

(2002) 10 PAT CK 0030
Patna High Court
Case No: C.W.J.C. No. 7226 of 2002

Md. Zakir Hussain

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: Oct. 30, 2002

Final Decision: Dismissed

Judgement

Aftab Alam, J.

This writ petition is filed against the judgment and order, dated June 14, 2002 passed by Munsif I, Vaishali at Hajipur in Election Case No. 61 of 2001. By the impugned judgment, the learned Munsif allowed the election petition filed by respondent No. 5 u/s 140 of the Bihar Panchayat Raj Act, 1993, set aside the election of the petitioner as the Mukhiya of Rajasan Gram Panchayat, declared respondent No. 5 as the winning candidate in the election of Mukhiya and directed the respondent authorities to take the consequential measures in accordance with law.

2. Election for the post of Mukhiya of Rajasan Gram Panchayat under Biddupur block in the district of Vaishali was held in April-May, 2000. There were twelve candidates in contest, including the petitioner and respondent No. 5. The polling was held on 11.4.2000 on 15 polling booths. The counting of votes commenced from 13.5.2000 and the result was announced on 18.5.2000 according to which the petitioner had got the highest number of votes (622) and he had defeated respondent No. 5 by a margin of 30 votes. He was, accordingly, declared as elected and was given the certificate in the statutory form.

3. Respondent No. 5 challenged the election of the petitioner by filing an election petition u/s 140 of the Bihar Panchayat Raj Act, 1993 ("the Act", hereinafter). The case of respondent No. 5 was that on 11.4.2000 polling took place peacefully and fairly on all the 15 polling booths. On booth No. 48 the total number of votes was 312 out of which 307 votes were cast. In course of counting, however, the Returning Officer accepted only 79 votes as valid and the remaining 228 votes, polled in his

favour, were not taken into account without assigning any reason. On objection being raised on his behalf, the authorities gave the reply that those 228 ballot papers were invalid because they did not bear the signature of the Presiding Officer of the booth. It was the case of respondent No. 5 that the reason given by the Returning Officer was quite incorrect and untrue because each ballot paper was handed over to the voters after it was duly signed by the Presiding Officer and there was no question of those ballot papers not bearing the signature of the Presiding Officer. He, therefore, made a specific plea before the Court that those 228 ballot papers of booth No. 48 be held valid and be taken into count for determining the winning candidate and declaring the election result.

4. It will be appropriate here to take note of the case of respondent No. 5 as stated in the election petition and the relevant statements as contained in paras 8 to 10 are reproduced below:

(8) That in course of counting of the ballots it has come to the notice of petitioner that at booth No. 48 which was located at village Pakauli (Paswan Tola) total 307 votes were polled out of 312 votes in which only 79 ballot were found valid and a total No. 228 ballot were declared invalid without assigning any reason. And when the petitioner made an objection then he was told by counting authorities that the ballots having no signature of the Presiding Officer have been declared invalid but on the contrary all the ballot which were declared invalid by the authority were issued by the Presiding Officer after putting his signature and thereafter, the voters were allowed to cast their votes.

(9) That the petitioner further states that all the ballot papers were issued to the voters by the polling personnel after getting signature of the Presiding Officer on the said ballot so that question of lacking of signature of the Presiding Officer over the ballots which were declared invalid does not arise at all.

(10) That it is further stated that had it been a fair counting of ballots which were declared invalid, the respondent No. 5 Md. Zakir Hussain would not have been declared elected. The ballots were declared invalid for the purpose of benefiting Md. Zakir Husain.

5. Defendants 1 to 4 (the election authorities) in their written statement agreed with the election applicant that the polling for the election was held peacefully, fairly and properly. They also accepted that 228 votes cast at booth No. 48 in the election of Mukhiya of the Gram Panchayat were rejected as invalid but they justified the rejection of those ballot papers and their exclusion from the count. It was stated on behalf of defendants 1 to 4 that like all other booths, on booth No. 48 the voters had cast their votes, on four separate ballot papers, for election of candidates to four different offices, namely, (i) Member of the Gram Panchayat, (ii) Mukhiya of the Gram Panchayat, (iii) Member of the Panchayat Samiti and (iv) Member of the Zila Parishad. In course of counting, it was found that some ballot papers were dropped

in the ballot box along with their counter-foils; and a number of ballot papers did not bear the distinguishing mark and/or the full signature of the Presiding Officer of the booth. Hence, 297 ballots for election of the member of the Panchayat, 225 ballots for election of the member of the Panchayat Samit, 228 ballots for the election of Mukhiya of the Panchayat (with which we are concerned in this case) and 223 ballots for election of the member of the Zila Parishad were rejected in terms of Rule 75(1) of the Bihar Panchayat Election Rules, 1995 ("the Rules", hereinafter) for not bearing the distinguishing mark and/or full signature of the Presiding Officer of the booth as provided under Rule 55(2) of the Rules.

