R. Narayanan

Vs

S. Semmalai and Others

Civil Appeals Nos. 524 and 588 of 1978

(Syed M. Fazal Ali, P.S. Kailasam, A.P. Sen JJ)

06.09.1979

JUDGMENT

FAZAL ALI, J. –

1. Civil Appeal No. 524 of 1978 has been filed by the appellant R. Narayanan who was respondent before the High court and in short would be referred to as the appellant. Civil Appeal No. 588 of 1978 has been filed by the appellant after obtaining special leave from this Court and is directed against that part of the order of the High Court which refused to entertain the recrimination petition filed by the appellant. The election petitioner before the High Court for the purpose of brevity will hereafter be referred to as the respondent.

2. Both the appellant and the respondent contested the election held on May 11, 1977. The appellant was a Congress candidate with a symbol of calf and cow whereas the respondent was put forward as a candidate of the All India Anna Dravida Munnetra Kazhagam and contested with the symbol of "Two Leaves". There were 14 candidates in all whose nominations were found valid but out of them 7 withdrew. The appellant and respondents 1 to 6 before the High Court remained in the field as contesting candidates. The respondents filed an election petition in the High Court under Section 81 and 84 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) for a declaration that the election of the appellant to the 85 Taramangalam Assembly Constituency of the Tamil Nadu Legislative Assembly was void under Section 100(1)(d)(iii) and (iv) of the Act and further prayed that he may be duly declared to be elected under Section 101 of the Act. The other candidates who were in the field lost the election and could not be elected.

3. The sheet-anchor of the case of the respondent was that there were number of errors in the counting of votes as a result of which number of votes were wrongly rejected or wrongly accepted. It was also alleged that the electoral roll was inaccurate as it contained the names of number of persons who were already dead who had supposed to have case their votes. The main relief sought by the respondent was that a re-count should be ordered particularly because the margin by which the appellants succeeded was extremely narrow being only 19 votes and if the postal ballots are included then the difference would be only 9 votes. A number of allegations were made regarding the errors in the counting of votes. The appellant denied all the allegations made by the respondent in his election petition and after filing his written statement sought a petition for recrimination on the ground that a number of persons had impersonated as the appellant as a result of which the respondent got a number of wrong votes, otherwise the margin would have become larger. The High Court however found that the petition for recrimination was time-barred, and, therefore, could not be entertained. The learned Judge who heard the election petition rejected the recrimination petition which is the subject-matter of Civil Appeal No. 588 of 1978. In the view that we take in this case, it

is not necessary for us to give any pronouncement regarding the validity of the order of the Judge rejecting the recrimination petition.

4. The counting of votes took place at St. Mary's Girls High School, Mettur on June 14, 1977. The initial counting commenced at 11 a.m. and ended at 3 a.m. on June 15, 1977. The counting is alleged to have been done in three rounds. After the counting was over the respondent filed an application before the Returning Officer for a re-count on the ground that there were a number of counting errors due to the shortage of staff and the tables on which votes were counted, paucity of light and the fact that the counting staff became absolutely exhausted and tired. The Returning Officer rejected the prayer of the respondent for re-count and went ahead with the declaration of the results.

5. The appellant's case was that there was sufficient space in the hall in which counting took place and the polling agents of all the candidates were present when the counting was done and none of them raised any objection when the counting was actually done. It was also alleged that there were sufficient number of tube lights in the hall and there was no question of there being any opportunity of committing mistakes in counting. All the ballot papers were opened in the presence of the counting agents contained the counting agent of the respondent and kept in the box which contained the ballot papers of the candidates concerned. The allegation of the respondent that some outsiders including one Perumal were also allowed to enter the hall when the counting was going on was also denied by the appellant.

6. The learned Judge after taking evidence of both the parties rejected most of the allegations made by the respondent but accepted the allegation that there were some counting errors at two tables, that there was paucity of light and that the counting staff was completely tired and exhausted during the third round.

