

SINGLE BENCH

P.R. No. 5512/05
Presented by Amal Sahas
dated 21/12/05

0.5.100/-

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

WRIT PETITION. NOS 264 OF 2005

BETWEEN

✓ Prahalad S/o Charan Singh, by caste Gond, aged about 62 years,
resident of Village Lailunga, Tahsil and Police Station Lailunga
District Raigarh (CG).

PETITIONER

AND

- ✓ 1. The State of Chhattisgarh,
Through the Specified Officer/ Sub Divisional Officer,
Gharghoda District Raigarh (CG).
- ✓ 2. Suresh Kumar S/o Shanker Lal, by caste Bhil, resident of
Lailunga, Tahsil and Police Station Lailunga District Raigarh
(CG).
- ✓ 3. Mahesh S/o Chaitu Ram by caste Oraon, resident of Lailunga,
Tahsil and Police Station Lailunga District Raigarh (CG).
- ✓ 4. Anup Sai S/o Nanhi Ram, by caste Kanwar, resident of
Lailunga, Tahsil and Police Station Lailunga District Raigarh
(CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION
OF INDIA



47
(47)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 5264 of 2005

Petitioner : Prahalad S/o Charan Singh

VERSUS

Respondents : State of CG and others.

**Shri Awadh Tripathi learned counsel for the petitioner.
Mr. Sandeep Dubey GA for the respondent No.1/state.
Mr. B.D. Guru learned counsel for respondent No. 2.**

ORDER

(Passed on 30-11-2005)

Dhirendra Mishra, J

This petition has been filed by the petitioner under Articles 226/227 of the Constitution of India against the order dated 5.10.2005 passed by Sub Divisional Officer/Specified Officer (Panchayat) Gharghoda.

2. The case of the petitioner is that he is the elected Sarpanch of Gram Panchayat Lailunga. Respondent No.2 who was also a candidate for the Panchayat election, lost the election by one vote and thus had preferred an election petition under section 122 of the Panchayat Raj Adhiniyam on the ground that on the date of counting the associates of the petitioner had illegally tried to enter in Polling Booth No. 47, fought with the Police Officers posted in the said booth and thereby created an atmosphere of terror as a result of which the ballot papers were brought by the concerned Presiding Officer to the Janpad Panchayat Lailunga in the absence of the election agents. Thereupon, respondent No.2 complained to the Election Officer, Lailunga and requested for recount of votes. However, prayer of respondent No.2 regarding recount was denied and the petitioner was declared elected by one vote. It is also alleged that that in polling booth No. 49 total votes of 423 were cast but they were informed that number of votes cast in that booth was 425. It was also alleged that there was some discrepancy in the number of the rejected votes. The Specified Officer by the impugned order dated 5.10.2005 allowed the election petition of respondent No.2 recording a finding that

the allegation of the respondent No.2 that there was disturbance at the time of counting in polling booth No. 47 and there was no arrangement for adequate light at that time, is very much established by the statements of the witnesses and as a result of which counting could not be held on the appointed day and thus for all these reasons the recount of votes had been ordered.

3. Learned counsel for the petitioner has challenged the above order on the ground that the Specified Officer ought to have rejected the election petition as the same was not in conformity with the rules 3, 11 and 12 of the (Election Petition, Corrupt Practices and disqualification for Membership) Rules, 1995 (hereinafter referred to as 'Rules of 1995'). It is further alleged that respondent No.2 did not annex as many attested copies of the petition as there are respondents and the Tribunal was required to follow the procedure prescribed in the Code of Civil Procedure as per rule 11 of the Rules of 1995 and accordingly ought to have framed the issues before proceeding to record evidence. It is further argued that as per Rule 80 (1), Rule 76 (2) and Rule 77 of the M.P. Panchayat Nirvachan Niyam, 1995, the election petitioner or his agent is required to file an application in writing to the Returning Officer or any authorized officer for recount stating the grounds on which demand for recount is made. However, no such document was filed along with the election petition and accordingly the tribunal has committed an illegality by permitting re-count solely on the ground that the petitioner was elected by a slender margin of one vote. It is argued that the slender margin cannot be a ground for re-count. Learned counsel for the petitioner relied on the decisions of the M.P. High Court in the matter of Amol Singh Vs. Hamir Singh reported in 1996 (1) MPWN 122, in the matter of Lakhan Lal Patel Vs. State of M.P. and others reported in 2002 (3) MPLJ, 41 and in the matter of Mohan Singh Vs. Satendra Singh and others reported in 2003 (1) MPLJ 234.

