

A. C. Jose

Vs

Sivan Pillai and Others

Civil Appeal No. 3839 of 1982

(O. Chinnappa Reddy, E. S. Venkataramiah, R. B. Misra JJ)

05.03.1984

JUDGMENT

FAZAL ALI, J. -

1. This election appeal has been filed by the appellant, who was a candidate for election to "No. 70-Parur Assembly Constituency" in Kerala but was not elected. Six candidates contested the said election which was held on May 19, 1982. Out of whom the first respondent (Sivan Pillai), who was a candidate of the Communist Party of India, and the appellant were the two principal contestants. The result of the election was announced on May 20, 1982 in which the first respondent was declared elected having secured 30,450 votes as against 30,327 votes secured by the appellant. Thus, the first respondents secured 123 more votes than the appellant. Of the 30,450 votes, 11,268 were cast manually, according to the conventional method provided in the Conduct of Election Rules, 1961 (for short, to be referred to as the 'Rules') made under the Representation of the People Act, 1951 (hereinafter to be referred to as the 'Act') and 19,182 votes were cast by means of electronic machines (for short, to be referred to as 'voting machines'). This was done in pursuance of the direction issued by the Election Commission of India (for short, to be referred to as the 'Commission') by virtue of a notification published in the Kerala Gazette on May 13, 1982. The said notification was purported to have been made under Article 324 of the Constitution of India, and has been extracted on pages 3 to 5 of the judgment of the High Court and it is not necessary for us to repeat the same having regard to the point of law that we have to decide in the instant case.

2. It may be mentioned that prior to issuing the notification the Commission had sought the sanction of the Government of India which was however refused. As mentioned above, votes by the mechanical process were cast in 50 out of the 84 polling stations.

3. The trial Court upheld the validity of voting by machine and held that the respondent was duly elected to the Assembly seat. Hence, this appeal by the appellant.

4. Article 324 of the Constitution gives full power to the Commission in matters of superintendence, direction and control of the preparation of electoral rolls and also for the conduct of elections to the Parliament and State Legislatures. It was argued that the Commission being a creature of the Constitution itself, its plenary powers flowing directly from Article 324 will prevail over any Act passed by the Parliament or Rules made thereunder. In order to buttress this argument, it was contended that the manner of voting was a matter coming within the ambit of Articles 324 and 327 which empowered the Parliament to make laws in respect of matters relating to or in connection with the elections to the Parliament or the State Legislatures and would be deemed to be subsidiary to the power contained in Article 324 and if there was any conflict between a law enacted by the

Parliament and the powers given to the Commission regarding regulating the conduct of elections of Parliament that law must yield to Article 324, otherwise the very object of Article 324 would be defeated. Notice was given by this Court both to the union of the India as also the Commission though in terms of Section 82 of Act they are not necessary parties and were not before the High Court.

5. This is very attractive argument but on a closer scrutiny and deeper deliberation on this aspect of the matter, it is not possible to read into Article 324 such a wide and uncanalised power, which is entrusted to the Commission as Mr. Jethmalani would have us believe. Part XV of the Constitution contains Articles 324 to 328 which relate to the manner in which elections are to be held, the rights of persons who are entitled to vote, preparation of electoral rolls, delimitation of constituencies, etc., but this is merely the storehouse of the powers and the actual exercise of these powers is left to Parliament under Article 325 to 329. In other words, Article 324 has to be read in harmony with and not in isolation of, Articles 326 to 329. Article 324 may be extracted thus :

324. Superintendence, direction and control of elections to be vested in an Election Commission. - (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioner, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioner, shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment :

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief

Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

6. While interpreting a constitutional provision we must remember the memorable words of Chief Justice Marshall :

We must never forget that it is the Constitution which we are expounding.