7. We would, therefore, briefly summarise the allegations made by the respondent in his election petition in order to show whether the allegations were clear and specific.

8. In para 7 of the election petition the respondent alleged that the counting of votes was not done properly or with due care and diligence, but was often hurried through amidst much noise and interruption and disturbance. It was also alleged that the lighting in the hall was poor and insufficient and there was much scope for error and there were numerous errors in the counting and throughout and specially in the third round. It was also complained that there were only 24 tables and counting was done in three rounds and the third round took place near about midnight the lasted till 3 a.m. It was also said that as the margin of votes secured by the respondent and the appellant was only 19 this was the result of grave irregularities and illegalities and errors in the counting. A perusal of para 7 of election petition clearly shows that all the allegations made by the respondent were extremely vague, no particulars were given either of the segments in which the voting was counted or number of tables which contained the errors by the counting officers, no complaint was made to the Counting Officers by the agents of the respondent when the counting was being done and which according to the respondent was defective or faulty. The narrow margin was attributed to grave irregularities and illegalities. The statement of the respondent in para 7 on this point may be quoted thus :

> The result announced was neither true nor correct. It was the result of grave irregularities and illegalities and errors in the counting. In the circumstances the Returning Officer ought to have allowed and carried out a re-count of the votes under

Rule 63(3) of the Conduct of Election Rules, 1961.

9. In para 8 it was alleged that the appellant was a Councillor and a former chairman of the Mecheri Panchayat Union and the counting staff consisted largely of the members of the staff of the aforesaid union who owed their employment to the appellant. It was also alleged that the counting staff did not remain seated but was moving about. The appellant's brother who was the central agent was moving about among all he tables all the time talking and disturbing. Despite these serious allegations no complaint was made to the counting staff at the spot by the respondent or his agent. It was further alleged that several outsiders particularly one Perumal who was a contractor for the Salem Steel Plant and treasure of the Taluk Congress Committee, Mettur constantly remained in the hall and were talking to the Returning Officer. Thus, though not expressly but by implication, the respondent seemed to suggest that the Returning Officer was influenced by Perumal.

10. Para 9 of the election petition is also frightfully vague the relevant portion of which runs thus :

> The counting was particularly faulty and unsatisfactory and defective during the 3rd round and at tables Nos. 8 to 10, 13.

It was also alleged that Srinivasan was consistantly talking to Selvaraj during the counting. Several allegations appear to have been made in paragraph 9 also regarding the influence exercised by the appellant's brother Srinivasan but no complaint regarding this matter was made to anybody and we shall presently show that even in the application which the respondent filed before the Returning Officer most of the allegations made by the respondent in the election petition are conspicuously absent.

11. In para 11 it was also stated that there was no proper supervision of the conducing staff nor a proper check up at all. There was no test check of re-check of the votes by the Returning Officer.

12. Similarly, a number of vague allegations regarding the manner and the time of counting were made in the petition. The learned Judge after taking evidence and hearing counsel for the parties disbelieved the case of the respondent almost in its entirely but accepted just a fragmentary portion of the case of the respondent. So far as the fact that the counting staff was sleepy or was physically exhausted, this matter was not even mentioned in the petition. The High Court after examining the contention of the parties, framed the following preliminary issues in the case :

> (1) Should there be a scrutiny and re-count of the ballot papers as claimed by the election petitioner ?
>
> (2) Is the election of the returned candidate, the first respondent, liable to be declared to be void ?
>
> (3) Is the election petitioner entitled to a declaration that he himself has been duly elected ? and
>
> (4) To what relief ?

As already indicated, the court after framing the issues rejected the recrimination petition filed by the appellant. On the important allegation made by the respondent that at the time of counting Perumal was present and disturbing the counting staff, it was disbelieved and the learned Judge observed as follows :

> After analysing the evidence of these witnesses in this regard, I am inclined to take the view that the Perumal's presence inside the counting hall has not been established.

