

Kabul Singh

Vs

Kundan Singh and Others

Civil Appeal No. 1359 of 1969

(K. S. Hegde, A. N. Ray JJ)

13.08.1969

JUDGMENT

HEGDE, J. -

1. This appeal under Section 116-A of the Representation of People Act, 1951 (to be shortly referred to hereinafter as the Act) is directed against the decision of the High Court of Punjab and Haryana in Election Petition No. 1 of 1968 on its file. In that election petition, Kundan Singh, the 1st respondent to this appeal challenged the validity of the returning officer's declaration that the appellant has been duly elected from the Hoshiarpur Local Authorities Constituency to the Punjab Legislative Council in the election held in April, 1968. The High Court came to the conclusion that some of the votes polled in that election were invalid votes and if the valid votes alone are taken into consideration, as it should have been, then the 1st respondent is entitled to be declared elected. It accordingly set aside the declaration made in favour of the appellant and declared the 1st respondent as having been duly elected.

2. We may now briefly state the material facts. In March 1968, the Hoshiarpur Local Authorities Constituency was called upon to elect one member to the Punjab Legislative Council. The election calendar was as follows :

#(1) The last date for filing nomination papers .. 12-3-1968.(2) Date of scrutiny of the nomination papers .. 13-3-1969.(3) The last date for withdrawal of candidatures .. 16-3-1968.(4) Date of polling .. 7-4-1968.(5) Date of counting and declaration of result .. 8-4-1968.##

In that election, as many as five candidates contested. They are the appellant and the respondents herein. On April 8, 1968, the returning officer after counting the votes cast declared the appellant to be the successful candidate as he had secured one vote more than the 1st respondent. The 1st respondent challenged that declaration in the aforementioned election petition on various grounds of which, at present, we are only concerned with one, viz., that the vote of Hari Singh should have been held to be a void vote as his name was included in the electoral roll on April 5, 1968, i.e., just two days before the date of polling. In his turn the appellant filed a recriminatory petition contending inter alia that the vote of Tarsem Singh was void as by the time the polling took place, he had become a Government servant and the votes of two other persons namely Harjinder Singh and Balwant Singh were void as their names were included in the electoral roll after the last date for filing nominations for the election. Other grounds taken in the recriminatory petition are not relevant for our present purpose. They have not been pressed before us.

3. The election petition came up for trial before Mahajan, J. The learned Judge submitted the following question to a Full Bench for decision :

"Whether allegation in Para 4(a) pertaining to the vote of Hari Singh is correct and the vote was void and was polled in favour of Respondent No. 1 in violation of the rules and has materially affected the result of the election of Respondent No. 1."

The Full Bench by majority came to the conclusion that the vote of Hari Singh was void as his name was included in the electoral roll of the constituency after the last date for making nominations for the election in that constituency. Thereafter the case was sent back to Mahajan, J., for deciding the issues left undecided. On the basis of the opinion expressed by the Full Bench, the learned Judge came to the conclusion that the votes of Hari Singh, Harjinder Singh and Balwant Singh were void votes. Consequently he recounted the votes validly cast and came to the conclusion that the 1st respondent had been duly elected. He gave a declaration to that effect.

4. As seen earlier, the main contention in this appeal relates to the true effect of sub-section (3) of Section 23 of the Representation of People Act, 1950 (to be hereinafter referred to as "the 1950 Act") which prohibits the deletion of any entry or inclusion of any name in the electoral roll of a constituency and before the completion of that election. We have considered the scope of that provision in *Baidyanath Panjiar v. Sitaram Mahto and Others* (Civil Appeal No. 25 of 1969, decided on 13-8-69) in which we have delivered judgment just now. In view of that decision, the view taken by the majority of the Full Bench must be held to be correct.

5. Evidently under an erroneous impression that Harjinder Singh and Balwant Singh had voted against him, the appellant had contended in his recriminatory petition that their votes were invalid. But on scrutiny it was found that one of them had given his first preference to him. Now it is contended on his behalf that as the 1st respondent had not challenged the validity of those votes, the trial court could not have excluded from consideration the vote cast in his favour by one of those persons. This is an untenable contention. The votes of Harjinder Singh and Balwant Singh have been rejected on the ground that their names were included in the electoral roll in defiance of the mandate given under Section 23(3) of the 1950 Act. What applies to Hari Singh equally applies to Harjinder Singh and Balwant Singh. The fact that the 1st respondent did not challenge the validity of those votes is immaterial in the circumstances of this case. The election petition and the recriminatory petition were parts of one enquiry. As the validity of these votes had come up for consideration and as it has been held that those votes are void votes, it necessarily follows that those votes must be excluded from consideration in determining the result of the election.

