

MAHENDER PRATAP
v.
KRISHAN PAL AND ORS

NOVEMBER 22, 2002

[M.B. SHAH AND D.M. DHARMADHIKARI, JJ.]

Representation of the People Act, 1951:

Ss.83 and 100—False averments in election petition and verification thereof—Election petition—Ground that application for recounting of votes wrongly rejected by Returning Officer—Inconsistency in averments made in application for recounting and election petition—Returning Officer endorsing on the application that it was filed after declaration of final results—Election petition containing averments that application was filed when 23rd round of counting was in progress—Election petition rejected by High Court—Held, for making out a ground for recount, if intentional false averment is made in an election petition and the said averment is duly verified to be true as provided under s.83 then such election petition could be rejected by the court— In election petitions for recount of votes a high standard of proof of grounds is required—Court allows an election petition only on strict proof of one of the grounds prescribed in s.100—It is only after the election petitioner is able to demonstrate before the Court by leading satisfactory evidence that there was serious flaw in the counting procedure which had materially affected the result of election that the prayer for recount is generally allowed — Where false facts are pleaded and false evidence is produced to mislead the court into interfering with the people's verdict of election, such misconduct has to be viewed seriously and appropriate deterrent action like dismissal of the case with costs, prosecution for perjury or initiation for contempt proceedings should be taken by the court—This is a case in which despite the endorsement by the Returning Officer that application for recount was filed after results were declared, the election petitioner has tried to make out a point that it was filed prior to declaration of results—Petitioner's case is based on misleading facts—Appeal dismissed with costs of rupees Twenty five thousand—Conduct of Election Rules, 1961—rr.56A and 63.

Jeet Mohinder Singh v. Harinder Singh Jassi, [1999] 9 SCC 386;
Mahant Ram Prakash Dass v. Ramesh Chandra and Ors., [1999] 9 SCC 420

A and *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar and Ors.*, [1970] 2 SCC 411, referred to

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 551 of 2002.

B From the Judgment and Order dated 19.11.2001 of the Punjab and Haryana High Court in E.P. No. 6 of 2000.

P.P. Rao, G. Balaji and G.K. Bansal for the Appellant.

C L. Naheshwar Rao, Ajay Chaudhary and Sanjay Bansal, Satpal Jain, Randhir S. Jain, Dungainder Singh and Ms. Savita Singh for the Respondents.

The following Order of the Court was delivered :

D **DHARMADHIKARI J.** This is an appeal under Section 116 A of the Representation of People Act, 1951 [for short 'the Act'] against the judgment dated 19.11.2001 passed by the High Court of Punjab and Haryana in Election Petition No. 6 of 2000.

The appellant lost election to the Legislative Assembly seat for Constituency No 52, Mewala Maharajpur by a margin of 161 votes.

E The appellant filed an election petition seeking relief of recount of votes on the ground that serious irregularities were committed in counting of votes on electronic voting machines which were used in the above said election.

F The main grounds urged *inter alia* for seeking recount of votes are non-compliance with the provisions of rules 63 and 56A of the conduct of Election Rules, 1961 [hereinafter called as Rules]. It is pointed out from the record produced in the election petition that in some of the result sheets of counting, there are no signatures of counting supervisors and in some of them only names of counting agents of the candidates are mentioned but their signatures do not find place. It is also pointed out that in few result sheets, there are cuttings and over-writings.

G Learned senior counsel appearing for the appellant strenuously argued that all these glaring illegalities committed in the course of counting of votes have made out a strong case in favour of the appellant for grant of directions

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for recount of votes.

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One of the important points urged in the election petition and pressed before use in this appeal is regarding the alleged wrongful rejection of the application of recount of votes made by the appellant before the Returning Officer soon after completion of the last round of counting and before signing of result-sheet in Form 20 in accordance with rules 63 of the Rules.

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The application made by the appellant before the Returning Officer seeking recount of votes with the order of rejection passed thereon by the Returning Officer as recorded on the application itself needs full reproduction for decision of this appeal. It reads as under:-

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“To,

Returning Officer,
52, Mewala Maharajpur Assembly Constituency,
Faridabad (Haryana).

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Sub: Application for Recounting.

Sir,

The undersigned applicant is not satisfied with the said counting which has been done in haste. There is over-writing in all the details of booth/polling station of Part-II.

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Therefore, you are requested to get the recounting done and the errors shown by the machines may kindly be got re-verified. Recounting may kindly be got done because the difference told by you is only 161 votes.

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This application has been made after declaring the result 52 Mewala Maharajpur Assembly Constituency, when there is a signature of counting agents, candidates and election agents on the verification certificate, therefore, this application is being returned in original without

Application
Sd/-English 25.2.2000
Vijay Partap Singh
Election Agent
Sh. Mahender Partap
Singh, BSP Candidate

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A any action.