7. Another golden rule laid down by this Court on the interpretation of statutes is that we should so interpret the language of a statute as to suppress the mischief and advance the object. It is true that Article 324 does authorise the Commission to exercise powers of superintendence, direction and control of preparation of the electoral rolls and the conduct of elections to Parliament and State Legislatures but then the article has to be read harmoniously with the articles that follow and the powers that are given to the Legislatures under Entry 72 in the Union List and Entry 37 of the State List of the Seventh Schedule to the Constitution. The Commission in the garb of passing orders for regulating the conduct of elections cannot take upon itself a purely legislative activity which has been reserved under the scheme of the Constitution only to Parliament and the State Legislatures. By no standards can it be said that Commission is a third Chamber in the legislative process within the scheme of the Constitution. Merely being a creature of the Constitution will not give it plenary and absolute power to legislate as it likes without reference to the law enacted by the legislatures.

8. It was further argued that this power was necessary in order to make the Commission an independent body and in this connection our attention was drawn to a speech of Dr. Ambedkar in the Constituent Assembly when the question of making the Election Commission an independent body was being debated. At page 905, Constituent Assembly Debates (vol. 8) Dr. Ambedkar observed thus :

But the House affirmed without any kind of dissent that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing Articles 289, 290 and so on. Therefore so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What Article 289 does is to carry out that part of the decision of the constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission.

9. These observations merely show that the intention of the founding fathers of our Constitution was to make the Commission a separate and independent body so that the election machinery may be outside the control of the executive Government. What Dr. Ambedkar, or for that matter the founding fathers, intended was that the superintendence, direction and control of the preparation of electoral rolls and of all elections to Parliament and State Legislatures should be left to the Election

Commission. This object has been fully carried out by the provisions in Articles 324 to 329. Neither the observations of Dr. Ambedkar nor the provisions of the Constitution could ever have intended to make the Commission an apex body in respect of matters relating to elections, conferring on it legislative powers ignoring the Parliament altogether.

10. Mr. Asoke Sen, appearing for the Commission, speaking in the same strain as Mr. Jethmalani, contended that Article 324 was a Code in itself and was couched in a very plain and simple language which admits of no ambiguity and it so construed, it gives full powers and authority to the Commission to give any direction in connection with the conduct of elections. It was further submitted that if this interpretation is not given then Articles 325 to 329 would amount to defeating the very object which was sought to be achieved by Article 324. Supporting argument was built up by Mr. Sen by heavily relying upon the opening words in Article 327 to the effect : "subjective to the provisions of this Constitution" and absence of any such rider in Article 324. For the reasons which we will give hereafter, it is not possible for us to accept the somewhat far-fetched argument of the learned counsel.

11. Reliance was placed on a decision of this Court in *Sadiq Ali v. Election Commission of India* ((1972) 2 SCR 318 : (1972) 4 SCC 664 : 47 ELR 349) where the Court observed thus : (SCC p. 672, para 15)

Article 324 of the Constitution provides inter alia, that the superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to Parliament and Legislative Assemblies of the States and all elections to the offices of President and vice-President held under the Constitution shall be vested in the Commission

Without prejudice to the generality of the foregoing power, Sub-section (2) enumerates some of the matters for which provision may be made in the rules. Sub-section (3) requires that the rules framed should be laid before each House of Parliament. Conduct of Election Rules, 1961 were thereafter framed by the Central Government. Rule 5 of those Rules requires the Commission to specify the symbols that may be chosen by candidates at elections in Parliamentary and Assembly elections and the restrictions to which the choice shall be subject. Rule 10 marks provision for allotment of symbols to the contesting candidates by the Returning Officer subject to general or special directions issued by the Commission.

12. The first part of the above observations merely repeats the language of Article 324 but the second part clearly shows that the power under Article 324 is conditioned by the Rules made by the Central Government for the conduct of all elections. These observations, therefore, do not appear to us to be of any assistance to the stand taken by the appellant.

