(2009) 02 AHC CK 0032

Allahabad High Court

Case No: None

Smt. Rugada Devi		APPELLANT
	Vs	
Prescribed Authority/Sub Divisional Officer and Others		RESPONDENT

Date of Decision: Feb. 26, 2009

Acts Referred:

- Evidence Act, 1872 - Section 67, 68

Citation: (2009) 85 AWC 1909 : (2009) 2 AWC 1909 : (2009) 2 UPLBEC 1218

Hon'ble Judges: Vineet Saran, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Vineet Saran, J.

The petitioner, was elected as Pradhan in an election held in the year 2005. The respondent Nos. 4 to 9 are the defeated candidates in the election. The respondent No. 4 Kawalpatia had lost the election by margin of 5 votes. She, thus, filed an election petition praying for recounting of votes, which was registered as Election Petition No. 6 of 2005. By an order dated 18.8.2007, the election petition of the respondent No. 4 was dismissed on merits. Challenging the said order, the respondent No. 4-election petitioner filed a revision before the District Judge, which has been allowed by order dated 27.1.2009. Aggrieved by the said order, this writ petition has been filed.

2. On 6.2.2009, an interim order was granted by this Court staying the operation of the order passed in revision and as such, the order, directing the re-counting of votes has not been implemented.

3. I have heard Sri R. C. Singh, learned Counsel for the petitioner as well as learned standing counsel appearing for respondent Nos. 1, 2 and 3 and Sri J. J. Munir, learned Counsel appearing for contesting respondent No. 4. Pleadings between the

parties have been exchanged and by the consent of learned Counsel for the parties, the writ petition is being finally disposed of at the admission stage.

4. While deciding the election petition, the prescribed authority has framed three issues, the English translation of which is as under:

I. Whether in the first round of counting, election petitioner was declared elected by 5 votes and in subsequent counting of the votes, defendant No. 1 (petitioner) was declared elected by 5 votes?

II. Whether recounting was done?

III. Whether counting was done improperly/illegally?

5. All the three issues are related to recounting of votes. While deciding the aforesaid issues, categorical finding of fact has been recorded by the prescribed authority that the counting of votes was done only once and there was no recounting of votes. It has also recorded in the said order that the election petitioner herself did not appear in the witness box, although the same was necessary u/s 67 of the Evidence Act, and further that the persons whose affidavits have been filed, had also not been produced as witnesses, which was against the provisions of Section 68 of the Indian Evidence Act. The prescribed authority had also categorically mentioned that the election petitioner did not enter in the witness box and the statement made by the Returning Officer categorically stating that there was no discrepancy in the counting of votes and that the writ petitioner had been declared elected by 5 votes, had not been disputed by the election petitioner. On such basis, the election petition had been dismissed.

6. From the perusal of the order passed by the revisional court, it is not clear as to how the Court has come to the conclusion that the recounting of votes was got done by the Returning Officer at the instance of the writ petitioner and in the second round of counting, the writ petitioner was declared elected, although in the first round she was found to be defeated by 5 votes. A categorical finding has been recorded by the prescribed authority that no application for recounting of votes was given to the Returning Officer and recounting could not be done without any such formal application. The same has been disbelieved by the revisional court merely by stating that normally such recounting is done without any application. Such observation of revisional court cannot be said to be justified as in an election matter, recounting can be ordered by the Returning Officer only if there is any objection filed by any party for which a formal application has to be filed. In the present case, no such application is said to have been filed by the election petitioner or any other party. In such view of the matter, the finding recorded by the prescribed authority that there was only one round of counting in which the writ petitioner was declared elected cannot be said to be unjustified.

7. The election petition is merely of 6 paragraphs of which only paragraphs 3 and 4 are relevant. In para 3 it has been stated that in the first round of counting, the election petitioner had been declared elected by 5 votes whereas, on an application filed by the writ petitioner before the Returning Officer recounting was ordered, after which the writ petitioner was declared elected by 5 votes. In such a view of the matter, since the election petitioner had taken a stand that recounting was ordered on an application of the writ petitioner, the same ought to have been substantiated by the election petitioner and in absence of the same, it could not be said that second round of counting was directed or got done by the Returning Officer. In paragraph 4 of the election petition it has been said that undue influence and political pressure was put on the Returning Officer and that the second round of counting was got done, in which the election agent of the petitioner was asked to sit at a distance and after declaration of the result, when the election petitioner wanted to give a complaint to the Returning Officer, then with the help of police force, she was thrown out of the counting area. From the record it is clear that the petitioner did not substantiate the said allegations before the prescribed authority. On the contrary it has come in evidence that there was no police force inside the counting area. The election petitioner also did not make any attempt to substantiate the assertion in the election petition that any written complaint was lodged with the Returning Officer, which the Returning Officer refused to accept. On the contrary the statement of the Returning Officer before the prescribed authority went unchallenged where it has been stated by him that there was no irregularity in the counting of votes and that it was wrong to say that there was any earlier counting done in which the election petitioner had won by 5 votes.

8. Categorical findings have been recorded by the prescribed authority, which were based on evidence. The revisional court could have exercised revision powers u/s 12C(6) of the U. P. Panchayat Raj Act, 1947 only when the prescribed authority had exercised the jurisdiction not vested in it by law or it had failed to exercise a jurisdiction vested in it or if the prescribed authority had acted in the exercise of its jurisdiction illegally or with material irregularities. The contention of the election petitioner is that the power was exercised under the last provision. However, the revisional court does not say that the prescribed authority had committed any such illegality or irregularity. As such, the reversal of the finding given by the prescribed authority cannot be said to be justified in the present case.

9. The Apex Court in the case of P.H. Pujar Vs. Kanthi Rajashekhar Kidiyappa and Others, , has held that the recounting of votes cannot be ordered in a casual manner. The relevant paragraph 14 is as under:

The recount of the votes cannot be ordered in a casual manner. It cannot be ordered only because the margin of defeat is meagre. For seeking recount, proper foundation is to be laid in the pleadings by setting out material facts and later proving it by adducing requisite evidence. The recount cannot be ordered on the

ipse dixit of the election petitioner. It can be ordered in rare cases where specific allegations are made and proved so as to do complete justice between the parties.

10. In such a view of the matter, since the order of the prescribed authority is based on cogent evidence and the revisional court has, without discussing the evidence and without upsetting the finding recorded by the prescribed authority, set aside the order of the prescribed authority, the same cannot be justified in the eye of law.

11. Accordingly, for the foregoing reasons, the writ petition stands allowed. The order dated 27.1.2009, passed by the revisional court is set aside, however, there shall be no order as to cost.