

Shri Beli Ram

Vs

Shri Nand Kumar and Others

Civil Appeal No. 1318 of 1975

(P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali JJ)

02.12.1976

JUDGMENT

BHAGWATI, J. –

1. We passed an order on April 29, 1976 allowing this appeal and dismissing the election petition filed by the first respondent for setting aside the election of the appellant. We now proceed to give our reasons for making that order.
2. The General Elections to the Jammu & Kashmir Legislative Assembly took place in March 1972. There were four candidates who stood for election from the Naushera Assembly Constituency. One was the appellant and the other three were the respondents. The appellant was a candidate set up by the Indian National Congress, while the first respondent was an independent candidate supported by the Praja Socialist Party. The poll was held on March 8, 1972 and the counting of votes took place on March 12, 1972. It was found that the appellant had secured 8563 votes as against 8512 votes secured by the first respondent, 1570 votes secured by the second respondent and 800 secured by the third respondent. The appellant was accordingly declared as duly elected by the Returning Officer.
3. The first respondent filed a petition in the High Court of Jammu & Kashmir for declaring the election of the appellant void and various grounds set out in the petition. We shall refer to these grounds a little later when we examine the arguments advanced on behalf of the parties. Suffice it to state for the present that some of the grounds taken in the petition found favour with the High Court and by a judgment dated September 25, 1975 the High Court allowed the petition and set aside the election of the appellant. It may be pointed out that the first respondent also claimed in the petition that he should be declared elected, but this claim was negated by the High Court on the ground that there was no material on the basis of which such an order could be made. The appellant being aggrieved by the order made by the High Court setting aside his election preferred the present appeal in this Court under Section 123 of the Jammu & Kashmir Representation of the People Act, 1957.
4. The first ground on which the High Court set aside the election of the appellant was that there was a sudden change in the polling booth in Hathal village at the last moment without obtaining the previous approval of the Election Commission and this change was not properly publicised and made known to the people with the result that a large number of voters whose number exceeded fifty could not exercise their franchise and that materially affected the result of the election in so far as it concerned the first respondent. The argument which found with the High Court was that the change of polling booth was made in violation of Section 36 of the Jammu & Kashmir Act and the Conduct of the Election Rules and Instructions issued under the Jammu & Kashmir Act and there

was thus non-compliance with the provisions of the Jammu & Kashmir Act and the Rules and Orders made thereunder and this non-compliance materially affected the result of the election by preventing a large number of voters from casting their votes in favour of the first respondent and hence the election of the appellant was void under clause (iv) of Section 108(1)(d) of the Jammu & Kashmir Act. This argument, if valid, would be sufficient to support the judgment of the High Court and we must, therefore, examine it closely to see whether it is well founded.

5. It is necessary to state a few facts in order to appreciate whether this argument is sustainable or not. The evidence on record clearly shows that the polling booth for Hathal village was agreed to be located at the house of Ram Saran and after obtaining the consent of Ram Saran, his house was shown as the place of the polling booth in the approved list published on February 5, 1972. Then a change was made on February 27, 1972, and the polling booth was shifted from the house of Ram Saran to that of Sarban Singh. But this change created a certain amount of confusion because Sarban Singh has two houses in Hathal village and, therefore, a second amendment had to be made on March 5, 1972 clarifying that the polling booth would be at the house of Sarban Singh at Salehri. This was done only three days before the date of the poll. But even so the first respondent had no grievance about it, since he had sufficient time to inform the voters of Hathal village. There was, however, a further change made in the polling booth on March 7, 1972, that is, the date before the poll and the polling booth was shifted from the Salehri house of Sarban Singh to the School at Tali Galla. The case of the appellant was, and that was supported by Ishardas Gupta, Deputy Commissioner, Rajauri, who was also the Returning Officer of the Naushera Assembly Constituency, that this change of polling booth was made at the instance of Indu Bhushan the son of the first respondent. The evidence of Ishardas Gupta was that on March 6 or 7, 1972 Indu Bhushan contacted him on the telephone from Sunder Bani and requested him to change the polling booth since Sarban Singh was related to the first respondent and though it was difficult to make such a last minute change, he acceded to the request of Indu Bhushan and changed the polling booth from the Salehri house of Sarban Singh to Tali Galla School on March 7, 1972. Ishardas Gupta stated in his evidence that he immediately informed Tahsildar, Naushera about this change and also gave direction to the Naib-Tahsildar, Sunder Bani to depute special messenger to inform the voters in Hathal village in regard to this change. Ved Prakash who was the Naib-Tahsildar, Sunder Bani at the material time thereupon immediately went to Hathal along with Patwari Manoharlal, Makhan Singh Chaukidar and Mansa Ram peon and called the village level workers, the chaukidar and the numberdar and informed them about the change in the polling booth. Sarban Singh was also informed that his house would no longer be used as a polling booth since it had been changed to Tali Galla School. The case of the appellant supported by Ishardas Gupta, Ved Prakash and Patwari Manoharlal was that sufficient intimation of the change of polling booth was given to the voters of Hathal village and that was the reason why the percentage of voters which turned out for voting at Hathal village was not less than 64 per cent. The High Court did not accept the evidence of Ishardas Gupta, Ved Prakash and Patwari Manoharlal on this point and held that sufficient publicity was not given to the change of polling booth and hence a large number of people who went to the Salehri house of Sarban Singh for the purpose of casting their votes could not exercise their franchise. There is no reason why the High Court should have refused to accept the evidence Ishardas Gupta and Ved Prakash. One was Deputy Commissioner of Rajauri while the other, Naib-Tahsildar, Sunder Bani at the material time and it is difficult to imagine any reason why these two officers and particularly Ishardas Gupta who was a highly responsible and well placed officer, should have gone to the length of purjuring themselves for the purpose of supporting the appellant. It is not possible to believe that Ishardas Gupta should have made last minute change in the polling booth at Hathal village simply in order to oblige the appellant. There were only about 500 voters in Hathal village

