

CASE DETAILS

DHARMIN BAI KASHYAP

v.

BABLI SAHU & OTHERS

(Civil Appeal No. 2517 of 2023)

AUGUST 16, 2023

[BELA M. TRIVEDI AND S.V.N. BHATTI, JJ.]

HEADNOTES

Issue for consideration : Whether the election petition filed by the petitioner before the Sub Divisional Officer seeking relief of recounting of votes alone, without seeking any relief under Rule 6 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 was maintainable.

Election Laws – Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 – r.6 – Relief that may be claimed by the petitioner – Election of Sarpanch – Election petition filed before the Sub Divisional Officer u/s. 122 seeking relief of recounting of votes alone, without seeking any relief u/r. 6 – Maintainability of:

Held : Where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of – Furthermore, if a Statute provides for doing a thing to be done in a particular manner, then it has to be done in that manner and in no other manner – s. 122 provides that an election under the said Act could be called in question only by a petition presented in the prescribed manner – Manner prescribed is in the Rules of 1995 – In r. 6, it has been provided that the petitioner may claim a declaration that the election of all or any of the returned candidates is void; and in addition, thereto a further declaration that he himself or any other candidate has been duly elected – In view of thereof, in the Election Petition filed u/s. 122, the reliefs claimed have to be in consonance with the r. 6 – The court or tribunal may direct re-counting of votes in the Election Petition, depending upon the evidence laid down by the parties in the Election

Petition – Petitioner having failed to make any application in writing for re-counting of votes as required u/s. 80 of the 1995 Act, and having failed to seek relief of declarations as required u/r. 6, the Election Petition filed by the petitioner before the Sub Divisional Officer seeking relief of re-counting of votes alone was not maintainable – Chhattisgarh Panchayat Raj Adhiniyam, 1993 – Chhattisgarh Panchayat Nirvachan Niyam, 1995. [Para 13 and 15]

Election laws: Statutory provisions relating to election law – Interpretation of:

Held: Jurisprudence on the subject mandates strict construction of the provisions – Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed. [Para 15]

LIST OF CITATIONS AND OTHER REFERENCES

Sohan Lal vs. Babu Gandhi and Others (2003) 1 SCC 108 : [2002] 4 Suppl. SCR 333 – relied on.

Ram Rati vs. Saroj Devi and Others (1997) 6 SCC 66 : [1997] 3 SCR 1050; Cherukuri Mani w/o Narendra Chowdari vs. Chief Secretary, Government of Andhra Pradesh and Others (2015) 13 SCC 722 : [2014] 6 SCR 750; Laxmi Singh and Others vs. Rekha Singh and others (2020) 6 SCC 812 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : Civil Appeal No.2517 of 2023.

From the Judgment and Order dated 25.04.2022 of the High Court of Chhattisgarh at Bilaspur in WA No.72 of 2022.

Appearances:

Sameer Shrivastava, Adv. for the Appellant.

Abhinav Shrivastava, Sudhir Verma, Ms. Ritu Reniwal, Sourav Roy, Mahesh Kumar, Kaushal Sharma, Sunit Kumar Toppo, Ms. Devika Khanna, Mrs. V D Khanna for M/s VMZ Chambers, Advs. for the Respondents.

JUDGMENT/ORDER OF THE SUPREME COURT**JUDGMENT****BELA M. TRIVEDI, J.**

1. The aggrieved appellant has preferred the present appeal challenging the legality and validity of the impugned judgment and order dated 25.04.2022 passed by the High Court of Chhattisgarh, Bilaspur in Writ Appeal No. 72 of 2022, whereby the Division Bench of High Court has allowed the said writ appeal and set aside the order dated 06.01.2022 passed by the Single Bench in W.P. (C) No. 09 of 2022. Consequently, the Division Bench has set aside the order dated 20.12.2021 passed by the Sub Divisional Officer and also the recounting of votes undertaken on 31.12.2021.

2. The bare summary of facts necessary for the purpose of deciding this

Appeal are: -

- (i) 28.01.2020 – The election of Gram Panchayat, Semarkona Block, District Mungeli, Chhattisgarh took place for the post of Sarpanch in which petitioner, respondent no.1 and respondent nos.5 to 8 contested the election.
- (ii) 30.01.2020 – The result of election was declared in which respondent no.1 was declared elected.
- (iii) 07.02.2020 - The petitioner filed the Election Petition before the Sub Divisional Officer, Mungeli and prayed for recounting of the votes mainly on the ground that there was no sufficient light at the three booths as stated therein.
- (iv) 18.10.2021 - The Sub Divisional Officer (R), Mungeli allowed the said Election Petition and directed recounting of votes.
- (v) 08.11.2021 – The respondent no. 1 having challenged the said order dated 18.10.2021 passed by SDO approached the High Court by filing writ petition, which came to be allowed on the ground that SDO had not followed the due process of law. The High Court also directed the SDO to decide the Election Petition in accordance with the provisions contained in Rule 11 of the **Chhattisgarh Panchayats (Election Petitions,**

Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as the Rules of 1995).

