Supreme Court of India
P.K.K. Shamsudeen vs K.A.M. Mappillai Mohindeen & Ors on 24 November, 1988
Equivalent citations: 1989 AIR 640, 1988 SCR Supl. (3) 950
Author: S Natrajan
Bench: Natrajan, S. (J)

PETITIONER:
P.K.K. SHAMSUDEEN

Vs.

RESPONDENT:
K.A.M. MAPPILLAI MOHINDEEN & ORS.

DATE OF JUDGMENT24/11/1988

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
DUTT, M.M. (J)

CITATION:
1989 AIR 640 1988 SCR Supl. (3) 950
1989 SCC (1) 526 JT 1988 (4) 473
1988 SCALE (2)1445
CITATOR INFO :
D 1989 SC2023 (16)

ACT:
Tamilnadu Panchayats Act, 1958: Sections 30 and 178--Panchayat election--Recount of votes--When to be ordered--Preservation of secrecy of ballot---Sacrosanct principle.

HEADNOTE:
At an election held on 23rd February, 1986, for the post of Panchayat President, the votes were counted on the 25th February, 1986, and the first respondent was declared elected having secured 649 votes. The petitioner and the second respondent who were the other contestants were declared to have secured only 556 votes and X votes respectively, and 55 votes were declared to be invalid votes.

Two days after the results were declared i.e. on 27th February. 1986, the petitioner sent telegrams and registered notices alleging irregularities in the counting of the votes, and thereafter he filed an election petition under section 178 of the Tamil Nadu Panchayat Act, 1958. The reliefs claimed in the petition were that the Election Tribunal should set aside the election of the first

respondent as the President of the Panchayat, order recounting of votes, and a declaration that the petitioner has been duly elected. The first respondent opposed the election petition and filed a counter statement denying all the allegations contained in the election petition.

The Tribunal after recording the evidence of the candidates and the Assistant Returning Officer came to the conclusion that the petitioner was entitled to ask for re-count of votes and ordered recounting and called for the ballot papers. In the recount of votes, it was found that there was no difference in the number of votes secured by the petitioner, namely, 556 votes but in so far as the first respondent was concerned he had secured only 528 votes as against the 649 votes, he was originally held to have secured. The excess of 121 votes were found to be invalid votes and consequently the total number of invalid votes came to 126 (sic) as against 55 votes originally held to be invalid. There was no difference in the number of 8 votes secured by the third contestant. Based on these figures of the recounting, the Tribunal declined to order re-election and instead declared the petitioner to have been duly

PG NO 950

PG NO 951

elected because the recount clearly proved that the petitioner has secured 28 votes more than the first respondent.

Aggrieved by the aforesaid order of the Election Tribunal, the first respondent filed a Civil Revision Petition in the High Court. A Single Judge allowed the revision petition holding that the Tribunal had erred in ordering a recount of the votes when the petitioner had not made out a prima facie case for an order of recount, and observed that the secrecy of the ballot was sacrosanct and should not be violated unless a prima facie case of a complusive nature had been made out by the defeated candidates. The High Court set aside the order of the Tribunal and restored the election result in favour of the first respondent.

Dismissing the Special Leave Petition,

HELD: 1. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or Court should not order the recount of votes. [957D-E]

2. The salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot he lightly or hastily broken unless there is prima-facie genuine need for it. [957D]

3. The justification for an order for examination of ballot papers and recount of votes is not to be derived from high sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. [957C-D]

4. An order or recount of votes must stand or fall on the nature of the averments made and the evidence adduced before the order of recount is made and not from the results emanating from the recount of votes. [958C]

In the instant case, the petitioner has neither made such averments in the petition nor adduced evidence of such a compulsive nature as could have made the Tribunal reach a

PG NO 952

prima facie satisfaction that there was adequate justification for the secrecy of ballot being breached. [957F]

Ram Sewak Yadav v. Russain Kamil Kidwai & Ors., [1964] 6 SCR 238; Dr. Jagjit Singh v. Giani Kartar Singh, [1967]1 SCJ 762; R. Narayanan v. Sommalai, [1980] 1 SCR 571 and N. Gopal Reddy v. Bonala Krishnamurthy & Ors., JT 1987 1 SC 406, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 12662 of 1988.

From the Judgment and Order dated 7.10.1988 of the Madras High Court in C.R.P. No. 704 of ]988.

M.N. Padmanabhan and K.K. Mani for the Petitioner. R.K. Garg, V. Balachandran and V. Krishnamurthy for the Respondents.