and it could hardly have been imagined by the appellant that a last minute change in the polling booth would make such a difference to his election prospects that he would persuade Ishardas Gupta to make such a last minute change and Ishardas Gupta would go out of his way to do so in order to oblige the appellant and expose himself to the risk of being reprimanded by the Election Commission. We are inclined to accept that Ishardas Gupta changed the polling booth in response to the request of Indu Bhushan and there was sufficient publicity given to the change of polling booth, for otherwise it is not possible that though there was heavy rain throughout the day on the date of polling, as many as 64 per cent. of the voters should have cast their votes at the polling booth at Tali Galla School. Ishardas Gupta also immediately sent intimation to the Election Commission and the approval of the Election Commission was obtained before actual polling commenced on March 8, 1972. The change of polling booth from the Salehri house of Sarban Singh to Tali Galla School did not, therefore, involve any violation of Section 36 of the Jammu & Kashmir Act or the Conduct of the Election Rules and Instructions issued under that Act and the High Court was in error in taking a contrary view.

6. But even if there was violation of Section 36 of the Jammu & Kashmir Act and the Conduct of the Election Rules and Instructions issued under that Act, that is not sufficient to invalidate the election of the appellant, unless it is shown that such violation materially affected the result of the election in so far as the appellant was concerned. It is now well settled as a result of several decisions of this Court that the election of the returned candidate cannot be voided under Section 100(1)(d)(iv) of the Representation of the People Act, 1951 which corresponds *ipsissima verba* with Section 188(1)(d)(iv) of the Jammu & Kashmir Act, unless the election petition proves that the result of the election has been materially affected in so far as the returned candidate is concerned. This proposition was laid down in an early decision of this Court in *Vashist Narain Sharma v. Dev Chandra* ([1955] 1 SCR 509 : AIR 1954 SC 513 : 10 ELR 30). In that case there was a difference of 111 votes between the returned candidate and the candidate who had obtained the next highest number of votes. One candidate by name Doodhnath Singh was found not competent to stand and the question was whether the votes wasted on Doodhnath Singh, if they had been polled in favour of the remaining candidates, would have materially affected the fate of the election. *Gulam Hussan, J.*, dealing with this question observed :

It is impossible to accept the *ipse dixit* of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand.

The learned Judge proceeded to add :

It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged.

The burden under our law lies on the election petitioner to show affirmatively that the result of the

election has been materially affected. What has, therefore, to be seen is whether this burden has been successfully discharged by the first respondent in the present case by demonstrating to the court either positively or even reasonably that the poll would have gone against the appellant, if the breach of Section 36 of the Jammu & Kashmir Act and the Rules and Orders issued under that Act had not occurred and the poll had taken place at the Salehri house of Sarban Singh which was the place originally appointed for the polling booth.

