

Ram Sarat Singh

Vs

Harish Chandra Mahto

Civil Appeal No. 738 of 1974

(A. Iyengar, R. S. Sarkaria, V. R. Krishna Iyer JJ)

13.12.1974

JUDGMENT

SARKARIA, J. -

1. The appellant was elected as a member of the Bihar Legislative Assembly from 69-Belsand Assembly Constituency securing 30,501 votes as against 18,371 polled by his nearest rival, Sri Ramanand Singh. The poll was held on March 5, 1972. A re-poll of polling stations situated in village Aura was held on March 10, 1972.

2. Harish Chandra Mahto, respondent herein, an elector of the constituency, filed an election petition in the Patna High Court calling in question the election of the returned candidate inter alia on the ground of undue influence exercised at several polling stations including those located at Sanbarsa, Narwara, Fatehpur and Manguraha. It was alleged that the returned candidate, his agents and supporters with the consent and connivance of the returned candidate drove away the voters, seized the polling stations and procured bogus votes in favour of the returned candidate. In Sch. IV, appended to the election petition, the names of the voters who were allegedly restrained by the returned candidate or his agents or supporters at different polling booths on the date of the poll were mentioned.

3. The High Court framed the issues and recorded the entire evidence adduced by the parties. The petitioner examined 54 witnesses including two who were simply tendered. The returned candidate examined 135 witnesses, in rebuttal, apart from himself appearing in the witness stand as RW 136. Almost at the close of the final arguments, the election-petitioner on January 17, 1974, moved an application before the High Court praying inter alia for permission to inspect the counterfoils of the ballot papers of eight voters who as RWs 10, 11, 12, 14, 37, 115, 118 and 136 had stated that on the polling day they were absent from the village. It was asserted that the inspection of the counterfoils would show that votes had been polled in their names. The returned candidate opposed the application. By an order dated February 5, 1974, the learned trial Judge allowed inspection of the counterfoils pertaining to RWs 10, 11, 12, 14, 37, 115, 118 and 136, who were to cast their votes in the polling booths located at village Narwara. Aggrieved by that order the returned candidate has filed this appeal after obtaining special leave under Article 136 of the Constitution.

4. This Court has held in a series of decisions that inspection of ballot papers or their counterfoils is not to be allowed as a matter of course as such an order touches upon the secrecy of the ballot. Such inspection can be allowed only if a good ground for the same is made out by the petitioner. He must adequately state all the material facts in his election petition on which he relies for such a claim. Furthermore, the Court must be satisfied that for the purpose of deciding the case and doing

complete and effectual justice between the parties it is imperatively necessary to order the inspection.

5. These tests, in our opinion, were not satisfied in the instant case. There was no allegation, even in an embryonic form, in the election petition or in the Schedule appended thereto that undue influence or coercion was exercised upon these eight persons or that bogus votes were cast in their names. Nor was any evidence adduced by the petitioner that these eight persons had been scared away from the polling station under threat, duress or undue influence proceeding from the returned candidate or his agent's and supporters, and thereafter votes were cast by personation in their names in favour of the returned candidate.

6. Inspection of the counterfoils of the ballots could not be allowed to establish a plea for which there was no adequate foundation either in the pleading or in the evidence of the petitioner. Such an inspection will not yield evidence of any specific fact in issue, excepting perhaps that of discrediting the testimony of these eight witnesses examined by the opposite party. Manifestly the petitioner under the cover of the Court's order wants to fish out evidence - a course which is not permissible.

7. For the reasons aforesaid, we are of the opinion that the learned trial Judge was in error in allowing inspection of the counterfoils of these ballot-papers. Of course, after recording its findings if the High Court feels the need for a recount on legally tenable grounds nothing said here stands in its way.

8. In the result, we allow this appeal, set aside the Order of the High Court and dismiss the application for inspection. Respondent No. 1 shall pay the costs of the appellant in this Court.

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