

Neutral Citation No. - 2023:AHC:198498

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 7489 of 2023

Petitioner :- Prabhu Dayal

Respondent :- The Chief Election Commissioner And 30 Others

Counsel for Petitioner :- Ashok Kumar Srivastava

Counsel for Respondent :- C.S.C., Tarun Agrawal

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner and Shri Shyam Sundar, learned Standing Counsel appearing for the State-respondents.

2. This petition has been filed seeking to challenge the order dated 24.05.2023 passed by the District Judge, Sonbhadra in Election Petition No.6 of 2021 (Prabhu Dayal vs. Sarita and others). Further relief has been sought for a direction to the respondent nos. 1, 2 and 3 to declare the result of the respondent no.4-Sarita to be illegal in the election of 2021 as member of the District Panchayat Kshettra 03, Ramgarh, District Sonbhadra. Yet another relief has been sought for a direction to the respondent nos. 1, 2 and 3 to declare the petitioner to be legally elected member of the District Panchayat Kshettra 03, Ramgarh, Sonbhadra for the election 2021.

3. The sole contention of the learned counsel for the petitioner is that during the period of counting of votes, the agents of the petitioner or the petitioner were not allowed to sit at the place of counting but the petitioner was made to stand at a distance of 10 metres from the place of counting.

4. Learner Standing Counsel has opposed the petition and has drawn the attention of the Court to paragraph 38 of the impugned judgment of the District Judge which records the finding while

deciding the issue nos. 1 and 2, to contend that the petitioner himself was outside the place of counting of votes and he did not appoint any counting agents and the person whom the petitioner was attempting to appoint as his agent was outside the place of counting of votes. It is contended that, under the circumstances, there was no error on part of the Returning Officer. It is contended that a categorical finding was returned by the District Judge that the procedure was duly followed and the ballots were accepted under the provisions of Rules. It is contended that accordingly it was held that election of the respondent no.1-Sarita was valid, and that the petitioner had failed to prove that respondent-Sarita was not a validly elected member. Accordingly, the issue no. 1 and 2 were decided together.

5. A perusal of the judgment of the District Judge reveals that four issues were framed, which are as follows:-

"1- Whether election of OP no.1 Sarita in election of Panchayat Chunav, 2021 Keshtra 3, Ramgarh as member is illegal ?

2- Whether petitioner is legally elected member in above election ?

3- Whether petition is time barred ?

4- What relief, petitioner is entitled ?"

6. Issue nos.1 and 2 were decided together. After considering the facts of the case as well as the testimony of the witnesses, the court was of the opinion that in view of the testimony of PW1, Prabhu Dayal (the petitioner), during his cross-examination, it transpired that at the time of the counting of votes, he had not appointed his agent. He had submitted his Aadhaar Card and photograph to the Returning Officer but had not appointed his agents. At the time of counting of votes, the petitioner was outside the campus. The election agents were standing at a distance of 4 - 5 ft. from the place of counting of votes, and from that place the entire procedure could be seen. All the ballot

boxes were opened after being shown to the election agents. The petitioner had received a total of 161 votes and the winning candidate, Sarita, received 623 votes. Accordingly, in the opinion of the court, it was proved from the cross-examination of PW1 that when the counting of votes was taking place, the petitioner was outside the campus of counting of votes, whereas the agents of other candidates were standing at the place where the votes were being counted. Why the petitioner was not at the place of counting of votes, he had not specified in his testimony. On the allegation that the defendant no. 29 and 30 had made the petitioner stand outside, the court observed that there was no credible evidence and reason. Accordingly, after referring to the provisions of Rules No. 49, 50, and 51 of the U.P. Kshettra Panchayat and Zila Panchayat (Election of Members), Rules 1994, the District Judge recorded his finding as under.

“38. न्यायालय के मत में नियम 49 के अन्तर्गत निर्वाचन लड़ने वाला उम्मीदवार, निर्वाचन अभिकर्ता व उसका गणना अभिकर्ता मतों की गणना के समय उपस्थित रहने के लिए हकदार है परन्तु इस मामले में याची स्वयं ही मतगणना स्थल से बाहर था और उसका कोई मतगणना अभिकर्ता नियुक्त ही नहीं हुआ था और जिसे याची नियुक्त करने का प्रयास किया था वह भी मतगणना स्थल से बाहर था। ऐसी स्थिति में जब याची स्वयं ही उपस्थित नहीं था तो उसमें निर्वाचन अधिकारी की कोई त्रुटि नहीं मानी जा सकती है। नियम 50 के अन्तर्गत गणना की प्रक्रिया का विवरण दिया गया है। मैंने इसका सम्यक् परीक्षण किया। जो भी प्रक्रिया अपनायी गयी है वह इस नियम के अनुसार अपनायी गयी है और नियम 51 के अनुसार मतपत्रों को स्वीकार किया गया है। इसके विपरीत याची पक्ष साबित नहीं कर पाया है कि मतपत्रों को गलत ढंग से अस्वीकार किया गया। याचिका को साबित करने का सिद्धिभार याची पर था परन्तु ऐसा नहीं कर सका है। नियमानुसार विजयी प्रत्याशी की घोषणा भी की गयी है। इस प्रकार जो भी साक्ष्य उपलब्ध है उससे यह साबित है कि विपक्षी सं०-1 सरिता का पंचायत चुनाव 2021 क्षेत्र - 03 रामगढ़ के सदस्य के रूप में जो चुनाव हुआ है, वह अवैध नहीं है बल्कि वैध है और याची यह साबित नहीं कर सका है कि विपक्षी सं०-1 सरिता पंचायत चुनाव में विधितः चुनी हुई सदस्य नहीं है। इस प्रकार वाद बिन्दु सं०-1 व 2 नकारात्मक रूप से निर्णीत किये जाते हैं।”

7. Once this finding was recorded with regard to issues no. 1 and 2, the other issues were accordingly adjudicated and the election petition was dismissed.

8. Learned counsel for the petitioner has not been able to demonstrate any violation of rules or perversity in the order of the District Judge while adjudicating the election petition that may warrant interference.

9. This petition is accordingly **dismissed**.

Order Date : 13.10.2023

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(Jayant Banerji, J)