13. Reliance was also placed on the following observations in the said case : (SCC p. 679, para 34)

Question then arises as to what is the binding nature of the decision given by the Commission under paragraph 15. In this respect it has to be borne in mind that the Commission only decides the question as to whether any of the rival sections or groups of a recognised political party, each of whom claims to be that party, is that party. The claim made in this respect is only for the purpose of symbols in connection with the elections to the Parliament and State Legislatures and the decision of the Commission pertains to this limited matter

14. These observations also do not advance the matter any further because it was clearly held that

the claim made in respect of symbols pertained only to the limited matter which was being considered by the Commission. The following observations of this Court in that case completely clinch the issue against the appellant : (SCC p. 681, para 40)

It would follow from what has been discussed earlier in this judgment that the Symbols order makes detailed provisions for the reservation, choice and allotment of symbols and the recognition of political parties in connection therewith. That the Commission should specify symbols for elections in Parliamentary and assembly constituencies has also been made obligatory by Rule 5 of Conduct of Election Rules ...

15. Thus, it is manifestly apparent from this decision that the rule making power of the Commission under the Act, with respect to symbols, would have to prevail over any order that it may pass and the words "conduct of elections" would not make the Commission a purely legislative body.

16. Another case on which great reliance was placed is : Mohinder Sigh Gill v. Chief Election Commissioner, New Delhi ((1978) 2 SCR 272 : (1978) 1 SCC 405 : AIR 1978 SC 851). In this case, it was held that an order passed by a statutory functionary on certain specific grounds cannot be supplemented by external evidence like affidavits or otherwise. This case also nowhere lays down that the Commission possesses plenary powers - both executive and legislative - in the guise of conduct of elections. One of the main questions posed by Krishna Iyer, J., speaking for the Court, was as follows : (SCC p. 421 para 17)

Can the Election Commission, clothed with the comprehensive, functions under Article 324 of the Constitution, cancel the whole poll of a constituency after it has been held, but before the formal declaration of the result has been made, and direct a fresh poll without reference to the guidelines under Section 58 and 64(a) of the Act, or other legal prescription or legislative backing ? If such plenary power exists, is it exercisable on the basis of his inscrutable 'subjective satisfaction' or only on a reviewable objective assessment reach on the basis of circumstances vitiating a free and fair election and warranting the stoppage of declaration of the result and direction of a fresh poll not merely of particular polling stations but of total constituency ?

17. The learned Judge while answering the question observed thus :

Article 324, which we have set out earlier, is a plenary provision vesting the whole responsibility for national and State elections, and therefore, the necessary powers to discharge that function. It is true that Article 324 has to be read in the light of the constitutional scheme and the 1950 Act and the 1951 Act. Sri Rao is right to the extent he insists that if competent legislation is enacted as visualised in Article 327 of the Commission cannot shake itself free from the enacted prescriptions And the supremacy of valid law over the Commission argues itself. No one is an imperium in imperio in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Article 324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system (SCC p. 431, para 38)

Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections', are the broadest terms (SCC p. 431, para 39)

18. The observations, extracted above, furnish a complete answer to the arguments of Mr. Jethmalani and Mr. Asoke Sen as it has been clearly held that Article 324 would operate only in areas left unoccupied by legislation, even if the widest possible connotation is given to the language of Article 324. While summarising the propositions, the Court made the following observation : (SCC p. 452, para 92)

Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far conformance to such canons can reasonable and realistically be required of it as fairplay-in action in a most important area of the constitutional order viz., elections

19. This is actually the main spirit and gist of the decision which appears to have been relied upon by the appellant but which does not at all support his stand. In the aforesaid, case there did not appear to be any conflict between the order passed by the Commission and the Act or the Rules. The question sat issue in the instant case did not really arise in the form and shape as has been presented before us. On the other hand, the matter seems to have been fully settled by an earlier decision of this Court in N. P. Ponnuswami v. Returning Officer, Namakkal Constituency (1952 SCR 218, 229 : AIR 1952 SC 64 : 1 ELR 133) where Fazal Ali, J. (as he then was) while making a very pointed and crisp approach, scientifically analysed the position thus :

Broadly speaking, before an election machinery can be brought into operation there are three requisites which require to be attended to namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to or in connection with elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Article 327 and 328 deal with the first of these requisites, Article 324 with the second and Article 329 with the third requisite. The other two articles in Part XV, viz., Articles 325 and 326, deal with two matters of principle to which the Constitution-farmers have attached much importance. They are : (1) prohibition against discrimination in the preparation of, or eligibility for inclusion in, the electoral rolls, on grounds of religion, race, caste, sex or any of them : and (2) adult suffrage. Part XV of the Constitution is really a code in itself providing the entire groundwork for enacting appropriate laws and setting up suitable machinery for the conduct of elections.