7. The evidence led by the first respondent to show that the result of the election was materially affected by reason of last minute change of polling booth consisted of the oral testimony of 25 witnesses. Each of these 25 witnesses came forward to say that he or she went to the house of Sarban Singh in order to cast his or her vote in favour of the first respondent, but there being no polling booth located there, he or she had to return without exercising his or her franchise and thus a large number of votes were lost to the first respondent. We have carefully gone through this evidence, but we find it wholly unsatisfactory. In the first place, out of these 25 witnesses, who came to give evidence on behalf of the first respondent, we find that six witnesses, namely, Mst. Jan. PW 16, Mst. Zebran PW 17, Piro PW 19, Baja PW 20, Mst. Zere PW 21 and Bhullo Ram PW 38 were not even registered as voters and they could not have cast their votes in favour of the first respondent and their votes must, therefore, be left out of account. That leaves 19 witnesses on the side of the first respondent and it is interesting to note that out of them, 4 witnesses, namely Parkasho PW 32, Ishardas PW 37, Mulkraj PW 39 and Chunnilal PW 40 stated in their evidence that they went to Sehata house or Sarban Singh for the purpose of casting their votes, but since no one from the election staff had turned up there, they had to return home without casting their votes. This evidence obviously cannot help the first respondent because prior to the change to Tali Galla School, the polling booth which was fixed by the Returning Officer was at the Salehri house of Sarban Singh and not at his Sehata house and the first respondent could not be heard to say that it was by reason of the change of polling booth to Tali Galla School that he was deprived of the votes of these 4 witnesses. The first respondent would not have got their votes even if the change had not taken place and the polling booth had remained at the Salehri house of Sarban Singh. This observation must also apply in case of Nanki PW 29, for it was her evidence that she went to the house of Sarban Singh in order to cast her vote along with Parkasho PW 32 and, therefore, she also must have gone to the Sehata house and not to the Salehri house of Sarban Singh. The votes of these five witnesses, namely, Nanki PW 29, Parkasho PW 32, Ishardas PW 37, Mulkraj PW 39 and Chunnilal PW 40 cannot, therefore, be taken into account in determining whether the result of the election was materially affected. So far as the remaining 14 witnesses are concerned, we have closely examined their evidence, but we do not think we can accept it as sufficient to establish that they went to the Salehri house of Sarban Singh and they had to return without casting their votes because of the last minute change of the polling booth. Each of these witnesses stated that when he or she went to the house of Sarban Singh for casting his or her vote, the stereotyped information which was conveyed was that none from the election staff had turned up and there was going to be no voting at that place and not one of the witnesses who is supposed to have gone to the house of Sarban Singh was told that the polling booth was at Tali Galla School. This is indeed very strange and unusual. It is difficult to believe that when there was a last minute change of polling booth from the Salehri house of Sarban Singh to the Tali Galla School, the first respondent should not have kept some workers of his at the Salehri house of Sarban Singh in order to inform the voters coming there that the polling booth was changed to Tali Galla School. We are not prepared to believe that any of these 14 witnesses, or for the matter of that, even the other 11 witnesses ever went to the house of Sarban Singh for the purpose of casting their votes. It was raining very heavily on that day and there was a lot of slush and slime on the road and that is why none of these witness went to the polling

booth to exercise his or her franchise and taking advantage of the fact that they did not cast their votes, the first respondent got hold of them to say that they could not cast their votes because they did not know of the change of polling booth. Even apart from this serious infirmity in the evidence of these witnesses, we find that their evidence is unsatisfactory. Take for example, Subhadran PW 27. She was 84 years old at the time of the election and yet she would tell us that she walked two to four miles on foot in heavy rain on a muddy and hilly road in order to go to the house of Sarban Singh for casting her vote. She admitted that her eye-sight is weak for the last three years and normally her grandson accompanies her whenever she goes out of the house, because she is in need of support. But even so, she wants us to believe that on the day of polling she went to Sarban Singh's house about four miles away from her place on foot, all alone, without her grandson. Then we have the evidence of Taro Devi PW 25 who went to Sarban Singh's house for casting her vote but could not do so because no one from the election staff had turned up there. It is strange that Krishan Singh, the husband of this witness could cast his vote at the polling booth at Tali Galla School, but this witness did not know that the polling booth was at Tali Galla School and she made a futile journey to Sarban Singh's house. The only explanation which was given by her was that her husband had already left for his father-in-law's house at village Bharak, but this explanation is hardly satisfactory, because he did go to the polling booth at Tali Galla School for casting his vote and if he was aware, it is difficult to believe that his wife did not know. There are similarly inherent infirmities in the evidence of other witnesses as well and we do not think we can rely on their evidence for the purpose of holding that but for the last minute change of polling booth, these witnesses would have been able to cast their votes in favour of the first respondent. We are accordingly of the view that it was not been established by the first respondent even reasonably that on account of the last minute change of polling booth the first respondent was deprived of the votes of any of these 25 witnesses and hence we must hold that these votes cannot be taken into account in deciding whether the result of the election was materially affected by reason of the last minute change of polling booth.