Similarly, the allegation that outsiders were allowed to enter the hall was also disbelieved thus :

> Even in the petition for re-count there is no allegation that unauthorised persons were allowed entry into the counting hall and that it affected the result of the counting. I have to therefore hold that there is no violation of Rule 53 of the Conduct of Election Rules, 1961 as alleged by the petitioner.

The ground that there was no test check or proper scrutiny of doubtful votes was also rejected by the learned Judge and he held that these allegations were not established. Regarding the allegation that the appellant was going round the hall openly announcing that a few votes were required for winning the election was not proved. The learned Judge observed thus :

> I am, therefore, of the view that there is no truth in the allegation made against RW 1 that he was going round the hall by openly announcing that only a few votes were required by the first respondent for winning the election.

13. Regarding the paucity of light the Judge found that there were 7 tube lights and the complaint of the respondent that there was no sufficient light to enable the counting staff to do their work was clearly an after thought. In this connection, the learned Judge observed as follows :

> After analysing the evidence adduced on this aspect, I am of the view that this complaint is purely an afterthought. If really the lighting was poor, not only the petitioner but all the other candidates would have complained even at the first instances to the Returning Officer.

14. Similarly, the allegation regarding the noise and disorder alleged to have prevailed in the counting hall, the Judge held that there was no acceptable evidence to prove these allegations.

15. Another serious allegation of partiality made by the respondent it at most of the counting staff was directly connected with the appellant was also disbelieved and the Judge observed thus :

> Even if the facts alleged by the petitioner that some of the counting staff owed their appointment to the first respondent and that they were working in the Panchayat Union Council in which the first respondent was the Chairman are true, it will not automatically amount to proof of the allegation of partiality. It has been pointed out time and again by Supreme Court that to tarnish the counting staff with the bias or partiality is easy for any party who challenges the election of a returned candidate and that the court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates.

16. The only ground which appears to have been accepted by the learned Judge was that although there was no clear evidence of any irregularity having been committed in the first two rounds there was a possibility that the staff was completely exhausted and this may have led to erroneous sorting and counting votes. This was because, according to the learned Judge, the staff started its work at 11 a.m. on June 14, 1977 and continued to work without rest till about 3 a.m. on June 15, 1977. They were provided with lunch in the afternoon of June 14, 1977. It was also found by the Judge that the

counting staff was not supplied with food in the night but was provided with tea at only 7 p.m. In this connection, the learned Judge observed as follows :

> The next ground urged by the petitioner is that the counting staff were sleepy, exhausted and not alert during the third round which was started after midnight and completed at 3 a.m. the next day and that as such there is definite possibility of erroneous sorting and counting of votes during that round. Almost all the petitioner's witnesses have deposed that the counting staff who began their work of preliminary counting at 11 a.m. on June 14, 1977 continued to work without any rest up to 3 a.m. the next day, that they were provided with lunch only on the afternoon of June 14, 1977, that the counting staff were not supplied with food during the night, that they were provided with only tea at 7 p.m. and therefore the counting staff were completely exhausted and sleepy especially after midnight and that they were not as vigilant and alert as they were during the first and second rounds of counting. All the first respondent's witnesses also admitted that the counting staff were not provided with food in the night but they were merely supplied with tea at 7 p.m. and that they carried on the counting without any break till 3 a.m. the next day. Through the petitioner has not established any specific instance of erroneous sorting and counting of votes during the third round, general allegations have been made in the pleadings as well as in the evidence adduced on behalf of the petitioner. There appears to be considerable force in the submission of the petitioner in this regard.

