

Before Rakesh Kumar Jain, J.

SMT. KARNAIL KAUR,—Appellant/Petitioner

versus

SMT. BALBIR KAUR,—Respondent

R.S.A. 1207 of 2008

8th December, 2008

Code of Civil Procedure, 1908—Haryana Panchayati Raj Act, 1994—Haryana Panchayati Raj Election Rules, 1994—Rl. 71—Election to post of Sarpanch—Appellant and respondent securing equal number of votes—Returning Officer by toss of a coin declaring respondent elected as Sarpanch—No provision either under 1994 Act or Rules whereby Returning Officer could decide in circumstance of equality of votes or a tie by way of toss of a coin—Provisions of Rl. 71 provide that in case of equality of votes result has to be decided on basis of los only—Action of Returning Officer declaring respondent elected by toss of a coin patently illegal—Appeal allowed, judgments and decrees of both Courts below set aside.

Held, that there is no provision either under the Act or under the Rules whereby Returning Officer (Panchayat) could decide in the circumstance of equality of votes or a tie by way of toss of a coin. It is otherwise admitted position that Rule 71 of the Rules was framed to tackle this type of a situation wherever there is a tie.

(Para 9)

Further held, that from the ratio of the law laid down in the judgments in the case of Harbans Singh *versus* The State of Punjab and others, 1982 PLJ 415 and Om Parkash Lamba *versus* State of Punjab and others, 1962 Cur. L.J. 152 it is clear that lot drawn would tantamount to securing of additional vote in favour of the candidate in whose favour lot is drawn and the drawing of the lot has to be forthwith, meaning thereby it has to be the next immediate step. The phrase to draw lots would mean : to determine an event by drawing one thing from a number whose marks are concealed from the drawer. The essence of drawing lots

is that the drawer himself should appear unconcerned with the result and the numbers themselves from which he is to select are concealed from him. It is further held that throwing a coin in the air for the purpose of tossing up there is a possibility of drawer to determine the result. Moreover, once the provision of tossing up is not provided in the Statute itself and the language of Rule 71 is plain and simple providing ("by lot"), the action of the Returning Officer was patently illegal whereby he had decided the fate of the parties to the list, who had a tie due to equality of votes, by way of tossing up the coin.

(Paras 13)

Amit Singla, Advocate *for the appellant.*

Rajinder Mathur, Advocate *for the respondent.*

RAKESH KUMAR JAIN, J.

(1) The following substantial questions are involved in this appeal :—

- (i) Whether in case of equality of votes or a tie in the election of Sarpanch or Panch under the Haryana Panchayati Raj Act, 1994 and Haryana Panchayati Raj Election Rules, 1994, Returning Officer should proceed to decide by lots or by toss of a coin.
- (ii) Whether in the absence of any provision under the Haryana Panchayati Raj Election Rules, 1994, Returning Officer (Panchayat) has the jurisdiction to decide by toss of the coin between the candidates whose votes are equal.

(2) The case of the appellant is that she is a permanent resident of village Luthera, Tehsil Ratia having Vote No. 196 Serial No. 56 in Ward No. 2. It is alleged that on 9th April, 2005, elections to the post of Sarpanch of Gram Panchayat, Luthera were held and polling took place in Government Primary School, Luthera where 456 votes were polled. The Returning Officer announced 222 votes in favour of the appellant, 220 votes in favour of the respondent, 13 votes were declared cancelled, one vote was found missing and the appellant was declared

elected by margin of 2 votes. But later on, the result was changed by the Returning Officer who announced that both the appellant and respondent have secured 219 votes each, 17 votes were invalid, one vote was found missing and since there was an equality of votes and a tie, the Returning Officer (Panchayat) by toss of a coin, which fell in favour of the respondent, declared him as Sarpanch. The appellant challenged the election of the respondent under Section 176 of the Act by filing an Election Petition but that was dismissed by the Additional Civil Judge (Sr. Division) Ratia *vide* his order, dated 12th April, 2007. The appellant then filed appeal which was also dismissed by learned District Judge, Fatehabad,—*vide* his judgment and decree, dated 8th November, 2007.

(3) In the present appeal, learned counsel for the appellant has challenged the impugned order, dated 12th April, 2007, judgment and decree of the Appellate Court dated 8th November, 2007, as well as the action of the Returning Officer (Panchayat) for declaring the respondent elected by toss of a coin, on the ground that there is no provision of toss either in the Haryana Panchayati Raj Act, 1994 (for short 'the Act') or in the Haryana Panchayati Raj Election Rules, 1994 (for short 'the Rules'). It is rather alleged there is a specific Rule 71 in the Rules according to which in case of equality of votes the result has to be decided on the basis of lot only.

(4) It is correct that to deal with a contingency of equality of votes or a tie, Rule 71 has been provided in the Rules, which is reproduced as under for ready reference :

“Rule 71-Equality of votes.—If, after the counting of votes equality of votes is found to exist between any candidates and an addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer (Panchayat) shall forthwith decide between those candidates by lot and proceed as if the candidate on whom the lot fall has received one additional vote.”