8. The second ground on which the election of the appellant was challenged on behalf of the first respondent was that the dining room in the Dak Bungalow where the counting was done was so small that it could not accommodate more than five tables and yet ten tables were accommodated in that small room and there was so much of crowding and lack of space that counting could not be done in a proper way, making it possible for the election staff to indulge in dishonest handling, irregular counting and improper rejection of votes with a view to helping, and benefiting the appellant. This ground was negated by the High Court on a consideration of the evidence led on behalf of the parties and the High Court pointed out that even assuming for the sake of argument that the dining room of the Dak Bungalow was too small to accommodate all the counting personnel and they could not move about freely, "that would not in any way militate against the fact that the counting was done in a peaceful atmosphere without any disturbance" and it was not correct to say that at the time of counting a situation was created in the dining room which made irregular counting and undue rejection of votes possible. The High Court observed that the first respondent "has failed to establish that due to lack of sufficient accommodation in the dining hall, his prospects of winning the election" were adversely affected. This finding of the High Court was sought to be assailed on behalf of the first respondent in an attempt to support the ultimate decision of the High Court, but we do not think there is any cogent reason for interfering with this finding of fact reached by the High Court. We agree with the High Court that even if the dining hall in the Dak Bungalow was small and there was some congestion, that did not create a situation rendering irregular counting and improper rejection of votes possible so as to materially affect the result of the election. This ground was, therefore, rightly rejected by the High Court.

9. So also the High Court was right in rejecting the next ground urged on behalf of the first respondent, namely, that Sardar Gurnam Singh, who was the District Planning Officer, Rajauri at the material time, worked for the appellant during the election campaign. The case of the first respondent was that Sardar Gurnam Singh carried on propaganda on behalf of the appellant and a complaint in writing was therefore, made by the first respondent to Ishardas Gupta the, Returning Officer, on February 11, 1972. This complaint was brought on record and it was admitted by Ishardas Gupta that he did receive it, but his evidence was that on receipt of this complaint he asked the first respondent to furnish proof in regard to the allegations made in the complaint and the first respondent failed to furnish any such proof. Even so, Ishardas Gupta made inquiries on his own and also contacted the Block Development Officers who were in charge of engagement of labour and found as a result of such inquiries that there was no truth in the allegations made against Sardar Gurnam Singh. It is true that Sardar Gurnam Singh was the Presiding Officer at Narain Polling Station and he allowed 19 voters of Hidayatpur village to vote at Narain polling station even though they were attached to Sangpur Digana Polling Station and were not entitled to vote at Narain Polling Station. But that cannot by itself lead to the inference that Sardar Gurnam Singh was biased in favour of the appellant and canvassed for the appellant during the election campaign. It may be pointed out that out of 19 votes of Hidayatpur village, voters cast at Narain Polling Station, 2 went to the first respondent, 3 were rejected, 1 went to respondent 2, while only the remaining 13 went to the appellant. It is, therefore, not possible to believe that Sardar Gurnam Singh was responsible for getting 19 Hidayatpur voters to cast their votes at Narain Polling Station. The High Court has discussed the evidence in regard to the allegations against Sardar Gurnam Singh in some detail and we agree with the High Court that it is not possible to accept the case of the first respondent that Sardar Gurnam Singh in any way assisted the appellant during the election campaign or at the time of polling.

10. We also agree with the High Court that the allegations made by the first respondent against Ishardas Gupta, the Returning Officer, in regard to the tying up of the used ballot papers into packets and sealing them and refusing permission to the first respondent and his election agent to affix his own seal are not substantiated. The discussion of these allegations by the High Court is adequate and satisfactory and the High Court has given clear and cogent reasons for rejecting the evidence led on behalf of the first respondent on this point. We see no reason to interfere with the conclusion reached by the High Court.

11. This takes us to the next ground of challenge against the validity of the election of the appellant. This ground appealed to the High Court and it is, therefore, necessary to examine it a little more closely. The argument of the first respondent in regard to this ground was that 19 voters of Hidayatpur village cast their votes at Narain Polling Station which was not the polling station at which they were entitled to vote and hence the votes cast by them were invalid and they were wrongly taken into account in counting the votes. In Section 36 of the Jammu and Kashmir Act it is provided that the District Election Officer shall, with the previous approval of the Election Commission, publish a list showing the polling stations provided for every constituency and the polling areas or groups of voters for which they have respectively been provided and in accordance with the provisions of this section, one polling booth was provided at Narain for the polling areas of Narain, Kotehra Jagir and Kallar and another polling booth was provided at Sangpur Digiana for the polling areas of Hidayatpur, Digiana and Rampur. The voters of Hidayatpur village were, therefore, entitled to cast their votes at Sangpur Digiana Polling Booth and not at Narain Polling Booth. But for some inexplicable reason, 19 voters from Hidayatpur village were allowed to cast their votes at Narain Polling Booth. The question is whether the votes of these 19 voters of Hidayatpur village were liable to be rejected as invalid. Prima facie it does seem to us that the votes of these 19 voters

