

Court No. - 19

Case :- WRIT - C No. - 2288 of 2024

Petitioner :- Indradev

Respondent :- Shri Umesh Singh And 19 Others

Counsel for Petitioner :- Sharad Pathak,Lalta Prasad Misra

Counsel for Respondent :- Ashok Kumar Srivastava,Arun Kumar Singh Parihar,Avinash Srivastava,B/R0135,Dilip Mishra,Raj Kumar Upadhyaya (R.K.Upadhyaya),Sudeep Srivastava

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Sharad Pathak, the learned counsel for the petitioner, Sri R.K.Upadhyaya, learned counsel for the opposite party no.1, Sri Ashok Kumar Srivastava, learned counsel for the opposite party no.10 and Sri Sudeep Srivastava, learned counsel for the opposite parties no. 2, 3, 4, 5, 7, 8, 11 to 16.
2. By means of the writ petition filed under Section 226 of the Constitution of India, the petitioner has challenged the validity of the judgment and order date 27.02.2024 passed by the District Judge, Pratapgarh in Election Petition No. 01 of 2021 filed under Section 27(2) Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961.
3. The opposite party no.1 had filed the aforesaid election petition *inter alia* stating that he was a candidate in the election held for the post of member of Zila Panchayat, Kshetra Mangraura III, Ward No. 11, Development Block Mangraura, Pargaana and Tehsil Patti, District Pratapgarh and he was allotted Polling symbol Axe. The opposite parties No. 1 to 17 in the election petition i.e. the petitioner and opposite parties no. 2 to 17 in this writ petition, were also candidates in the election. It was alleged in the election petition that serious irregularities were committed in preparation of the voters list.

4. In para 5 of the election petition it was pleaded that a total of 27,928 ballots had been casted and 1933 ballots had been cancelled whereas a total of 27,160 ballots had been counted, out of which 1328 had been cancelled, whereas in para 7 of the election petition it was pleaded that a total of 27,160 ballots had been casted whereas 27,928 ballots had been counted and thus 768 ballots were counted in excess. The opposite party no.1 had contended that 3896 votes were casted in his favour and 833 votes casted in his favour were cancelled and the returned candidate (the writ petitioner) got 3818 votes. The opposite party no.1 claimed that he had won by 78 votes and the opposite parties no. 18 to 20 to the election petition – the Assistant Returning Officer, Returning Officer and District Election Officer, had made an announcement to this effect at the polling center, but a certificate to this effect was not given to him and it was told that the same will be provided at the district headquarter on the following day. When the election petitioner reached the district headquarter on the following day, the writ petitioner was declared successful by committing serious irregularities in counting of ballot papers, whereby 833 votes casted in favour of the election petitioner were cancelled and 768 excess votes were counted, which affected the result of the election.
5. In para 10 of the election petition seven grounds were taken by the election petitioner for assailing validity of the election which are as follows:-
- (i) The counting was not done in accordance with the provisions of the U. P. Kshetra Panchayat and Zila Panchayat Act, 1961 and the relevant rules and the counting sheet was prepared illegally and it is erroneous, ambiguous and misleading.
 - (ii) The counting was not done in an independent, unbiased and legal manner.
 - (iii) A total of 27,160 votes had been casted and 768 votes have been counted in excess of the votes casted. The election petitioner was told that his 3896 votes were valid and 833 votes

were cancelled. He had been told that the returned candidate had got 3818 votes and thus he had won by 78 votes and the opposite parties 18 to 20 had made a declaration to this effect. However, it was told that the winning certificate will be given at the District Headquarter on the following day. Subsequently in absence of the election petitioner, his 833 valid votes were cancelled, his 78 votes were added to the votes of the returned candidate and the writ petitioner was declared to have won the election.