(5) Now the question is whether the Returning Officer (Panchayat) should decide on the basis of Rule 71 of the Rules or by way of toss.

(6) Learned counsel for the appellant has relied upon decision of this Court rendered in the case of **Harbans Singh versus The State of Punjab and others (1)** and **Om Parkash Lamba versus State of Punjab and others (2)** and contended that since there is no provision in the Rules for deciding the election by way of toss, therefore, the action of the Returning Officer (Panchayat) was illegal as he was required to decide the tie between the parties by way of lot.

(7) On the contrary, learned counsel for the respondent has contended that decision by lot or by toss is one and the same thing. He relied upon dictionary meaning of lot—Provided in the Law Lexicon which says that “lot means to be a contrivance to determine a question by chance, or without the action of man’s choice or will.” It is thus, contended that toss of the coin is also a matter of chance, therefore the action of the Returning Officer (Panchayat) is within the parameters of law.

(8) I have heard learned counsel for both the parties and have given my thoughtful consideration to their respective contentions.

(9) It is an admitted fact that there is no provision either under the Act or under the Rules whereby Returning Officer (Panchayat) could decide in the circumstance of equality of votes or a tie by way of toss of a coin. It is otherwise admitted position that Rule 71 of the Rules was framed to tackle this type of a situation wherever there is a tie.

(10) In Harbans Singh’s case (*supra*), election under the Punjab Gram Panchayat Election Rules, 1960 were held and there was a tie between the parties Rule 33 of the Punjab Gram Panchayat Election Rules, 1960 provides a guidance to the Returning Officer in case of a tie. Rule 33 is reproduced as under :

“Procedure in case of tie.—If after the counting of votes is completed, an equality of votes is found to exist between

(1) 1982 P.L.J. 415

(2) 1962 Cur. L.J. 152

any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the Presiding Officer or the Returning Officer, as the case may be, shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls has received an additional vote.”

(11) In the said case, it was held that lot drawn would tantamount to the securing of one additional vote in favour of the candidate in whose favour the lot is drawn. It was further held that mandatory language of the Rule is that the drawing of the lot has to be ‘forthwith’, meaning thereby that it has to be the next immediate step. So, certainty being one of the essential attributes of law, the interpretation of the rule which can give rise to looseness and speculation has to be discarded, and rather it has to be put on a firm and straight footing.

(12) In the case of **Om Parkash Lamba** (*supra*), there was a tie between the contesting parties. In order to meet this contingency Rule 49(1) is provided in the Municipal Election Rules which says that if two or more candidates obtain an equal number of votes, the Chairman of the meeting shall once decide between the candidates by drawing lots in the presence of the members attending the meeting. In the said case, instead of drawing lots, the Chairman of the meeting tossed up a coin and the respondent therein was elected. In the said case, it was argued by the counsel for the winning candidate that procedure of tossing up, harmonizes with the operation of the drawing of the lots as both involve an element of chance. The learned court however, observed that as per Volume 13 at page 388, in words and phrases “the phrase to draw lots” is said by Webster to mean : “to determine an event by drawing one thing from a number whose marks are concealed from the drawer.” The essence of drawing lots is that the drawer himself should appear unconcerned with the result and the numbers themselves from which he is to select are concealed from him. It was held that in throwing a coin in the air, the drawer may be in a position to determine the result. It was further held that it might well be that the

State Government did not wish to countenance the procedure of 'tossing up' in the election of a President of a democratic assembly, being undignified or improper.

(13) Thus, from the ratio of the law laid down in the aforesaid judgments in the case of **Harbans Singh** (*supra*) and **Om Parkash Lamba** (*supra*) it is clear that lot drawn would tantamount to securing of additional vote in favour of the candidate in whose favour lot is drawn and the drawing of the lot has to be forthwith, meaning thereby it has to be the next immediate step. The phrase to draw lots would mean : to determine an event by drawing one thing from a number whose marks are concealed from the drawer. The essence of drawing lots is that the drawer himself should appear unconcerned with the result and the numbers themselves from which he is to select are concealed from him. It is further held that throwing a coin in the air for the purpose of tossing up there is a possibility of drawer to determine the result. Moreover, once the provision of tossing up is not provided in the Statute itself and the language of Rule 71 is plain and simple providing ("by lot"), the action of the Returning Officer was patently illegal whereby he had decided the fate of the parties to the lis, who had a tie due to equality of votes, by way of tossing up the coin.

(14) In view of the above discussion, the present appeal is hereby allowed and the impugned order and judgment and decree of both the Courts below are set aside. Consequently, the election of the respondent to the post of Sarpanch Luthera, Tehsil Ratia is also set aside. It is further directed that fresh election to the post of Sarpanch of Gram Panchayat Luthera, Tehsil Ratia be held in accordance with the provision of Rule 71 of the Rule within a period of fifteen days from the date of receipt of copy of this order.

(15) In the facts and circumstances of the case, parties are left to bear their own costs.