Sd/-
Returning Officer,
52, Mewala Maharajpur
Assembly Constituency
-cum-Sub Divisional
Officer (Civil),
Fairdabad. 25.2.2000,
time 3.30p.m”

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The learned counsel appearing for the appellant argues that the Returning Officer wrongly recorded in his order of rejection that the application for recount of votes was made after the counting was completed at 3.30 p.m on 25.2.2000.

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From the timings recorded in the result-sheets in each round, it is shown to us that time recorded of completion of last round of counting is 3.30 p.m. Thus, an attempt is made on behalf of the appellant to demonstrate that the application for recount which was made before the Returning Officer in the interval between the announcement of result of counting and signing of result sheet in Form 20, was wrongly rejected by stating in the order that the application for recount was made after the final result and signing of “verification certificate ”by the counting agents and election agents of the candidates. Reliance has been placed on the contents of rule 63 and the instructions contained in the handbook for Returning Officer. It is pointed out that the rule and instructions permit filing of application for recount after the final result of counting is formally announced by the Returning Officer and before the final result sheet in Form 20 is signed.

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The ground, thus, urged for seeking recount of votes in the election petition is that the application made on valid grounds at proper time was arbitrarily rejected by the Returning Officer.

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On behalf of the Respondent [Returned Candidate], the learned counsel points out that the facts pleaded, verified and which are tried to be proved on oath in the deposition of the appellant in the election petition are inconsistent with the contents of his application for recount which apparently does not appear to have been presented before the Returning Officer on 25.2.2000 as required by the rules in the interval between the announcement of final result and signing of the result sheet in Form 20.

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Attention of the Court has been invited by the learned counsel appearing for the respondent to the averments made in paragraph 17 of the election petition. It is shown that the averment made is that the application for recount was made when 23rd round of counting was in progress. It has been further averred in the election petition that Returning Officer with held his application for about 5 to 6 minutes and thereafter police party entered the counting centre and forcibly drove out the counting agents from the centre. The relevant part of the pleadings in the election petition reads as under:-

“When 23rd round was going on, I lodged protest in writing by submitting application Ex.A1. It is signed by me and I identify my signatures on it, The Returning Officer kept my application for about 5/7 minutes and thereafter I saw that police people had entered inside the counting centre. They used their batons and forcibly drove away our counting agents from the counting centre. After the declaration of the result, I lodged a complaint with the Election Commission of India and Election Commissioner, Haryana, Chandigarh. I issued fax messages at about 5 p.m. I have seen Exs. A3 and A4. These bear my signatures. Exs. A99, A100 and A101 are the receipts acknowledging the fax messages.

To prove the above averments in the election petition, the election petitioner examined himself as PW-1 and made the following statement on oath:-

“The final result was being processed and prepared by the Returning Officer on the basis of the counting sheets prepared by the counting supervisors. On certain counting sheets the counting supervisors did not put their signatures. After 10th -11th round of the counting my lead started decreasing considerably. Thereafter the counting started rapidly. When counting of 23rd round was in progress and my lead was decreasing rapidly, I suggested my election agent to draft an application for recounting. Shri Vijay Partap Singh was my election agent. When our prayer for recounting was not accepted, we brought the matter to the notice of the Deputy Commissioner, but to no effect. We also gave telegrams to the Chief Election Commission of Haryana. Thereafter, we also made a complaint to the Chief Election Commission of India. Shri Vijay Partap Singh is my son. I am in a position to identify his signature. I have seen the application Ex.A1. It is signed by me. It is also in his hand-writing.

- A It is not dispute and is clear from election record of counting that the counting was completed in 25 rounds. From the contents of application for recount, it is apparent that the same was made only after the last round of counting was over and the respondent was declared elected by a margin of 161 votes. Had this not been the situation in the application for recount, it was not possible for the appellant to have stated that the margin of votes was 161.
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- C By highlighting the above discrepancies and contradictions in the facts pleaded in the election petition those stated in the deposition of the election petitioner and as found in the contents of the application for recount submitted to the Returning Officer, it is argued by the learned counsel appearing for the respondents that the election petition deserves to be dismissed on the sole ground of false pleas and evidence of the election petitioner. A few decisions were cited before this court to pray that apart from the outright dismissal of the petition for raising false pleas and leading evidence, the election petitioner be held guilty of contempt for attempting to mislead the Court and perverting the judicial process.
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- E The contents of Election petition as provided under Section 83 of the Representation of the People Act, 1951 should contain a concise statement of material facts on which appellant relies. It is also required to be signed by the appellant and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleading. This verification cannot be held to be mere formality. In *Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar and Ors.*, [1970] 2 SCC 411, this court observed that pleading in a case has great importance and that is more so in an election petition particularly when the returned candidate is charged with corrupt practices. He must know what the charge against him is, so that he may prepare his defence.
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In *Jeet Mahinder Singh v. Harminder Singh Jassi*, [1999] 9 SCC 386, this Court referred to the settled to the settled legal principle in the field of election jurisprudence as under-(para 40)

