondents, he would get only 443 votes as against 456 votes polled by the petitioner. The petitioner is entitled to be declared as duly elected Pradhan. The Returning Officer instead of declaring the petitioner as duly elected Pradhan has reported for fresh poll. This is a clear case of failure to exercise jurisdiction by the Returning Officer and repoll ordered by the District Magistrate on this basis is no better. It is equally contrary to law and beyond jurisdiction. The High Court seems to have overlooked this material aspect of the case and dismissed the writ petition on erroneous view of the law.

8. Respondent 4 has indeed committed a serious mal practice. He should, therefore, be made to pay heavy cost which we quantify at Rs. 10,000/-. The appeal is accordingly allowed with costs. The impugned order of the District Magistrate as affirmed by the High Court is set aside. The petitioner is declared to have been elected as Pradhan of the Gaon Sabha, Gedurahi.

Appeal allowed.

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