

HIGH COURT OF JAMMU AND KASHMIR

JAMMU

**OWP.No. 1435/2011
CMA.No. 1984/2011**

Date of order: March 14, 2013

Prithvi Raj Bhagat
Vs.
State and Ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

- | | |
|--|------------|
| 1. Whether approved for Law Journal? | Yes |
| 2. Whether approved for publication in Press? | |
-

Appearing counsel:

For Petitioner (s) : Mr. I.H.Bhat, Advocate.
For respondent(s) : M. B.B. Kotwal, Adv, for no. 4
Mrs. Z.S.Watali, Dy.AG.

(Oral)

The dispute in this Writ Petition is raised about the election of private respondent as Sarpanch of Panchayat Halqa Manthla-27.

The petitioner was candidate in the elections, but lost the same. He filed appeal before the appellate authority in terms of Section 43 of the Panchayati Raj Act 1989 (for short "**Act of 1989**"). The appeal has been dismissed that is how the petitioner has landed in this Court by filing Writ Petition, wherein he has

challenged the election of the private respondent as also the order of the appellate authority.

Learned counsel for the petitioner submitted that the election process stands vitiated as bogus votes were cast and that the petitioner's agents were not permitted to enter into the counting hall and his signatures on form PEL-17 were obtained under pressure and duress.

The appellate authority has stated in the impugned order that the Counting Assistants in their recorded statements, have stated that the counting process was smooth, fair and free, and no objection was raised about same by the candidates. It is also stated that the signatures of the candidates and counting staff were obtained on form PL-17 during the counting of votes. There being no material placed on record displacing the findings recorded by the appellate authority, the court has no option, but to accept these findings of the appellate authority.

The contention of the learned counsel for the petitioner that the signatures of the petitioners were obtained under duress on form PL-17, cannot be accepted for the reason that the petitioner

before the appellate authority had stated that his signatures were obtained on blank paper and there is no such averment made that the signatures were obtained under pressure and duress. The further contention of learned counsel for the petitioner that the agents were not permitted to enter into the premises where the votes were to be counted, cannot be accepted in view of the mandate contained in Rule 35 (1) of the Panchayati Raj Rules 1996, which provide that the counting of the votes shall commence in presence of the candidates or their agents. Since, admittedly, the petitioner was himself present at the time of counting of the votes, so there was no requirement of allowing the agents to enter into the counting premises.

For the above stated reasons this Writ Petition being meritless is dismissed alongwith connected CMA(s).

(Muzaffar Hussain Attar)
Judge

Jammu

March 14, 2013

Shamim Ahmad