- (vi) 20.12.2021 – The Sub Divisional Officer after recording the evidences of witnesses held that there was insufficiency of light at the polling stations, and ordered for recounting in three polling stations on 31.12.2021.
- (vii) 31.12.2021 – After the recounting of the votes, the petitioner herein was declared as elected Sarpanch.
- (viii) 06.01.2022 – The respondent no. 1 having challenged the said order of SDO by filing the writ petition, the same came to be dismissed by the Single Bench of the High Court.
- (ix) 25.04.2022 – The respondent no. 1 having preferred the writ appeal before the Division Bench, the same came to be allowed vide the impugned judgment and order, mainly on the ground that the relief claimed by the petitioner in the Election Petition was not in consonance with the Rule 6 of the Rules of 1995.

3. The crisp question of law that falls for consideration before this Court is whether the Election Petition filed by the petitioner before the Sub Divisional Officer (R) seeking relief of recounting of votes alone, without seeking any relief under Rule 6 of the Rules of 1995 was maintainable?

4. Before adverting to the submissions made by the learned counsel for the parties on the issue involved it would be apt to mention that as per Section 122 of the **Chhattisgarh Panchayat Raj Adhiniyam, 1993** (hereinafter referred to as the said Act) an election under the said Act could be called in question only by a petition presented in the prescribed manner, and in case of Panchayat to the Sub Divisional Officer (R), within 30 days from the date on which the election in question was notified. The State Government in exercise of the powers conferred by sub-section (1) of Section 95 read with Section 43 of the said Act of the 1993 has framed the Rules called the **Chhattisgarh Panchayat Nirvachan Niyam, 1995** (hereinafter referred to as the Nirvachan Niyam 1995). Chapter IX of the said Nirvachan Niyam 1995 deals with “Poll and voting for election”. Sub rule (1) and sub rule (2) of Rule 77 thereof being relevant are reproduced hereunder: -

“77. Counting of votes. –

(1) Every ballot paper which is not rejected under rule 76 shall be counted:

Provided that no cover containing tender ballot papers shall be opened and no such ballot paper shall be counted.

(2) After the counting of votes in respect of a polling station has been completed, the Returning Officer or such other officer authorised by him, shall make the entries in result sheet in Form 16 for Panchas and in Part one of the result sheet in Form 17, 18 and 19 for sarpanch, members of Janpad Panchayat and Zila Panchayat respectively and announce the total number of votes polled by each candidate.”

5. Rule 80 pertains to the recount of votes. The relevant sub-rule (1) and (2) thereof are reproduced hereunder: -

“80. Recount of votes. –

(1) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under sub-rule (2) of rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorised by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.

(2) On such an application being made the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in to if it appears to him to be frivolous or unreasonable.”

6. It is pertinent to mention that the State Government has also framed the Rules of 1995, under the said Act of 1993. Rule 5 of the said Rules of 1995 pertains to the “Contents of the petition” and Rule 6 pertains to the “Relief that may be claimed by the petitioner”, which read as under: -

“5. Contents of the petition. – An election petition shall

(a) contain a concise statement of all material facts on which the petitioner relies;

(b) set forth with sufficient particulars, the grounds on which the election is called in question;

(c) be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verifications of pleadings.

“6. Relief that may be claimed by the petitioner. - A petitioner may claim-

(a) a declaration that the election of all or any of the returned candidates is void; and

(b) in addition, thereto, a further declaration that he himself or any other candidate has been duly elected.”

7. As stated hereinabove, the election of Gram Panchayat Semarkona, District Mungeli had taken place on 28.01.2020, whereby the respondent no. 1 was declared elected as the Sarpanch. The petitioner had called in question the said election by presenting an Election Petition on 07.02.2020 before the Sub Divisional Officer (R) under Section 122 of the said Act of 1993, mainly on the ground that the counting of votes was done hurriedly in the late evening hours, without there being proper facility of light at three booths. The precise relief claimed therein was as under: -

“...it is prayed that the votes of Booth Nos. 3, 4 and 5 of election area Gram Panchayat Semarkona, Tahsil and District Mungeli should be recount”

8. It was strenuously urged by the learned counsel for the appellant that the Sub Divisional Officer (R) having recorded the evidence of the witnesses and having been satisfied that there was no proper facility of light while counting the votes at three booths, had rightly ordered for recounting of votes. The said order of SDO was also confirmed by the Single Bench of the High Court, however the same was wrongly set aside by the Division Bench vide the impugned order on the ground of non-compliance of the Rule 6 of the said Rules of 1995. Placing heavy reliance on Three-Judge Bench decision of this Court in case of *Sohan Lal vs. Babu Gandhi and Others*¹, he submitted that once the result is declared, the only remedy available to an aggrieved party is filing of an Election Petition under Section 122, and the

¹ (2003) 1 SCC 108

Tribunal i.e., SDO in this case, is bound to consider the plea of recounting of votes and also declare the result accordingly. He also submitted that the agent of the petitioner had orally requested the Returning Officer to recount the votes, immediately on the announcement of total number of votes polled by each candidate, as required under Rule 80 of the Nirvachan Niyam, 1995, however Returning Officer did not pay any heed to it.