6. The petitioner in the written statement, originally filed by him, accepted that polling on all the polling booths was held peacefully and normally but he later filed an amendment petition in which it was stated that polling was held peacefully and normally on all booths, excepting booth No. 48. It was further stated on his behalf that it was incorrect and wrong to say that 228 ballots from booth No. 48 were rejected wrongly or without assigning any reason. According to him, those ballots were rightly rejected in terms of Rule 75(1) of the Rules. It was further stated on his behalf that the polling at booth No. 48 was over 95% and in course of counting it was found that some of the ballots were put in the ballot box along with the counter-foils and a number of ballots did not bear the distinguishing mark and the signature of the Presiding Officer of the booth. The election authorities, therefore, sent a report to the Election Commission seeking instructions in the matter and the 228 ballot papers were rejected as invalid on the basis of the instructions given by the Election Commission. It was further stated that at the time of the counting no objection was raised on behalf of the petitioner regarding the rejection of the ballots in question and he was, therefore, not entitled to raise this issue in the election petition filed before the Court.

7. Defendant No. 7 filed his separate written statement in which it was stated that on booth No. 48, respondent No. 5 and his supporters had looted the ballots and after forging the signature⁴ of the Presiding Officer on the looted ballots had forcibly put them in the ballot box. The learned Munsif commented in his judgment that defendant No. 7 had brought forward a new story of looting of ballots, forging the signature of the Presiding Officer on the looted ballots and putting them forcibly in the ballot box though no such case pleaded by any other contesting party.

8. In course of the proceeding, the Munsif passed an order, dated 17.8.2001 directing the election authorities, defendants 1 to 4 produced before the Court for inspection, apart from some other documents, the rejected ballot papers and the statements prepared in Forms 19, 20, 21 and 22. In pursuance of the direction, all the ballot-papers declared as invalid were produced in the Court and the defendants, while adducing evidence, got all those ballot-papers (228 in numbers) marked as exhibits.

9. On a consideration of the entire evidence, oral and documentary produced before the Court, the learned Munsif came to the finding that polling at booth No. 48 was quite normal and peaceful and he rejected the allegations made by the petitioner and more specifically by defendant No. 7 that a number of ballots at booth No. 48 were looted by respondent No. 5 and his supporters and were forcibly put into the ballot box after forging the signature of the Presiding Officer on those looted ballots.

10. The learned Munsif then proceeded to examine the ballot-papers rejected by the authorities.

11. In order to appreciate how he dealt with the issue or rejection of ballot-papers, it would be helpful to take a look at the relevant provisions of the Rules. Rule 55 (2) provides as follows:

55. Ballot paper-

(2) On the reverse side of the ballot-papers and its counterfoil the distinguishing mark will be printed which will bear the name of the district/block and number of the polling station. In addition to that the Presiding Officer will put his full signature on the reverse side of the ballot-paper.

(3)....

Further, Rule 75 in so far as relevant for the present is as follows:

75. Scrutiny of the ballot papers and their rejection:

(1) Any ballot paper contained in the ballot box shall be rejected in the situation when:

(a) to (c) omitted, not being relevant.

(d) It does not bear the distinguishing mark on the signature of Presiding Officer.

Provided that if the Returning Officer or the Officer authorities by him is satisfied that the defect mentioned in Clause (d) is due to the error of the Presiding Officer or the Polling Officer concerned, then he may direct that the ballot paper will not be rejected on the ground of defect under Clause (d).

Provided....

(2)....

(3)....

12. The learned Munsif found that there were many ballot-papers which though bearing the initials were rejected on the ground that those did not bear the full signature of the Presiding Officer. He commented that the Presiding Officer of booth No. 48 who could be in a position to explain the circumstances in which he did

not make his full signature on those ballot-papers was not examined as a witness on behalf of the defendants. He pointed out that in the booth-diary the Presiding Officer had stated that the polling on the booth was peaceful and normal and observed that in the absence of the Presiding Officer being examined as witness it must be deemed that the initials on the rejected ballot papers were those of the Presiding Officer. He then reasoned that the Presiding Officer must have put his initials instead of making his full signatures on the ballot-papers due to carelessness, ignorance and lack of due diligence in discharges of duties. He contended that rejecting those ballot papers would amount to punishing respondent No. 5 for the omission of the Presiding Officer and that would be quite unfair. The learned Munsif, therefore, held that the defect was covered and protected by the proviso to Rule 75(1); the ballot papers bearing the initials of the Presiding Officer were, therefore, valid votes and the election authorities had committed a material irregularity in rejecting those ballots and not taking them into the count.