Another contention urged by Shri Hardev Singh is that only the votes of those electors who had applied for inclusion of their names in the electoral roll after the period mentioned in Section 23(3) of the 1950 Act can be held to be void; as the person who cast his vote in favour of the appellant had applied for inclusion of his name some days before the last date for making nominations, the inclusion of his name in the roll after that date will not make his vote void. In support of his contention, he placed reliance on the decision of the Patna High Court in *Ram Swaroop Prasad Yadav v. Jagat Kishore Prasad Narain Singh*. (XVII ELR 110). The ratio of that decision has no application to the facts of the present case. That decision was rendered before sub-section (3) of Section 23 of the 1950 Act was incorporated into the 1951 Act. The mandate of that provision is plain and unambiguous. It prohibits inclusion of any name in the electoral roll after the prescribed date whether the application for inclusion was made before or after that date.

6. The only other contention that remains to be considered is that the High Court should have held that the vote of Tarsem Singh is invalid. It is not disputed that Tarsem Singh's name finds place in the electoral roll of the constituency but the argument was that as he had taken up Government service subsequent to the inclusion of his name in the electoral roll, he became disqualified to be a member of any local board and therefore he was not entitled to vote in the election. The contention cannot be upheld. Section 62 of the Act provides thus :

"62. (1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in Section 16 of the Representation of the People Act, 1950.

(3) No person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police :

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force."

In view of those provisions, read with Section 23(3) of the 1950 Act, every person who is for the time being entered in the electoral roll of a constituency as it stood on the last date for making nominations for an election in that constituency is entitled to vote unless it is shown that he is prohibited by any of the provisions of the Act from exercising his vote. The prohibitions contained in sub-sections (3), (4) and (5) of Section 62 of the Act do not apply to the case of Tarsem Singh. Therefore we have to see whether the prohibition contained in sub-section (2) applies to his case. That sub-section says that no person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in Section 16 of the 1950 Act.

7. This takes us to Section 16 of the 1950 Act. It reads thus :

"16(1) A person shall be disqualified for registration in an electoral roll if he -

(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included :

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of sub-section (1) shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorising such removal."

8. It is not the case of the appellant that Tarsem Singh had incurred any of the disqualifications mentioned therein. No other provision of law in the Act or in any other law was brought to our notice disqualifying him from exercising his vote. The right to vote being purely a statutory right, the validity of any vote has to be examined on the basis of the provisions of the Act. We cannot travel outside those provisions to find out whether a particular vote was a valid vote or not. In view of Section 30 of the 1950 Act, civil courts have no jurisdiction to entertain or adjudicate upon any question whether any person is or is not entitled to register himself in the electoral roll in a constituency or to question the illegality of the action taken by or under the authority of the Electoral Registration Officer or any decision given by any authority appointed under that Act for the revision of any such roll. Part III of the 1950 Act deals with the preparation of rolls in a constituency. The provisions contained therein prescribe the qualifications for being registered as a voter (Section 19), disqualifications which disentitle a person from being registered as a voter (Section 16), revision of the rolls (Section 21), correction of entries in the electoral rolls (Section 22), inclusion of the names in the electoral rolls (Section 23), appeals against orders passed by the concerned authorities under Sections 22 and 23 (Section 24). Sections 14 to 24 of the 1950 Act are integrated provisions. They form a complete code by themselves in the matter of preparation and maintenance of electoral rolls. It is clear from those provisions that the entries found in the electoral roll are final and they are not open to challenge either before a civil court or before a tribunal which considers the validity of any election. In *B. M. Ramaswamy v. B. M. Krishnamurthy and Others* ((1963) 3 SCR 479), this Court came to the conclusion that the finality of the electoral roll cannot be challenged in a proceeding challenging the validity of the election.

9. For the reasons mentioned above this appeal fails and the same is dismissed with costs.

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