In the first place the finding itself is based purely on speculation. It is obvious that election being a technical matter the authorities choose experienced persons to do the counting and take every possible care to see that the members of the staff do not commit any error. Moreover, the relief of re-counting cannot be accepted merely on the possibility of their being in error. It is well settled that such allegations must not only be clearly made but also proved by cogent evidence. The Judge himself holds that the respondent has not established any specific instance of erroneous sorting and that the allegations made in the pleadings as well as in the evidence are general yet he accepts the case of the respondent on such insufficient and infirm evidence. Moreover, it would appear from the evidence of PW 23 the witness for the respondent that the first round started at 5 p.m. and ended at about 8.30 p.m., the second round started at 9 p.m. and ended at 11.30 p.m. and the third round started at 12 midnight and ended at 2 a.m. The witness was asked in cross-examination whether he had complained to the counting staff at the spot and witness admitted that when he pointed out the mistake it was rectified by the counting staff. From the timings of the rounds it appears that there were sufficient intervals between the three rounds, and, therefore, the question of the staff being tired and exhausted did not rise. This finding of the learned Judge, therefore, is against the weight of evidence and cannot be legally supported. Moreover, as we have already pointed out that re-count should be ordered not on possibility of errors but when the matter is proved with absolute certainty. Similarly, the learned Judge speculates that there must have been lot of physical exertion and observed thus :

> It is not possible to exclude the possibility of physical exertion on the part of the counting staff especially after midnight when the third round of counting took place. Having regard to the minimal difference in votes it has become necessary to find out whether the third round of counting was carried on by the counting staff properly. In the nature of things it is not possible to assume that all the 72 persons were alert and attended to the process of counting with such keenness as it deserved.

The finding is also based on pure speculations and cannot be maintained.

17. Lastly, the learned judge was greatly influenced by the fact that the margin by which the appellant succeeded was very narrow. This was undoubtedly an important factor to be considered but would not by itself vitiate the counting of votes or justify re-counting by the court.

18. We would like to mention here that the fact the respondent had made an application before the Returning Officer for re-count but the actual application filed by the respondent has not been produced for reasons best known to the respondent. It appears form Annexure II which is a certified copy of the order of the Returning Officer that three grounds were taken before the Returning Officer by the respondent. In the first place, he expressed his suspicion that the votes would have been mixed relating to Naryanan (Congress) and other candidates, (ii) that many votes polled in his favour have been rejected, (iii) postal ballots have been rejected without sufficient reasons. It may thus be pertinent to note that Dr. Chitale, learned counsel for the appellant's main plank of argument was that there was overwhelming evidence show that there were several counting errors at Tables 2, 3, 7, 9, 12, 15, 17, 8, 10, 13, particularly stress was laid on Tables 2, 3, 6, 8, 9, 10, and 13. It was also said that despite protests being made by the respondent agents to the polling staff no action was taken at all. Indeed, if this was so then we should have accepted such an allegation being made prominently in the application given by the respondent to the Returning Officer. The absence of any such allegation in the application of the respondent before the Returning Officer clearly shows that the allegation was clearly an afterthought and, therefore, no implicit reliance can be placed on the oral evidence by the respondent before the court. It would thus be seen that all the three grounds taken by the respondent before the Returning Officer were absolutely vague and could not make out a case for re-counting by the Returning Officer much less by the court. It may be relevant to note that in the application filed by the respondent the question that the appellant succeeded by a narrow margin was also not mentioned. On this application the Returning Officer passed the following order :

> Under the above circumstances he requested that a re-count may be ordered and justice rendered. The candidate, his election and counting agents were watching the process of counting and no objection or complaint was raised by any of them during the course of counting regarding any mistakes. The suspicion expressed by him that many of the votes relating to him would have been included in the votes relating in Narayanan and other candidates, is without basis and hence not correct. All the doubtful votes were scrutinised by me in the presence of candidates and their agents and orders passed. His version that many of the votes in his favour were rejected is not correct since the scrutiny was done in their presence. He has not made any specific mention about the round or table to be re-counted. The petitioner has requested re-count in general of all the votes polled for all candidates under the presumption that his ballot papers would have been mixed up in other bundles.

His petition is frivolous and unreasonable. This part of his request is therefore rejected.