9. Rebutting the said submissions, learned counsel for the respondent no. 1 submitted that no such objection was raised either orally or by application in writing for re-counting of votes by the petitioner or her agent, either during the counting or after the completion of counting of votes. He further submitted that the only prayer prayed for by the petitioner in the election petition was for re-counting of votes at three selective booths, and such a prayer was not in consonance with Rule 6 of the said Rules of 1995.

10. At the outset, it may be noted that a three judge bench of this Court in **Sohan Lal vs. Babu Gandhi and others** (supra) dealing with the provisions contained in M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993, similar to the provisions contained in the Chhattisgarh Act, 1993, did not agree with the earlier decision in **Ram Rati vs. Saroj Devi and Others**² and held, *inter alia*, that there was no prohibition in the Act or under the rules prohibiting the Court or Tribunal to direct re-counting of the votes. The precise observations made in Para 14 are reproduced as under: -

“14. In view of Section 122 and the Rules, we are unable to agree with the ratio laid down in *Ram Rati case* [(1997) 6 SCC 66 : AIR 1997 SC 3072] . It is not correct to hold that, in an election petition, after the declaration of the result, the court or tribunal cannot direct re-counting of votes unless the party has first applied in writing for re-counting of votes. There is no prohibition in the Act or under the Rules prohibiting the court or tribunal to direct a re-counting of the votes. Even otherwise, a party may not know that the re-counting is necessary till after the result is declared. At this stage, it would not be possible for him to apply for re-counting to the Returning Officer. His only remedy would be to file an election petition under Section 122. In such a case, the court or the tribunal is bound to consider the plea and where a case is made out, it may direct re-count depending upon the evidence led by the parties. In

2 (1997) 6 SCC 66

the present case, there was obvious error in declaring the result. We, therefore, hold that the ratio laid down in *Ram Rati case* [(1997) 6 SCC 66 : AIR 1997 SC 3072] is not correct.”

11. There cannot be any disagreement with the ratio laid down in the afore-stated case of Sohan Lal, which has stated that till the result is declared, it may not be possible for the party to apply for re-counting of votes to the Returning Officer, and his only remedy would be to file Election Petition, and that in such a case, a Court or the Tribunal is bound to consider the plea and where a case is made out, it may direct re-counting depending upon the evidence laid down by the parties. However, in the instant case the question involved is whether the election petition could be filed seeking the prayer only for re-counting of votes, without seeking any reliefs as contemplated in Rule 6 of the said Rules of 1995.

12. It is well settled principle of law that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of. It is also well settled salutary principle that if a Statute provides for doing a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. In *Cherukuri Mani w/o Narendra Chowdari vs. Chief Secretary, Government of Andhra Pradesh and Others*³, it is observed that “where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.”

13. So far as the facts of the present case are concerned, Section 122 of the said Act provides that an election under the said Act could be called in question only by a petition presented in the prescribed manner. The manner prescribed is in the Rules of 1995. Rule 5 pertains to the “contents of the election petition” and Rule 6 thereof pertains to “the relief that may be claimed by the petitioner”. In the said Rule 6, it has been provided that the petitioner may claim a declaration that the election of all or any of the returned candidates is void; and in addition, thereto a further declaration that he himself or any other candidate has been duly elected. In view of the said Rule 6, there remains no shadow of doubt that in the Election Petition filed under Section 122 of the said Act, the reliefs claimed have to be in consonance with the said Rule 6 of Rules of 1995.

3 (2015) 13 SCC 722

It is true that as laid down in Sohan Lal's case, the Court or Tribunal may direct re-counting of votes in the Election Petition, depending upon the evidence laid down by the parties in the Election Petition, nonetheless the Election Petition seeking the relief for re-counting of votes only, without seeking any other reliefs i.e., declarations as contemplated in Rule 6, would not be tenable in the eye of law. The main reliefs that may be claimed in the Election Petition have to be the reliefs as envisaged in Rule 6 of the said Rules of 1995.

14. Though a faint attempt was made by the learned counsel for the petitioner to argue that the agent of the petitioner had orally requested the Returning Officer to re-count the votes immediately after the announcement of total number of votes polled by each of the candidates, admittedly no such request was made in writing either by the petitioner or his agent to the Returning Officer as required under Rule 80 of the Nirvachan Niyam 1995. Even otherwise the petitioner was required to call in question, the election by filing an Election Petition under Section 122 of the said Act, in the manner prescribed under the Rules of 1995 which required the petitioner to seek declarations as envisaged in Rule 6 thereof, and in such a petition, she could have prayed for a relief of re-counting of votes.

15. There is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions⁴. Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed. The petitioner having failed to make any application in writing for re-counting of votes as required under Section 80 of the Nirvachan Niyam, 1995, and having failed to seek relief of declarations as required under Rule 6 of the Rules of 1995, the Election Petition filed by the petitioner before the Sub Divisional Officer (R) seeking relief of re-counting of votes alone was not maintainable.

16. In that view of the matter, we do not find any merit in the present appeal.

17. The appeal is dismissed.