

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION ST.NO.15870 OF 2014

Santosh Laxman Jadhav .. Petitioner
-Versus-
Sachin Shivram Kolape & Ors. .. Respondents

Mr.V.S.Talkute for petitioner
Mr. Dilip Bodake for respondent No.3
Ms.M.S.Bane, B Panel Counsel for respondent State.

CORAM : R.M.SAVANT, J

DATE : 16th APRIL 2015.

PC.:-

1] The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 26th April 2014 passed by the learned Dist.Judge II, Satara by which order, the election petition being Election Petition No.7 of 2012 and the application No.Exh.27 filed by the petitioner for recounting of votes came to be dismissed.

2] The petitioner was a candidate for elections held to the Zilla Parishad, Satara from Block No.45 of Degav. Apart from the petitioner,

there were 5 other candidates from the said Block No.45. The polling took place on 7th February 2012 and the counting of votes took place on 17th February 2012. The Returning Officer i.e. respondent No.6 herein declared the respondent No.3 as the elected candidate. The votes polled by all the candidates are as follows:-

(i)	Respondent No.3 (Returned Candidate)	8591 Votes
(ii)	Petitioner	7916 Votes
(iii)	Opponent No.1	426 Votes
(iv)	Opponent No.2	236 Votes
(v)	Opponent No.4	1630 Votes
(vi)	Opponent No.5	351 Votes

3] The respondent No.3, therefore, had won the elections by a margin of about 675 votes. After the results were declared, on 17th February 2012, it seems that an application for recounting of votes was made on behalf of the petitioner to the Returning Officer, which was received by the Returning Officer at about 7.15 p.m. Insofar as the postal ballots were concerned, total 11 votes were cast out of which 8 votes were in favour of the respondent No.3. Since the request for recounting did not meet with any favourable response from the Returning Officer, the petitioner invoked

the jurisdiction under section 27 of the Maharashtra Zilla Parishad and Panchayat Samities Act and filed the Election Petition in question, which came to be numbered as Election Petition No.7 of 2012. The gravamen of the allegations of the petitioner was in respect of the seven counting tables being Nos.45/38, 45/31, 45/41, 45/43, 45/39, 45/35 and 45/30.

4] It was the case of the petitioner that though voting sheets depicted the votes as per the below mentioned chart No.1,

Voting Center	Votes received by the petitioner	Votes received by the Opponent No.3
4538	78	273
4531	185	249
4540	89	164
4541	76	190
4543	211	295
4539	129	157
4535	62	316
4530	271	250

in fact it should have been the other way round as shown in Chart No.2 hereinbelow:-

Voting Center	Votes received by the petitioner	Votes received by the Opponent No.3
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4538	273	78
4531	310	204
4540 & 4541	349	354
4543	295	211
4539	157	129
4535	146	316
4530	341	180

5] It was alleged by the petitioner that on account of corrupt practices committed by the Returning Officer, the votes which were in fact polled by the petitioner were credited to the respondent No.3. The petitioner had filed an application Exh.27 seeking recounting of the votes, which application was filed in the election petition. The said application came to be allowed by the learned Dist. Judge, Satara. The said order passed by the learned Dist. Judge Satara was taken exception to by way of a writ petition in this court. A learned Single Judge of this court by order dated 23rd September 2013 set aside the order passed by the learned Dist. Judge and directed that the said application Exh.27 be considered along with the Election Petition No.7 of 2012. It is in terms of the said order passed by the learned Single Judge that the application Exh.27 came to be considered by the learned Dist. Judge with the Election Petition.

6] The election petition was taken up for adjudication by the learned

Dist. Judge Satara, who framed the following issues:-

Sr. No.	Points	Answers
1	Does petitioner proves that, there was mistake in counting and preparation of result sheet, as stated in Petition para No.6 of Degaon Z.P, Block 45, Z.P. Satara?	NO
2	Is the petitioner entitled for recounting of votes?	NO
3	Does petitioner prove that the declaration of result of 45 Degaon Z.P, Satara is required to be set aside?	NO
4	Does petitioner prove that he is entitled for declaration, as he is elected member by setting aside election of respondent No.3?	NO
5	What order?	As per final order
Addl. Issue No.1	Whether the petitioner proves that the opponent No.6 with collusion with opponent No.3, by playing corrupt practice and illegal act, has declared result of 45, Degaon Gat on 17.12.2012?	NO.

The said issues came to be answered by the learned Dist. Judge against the petitioner.

7] In assertion of his case, the petitioner examined three witnesses, including himself. The two witnesses examined by the petitioner, apart from himself were his Counting Agents. The respondent No.3, Returning Officer did not adduce any oral evidence and filed purshis to the said

effect. Insofar as oral evidence which has come on record is concerned, the learned Dist. Judge did not find it meeting the requirements to bring home a charge that the votes polled in favour of the petitioner were credited to respondent No.3. The learned Dist. Judge did not give any credence to the evidence of the counting agents as it came in their evidence that though they were counting agents for two tables only, they were deposing in respect of other tables. The factum that the said accounting agents having not taken objection to the final tally of votes which was announced by the representatives of the Returning Officer, weighed with the learned Judge. The evidence of the said witnesses as also the petitioner is absolutely sketchy having regard to the fact that the petitioner is making a serious allegation of the votes polled in his favour being shown to the credit of respondent No.3. Before the learned District Judge, the procedure which was adopted and the manner in which the record in respect of each table was maintained has come on record. The learned District Judge was of the view that the said procedure encompasses checks and balances at various stages and, therefore, it is difficult to accept the case of the petitioner that the votes polled in his favour were credited to respondent No.3. The learned Dist. Judge has also held against the petitioner on the ground that the evidence disclosed that he was not present at the time of counting. The said finding has been

recorded by the learned Dist. Judge by accepting the case of respondent No.3 that the petitioner was not present. In my view, even assuming that the petitioner was present at the time of counting, the same would not make any material difference as having regard to the nature of the evidence, which has come on record in support of his case that the votes polled in favour of the petitioner were credited to the respondent No.3. The evidence at best can be said to be sketchy and does not inspire confidence.

8] The learned Dist. Judge also held against the petitioner on the ground that in the application Exh.100, which can be said to be the first reaction of the petitioner, the case made out by the petitioner is different than the case made out in the election petition. Pertinently, in the said application Exh.100, there is no allegation that the votes polled in favour of the petitioner have been credited to the respondent No.3 but general allegations in respect of the manner in which the voting took place etc. has been made. Whereas, in the election petition as indicated above, the gravamen of the allegation is that the votes at 8 tables which were polled in favour of the petitioner were credited to respondent No.3.

9] In my view, the claim made by the petitioner that the votes polled at

the 8 tables which have been adverted to hereinabove, were credited to respondent No.3 is a bit extravagant. It is impossible to believe that at 8 tables the votes polled to a particular candidate were shown to the credit of another candidate, when one can imagine the rush at the time of counting, especially the presence of the counting agents of as many as six candidates. The learned Dist. Judge was, therefore, right in rejecting the application Exh.27 for recounting of the votes as it is well settled by the pronouncement of the Apex Court that a prayer for recounting has to be treated with caution and with utmost circumspection as it has its effects on the sanctity of the voting process. Since the petitioner's election petition was founded on the case of recounting and since the application No.Exh.27 for recounting was rejected, consequently the election petition was also required to be dismissed.

10] In my view, there is no error of jurisdiction or any other illegality or infirmity for this court to interdict in its writ jurisdiction under Article 227 of the Constitution of India. The writ petition is accordingly dismissed. No costs.

(R.M.SAVANT, J.)