

Satyanarain Dudhani

Vs

Uday Kumar Singh, and others, Respondents.

Civil Appeal No. 4337 (NCE) of 1988

(CJI M.H. Kania, Kuldip Singh JJ)

17.11.1992

Judgement

KULDIP SINGH, J.:-

1. We pronounced our conclusions in this appeal on January 23, 1990 in the following terms:-

"After hearing the arguments we reserved judgment in this election appeal. The Election Commission has announced fresh elections to the Bihar Legislative Assembly. There is thus an urgency to announce the judgment. For the reasons to be recorded later on we allow the appeal with costs and set aside the order of the High Court dated March 30, 1988 ordering recount and allowing inspection of ballot papers. As a consequence the order of the High Court dated December 6, 1988 declaring the election of the appellant to Tundi Assembly Constituency as void and declaring respondent Uday Kumar Singh as duly elected is also set aside. The election petition filed by Shri Udai Kumar Singh challenging the election of the appellant Shri Satyanarain Dudhani is dismissed with costs. We quantify the costs as Rs. 7000/-".

2. We now proceed to give our reasons for the conclusions quoted above.

3. The appellant contested election to the Bihar Assembly Constituency from Tundi Constituency. He was declared elected on March 7, 1985 by defeating his nearest rival Uday Kumar Singh by a narrow margin of 24 votes. Uday Kumar Singh challenged the election of the appellant by way of an election petition on the sole ground that the counting of the votes was done illegally and against law.

4. It was pleaded in the election petition that 339 valid ballot papers in favour of the petitioner were neither counted nor rejected by the Counting Supervisor. 35 valid votes in favour of the petitioner were not counted in his favour on the false plea that the ballot papers were missing. It was also claimed in the petition that irregularities committed in the fifth round of counting at table No. 8 in respect of booth No. 64 materially affecting the result of the election. 30 votes were counted less in booth No. 3 by the Counting Supervisor. Similar allegations in respect of counting were alleged in the election petition.

5. The appellant-respondent vehemently denied the allegations. According to him no objection of any kind was raised either by the petitioner or by any of his counting agents at the time of counting of votes. He stated that on the conclusion of the counting when the petitioner came to know that he

was losing by 24 votes he filed cryptic objections before the Assistant Returning Officer. The objections were thoroughly examined and a detailed order was passed by the Assistant Returning Officer rejecting the objections.

6. The High Court by its order dated March 30, 1988 ordered recount and allowed inspection of ballot papers. As a result of recount and the inspection of ballot papers the High Court came to the conclusion that the election petitioner had polled majority of 26 votes and as such was required to be declared elected. High Court allowed the election petition and declared the petitioner respondent elected to the Bihar Legislative Assembly. This appeal under S. 116-A of the Representation of the People Act, 1951 is by Satyanarain Dudhani who was the returned candidate.

7. We have heard learned counsel for the parties at length. We are of the view that the High Court was not justified in ordering recount and allowing inspection of ballot papers. On the completion of the counting of votes on March 7, 1985 the respondent-petitioner filed objections before the Returning Officer in the following terms:

"In spite of objection raised by our representatives, votes in our favour were either rejected or they were counted in favour of the opposite party. Therefore, it is requested that votes may be recounted."

8. The Returning Officer immediately asked the Assistant Returning Officer A. K. Sinha to give clarification regarding the objections. Shri Sinha clarified in writing that during the counting of votes, the objector did not raise any objection either orally or in writing and he further stated that the objection was raised on the completion of the counting when it became obvious that he was losing by 24 votes. The Returning Officer thereafter, heard the parties at length. He passed speaking order running into five pages. He rejected the objections on the following reasoning:-

"After hearing both the parties, clarification of Assistant Returning Officer and after inspection made by myself I have come to this conclusion that there was no impropriety in counting of votes and no complaint was received. After completion of counting the complaint in question was made. There was no complaint in writing or . on the spot regarding the arrangement of tables for counting. Supervisory officer had not indicated any error. The appointment of counting agents was done on the request of the candidates. The tables were given according to the number of agents and vigilance was kept on the counting tables. I do not find any shortcomings. No complaint was filed by candidate Shri Uday Kumar Singh. I am satisfied that there is no substance in this complaint and it has no basis. Therefore it is not tenable. Therefore prayer by candidate Shri Uday Kumar Singh for recounting cannot be accepted."

9. The Returning Officer in his order also stated that he had at random checked the votes after he received the complaint from Shri Uday Kumar Singh. The Returning Officer in his order rejecting the application for recount further stated as under:

"After the complaint was received, because the margin in winning was low, I wanted to satisfy myself if there were any invalid votes in valid votes and therefore, stack was inspected to see that invalid votes were not counted. Taking both the points in view I made at random check of both rejected votes and valid votes. I found that whatever valid votes were declared valid there was no invalid vote in them. I also

found that no invalid votes were counted while valid votes were counted".

10. It is thus obvious that neither during the counting nor on the completion of the counting there was any valid ground available for the recount of the ballot papers. A cryptic application claiming recount was made by the petitioner-respondent before the Returning Officer. No details of any kind were given in the said application. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the returning Officer. We are of the view when there was no contemporaneous evidence to show any irregularity or illegality in the counting. Ordinarily, it would not be proper to order recount on the basis of bare allegations in the election petition. We have been taken through the pleadings in the election petition. We are satisfied that the grounds urged in the election petition do not justify for ordering recount and allowing inspection of the ballot papers. It is settled proposition of law that the secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.

11. As stated above only three line objection application was filed before the Returning Officer. No objection whatsoever was raised during the counting and no irregularity or illegality was brought to the notice of the Returning Officer. Even the material in the election petition has been pleaded with the object of having a fishing enquiry and does not inspire confidence.

12. We, therefore, allow the appeal with cost and set aside the order of the High Court dated March 30, 1988 ordering recount and allowing inspection of ballot papers. As a consequence the order of the High Court dated December 6, 1988 declaring the election of the appellant to Tundi Assembly Constituency as void and declaring respondent Uday Kumar Singh as duly elected is also set aside. The election petition filed by Shri Uday Kumar Singh challenging the election of the appellant Shri Satyanarain Dudhani is dismissed with costs. We quantify the costs as Rs. 7000/-. Appeal allowed.

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