were valid votes since there is no provision in the Jammu and Kashmir Act or the Rules made under it authorising the rejection of these votes as invalid. The High Court took the view that the votes of these 19 Hidayatpur voters were liable to be rejected under clause (g) of sub-rule (2) of Rule 56 of the Jammu and Kashmir Conduct of Election Rules 1965. That clause provides that the Returning Officer shall reject a ballot paper if it bears a serial number or is of a design, different from the serial number, or as the case may be, design of the ballot papers authorised for use at the particular polling station. It is difficult to see how this clause could be availed of by the High Court for the purpose of rejecting the votes of these 19 Hidayatpur voters. The ballot papers which were used by these 19 voters for casting their votes were the ballot papers authorised for use at Narain Polling Station. It is not as if they used at Narain Polling Station ballot papers authorised for use at Sangpur Digiana Polling Station. The ballot papers used by them were the ballot papers authorised for use at Narain Polling Station and there was accordingly no scope for invoking clause (g) of sub-rule (2) of Rule 56. Prima facie we do not see why the votes cast by these 19 Hidayatpur voters should be regarded as invalid merely because they voted at Narain Polling Station instead of Sangpur Digiana Polling Station. But we do not think it necessary to decide this point, since we are of the view that even if the votes of these 19 Hidayatpur voters were excluded from consideration, it would not make any difference to the result of the election. Pursuant to an order made by us in the course of the hearing of the appeal on March 9, 1976, the Registrar of this Court opened the ballot boxes in the presence of the parties with a view inter alia to ascertaining how these 19 Hidayatpur voters had voted and it was found that out of the votes cast by these 19 Hidayatpur voters, 3 were rejected, 2 went to the first respondent, 1 went to the second respondent and only 13 went to the appellant. The net difference in the result would, therefore, be only to the extent of 11 votes, if the votes of these 19 Hidayatpur voters were excluded. But that, as we shall presently show, will not tilt the balance in favour of the first respondent.

12. There was another ground on which the election of the appellant was challenged and it was that several voters who were enrolled as service voters and to whom postal ballot papers were issued, cast their votes personally at their respective polling stations and hence their votes were liable to be excluded from consideration. The election petition gives the names of these voters who, according to the first respondent, had personally voted at their respective polling stations despite postal ballot papers having been issued to them, but out of them, according to the High Court, the case could be said to be established only in regard to Daulat Ram. The High Court held that the identity of the other voters was not established and it could not be said that the voters who were enrolled as service voters and to whom postal ballot papers were issued were the same persons who personally cast their votes at the respective polling stations. The appellant challenged the finding of the High Court in regard to Daulat Ram and contended that there was nothing to show that Daulat Ram who was entered at serial No. A-189 in the service voters register and to whom postal ballot paper was issued was the same Daulat Ram who personally cast his vote at Lamberi High School Polling Station. This contention of the appellant seems to be well founded. Daulat Ram, son of Hira Nand (RW 46) was registered as a voter at serial No. 830 and according to his evidence, he voted at Lamberi High School Polling Station. He made it clear that he was not serving in the Army at the time when the election took place, but there was another Daulat Ram, son of Kirpa Ram, who was serving in the Army since the last 13 years. The service voters register did show one Daulat Ram at serial No. A-189 and it was clear from the evidence that postal ballot paper was issued to this Daulat Ram but it did not appear from the service voters register as to what was the parentage of this Daulat Ram, whether he was the son of Hira Nand or the son of Kirpa Ram or the son of any one else. It was, therefore, not possible to identify this Daulat Ram who was at serial No. A-189 in the Service Voters Register and to whom postal ballot paper was issued as the same Daulat Ram son of Hira

Nand RW 46 who cast his vote at Lamberi High School Polling Station, and consequently the High Court was in error in excluding the vote of Daulat Ram, son of Hira Nand, RW 46 from consideration.