- (iv) The election petitioner's 78 votes were added to the votes of the returned candidate and in place of 27,169 votes that were casted, 27,928 votes were counted. Thus 768 excess votes were counted.
 - (v) The election petitioner's valid votes were illegally cancelled and 768 excess votes were counted and by doing this, the writ petitioner was declared elected with a margin of 501 votes.
 - (vi) The counting sheet is ambiguous and misleading, it is based on counting of false votes and it is irregular and void.
 - (vii) The election petitioner had been declared elected with a margin of 78 votes but by committing illegality in counting of votes, the writ petitioner was declared to have won the election by 501 votes. There is a narrow margin of victory and it would be in the interest of justice that a recounting of votes be carried out.
6. The writ petitioner - opposite party no.1 to the election petition, and some other defendants filed their written statement/objections.
7. The trial court had framed the following nine issues on 01.04.2023: -
- (i) Whether in counting of votes for election of member of Zila Panchayat Mangaraura III, Ward No. 11, Patti, Pratapgarh votes were counted in excess of votes that were actually polled and thus the election result was declared in an illegal manner?

- (ii) Whether 833 votes casted in favour of the election petitioner Umesh Singh were not included in counting and those were cancelled illegally, which affected the election result?
 - (iii) Whether 78 votes casted in favour of the election petitioner Umesh Singh were counted in favour of the Writ Petitioner Indradev? If yes, then its effect.
 - (iv) Whether 768 votes casted in favour of some other candidates were irregularly included in the votes of the Writ Petitioner and thus he was illegally declared successful?
 - (v) Whether the calculation sheet was prepared against the actual votes casted in favour of the candidates?
 - (vi) Whether the calculation sheet for election of member of Zila Panchayat Mangaraura III, Ward No. 11, Patti, Pratapgarh has not been prepared in an impartial manner?
 - (vii) Whether the petitioner was entitled to a recounting of votes on the basis of averments made in para 10 of the petition?
 - (viii) Whether the election of member of Zila Panchayat Mangaraura III, Ward No. 11 is liable to be declared illegal as it violates the rules and the law?
 - (ix) Whether the petitioner was entitled to any relief?
8. The election petitioner adduced his evidence in support of the election petition on 12.04.2023. When the matter was fixed for cross-examination of the election petitioner on 25.04.2023, he filed a supplementary affidavit along with an application under Section 151 C.P.C. stating that he has already filed his examination-in-chief (Paper no. 39 A) but some facts were left to be incorporated due to inadvertence of the author of the affidavit, which were being brought to light by way of the supplementary affidavit.

9. The writ petitioner filed objections against the application stating that there were no pleadings regarding the facts sought to be brought on record by way of the supplementary affidavit.
10. On 25.04.2023, the writ petitioner filed an application before the District Judge stating that the issues no. 1 to 4 framed on 01.04.2023 deal with one issue and these should be reformulated as a single issue. The petitioner further stated that the issue no. 5 did not arise from the pleadings and it should be deleted. The District Judge disposed of this application by means of an order dated 24.05.2023 stating that issue no. 1 to 4 will be decided together at the time of final disposal of the petition. Regarding issue no. 5, the District Judge stated that the same will be disposed off in case its importance comes to light after considering the entire facts and material at the time of final decision of the petition.
11. The election petition was decided by means of the impugned judgment dated 27.02.2024, in which the District Judge has decided issue Nos.1 to 6 together. The objection of the writ petitioner that issue No.5 did not arise from the pleadings of the parties, which was ordered to be decided while decision of the election petition finally, has not been decided while allowing the election petition.
12. The opposite party No.1 to the election petition had raised a specific objection that the facts which had not been pleaded in the election petition, cannot be proved by leading evidence and the facts stated in the supplementary affidavit filed after the examination-in-chief of the election petitioner, cannot be taken into consideration by the Court. While dealing with this objection, the District Judge has held that the election petition was not a regular Civil Suit and it has to be decided keeping in view the principles of natural justice. He further held that the election petition should not be allowed or rejected merely on any technical ground.

13. At this stage, it would be appropriate to have a look at Rule 11 of the U.P. Zila Panchayat (Settlement and Dispute Relating to Membership) Rules, 1994, which reads thus: -

“11. Procedure before the Judge. - (1) Except so far as provided by the Act or in these Rules, the procedure provided in Civil Procedure Code, 1908 in regard to suits shall so far as it is not inconsistent with the Act or any provisions of these rules and it can be made applicable be followed in the hearing of the petitions :

Provided that-

- (a) any two or more petitions to the membership of the same person may be heard together ;*
- (b) the Judge shall not be required to record the evidence in full but shall make a memorandum of the evidence sufficient in his opinion for the purpose of deciding the case ;*
- (c) the Judge may, at any stage of the proceedings, require the petitioner to give further cash security for the payment of the costs incurred or likely to be incurred by any respondent;*
- (d) for the purpose of deciding any issue, the Judge shall only be bound to order production of or to receive only so much evidence, oral or documentary as he considers necessary ;*
- (e) any person aggrieved from the decision of the Judge may apply for review to the Judge within 15 days from the date of the decision and the Judge may thereupon review the decision.*

(2) The provisions of the Indian Evidence Act, 1872 (Act No. 1 of 1872) shall, subject to the provision of the Act and these rules, be deemed to apply in all respects in the proceedings for the disposal of the petition.”