- G “(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate
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and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. *Jagan Nath v. Jaswant Singh*, [1954] SCR 892 and *Gajanan Krishnaji Bapat v. Dattaji Reghobaji Meghe*, [1995] 5 SCC 347.” A

For making out a ground for recount being granted, if intentional false averment is made in an election petition and the said averment is duly verified to be true as provided under Section 83 of the Act then such election petition could be rejected by the Court. In *Mahant Ram Prakash Dass v. Ramesh Chandra and Ors.*, [1999] 9 SCC 420 considering the contention of irregularity in counting, the Court held thus:- B

“13. A candidate or his agent has an opportunity to ask for re-count at two stages: the first, before election result is finally declared, and the second, by way of election petition before the High Court. An application under Rule 63(2) of the Conduct of Elections Rules is to be given immediately after the votes secured by each of the candidates is announced under Rule 63(1), but such an application cannot be given after the candidate is declared elected under Rule 64. If an application is made under rule 63(2) the Returning Officer shall decide the matter either by allowing the application in whole or in part or may reject it in its entirety, if it appears to him to be frivolous or unreasonable. The decision shall be in writing containing reasons therefor. The application for re-count should contain valid precise grounds on which the re-count is asked for . When the rules provide for enough opportunity to a candidate or his agent to watch the counting process before the result is declared and if any objection is raised as to the validity of any ballot paper and if such objection is rejected improperly, it would afford a basis for re-count in an election petition. The secrecy of the vote has to be maintained and demand for recount should not ordinarily be granted unless the election petitioner makes out a *prima facie* case with regard to error in counting of such magnitude that the result of the election of the returned candidate may be affected. Smallness of the victory margin by itself may not be sufficient ground for re-count. However, if a *prima facie* case is made out as to error in counting, a small margin by which the returned candidate succeeded in the election assumes significance, inviting re-count.” C D E F G

In this appeal, it has been sought to be projected that the application H

- A for recount was made in the permissible interval between the announcement of the result of counting and signing of result-sheet in Form 20. This plea raised in the appeal is contrary to the appellant's own pleadings and evidence and is thus, clearly, an after thought. We thus find that the petitioner's case is based in on misleading facts. The least we can do is to dismiss his appeal and confirm the order of the High Court rejecting his election petition.

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As seen from the decided cases mentioned above, in election petitions which are filed with prayer for recount of votes, the court has always insisted upon a high standard of proof of grounds as would impel the court to direct recount of votes and recheck the election results. It is only after the election

C petitioner is able to demonstrate before the court by leading satisfactory evidence that there was serious flaw in the counting procedure which had materially affected the result of election that the prayer for recount is generally allowed.

- D In such a state of election law, the court legitimately expects the parties to approach it with genuine grievances on truthful facts. Where false facts are pleaded and false evidence is produced to mislead the court into interfering with the people's verdict of election, the misconduct of the parties to the election has to be viewed seriously. The court allows an election petition only on strict proof of one of the grounds prescribed in Section 100 of the Act. If the parties to the election petitions are allowed to take court lightly
- E even though attempts are skillfully made by them by false pleas and evidence to mislead the Court, the whole judicial process would be misused by clever parties to their advantage and to the detriment of the interest of the electorate who are vitally interested in the result of election.

- F This is case in which despite the endorsement by the Returning Officer that application for recount was filed after results were declared, the election petitioner has tried to make out a point that it was filed prior to the declaration of the results.

- G In Election petition, if the parties are found to have made incorrect statements in their pleadings, affidavits or depositions and there is thereby an intention on their part to mislead the court, appropriate deterrent action like dismissal of their cases with costs, prosecution for perjury or initiation of contempt proceedings should be taken by the court lest the judicial process would continue to be polluted and misused by undeserving parties who have no real grievance or cause for seeking aid of judicial forums. Such false
- H cases not only contribute to the work-load of the court and kill its precious

time but create hurdles in the ways of genuine litigants who sincerely need assistance of the court for obtaining justice. A

With the aforesaid observation, we dismiss this appeal and impose cost of Rupees twenty five thousand on the appellant. From the cost deposited, a sum of Rupees twenty thousand should be paid to the Supreme Court Legal Aid Committee and the remaining sum of Rupees five thousand be paid to Respondent No.1-the Returned Candidate. B

R.P.

Appeal dismissed.