19. The law on the subject is absolutely clear and while the learned Judge had relied on some of the decisions of this Court he has failed to apply them correctly to the fact and circumstances of this case. On the question of re-count as far back as in the case of Ram Sewak Jadav v. Hussain Kamil Kidwai ((1964) 6 SCR 238, 244-246 : AIR 1964 SC 1249 : 26 ELR 14) this Court pointed out as follows :

> But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interests of justice demand it, the Tribunal may call upon the Returning Officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers.

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 are fulfilled :
>
> (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.

Therefore a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinized and opened, and the votes were counted. He also has opportunity of inspecting rejected ballot papers, and of demanding a re-count. It is in the light of the provisions of Section 83(1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting, of watching and of claiming a re-count that the application for inspection must be considered.

To the same effect is a later decision of this Court in the case of Dr. Jagjit Singh v. Giani Kartar Singh (AIR 1966 SC 773 : 28 ELR 81). In case of Jitendra Bahadur Singh v. Krishna Behari ((1970) 1 SCR 852, 856, 857 : (1969) 2 SCC 433, 436, 438 : AIR 1970 SC 276), this Court observed as follows : (SCC p. 436, para 8; p. 438, para 12)

In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the Congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information ? It is not his case that they maintained any notes or that be examined their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words they must be such facts as to afford a basis for the allegations made in the petition.

The trial Court correctly came to the conclusion that before an order of inspection of the ballot papers can be made it must be 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. It did say that it

was so satisfied by it gave no reasons, whatsoever as to how it came to be satisfied. A judge can be satisfied only on the basis of proof and not on the basis of mere allegations.

20. In HALSBURY'S LAWS OF ENGLAND (Vol. 14 at page 310, paragraph 599), it is observed :

> A re-count is not granted as of right, but on evidence of good grounds for believing that there has been a mistake on the part of the Returning Officer.

21. Similarly, Fraser in his LAW OF PARLIAMENTARY ELECTIONS AND ELECTION PETITIONS at p. 222 observed thus :

> A strong case must be made on affidavit before an order can be obtained for inspection of ballot papers or counterfoils.

22. In the case of Baldev Singh v. Teja Singh Swatantar ((1975) 3 SCR 381 : (1975) 4 SCC 406 : AIR 1975 SC 693), Krishna Iyer, J., speaking for the court observed as follows : (SCC pp. 414, 416, paras 14, 18)

> Disingenuous averments do not promote prospects of judicial re-count and will be dismissed as devices to comply with requirements suggested in some ruling or other.

Where the margin of difference is minimal, the claim for a fresh count cannot be summarily brushed aside as futile or trumpery . . . . If formal defects had been misconstrued at some table as substantial infirmities, or vice versa, resulting in wrongful reception or rejection, the sooner it was set right the better, especially when a plea for a second inspection had been made on the spot. Many practical circumstances or legal misconceptions might honestly affect the legal or arithmetical accuracy of the result and prestige or fatigue should not inhibit a fresh, may be partial, check. Of course, baseless or concocted claims for re-count or fabricated grounds for inspection or specious complaints of mistakes in counting when the gap is huge are obvious cases of frivolous and unreasonable demand for re-count. Mala fide aspersions on counting staff or false and untenable objections regarding validity of votes also fall under the same category. We mean to be illustrative, not exhaustive, but underline the need in appropriate cases to be reasonably liberal in re-check and re-count by Returning Officers. After all, fairness at the polls must not only be manifest but misgivings about the process must be erased at the earliest. Indeed, the instructions to officers are fairly clear and lay down sound guide-lines.