13. The learned Munsif then proceeded to make a break-up of the 228 rejected ballots. He found that 8 ballots were blank, that is to say, those did not bear the stamp of the voting seal in favour of any candidate. He, therefore, upheld their rejection as invalid. He further found 38 ballots with their counter-foils intact and held that those could not be held valid under any provisions of the Rules. There were further 42 ballots which did not bear either the distinguishing mark or the initial/signature of the Presiding Officer. He upheld their rejection as well. The remaining 140 ballots, bearing the initials of the Presiding Officer, were cast in favour of the petitioner. The learned Munsif held and found that those were valid votes not liable to rejection in terms of the proviso to Rule 75(1) of the Rules. He, accordingly, added those 140 votes in favour of respondent No. 5 as a result of which his total tally added upto 730, much in excess of the votes polled by the petitioner. In the result he allowed the election petition and declared respondent No. 5 as the winning candidate.

14. Before proceeding to consider the submissions made on behalf of the parties, I feel tempted to observe that there are certain objective facts in this case which do not fully harmonise with the finding of the Court below that the polling on booth No. 48 was peaceful, fair and normal. These objective facts may be summarized as follows:

- (i) The abnormally high percentage of voting, polling of 307 out of 312 votes will put the polling at 98.3%.
- (ii) Presence of 38 ballots, out of 307 with their counter-foils intact.
- (iii) Presence of 42 ballots, cast in favour of the election applicant, without the distinguishing mark or the signature/initial of the Presiding Officer, and
- (iv) Presence of 8 ballot-papers cast in favour of none of the candidates.

15. But this is a remark only in the passing because that issue is no longer open before this Court. The learned Munsif has pointed out that the assertion by the election applicant that the election was normal and peaceful was accepted by the election authorities; it was also not denied by the main contesting defendant, the petitioner in his original written statement and it was only later that he filed an amendment, alleging that polling on booth No. 48 was not normal and peaceful. The allegation that polling on booth No. 48 was rigged in favour of respondent No. 5 was made by defendant No. 7 who was really not in the contest. In any event the finding of the Court below that the polling on booth No. 48 was held peacefully and normally does not come under challenge before me and the case was argued on a different point.

16. Mr. S.N.P. Sharma, learned Counsel appearing on behalf of the petitioner strongly argued that the Munsif committed an error in allowing recount of votes. Mr. Sharma submitted that a recount of votes before the Court or an Election Tribunal could be held only after satisfying very stringent tests laid down by the Supreme Court in a series of decisions. In support of his submissions, he relied upon a number of decisions (i) [Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others](#), (ii) [Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others](#), , (iii) [Chanda Singh Vs. Choudhary Shiv Ram Verma and Others](#), and (iv) [Satyanarain Dudhani Vs. Uday Kumar Singh and Others](#),

17. I am unable to accept the submission and in my view the decisions relied upon by Mr. Sharam have no application to the facts of this case. In this case neither there was such a plea on behalf of the election applicant nor was there any recount of the votes in the sense that the polled votes were counted a second time before the Court or a Commission appointed by it on the ground of any alleged irregularities in counting. The specific issue before the Court was whether the decision of the election authorities to reject certain votes and not to take them into count was valid, correct and legal. The election applicant gave the number of the polling booth where those votes were cast and the exact number of the ballot-papers which were rejected by the Election Officer, assigning the reason that those ballots did not bear the signature of the Presiding Officer. The allegation of the election applicant was not an issue of controversy in itself because the election authorities accepted that 228 votes were rejected by them and they justified their rejection. Even the private contesting defendant accepted this position and resisted the election petition on the ground that the rejection of those ballots by the election authorities was justified. It is, therefore, evident that it was not a case of recounting of votes in the sense in which submissions are made by Mr. Sharma.

18. Mr. R.B. Mahto, learned Senior Advocate appearing for respondent No. 5, in defence of the judgment passed by the Court below, relied upon a Supreme Court decision in the case of [Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others](#), . The facts in Arun Kumar Bose are very similar to the facts of the case in hand and the

reliance on the decision is well placed.

19. On the basis of the discussions made above, I am of the view that this matter does not warrant any interference by this Court in exercise of its writ jurisdiction and the petitioner is not entitled to any relief. This writ petition is, accordingly, dismissed but with no order as to costs.