

Akhand Pratap Singh Yadav

Vs

Kunwar Surendra Pratap Singh and Others

Civil Appeal No. 2668 of 1992

(J.S. Verma, K. Venkataswami JJ)

18.01.1996

JUDGMENT

1. Aggrieved by the dismissal of his Election Petition No. 36 of 1990 on the file of High Court of Madhya Pradesh, the appellant has filed the present appeal under Section 116-A of the Representation of the People Act, 1951, hereinafter called the Act.
2. In the election held in the month of February, 1990 for No.44-Jatara Constituency in the District of Tikamgarh, Madhya Pradesh, the appellant along with 24 other candidates contested in that constituency by filing nomination. The appellant polled 13,716 votes while respondent No. 2 was polled 15,221 votes. Respondent No.2 having secured 1505 votes, more than the votes polled by the appellant, was declared elected to the said Constituency. The appellant challenged the election of the second respondent by filing the Election Petition in the High Court.
3. The main grounds of attack in the Election Petition were that his full name is 'Akhand Pratap Sing Yadav', but in the voters' list as well as in the ballot papers his name was shown as 'Akhand Pratap Singh'. The failure to give his surname 'Yadav' both in the voters' list and in the ballot papers had 'materially affected the voting and the result of the returned candidate to the prejudice and detriment' of the appellant. According to the appellant he had canvassed throughout the Constituency giving prominence to his full name, namely, 'Akhand Pratap Singh Yadav, Whereas in the ballot papers his name was mentioned as 'Akhand Pratap Sigh' sounded similar to the name of the returned candidate, namely ' Surendra Pratap Singh' which created confusion in the minds of the voters in particular amongst the rural and uneducated voters who were familiar with the Appellant's /petitioner's name as 'Yadav'.
4. The second ground of attack was that that the Returning Officer failed to prepare a complete layout of the counting hall for each constituency and also failed to give the appellant a notice of the time and place for counting of votes at least one week before the date fixed for counting as required by the rules and guidance contained in the handbook issued for the guidance of the Returning Officer. As a consequence of that the appellant could not prepare his list of required counting agents. It was also averred in the Election Petition that adequate arrangements for counting of votes were not made by the Returning Officer and that there were open malpractices of manipulations; in the counting of votes in favour of the returned candidate. Yet another contention taken in the election petition was that the Returning Officer had refused to admit his counting agents in the counting halls. The appellant was informed that there would be 14 tables for counting and two tables for Returning Officer in the counting hall. The petitioner could, however, manage to submit

only ten completed forms with photographs of his proposed counting agents. He could, not submit four more forms with photographs of his proposed counting agents for want of sufficient time and the Returning Officer declined to receive his forms stating that they were not given within the time fixed for that purpose. This resulted in some counting tables unattended on behalf of the petitioner /appellant. The election of second respondent also was challenged on the ground that the petitioner's/appellant's application for re-count was arbitrarily rejected by the Returning Officer and if a re-count had been allowed, that appellant would have got more votes than respondent No.2.

5. In the High Court the petitioner examined himself as P.W. 2, apart from other witnesses. The appellant has also filed a number of documents in support of his case. The learned Judge on a careful consideration of the pleadings, documents and the oral evidence found that the appellant had not filed any application under rule 8/9 of Election Rules before the Returning Officer for addition of his surname 'Yadav' to his name in the list of the nominated candidates, as alleged. The non-addition of the petitioner's surname 'Yadav' in the ballot papers did not materially affect the voting and result to the detriment of the appellant. The learned Judge further held that though it was obligatory on the part of the Returning Officer to prepare the layout of the counting hall and given notice of time and place of counting votes to all the candidates, well in advance, the failure to do so, on the facts of this case, did not materially affect the results of the election. The further finding of the learned Judge was that the appellant failed to prove that he was wrongly denied to add four more counting agents on the ground that the request was made after expiry of the time while such request was acceded to for admitting counting agents of the B.J.P. candidates. The learned Judge also found that the allegations with respect to arrangement and malpractices in the counting of votes were not proved by giving necessary material. In the light of the findings, the High Court dismissed that Election Petition with costs.

6. The learned counsel for the appellant, while reiterating the contention regarding the failure on the part of the Returning Officer to add his surname also submitted that Jatara Constituency consisted of 148 polling booths and the counting of votes factually took place only for the 147 polling booths and the votes in one polling booth had not been counted.

7. Let us dispose of the additional contention which was not raised before High Court at the outset. A perusal of the Election Petition does not show that such a contention, though serious one, has been raised and presumably for that reason no issue was framed on that aspect. Even before us, the learned counsel was not in a position to contend that such a plea was taken but not considered. He could not also argue that sufficient evidence was let in to substantiate that plea. The contention being one which requires evidence to be let in, we are not able to appreciate the contention in the absence of pleadings and evidence and therefore, we reject the same.

8. The learned counsel for the appellant, no doubt elaborately argued on the question concerning the failure on the part of the Election authorities in not adding the surname of the appellant in the voters' list and in the ballot papers. The learned Judge has also dealt with this aspect elaborately by referring to the evidence of the appellant PW 2 and one Subhash Chandra Suri, Grade 'I' Clerk in the Collectorate, Tikamgarh (PW1) who was on Election duty in the Election Office during February, 1990 Assembly elections. Except the oral assertion of the appellant as PW 2 that he made the application under Rule 8 requesting the Returning Officer to correct his name in the list of nominated candidates by adding his surname 'Yadav' against his name " Akhand Pratap Singh' shown in the voter list, no other documentary evidence was produced before the High Court. Further from the evidence of PW1, it was found that the appellant neither filed any application for suffixing his surname 'Yadav' to his name, nor was there any order of the Returning Officer

including the surname, as asserted by the appellant, in the records. It was also further brought out in the oral evidence of the appellant as PW 2 that he had contested Lok Sabha elections without the surname 'Yadav' that he always used to sign as 'Akhand Pratap Singh' only and in the present Election Petition he has only signed as 'Akhand Pratap Singh' without suffixing his surname 'Yadav'. The contention that he was popularly known as 'Yadav' and he canvassed through-out the constituency giving prominence to his full name 'Akhand Pratap Singh Yadav' and failure to add his surname in the ballot papers created confusion in the minds of voters especially amongst the rural uneducated voters cannot be accepted; for the simple reason that the rural and uneducated voters go by the symbol allotted to the candidates and not by the name of the candidates. For all these and other well-founded reasons, the learned Judge has rejected the contention and we are in agreement with that conclusion.

9. Even on other issues the findings of the learned Judge are very well based on evidence and we find no good reason to differ from the learned Judge.

10. In the result we find no ground to interfere with the Judgment and Order of the learned Judge. Consequently the appeal fails and is dismissed with costs.

Appeal dismissed.