13. But the first respondent contended that Naubat Ram who was registered at serial No. A-87 and to whom postal ballot paper was issued had also personally cast his vote at Lamberi Primary School Polling Station and his vote was, therefore, liable to be excluded from consideration. Naubat Ram RW 28 gave evidence on behalf of the appellant and stated that he was discharged from the Army long back and he had cast his vote at Lamberi Primary School Polling Station. The Service Voters Register, however, showed that there was one Naubat Ram Registered at serial No. A-87 and according to the record, postal ballot paper was issued to him. The only question, therefore, would be whether Naubat Ram RW 28 was the same Naubat Ram who was registered at serial No. A-87 in the Service Voters Register. It was urged on behalf of the appellant that the name of the wife of Naubat Ram RW 28 was Permishwari alias Peshri, while the name of the wife of Naubat Ram registered at serial No. A-87 in the Service Voters Register was Pushpa Devi and this showed that the two Naubat Rams were not the same. Now this circumstances standing by itself could have been utilised for casting doubt on the identity of one Naubat Ram with the other but we find that there was only one Naubat Ram entered in the Electoral Roll for Lamberi area. Naubat Ram RW 28 must, therefore, be the same Naubat Ram who was registered at serial No. A-87 in the Service Voters Register. It is possible that the name of his wife may have been mentioned as Pushpa Devi in the Service Voters Register and Permishwari alias Peshri in the Electoral Roll. We think that the evidence led on behalf of the first respondent is sufficient to establish that Naubat Ram RW 28 was the same as Naubat Ram registered at serial No. A-87 and hence the vote cast by Naubat Ram RW 28 was liable to be rejected as invalid under clause (2)(b) of Rule 23 of the Jammu and Kashmir Conduct of Election Rules, 1965. The vote cast by Naubat Ram RW 28 was in favour of the appellant and hence one more vote must be deducted from the total number of votes polled by the appellant.

14. A similar contention was also advanced on behalf of the first respondent in regard to Permishwari wife of Purshotam Das registered at serial No. 1042 in the Electoral Roll. The argument of the first respondent was that Permishwari registered at serial No. 1042 was the same as Permishwari registered at serial No. A-260 in the Service Voters Register and since postal ballot paper was issued to her, she was not entitled to cast her vote at the polling station and her vote was liable to be rejected as invalid. Now, there can be no doubt that Permishwari registered at serial No. 1042 in the Electoral Roll was the same Permishwari who was registered at serial No. A-260 in the Service Voters Register, because in both the registers she was described as the wife of Purshotam Das and it would indeed be a strange coincidence that there should be two Permishwari in the same village having husbands of the same name, namely, Purshotamdas. But that by itself is not sufficient to invalidate the vote cast by Permishwari at the polling station. What is further necessary to be shown is that postal ballot paper was issued to her and that, unfortunately for the first respondent, does not appear to be established from the evidence on record. The notes regarding the result of the inspection of the list of service voters made by the learned Judge of the High Court in fact showed that no postal ballot paper was issued to Permishwari. The vote cast by Permishwari at the polling station cannot, in the circumstances, be condemned as invalid and the High Court was right in not excluding it from consideration in counting of votes.

15. Then it was contended on behalf of the first respondent that some voters were registered twice at different places in Naushera Assembly Constituency and they exercised their franchise at both the places where they were registered and hence the votes cast by them at both the places were invalid.

Though in the particulars of the election petition furnished by the first respondent, the names of as many as nine persons were mentioned, who, according to the first respondent, had voted twice, the first respondent at the hearing of the appeal before us confined his argument only to five persons, namely, Dhanraj and his wife Shakuntala, Lekhraj and his wife Leela Sharma and Vishwanath. Taking up first the case in regard to Dhanraj and Shakuntala, it is clear from the evidence that they were registered twice in the Electoral Roll, once at serial Nos. 235 and 236 and again at serial Nos. 1784 and 1782. It is true that the wife of Dhanraj at serial No. 236 was registered in the name of Kunti Devi and not in the name of Shakuntala, but the evidence on record established beyond doubt that these two were one and the same person. It may be noted that Dhanraj registered at serial No. 235 was the son of Nanak Chand while Dhanraj registered at serial No. 1784 was also the son of Nanak Chand. Ved Prakash RW 15 stated in his evidence that he knew Dhanraj, son of Nanak Chand of Sunderbani, that is, Dhanraj registered at serial No. 1784 and according to him, the brother of this Dhanraj was Girdharilal and his father-in-law was Uttam Chand. But, according to Lekhraj RW 32, the elder brother of Dhanraj of Kalideh, that is Dhanraj registered at serial No. 235, was also Girdharilal and the name of the father of his wife Kunti was also Uttam Chand. Uttam Chand, according to this witness, resided at Sunderbani and formerly Dhanraj registered at serial No. 235 was living with his father-in-law Uttam Chand but subsequently he started residing in his own house at Kalideh with his brother Girdharilal. It is, therefore, obvious that Dhanraj registered at serial No. 235 was the same as Dhanraj registered at serial No. 1784. It would indeed be a strange coincidence that there should be two Dhanrajs both having their father's name as Nanak Chand, their brother's name as Girdharilal and their father-in-law's name as Uttam Chand. Dhanraj was formerly staying with his father-in-law Uttam Chand at Sunderbani and, therefore, he and his wife must have been registered at serial No. 1784 and 1782 and subsequently when they shifted to Kalideh, they must have again been registered at serial Nos. 235 and 236 and it is quite possible that the wife may be having two names, Shakuntala and Kunti. We are, therefore, satisfied that Dhanraj and Shakuntala were registered twice in the Electoral Roll and the evidence on record clearly establishes that both of them voted twice at the places where they were registered. Both the votes of Dhanraj and Shakuntala would, therefore, have to be excluded from consideration, and since both of them voted in favour of the appellant, four votes must be deducted from the total number of votes counted in favour of the appellant.