20. We fully endorse and follow the above observations of the Constitution Bench which lay down the correct law on the subject and we have nothing further to add to the approach made by this Court in the case referred to above. On the other hand, our view that Articles 324 to 329 have to be construed harmoniously flows as a logical corollary from the ratio in Ponnuswami case (1952 SCR 218, 229 : AIR 1952 SC 64 : 1 ELR 133).

21. The pointed and pungent observations, extracted above, really amount to a Bible of the election law as culled out from an interpretation of the provisions of Article 324 to 329 of the Constitution, and were referred to with approval even in Mohinder Singh Gill case ((1978) 2 SCR 272 : (1978) 1

SCC 405 : AIR 1978 SC 851). During the last three decades this case has neither been distinguished nor dissented from and still holds the field and, with due respect, very rightly. No other case ever made such a dynamic and clear approach to the problem, perhaps due to the fact that no such occasion arose because the Commission has always been following the provisions of the Act and the Rules and had never attempted to arrogate to itself powers which were not meant to belong to it. Indeed, if we were to accept the contention of the respondents it would convert the Commission into an absolute despot in the field of election so as to give directions regarding the mode and manner of elections by passing the provisions of the Act and the Rules purporting to exercise powers under cover of Article 324. If the Commission is armed with such unlimited and arbitrary powers and if it ever happens that the person manning the Commission shares or is wedded to a particular ideology, he could be giving odd directions cause a political havoc or bring about a constitutional crisis, setting at naught the integrity and independence of the electoral process, so important and indispensable to the democratic system.

22. Further, such an absolute and uncanalised power given to the Commission without providing any guidelines would itself destroy the basic structure of the rule of law. It is manifest that such a disastrous consequence could never have been contemplated by the Constitution makers, for such an interpretation as suggested by the counsel for the respondent would be far from attaining the goal of purity and sanctity of the electoral process. Hence, we must construe Articles 324 to 329 as an integral part of the same scheme collaborating rather than colliding with one another. Moreover, a perusal of Articles 324 to 329 would reveal that the legislative powers in respect of matters relating to Parliament or the State Legislatures vest in Parliament and in no other body. The Commission would come into the picture only if no provision has been made by Parliament in regard to the elections to the Parliament or State Legislatures. Furthermore, the power under Article 324 relating to superintendence, direction and control was actually vesting of merely all the executive powers and not the legislative powers. In other words, the legislative power of Parliament or of the Legislature of a State being made subject to Article 324 only means that no law made by Parliament under Article 327 or by a State Legislature under Article 328 can take away or deprive the Commission of the executive power in regard to matters entrusted to it, viz., superintendence, direction and control of elections. The right to file an election petition directly flows from Article 329 and cannot be affected in any manner by the exercise of executive power by the Commission under Article 324.

23. In view of the above, it is not necessary for us to consider a number of other authorities that were cited before us as they do not appear to be directly on point.

24. It is pertinent to indicate that the High Court fell into an obvious fallacy by acceptance of the position that the direction of the Commission as intended to operate in an uncovered field. When the Act and the Rules prescribed a particular method of voting, the Commission could not innovate a new method and contend that use of the mechanical process was not covered by the existing law and, therefore, did not come in conflict with the law in the field.

25. To sum up, therefore, the legal and constitutional position is as follows :

- (a) when there is no parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders in respect of the conduct of elections,
- (b) where there is an Act and express Rule made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience

to the mandate contained in the Act or the Rules. In other words, the power of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324.

(c) Where the Act or the Rules are silent, the Commission has no doubt plenary powers under Article 324 to give any direction in respect of the conduct of election, and

(d) Where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with implementation of it at its own sweet will even if the approval of the Government is not given.