14. Thus the District Judge has committed a patent error of law in holding that the election petition was not a regular Civil Suit and it has to be decided keeping in view the principles of natural justice only, as Rule 11 aforesaid provides that the election petitions are to be decided as per the procedure provided in Civil Procedure Code in regard to suits.
15. Order XIV C.P.C. deals with settlement of Issues and determination of suit on issues of law or on issues agreed upon. Rules 1 and 2 of Order XIV C.P.C. are being reproduced below: -

“1. Framing of issues.—

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Court to pronounce judgment on all issues.—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

16. It is clear from a bare reading of Rule 1 of Order XIV that issues have to be framed on the first date of hearing, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders. No issue can be framed which does not arise from the aforesaid material. Therefore, when issue no. 5 did not arise from the pleadings of the parties or from the examination of the parties under Order X Rule 2 – which was not done, issue no. 5 could not have been framed and no judgment could be given on this issue.

17. There are only two principles of natural justice - (i) no person can be a judge in his own cause and (ii) no person can be condemned un-heard. There is no principle of natural justice which may justify the trial Court's approach of ignoring the basic principle of dispensation of justice that all the cases are to be decided on the basis of pleadings of the parties and in absence of pleadings, no amount of evidence can be looked into. The District Judge has committed a patent error of law in ignoring this basic principle of dispensation of justice and rejecting the objection of the petitioner regarding lack of pleadings to support issue No.5.
18. Issue No.1 to 6 have been decided together and even while concluding the discussion on six issues, no separate specific findings has been recorded regarding the issue No.6. Order XIV Rule 2 C.P.C. provides that the Court shall pronounce judgment on all issues. Order XX Rule 5 C.P.C. mandates that the Court shall state its finding or decision, with the reasons thereof, on each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. Therefore, even while proceeding to decide several issues together, it was incumbent on the trial Court to give its finding on each of the issues and impugned order passed by the District Judge without giving the findings on each of the issues no. 1 to 6, does not fulfill the legislative mandate contained in Order XIV Rule 2 and Order XX Rule 5 C.P.C.
19. While deciding all the issues together, the District Judge has found that there was no evidence to establish as to how many votes of the return candidate were cancelled and how many votes of the election petitioner were cancelled. District Judge having himself recorded that there was no evidence to establish the aforesaid facts, the election of the return candidate could not have been set-aside on this count.
20. The District Judge found that there appears to be force in the contention of the election petitioner that it had been announced on the loud-speakers installed at the counting center that he had won the election. However, this finding is not supported by the statement of

the election petitioner made in his cross-examination, wherein he had categorically stated that at the close of the counting, the returning officer had told him that he had won by 78 votes, but no announcement to this effect was made. The R.O. had told him in a conversation that he had won by 78 votes and he should collect the winning certificate from Sadar Tahsil on the following day. The R.O. did not give him any round-wise counting details and no round-wise announcement was made by the R.O.

21. The District Judge has recorded a finding that in the counting sheet of Mangraura III, Ward No. 11, the votes casted in polling booth nos. 64 and 181 – Panchayatghar Nevra A, had also been included whereas those booths fall outside the constituency of Mangraura-III. Moreover, the votes casted at Polling booth Salhipur Kanas – Booth D, had not been included while preparing the calculation-sheet, which shows that the calculation-sheet had not been prepared properly. The learned Counsel for the Writ Petitioner has fairly conceded that this finding recorded by the District Judge is correct and this error committed while preparing the calculation-sheet needs to be corrected by the authorities, although as per him, it will not make any difference in the outcome of the election.
22. The District Judge has found that the counting sheet was erroneous, but it was not a fit case for ordering recount of votes and he has allowed the election petition and set-aside the election.
23. The learned counsel for the petitioner has submitted that the error committed in preparation of the counting sheet was a curable defect and this defect ought to have been cured by preparing a correct counting sheet. Further submission of learned counsel for the petitioner is that even if this defect is cured, it will not affect the result of the election in any manner and in fact it would result in an increase in the votes of the returned candidate.
24. The learned counsel for opposite party No.1 has vehemently opposed the writ petition and he has submitted that numerous illegalities were committed in conduct of the election, the most serious of those being