4. On the other hand learned counsel for the respondents opposing the petition submits that all the grounds raised by the petitioner were never raised in reply to the election petition or at the time of argument and

the same was raised for the first time on 25.7.2005 in the written argument. It is argued that rule 11 of the Rules of 1991 is not mandatory and in appropriate cases if the facts and circumstances of the case warrant, re-count may be ordered. In support of the submission, learned counsel for the respondents relies on the judgment of the Supreme Court in the matter of T.A. Ahammed Kabeer Vs. A.A. Azeez and others reported in 2003 (5) SCC 650 and in the matter of Sohanlal Vs. Babu Gandhi and others reported in AIR 2003 SC 320.

5. According to learned counsel for the petitioner Rules of 1995 have been held to be mandatory which says that attested copies of the documents duly signed by the election petitioner have to be supplied to the counsel for the respondents and since according to the learned counsel for the petitioner, the respondent No.2 in this case has not supplied the same, the tribunal ought to have dismissed the election petition at the outset.

6. Relying on the judgment in the matter of Mohan Singh (supra) learned counsel for the petitioner submits that as per rule 80 of Panchayat Nirvachan Niyam, 1995 in the absence of an application being submitted to the Returning Officer for recounting immediately after announcing the result, the recount of votes cannot be ordered.

7. On the other hand learned counsel for the respondents relying on the judgment of the Supreme Court in the matter of Sohanlal Vs. Babu Gandhi and others (supra) submits that the Court is bound to consider the prayer for recount in the election petition under section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam and where case is made out, the Tribunal may direct recount depending upon the evidence led by the parties. Further relying on the decision of the Supreme Court in the matter of T.A.Ahammed Kabeer Vs. A.A. Azeez and others (Supra) learned counsel for the respondents submits that in an election petition mere question to be decided is correct counting of votes without entering into an adjudication as to the propriety, impropriety or validity of acceptance, rejection or reception of any vote. He further submits that the rule of practice should not be unduly stretched; for the purity of the

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election process needs to be preserved unpolluted so as to achieve the predominant goal of democracy that only he should represent the constituency who has been chosen by the majority of the electors.

8. I have heard learned counsel for the parties.

9. So far as the objection of the petitioner that non compliance of Rule 3 of 1995 is concerned, there is no objection from the side of the petitioner either in his reply or in the subsequent proceedings and the same was raised for the first time in the written arguments submitted by him, and therefore I am of the opinion that this objection cannot be entertained at this stage.

10. So far as the question of non framing of issues is concerned, the petitioner has not been able to show as to what prejudice has been caused to the petitioner on account of non framing of issues. Thus the second question can also not be sustained.

11. Learned Tribunal after going through the pleadings of the respective parties and on the basis of oral evidence on record has arrived at the conclusion that on the date of polling and counting there was disruption in the election process in booth No. 47 which affected the counting. Learned Tribunal further recorded a finding that the counting was conducted under inadequate light arrangement and it is only because of these disturbances the petitioner has won the election by one vote. Thus keeping in view all these lacunas the recount has been ordered by the Tribunal.

12. Thus in view of the aforesaid discussion and keeping in view the judgment of the Supreme Court cited above, I am of the opinion that the instant petition is devoid of substance. The same is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