26. Apart from the arguments referred to above, an alternative argument put forward before us was that even the Rules framed under the Act authorise the Commission to give directions to hold voting by the use of a voting machine and this is covered by Section 59 of the Act and Rules 49 of the Rules. This argument merits serious consideration. In the instant case, the main grievance of the appellant is that the voting by mechanical process was not permissible either under the Act or under the Rules. Reliance was, however, placed by the appellant on Section 59 of the Act which runs thus :

59. Manner of voting at elections. - At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

27. It is obvious that Section 59 uses the words "ballot in such manner as may be prescribed", which means prescribed by the Rules made under the Act. A reference to Section 61 of the Act would show that Parliament intended use of ballot paper only for casting of votes. This takes us to Rule 49, the relevant part of which may be extracted thus :

49. Voting by ballot at notified polling stations. - (1) Notwithstanding anything contained in the preceding provisions of this Part, the Election Commission may, by notification published in the Official Gazette at least 15 days before the date, or the first of the dates, or poll appointed for an election, direct that the method of voting by ballot shall be followed in the election at such polling stations as may be specified in the notification.

28. It was submitted that having regard to the modern and changing conditions of the society a dynamic approach should be made to the interpretation of the aforesaid two legal requirements. The matter does not rest here : something could be said for the view that the word 'ballot' includes voting by machines. Section 59 proceeds to explain its intention in setting up the mode, manner and method of voting by prescribing express rules as to how the voting should be done. In this connection, reference may be made to Rule 22 which relates to the form of ballot paper and its contents. Rule 23 requires the Returning Officer to record on the counterfoil of the ballot paper the electoral roll number of the elector as entered in the marked copy of the electoral roll. Rule 27 refers to the return of ballot paper after an elector has recorded his vote or made his declaration. Rule 30, which prescribes the contents of the ballot papers, is completely contrary to the concept of ballot by machine. Similarly Rules 33, 38, 39 and 40 seem to be wholly inconsistent with the mechanical

process but seem to adopt the conventional method. As we have already indicated, these Rules are binding on the Commission and it cannot by an executive fiat either override them or act contrary to the statutory provisions of the Rules.

29. On a proper and detailed analysis of these Rules it is clear that the Act by framing the Rules completely excluded the mechanical process which, if resorted to, would defeat in a large measure the mandatory requirements of the Rules.

30. It is a well settled rule of interpretation of statutes that words, phrases or sentences of a statute should ordinarily be understood in their natural, ordinary, popular and grammatical sense unless such a construction leads to absurdity. Mr. Jethmalani argued that the word 'ballot' is wide enough to include the mechanical process and, therefore, the direction of the Commission falls squarely within the four corners of both Section 59 Rules 49. Reliance was placed on the dictionary meaning of the word 'ballot' which has been defined in Black's Law Dictionary (Fourth Edn.) at page 182 thus :

means act of voting, usually in secret, by balls or by written or printed tickets or slips of paper; the system of voting by balls or tickets, or by any device for casting or recording votes, as by voting machine.

In Stroud's Judicial Dictionary (Third Edn.) however, 'ballot' means "votes recorded - all ballot papers put into the ballot boxes by the electors (p. 3239)". Stroud therefore, does not subscribe to the view of casting of vote through a voting machine and we agree with this view because casting of votes by machine is a mechanical process, which has come into existence long after the Act was passed and is not generally invoked in most of the democratic countries of the world.

31. Concise Oxford Dictionary defines the word 'ballot' thus :

(usu, secret) voting; small ball, ticket or paper used in voting; votes so recorded : lot-drawing.

32. In Webster's Third New International Dictionary (Vol. I) at page 168 'ballot' is defined thus :

to obtain a vote from (a body of voters) (the men on the proposal), to select by ballot or by the drawing of lots.