The Judgment of the Court was delivered by NATARAJAN, J. This special leave petition to seek leave to appeal under Article 136 of the Constitution has been filed against the order of the Madras High Court in Civil Revision Petition No. 704 of 1988 filed by the 1st respondent herein. After hearing the arguments of the counsel for the petitioner and the 1st respondent (Caveator) we are not persuaded to grant special leave and are dimissing the petition for the reasons given below.

For an election held on 23.2.1986, the votes were counted on 25.2.1986 and the 1st respondent was declared elected, having secured 649 votes for the post of the President of the Keelpaguthi Panchayat, Kulithalai Taluk Tamil Nadu. The petitioner and the 2nd respondent who were the other contestants were declared to have secured only. 556 votes and 8 votes respectively. Besides the voles secured by the contestants, 55 votes were declared to be invalid votes.

Two days after the results were declared i.e. On 27.2.1986, the petitioner sent telegrams and registered notices alleging irregularities in the counting of the votes. Thereafter, he filed an election

petition O.P. No. 7/86 under Section 178 of the Tamil Nadu Panchayats Act before the Election Tribunal (District Munsif), Kulithalai for setting aside the election of the 1st respondent as the PG NO 953 President of Keelpaguthi Panchayat. He alleged in the petition that the Returning Officer (3rd respondent) had wrongly treated some valid votes cast in his favour as invalid votes and a certain number of invalid votes as votes validly cast in favour of the 1st respondent and that the third respondent had failed to permit him and his agents to have scrutiny of the ballot papers at the time of counting. He, therefore, sought the reliefs of (a) setting aside the election of the first respondent, (b) ordering of re-count of votes and (c) a declaration that he had been duly elected.

The first respondent opposed the election petition and filed a counter statement denying all the allegations contained in the election petition .

The Tribunal, after recording the evidence of all the candidates and the Assistant Returning Officer came to the conclusion that "the petitioner is entitled to ask for recount of votes" and ordered recounting and called for the ballot papers. In para 7 of the order wherein the Tribunal has accepted the plea of the petitioner for recounting of votes, the Tribunal has merely set out the evidence adduced by the petitioner on the one hand and respondents 1 and 2 and the Assistant Returning Officer on the other and without any discussion whatever upon the merits and demerits of the evidence of the parties, has given a cryptic finding as follows: "I accept the evidence given by the petitioner that he (Returning Officer) has sided the first respondent in the election." The Tribunal has then stated as follows immediately after the election-results were announced on 25.2.86 he has sent notice Ex. A1 on 27.2.86 stating that the counting is not correct. Further he has deposed that on the date of counting he objected to he counting and requested for recounting. Even though the petitioner has not given ,any petition in writing for recounting on the counting date, he has right to approach the Tribunal for recounting. The petitioner has filed this petition within the stipulated time. the petitioner prays for recounting of votes and he petition may be admitted on the basis of recounting. If recounting ordered, no prejudice will be caused to the respondents Because their arguments is that the votes were counted according to law. Therefore I decide that the petitioner is entitled to ask for recounting. Recounting is ordered."

In the recount of of votes it was found that there was no difference in the number of votes secured by the petitioner viz. 556 votes but in so far as the first respondent is concerned he had secured only 528 votes as against 649 votes he was originally held to have secured. The excess of 121 votes were found to be invalid votes and PG NO 954 therefore the total number of invalid votes came to 126 as against 55 votes originally held to be invalid votes. There was no difference in the number of 8 votes secured by the third contestant viz. the second respondent.

All the three contestants accepted the correctness of the recounting of votes and signed a memo to that effect before the Tribunal. Based on the figures of the recount the petitioner pressed for a declaration that he had been duly elected to the post of the President of the Panchayat. On the other hand, the first respondent prayed that the Tribunal should direct a fresh election to be held for the post of President. The tribunal declined to order re- election and instead declared the petitioner to have been duly elected because the recount clearly proved "that the petitioner has secured 28 votes more than the first respondent" .

Against the order of the Tribunal the first respondent filed Civil Revision Petition No. 704/88 to the High Court. A learned single judge of the High Court allowed the revision holding that the Tribunal had erred in ordering a recount of the votes when the petitioner had not made out a prima facie case for an order of recount of votes being made. The High Court has pointed out that the secrecy of the ballot is sacrosanct and as such the secrecy of the ballot should not be violated by any Tribunal unless a prima facie case of a compulsive nature had been made out by the defeated candidate for the rule of secrecy being broken and the ballot papers being inspected and counted afresh. Consequently the High Court set aside the order of the Tribunal and restored the election result in favour of the first respondent. It is against the said order of the High Court the petitioner has filed this special leave petition.