16. The position is the same in regard to Lekhraj and Leela Sharma. They were registered once at serial Nos. 329 and 333 and again at serial Nos. 1597 and 1598 and as voters at serial Nos. 329 and 333, they voted at Solki Polling Station, while as voters at serial Nos. 1597 and 1598, they voted at Bhajwal Polling Station. See the evidence of Lekhraj RW 2, Puran Chand PW 10 and Niranjana Das RW 13. Now, Lekhraj registered at serial No. 329 was the son of Moolraj and Leela Sharma was the name of his wife registered at serial No. 333. And strangely enough Lekhraj registered at serial No. 1597 was also the son of the Moolraj and the name of his wife was also Leela Sharma registered at serial No. 1598. It would indeed be a remarkable coincidence that there should be two Lekhrajs in the same area having their father's name as Moolraj and their wife's name as Leela Sharma. We have no doubt that Lekhraj and Leela Sharma registered at serial No. 329 and 333 were the same as Lekhraj and Leela Sharma registered at serial No. 1597 and 1598. Since both these persons cast their votes twice, once at Solki and another time at Bhajwal, both the votes cast by them must be rejected as invalid and hence four more votes should be deducted from the total number of votes polled by the appellant.

17. So far as Vishwanath is concerned, we find that one Vishwanath was registered at serial No. 131 while another Vishwanath was registered at serial No. 320. But there is no doubt that both these Vishwanaths were one and the same individual. The relations of Vishwanath at serial No. 131 were

registered at serial Nos. 132 to 135, while the relations of Vishwanath at serial No. 320 were registered at serial Nos. 319 and 321 to 323 and both these sets of relations bore identical names which clearly indicates that Vishwanath at serial No. 131 was the same individual as Vishwanath at serial No. 320. Vishwanath was, therefore, clearly registered twice in the Electoral Roll. But there is nothing to show that he voted twice, once as voter at serial No. 131 and another time as voter at serial No. 320. The possibility cannot be ruled out that Vishwanath voted only at one polling station while some one else impersonated him and voted at the other polling station. Therefore, at the highest, only one out of the two votes cast in the name of Vishwanath can be excluded from consideration.

18. The net result of this discussion in regard to the issue of double voting, therefore, is that an aggregate of nine votes were liable to be rejected as invalid and they must be left out of consideration in counting the total votes polled in favour of the appellant.

19. That leaves for consideration one other ground urged on behalf of the first respondent, namely, that some spurious votes were cast in favour of the appellant and they should be excluded from consideration. Here again, a large number of names were set out in the particulars of the election petition furnished by the first respondent and it was said that spurious votes were cast in the names of all these voters but out of them, the High Court upheld the contention of the first respondent only in regard to the votes cast in the names of four voters, namely, Ram Piari, Padam Nath, Kishorilal and Vishwanath. The appellant challenged the finding of the High Court that the votes cast in the names of these four voters were spurious votes but it is obvious from the evidence on record that the challenge is misconceived. The High Court has given clear and cogent reasons for holding that the votes cast in the names of these four voters were spurious votes and we see no justification for interfering with the finding of the High Court on this point. The first respondent, however, sought to add the names of three more voters, namely, Amrita Sharma, Bhagat Ram and Bidhi Chand and urged that the votes cast in the names of these three voters were also spurious and the High Court was in error in holding them to be valid. So far as Amrita Sharma is concerned, she gave evidence as RW 41 and in her evidence she stated that she was undergoing training in the punch Training School in 1972 but she had come down to Kalideh at the time of the election and she cast her vote at Kalideh Polling Station along with her brother-in-law Ishar Das and sister-in-law Ram Piari. We do not think we can accept this evidence as true. In the first place, Amrita Sharma was the niece of the appellant and was, therefore, interested in supporting him. Secondly, the counterfoil of the ballot paper issued in the name of Amrita Sharma bore a thumb impression and not a signature and it is difficult to believe that Amrita Sharma who had passed her Middle Standard Examination and was undergoing training in Punch Training School should have affixed her thumb impression instead of her signature on the counterfoil of the ballot paper. Thirdly, according to Amrita Sharma, she was accompanied by her sister-in-law Ram Piari and both of them cast their votes, but the counterfoil of the ballot paper issued in the name of Ram Piari clearly showed that it was not Ram Piari who cast her vote but some one else in her name because the thumb impression on the counterfoil did not tally with the specimen thumb impression of Ram Piari. Moreover, Om Prakash PW 7 clearly stated that Amrita Sharma did not cast her vote as she was at Punch Training School. The vote cast in the name of Amrita Sharma was, therefore, clearly a spurious vote. The vote cast in the name of Bhagat Ram was also challenged on behalf of the first respondent as spurious but we do not think the evidence on record is sufficient to sustain this challenge. Bhagat Ram stated in his evidence as RW 18 that he cast his vote at Kalideh Polling Station and apart from the negative evidence of Om Prakash PW 7, there is nothing to doubt the veracity of his statement. There was a thumb impression on the counterfoil of the ballot paper issued in the name of Bhagat Ram and it would have been quite easy for the first respondent to take a spaceman thumb impression of Bhagat Ram