non-declaration of result of the counting immediately after closure thereof in favour of the opposite party No.1 and subsequent illegal alteration of the result by issuing the winning certificate in favour of the writ petitioner. He has further submitted that issue no. 7 was framed by the District Judge regarding recounting of the votes and this Court should at least order a recount of the votes.

25. When the District Judge has found that there was no evidence to establish as to how many votes of the returned candidate were cancelled and how many votes of the election petitioner were cancelled, the election of the returned candidate could not have been set-aside on this count.
26. The finding of the District Judge that there appears to be force in the contention of the election petitioner that it had been announced on the loud-speakers installed at the counting center that he had won the election, is against the evidence on record in the shape of the statement of the election petitioner made in his cross-examination, wherein he had stated that at the close of the counting, the returning officer had told him that he had won by 78 votes, but no announcement to this effect was made. The R.O. had told him in a conversation that he had won by 78 votes and he should collect the winning certificate from Sadar Tahsil on the following day. Therefore, this finding is perverse.
27. The alleged personal communication made by the returning officer with the opposite party no.1 cannot be the basis of setting aside election of the returned candidate when there is nothing on record to establish that the opposite party No.1 had in fact been declared successful prior to issuance of winning certificate in favour of the petitioner.
28. So far as the submission of the learned Counsel for the respondent no. 1, that this Court should order a recount of votes, the law in this regard was explained in **Chandrika Prasad Yadav v. State of Bihar**, (2004) 6 SCC 331, wherein the Hon'ble Supreme Court held that: -

“20. It is well settled that an order of re-counting of votes can be passed when the following conditions are fulfilled:

(i) a prima facie case;

(ii) pleading of material facts stating irregularities in counting of votes;

(iii) a roving and fishing inquiry shall not be made while directing re-counting of votes; and

(iv) an objection to the said effect has been taken recourse to.

21. The requirement of maintaining the secrecy of ballot papers must also be kept in view before a re-counting can be directed. Narrow margin of votes between the returned candidate and the election petitioner by itself would not be sufficient for issuing a direction for re-counting.”

29. The election petitioner had pleaded in para 10 of the petition that he had been declared elected with a margin of 78 votes but by committing illegality in counting of votes, the writ petitioner was declared to have won the election by 501 votes, there is a narrow margin of victory and it would be in the interest of justice that a recounting of votes be carried out. The allegation that the election petitioner had been declared elected with a margin of 78 votes, was not supported by the statement of the election petitioner himself, as has already been discussed above. The victory margin in the present case cannot be said to be a narrow margin and even if it is taken to be a narrow margin, it does not provide a good ground to order a recounting of votes in view of the law laid down by the Hon’ble Supreme Court in **Chandrika Prasad Yadav** (Supra).
30. Election of a returned candidate can only be set aside on the proof of illegalities affecting the purity of election and it cannot be interfered lightly, on the basis of unsubstantiated allegations.
31. In view of the aforesaid discussion, the writ petition is ***allowed***. The impugned judgment and order dated 27.02.2024 passed by the District Judge, Pratapgarh in the Election Petition No. 01 of 2021 filed under Section 27 (2) Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, setting aside election of the petitioner, is hereby ***quashed***.

32. The matter is remanded to the District Judge for passing appropriate orders for preparation of a correct calculation sheet in light of the observations made in this order and the finding recorded in the judgment and order dated 27.02.2024, that in the counting sheet of Mangraura III, Ward No. 11, the votes casted in polling booth nos. 64 and 181 – Panchayatghar Nevra A, had also been included whereas those booths fall outside the constituency of Mangraura-III and that the votes casted at Polling booth Salhipur Kanas – Booth D, had not been included while preparing the calculation-sheet.

(Subhash Vidyarthi J)

Order Date: 19.04.2024

Preeti.