33. It may be mentioned here that the word 'ballot' has been derived from the word 'ballot' which existed at a time when there was no question of any system of voting machine. Even in 1951 when the Act was passed or the Rules were made, the system of voting by machine was not in vogue in this country. In these circumstances, therefore, we are constrained to hold that the word 'ballot' in its strict sense would not include voting by the use of voting machines. Legislatures must be deemed to be aware of the modern tendencies in various democratic countries of the words where the mechanical system has been introduced and if despite the plain meaning of the word 'ballot' they did not choose to extend the definition given as far back as 1950, it may be safely presumed that the Parliament intended to use the word 'ballot' in its popular rather than a technical sense. Our view finds a good deal of support from the circumstance that even though the system of voting by mechanical process was submitted to the Government for approval yet the same was declined which shows that the rule-making authority was not prepared to switch over to the system of voting by machines, perhaps on account of the legal bar as indicated by us.

34. It is rather unfortunate that the Union of India which is a party to this case, has taken a very

neutral stand by neither supporting nor opposing the direction given by the Commission.

35. Having regard to these circumstances, therefore, we are clearly of the opinion that according to the law as it stands at present, the order of the Commission directing casting of ballot by machines in some of the polling station, as indicated above, was without jurisdiction and could not have been resorted to.

36. It was further pointed out by the respondent that the process of voting by machines is very useful as it eliminates a number of drawbacks and expedites, to a great extent, the declaration of the result of the election by eliminating the process of countering of votes from the allot boxes. On the other hand, the appellant has pointed out a number of defects, some of them being of a vital nature, which would defeat the electoral process. We would now indicate some of the apparent defects which were pointed out to us by the counsel for the appellant after giving a demonstration of the voting machine before us :

The absence of a provision for identifying the candidate for whom a void vote has been cast -

(a) by impersonating a dead voter,

(b) by impersonating an absentee voter,

(c) by the genuine voter who tenders a vote after a vote has been cast in his name by an impersonator (Rules 42),

(d) where a vote is void having been cast after closing, time (Rule 43),

(e) where the voter has cast votes in more than one booth in the same constituency [Section 62(2)].

(f) where the voter has cast two votes in two constituencies [Section 63(3)].

(g) where the voter is disqualified under Section 16 of the Act [Section 62(4)].

(h) where an elector marks a ballot paper wrongly for a candidate, he loses the right to get a fresh ballot paper for casting his vote correctly (Rule 41).

The provisions of Section 100(1)(d) and more so Section 101(1) and (b) under which by excluding the void votes or votes cast as a result of corrupt practices any other candidate can be declared duly elected as the true representative of the constituency.

37. On the other hand a number of advantages which could be obtained by using the mechanical process were pointed out the respondent, the sum and substance of which was that despite some defects the electoral process would be expeditious and would cut out a number of delays or mistakes committed at various stages. The fact, however, remains that if the mechanical process is adopted, full and proper training will have to be given to the voters which will take quite some time. However, we refrain from making any comments on either the defects or advantages of voting machines because it would be for the Legislature and the Government, if it revises its decision at one time or the other, to give legal sanction to the direction given by the Commission. For these reasons, it is not necessary for us to go into the very detailed notes of arguments submitted by the

parties in respect of this aspect of the matter.

38. Lastly, it was argued by the counsel for the respondents that the appellant would be estopped from challenging the mechanical process because he did not oppose the introduction of this process although he was present in the meeting personally or through his agent. This argument is wholly untenable because when we are considering a constitutional or statutory provision there can be no estoppel against a statute and whether or not the appellant agreed or participated in the meeting which was held before introduction of the voting machines, if such a process is not permissible or authorised by law he cannot be estopped from challenging the same.

39. For the reasons given above, we allow the appeal, set aside the election of the respondent with respect to the 50 polling stations where the voting machines were used and we direct a repoll to be held in these 50 polling stations. We, however, do not touch or disturb the results of the votes secured in the other 34 polling stations which was done in accordance with law, viz., the use of the ballot papers. After the repoll, the result of the election would be announced afresh after taking into account the votes already secured by the candidates, including the respondent. We make no order as to costs.

40. In Course of argument, Mr. Sen for the Commission informed us that at eleven elections held under the Act, the mechanical device was used and in nine, no challenge has been raised. It follows that our judgment will not affect those nine elections any manner.

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