RW 18 and compare it with the thumb impression on the counterfoil of the ballot paper, but this was not done by the first respondent and, therefore, without anything more, we cannot conclude that the vote cast in his name was a spurious vote. Bidhi Chand also deposed in the course of the evidence given by him as RW 16 that he cast his vote at Brevi Polling Station. The only ground on which this statement of Bidhi Chand was sought to be challenged on behalf of the first respondent was that the counterfoil of the ballot paper issued in his name bore a thumb impression and it was highly unlikely that an educated person like him who had passed his Intermediate Examination would place his thumb impression instead of his signature on the counterfoil of the ballot paper. But the foundation for this challenge was not laid in the cross-examination of Bidhi Chand and he was not asked as to why he placed his thumb impression instead of a signature on the counterfoil of the ballot paper nor was his specimen thumb impression taken for the purpose of comparing it with the thumb impression on the counterfoil of the ballot paper. It is, therefore, not possible to accept the contention of the first respondent that the vote cast in the name of Bidhi Chand was a spurious vote. The result of this discussion is that in addition to the four spurious votes cast in the names of Ram Piari, Padam Nath, Kishorilal and Vishwanath, one more spurious vote must be held to have been cast in the name of Amrita Sharma and hence five spurious votes must be excluded in counting the total votes polled in favour of the appellant.

20. That takes us to be last ground of challenge urged on behalf of the first respondent and that ground of challenge was that the application for recount made by the first respondent to the Returning Officer on March 12, 1973, receipt of which was acknowledged by the Returning Officer under Ex. PW 43/3, was wrongly rejected by the Returning Officer and a recount ought to have been made by him. The contention of the first respondent was that if a recount had been made, it would have been clearly ascertained that he had secured higher number of votes than the appellant. Considerable argument was advanced before us in regard to this contention, but we do not think it necessary to deal with the same, since we find that the High Court had adequately dealt with this contention and rightly held that the Returning Officer was justified in rejecting the application made by the first respondent for recount of votes. We agree with the reasoning which prevailed with the High Court in reaching this conclusion. We are also of the view that the High Court was right in not acceding to the application of the first respondent for recount of votes in court. The first respondent did not make out any case for recount of votes and the High Court was justified in turning down his request in that behalf.

21. These were the only arguments advanced on behalf of the parties. We find as a result of the aforesaid discussion that, at the highest, only the following votes counted in favour of the appellant : eleven votes in respect of Hidayatpur voters, nine votes cast in the names of Dhanraj, Shakuntala, Lekhraj, Leela Sharma and Vishwanath and five votes cast in the names of Ram Piari, Padam Nath, Kishorilal, Vishwanath and Amrita Sharma. This means that the total number of votes counted in favour of the appellant would be liable to be reduced by not more than 25 votes. But the difference between the votes polled by the appellant and the first respondent, as found by the Returning Officer, was 51 and therefore, even if the difference were reduced by 25 votes, the result of the election would not be affected since the appellant would still have secured the highest number of votes. The election of the appellant cannot, in the circumstances, be set aside as invalid.

22. These were the reasons why we allowed the appeal and dismissed the election petition filed by the first respondent for setting aside the election of the appellant. We may add that, in the peculiar circumstances of the present case, we would make no order as to costs, but we direct that the amount of Rs. 500 payable to the Registrar of this Court for the work done by him pursuant to our order dated March 9, 1976 shall be payable by the appellant and if that amount has not already been

paid to the Registrar, it shall be payable out of the security deposit of the appellant lying in the Court and if any part of this amount has been paid by the first respondent, the first respondent will be entitled to reimburse himself in respect of the same out of the security deposit made by the appellant. The amount of Rs. 629.75 paid for bringing record of the case to New Delhi in compliance with the order of this Court will also have to be paid by the appellant and the same may be deducted out of the amount of the security deposit.

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