

D. P. Sharma

Vs

Commissioner and Returning Officer and Others

Civil Appeal No. 2539 of 1981

(V. D. Tulzapurkar, Sabyasachi Mukharji JJ)

30.11.1983

JUDGMENT

TULZAPURKAR, J. -

1. There is no substance in this election appeal which has been preferred by the defeated candidate.
2. Election to the Lok Sabha seat from the Thirteenth Bangalore South Parliamentary Constituency in the State of Karnataka was held on January 6, 1980. The appellant was a Congress (I) candidate while respondent 12 was a Janata candidate; respondent 12 having polled the highest number of votes, namely, 1,98,390 votes as against 1,95,663 votes polled by his nearest rival the appellant, was declared elected; 8067 votes were rejected as having been invalidly cast. The election of respondent 12 was challenged by the appellant by filing an election petition in the Karnataka High Court on several grounds. None of the grounds succeeded and his petition was dismissed. Hence this appeal.
3. In support of the appeal substantially only one contention was urged by counsel for the appellant. According to him, the records which are required to be maintained under Rules 45 and 56 of the Conduct of Election Rules, 1967 contained discrepancies and irregularities which showed that the entire counting process was defective necessitating a re-count of the votes. Counsel pointed out that under Rule 45 the Presiding Officer is required to prepare a ballot papers account in the prescribed Form 16 (Parts I and II) in which details with regard to the ballot papers received, ballot papers unused, ballot papers used at the polling station and ballot papers found in ballot boxes are required to be given, while prescribed Form 20 contains the final result sheet and what has been urged before us by counsel is that if these documents pertaining to all the polling stations in the 8 assembly segments which constituted the parliamentary constituency, prepared by the concerned Presiding Officers, are scrutinised two glaring discrepancies would become apparent - (i) at some polling stations in some of the assembly segments the total ballot papers which were actually found from the ballot boxes at the time of counting were in excess of the ballot papers which were issued and used by the voters at the time of the poll and (ii) in some cases less ballot papers were found in the ballot boxes at the time of counting than what were actually issued and used by the voters. It was strenuously urged that such discrepancies clearly showed that the entire process of counting was improperly done, that the prescribed forms required to be maintained under the statute and the rules were not merely inaccurate but will have to be regarded as unreliable and in this situation a case could be said to have been made out where the Court should order a re-count, particularly, when respondent 12 was declared elected by a margin of 2727 votes. For the reasons which we shall presently indicate the contention will be found to be without substance.

4. It appears that during the course of hearing before the High Court, the Returning Officer, who is impleaded as a party respondent to the election petition, was directed to prepare and file a statement showing clearly the discrepancies between the number of ballot papers issued and used by the voters and the ballot papers that were actually found in the ballot boxes and counted and taken into account at the time of counting, at all the polling stations in all the 8 assembly segments constituting the Thirteenth Bangalore South Parliamentary Constituency and such statement was prepared and filed by the Returning Officer before the High Court. On a careful examination of this statement it appears to us very clear - and this was not disputed by counsel on either side before us, that the total ballot papers (at all the polling stations in all the 8 assembly segments of the parliamentary constituency) which were taken out and counted from the ballot boxes were in excess to the tune of 316 over and above those which were issued and used by the voters while the total number of ballot papers which were found less than those which had been issued and used by the voters was 20. The discrepancy as regards finding of less ballot papers from the ballot boxes than what had been issued and used by the voters is easily understandable, for it is quite conceivable that some voters, who had got ballot papers issued to them, might have walked out of the polling booths without casting them in the ballot boxes and such discrepancy, which in the instant case is only to the extent of 20 ballot papers, is not of much significance. It is true that the discrepancy which pertains to finding of excess ballot papers from the ballot boxes over and above those which had been issued and used by the voters would undoubtedly be serious but in the instant case such discrepancy is again in regard to a very small and insignificant number, namely, 316. It may be stated that the total number of votes that had been cast at the election were to the tune of 4,36,536 and compared to the magnitude of the votes cast the discrepancy as regards the excess ballot papers found in the ballot boxes is too insignificant and in any case it is nowhere near the margin of 2727 votes by which the respondent 12 defeated the appellant. We are of the view that these discrepancies are so insignificant in character that they could be safely attributed to accidental slip or clerical or arithmetical mistakes that must have been committed at the time of counting and preparation of the statements in Forms 16 and 20. In our view, these discrepancies by themselves do not make out a case for directing a re-count of votes. It is well established that in order to obtain re-count of votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate. Admittedly, no such material was placed by the appellant either before the High Court or this Court. In that view of the matter by themselves the discrepancies which have been pointed out by counsel for the appellant in the statements required to be prepared under Rules 45 and 56, do not make out a case for directing a re-count of votes.

5. Apart from the aforesaid aspect of the matter we directly asked counsel for the appellant as to whether it was his client's case that because of the discrepancies appearing in the statement of account of ballot papers (Forms 16 and 20) his client or his agents had stopped participating in the counting process and counsel replied in the negative. In other words, the appellant or his agents had participated in the counting process with regard to each and every ballot paper which was found and taken out from the ballot boxes and raised his objection whenever he or they thought fit to do so; in other words, the discrepancies in the prescribed forms, copies of which were furnished to the appellant or his agents did not prevent him or his agents from effectively participating in the counting process. The result was admittedly declared after all objections raised by the appellant or his counting agents during the process of counting had been taken into account and ruled upon by the Presiding Officer and even so no material was placed either before the High Court or before us

laying the foundation for obtaining an order for a re-count. In any case, as stated earlier, no prejudice is shown to have been caused to the appellant by the discrepancies pointed out in the statutory Forms 16 and 20; particularly the discrepancies in regard to the excess ballot papers found would not have affected or altered the result of the election.

6. Having regard to the above discussion we feel that the High Court was right in dismissing the election petition. The appeal is, therefore, dismissed with no order as to costs.

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