Mr. M.N. Padamanabhan and Mr. Garg, learned counsel appearing for the petitioner and the first re pondent respectively presented the case of their respective parties before us with all the persuasiveness at their command. While Mr. Padmanabhan's contention was that the petitioner had placed sufficient materials before the Tribunal to make out a prima facie case for a recount of votes being ordered and that the result of the recount of votes amply established the truth of the petitioner contentions, Mr. Garg argued that the allegations made by the petitioner in the petition were of a very general and vague nature and such vague averments can by no stretch of imagination be considered adequate material by the Tribunal to conclude that there was compulsive need for the secrecy of the ballot being violated and a recount of votes being ordered.

PG NO 955 Before examining the contentions of the parties we may set out the position in law as regards the need for the secrecy of the ballot being maintained and as to when the well established rule can be departed from. Since the principle of law has already been enunciated by this Court in several cases, we may refer to three of those decisions. In Dr. Jagjit Singh v. Giani Kartar Singh, [1967] 1 SCJ 762, the appellant had challenged the election of the first respondent to the Punjab Legislative Assembly. In the recount of votes ordered by the Tribunal it was found that the appellant had secured 22,491 votes and the first respondent had secured 22,412 votes. The Tribunal allowed the election petition and declared the appellant to have been duly elected. The High Court set aside the order of the Tribunal and the judgment of the High Court was confirmed by this Court. In doing so this Court observed as follows:

"Therefore,in a proper case, the Tribunal can order the inspection of the ballot boxes and may proceed to examine the objections raised by the parties in relation to the improper acceptance or reject of the voting papers. But in exercising this power, the Tribunal has to bear in mind certain important considerations. Section 83(1)(a) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies; and in every case, where a prayer is made by a petitioner for the inspection of the ballot boxes, the Tribunal must enquire whether the application made by the petitioner in that behalf contains a concise statement of the material facts on which he relies. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted, would not serve the purpose which section 83(I)(a) has in mind. An application made for the inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice, the ballot boxes should be inspected or not. In dealing with this question, the importance of the secrecy of the ballot

papers cannot be ignored, and it is always to be borne in mind that the statutory Rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting. It may be that in some cases. the ends of justice would make it necessary for the Tribunal to allow a party to inspect the PG NO 956 ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election; but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void."

In Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors., [1964] 6 SCR 238, this Court has set out the circumstances when an order for inspection of ballot papers can be ordered in the following terms:

"An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled:

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) The tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

In R. Narayanan v. Semmalai, [1980] SCR 571, the same principle has been reiterated. That was a case where the difference of votes between the candidates declared elected and his nearest rival, who filed an election petition was only 19 votes and which figure would have come down to 9 PG NO 957 votes only if the postal ballots were included. Even so this Court after referring to a number of decisions and Halsbury's Laws of England and Fraser on Law of Parliamentary Elections and Election Petitions held that without their being an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting of votes are founded and such averments being backed by acceptable evidence and the Court trying the petition being prima facie satisfied that an order for recount of votes is imperatively necessary to decide the dispute and do complete justice between the parties, an order of recount of votes cannot be passed.

Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from high sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material

placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or court should not order the recount of votes.

Viewed in the light of these well enunciated principles, we find that the petitioner has neither made such averments in the petition nor adduced evidence of such a compulsive nature as could have made the Tribunal reach a prima facie satisfaction that there was adequate justification for the secrecy of ballot being breached in the petitioner's case. Factors urged before us by Mr. Padamanabhan such as that the first respondent had accepted the correctness of the recount. and that he had conceded his defeat and wanted a re-election to be held cannot constitute justifying materials in law for the initial order of recount of votes made by the Tribunal.

Mr. Padamanabhan also contended that the purpose and object of the election law is to ensure that only that person should represent the constituency who is chosen by the majority of the electors and that is the essence of PG NO 958 democratic process, and this position has been observed by a Bench of this Court in their order of reference of the case of N. Gopal Reddy v. Bonala Krishnamurty & Ors., CA No. 3730(NCE) of 1986 reported in JT 1987(1) SC-406 and hence it would be a travesty of justice and opposed to all democratic canons to allow the first respondent to continue to hold the post of the President of the Panchayat when the recount disclosed that he had secured 28 votes less than the petitioner. We are unable to sustain this contention because as we have stated earlier an order of recount of votes must stand or fall on the nature of the averments made and the evidence adduced before the order of recount is made and not from the results emanating from the recount of votes.

It was also brought to our notice that the first respondent has resumed charge of the post of the President from the petitioner, although with unseemly hurry with the aid of police after the High Court's order, and that the term of office of President is to come to a close in about ten weeks time.

In the light of our conclusions we do not find any merit in the special leave petition and accordingly dismiss the same.

N . V . K . Petition dismissed .