23. Reliance was placed by the High Court on an observation of Krishna Iyer, J. in this case that where the margin of difference is minimal the claim for the fresh poll cannot be summarily brushed aside. In the first place, this observation was really meant for the Returning Officer because at the time when request for re-count to the Returning Officer is made the electoral process is still continuing and if there are any counting errors they can be rectified before the election process is complete. This however cannot apply to the court while dealing with an election petition because if a re-count is ordered at that stage then the electoral process has to be restarted afresh. In our country the election is an extremely expensive process and unless very clear case for re-count is made out the candidates should not be put to unnecessary trouble and expense. Moreover, in the case of Ram Autar Singh Bhadauria v. Ram Gopal Singh ((1976) 1 SCR 191 : (1976) 1 SCC 43 : AIR 1975 SC 2182) this Court to which Krishna Iyer, J. himself was a party observed (SCC p. 49, para 16)

The above being the law on the point, it is clear that the learned Judge was in error in ordering general inspection and re-count of the total votes polled at the election, merely because in these

additional pleas the returned candidate also had by way of recrimination, complained of wrong reception and rejection of votes and wrong counting of votes. The pleas at this stage could not be investigated even in the recriminatory petition filed by the returned candidate. They were beyond the scope of the enquiry into petitioner's case which (as set up in para 11 of the petition) fell Section 100(1)(d)(iii) of the Act.

24. Similarly in the case of Chanda Singh v. Choudhary Shiv Ram Verma ((1975) 4 SCC 393 : AIR 1975 SC 403 : (1976) 1 SCJ 432) this Court observed as follows : (SCC pp. 396, 397, para 6)

> A democracy runs smooth on the wheels of periodic and pure elections. The verdict at the polls announced by the Returning Officers lead to the formation of governments. A certain amount of stability in the electoral process is essential. If the counting of the ballots are interfered with by too frequent and flippant re-counts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying, if re-count of votes is made easy. The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only of a few hundred votes as here, to ask for a re-count Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declar__ed returns, unless the court restricts recourse to re-count to cases of genuine apprehension of miscount or illegality or other compulsions of justice necessitating such a drastic step. 25. In the case of Beliram Bhalaik v. Jai Beharilal Khachi ((1975) 4 SCC 417) this Court again reiterated the same principles in the following words : (SCC pp. 426, 427 paras 43, 44) A whimsical and bald statement of the candidate that he is not satisfied with the counting is not tantamount to a statement of the "grounds" within the contemplation of Rule 63(2). The application was thus not proper application in the eye of law. It was not supplemented even by an antecedent or contemporaneous oral statement of the author or any of his agents with regard to any irregularities in the counting. It was liable to be rejected summarily under sub-rule (3) of Rule 63 also. Although no cast-iron rule of universal application can be or has been laid down, yet from a beadroll of the decisions of this Court two broad guide-lines are discernible; that the court would be justified in ordering a re-count or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are foundedare pleaded adequately in the election petition, and (ii) the Court/Tribunal trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

26. Finally the entries case law on the subject regarding the circumstances under which re-count could be ordered was fully summarised and catalogued by this Court in the case of Bhabhi v. Sheo Govind (1975 Supp SCR 202 : (1976) 1 SCC 687 : AIR 1975 SC 2117) to which one of us (Fazal Ali, J.) was a party and which may be extracted thus : (Quoted from Suresh Prasad Yadav v. Jai Prakash Mishra, (1975) 4 SCC 822 (pp. 824-825, paras 5, 6) (SCC p. 693, para 13)

> The court would be justified in ordering re-count of the ballot papers only where :

(1) The election petition contains an adequate statement of all the material facts on which the allegations of irregularity of illegality in counting are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

27. Thus on a consideration of the principles deduced from the authorities mentioned above and the evidence led in this case by the parties, we are satisfied that this was not a case on which a re-count should have been ordered by the learned Judge.

28. For these reasons, Civil Appeal No. 524 of 1978 is allowed with costs throughout and the order passed by the High Court setting aside the election of the appellant and declaring the respondent to be elected is hereby quashed. In this view of the matter no order need be passed in Civil Appeal No. 588 of 1978 in view of the order passed by us in Civil Appeal No. 524 of 1978.

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