

Hareram Pandey

Vs

Ajit Chaudhary

Civil Appeal No. 377 of 1999

(CJI Dr. A. S. Anand, S. Rajendera Babu, R. C. Lahoti JJ)

16.09.1999

JUDGMENT

1. The appellant was a candidate sponsored by the Indian National Congress in the elections to the Bihar Legislative Assembly from 218, Brahampur Assembly Constituency held in 1995. The respondent, conditions sponsored by the Janta Dal was declared elected, defeating the appellant by a margin of 26,490 votes. The result of the election was declared on 1-4-1995. The election of the returned candidate was challenged through an election petition filed by the appellant in the Patna High Court. That election petition was dismissed on 19-11-1998. Hence, this appeal

2. The challenge to the election of the respondent in the election petition was based on the sole ground of improper reception of void votes in favour of the returned candidate and not counting of valid votes polled in favour of the appellant stated thus:

"13. That in counting of the ballot papers, 20,000 valid ballot papers of the petitioner were not counted and on the other hand 20,000 spurious ballot papers bearing vote in favour of the sole respondent, the nominee of the Janta Dal were illegally counted in this favour."

3. Again in para 20 of the election petition, it was averred as follows:

"20. That the commission of the irregularities in counting including 20,000 valid and spurious ballot papers in favour of the respondent and not counting 20,000 genuine ballot papers of the petitioner has merely effect (sic) the result of the election".

4. Para 21 of the election petition contained the following averment:

"21. That after inspection of scrutiny (sic) and re-counting of the ballot papers and elimination of 20000 spurious ballot papers from the total number of vote counted in favour of the respondent and counting of 20,000 genuine votes of the petitioner will render the election of the sole respondent as invalid and is fit to be declared void."

5. The election petition was resisted by the returned candidate and all allegations were denied. Apart from raising certain preliminary objections, the respondent asserted that since the election petition contained vague pleadings based on mere suspicion, the same was liable to be dismissed under Order VII Rule 11 of the Code of Civil Procedure also. From the pleadings of the parties, the

following issues were framed:

- "(i) Whether the election petition in its present frame is maintainable?
- (ii) Whether the election petition is liable to be dismissed due to non compliance with the provisions of Sections 81, 82 83 and 117 of the Representation of the People Act?
- (iii) Whether 20,000 votes, and detailed in para 14 of the election petition, were spurious in nature and counted in favour of the respondent in place of equal number of votes validly polled in favour of the election petitioner?
- (iv) Whether the election petitioner is entitled to the relief sought by him?"

6. The material issued for consideration is Issue 3 since Issues 1 and 2 were not pressed.

7. The gravamen of the charge, insofar as Issue 3 is concerned is that about 20,000 votes which had been cast in favour of the appellant were "removed" or "caused to disappear" from the ballot boxes and in place of those voted 20,000 spurious ballot papers were put in the ballot boxes and counted in favour of the respondent. The grounds on which the ballot papers were alleged to be spurious were given in the election petition. According to the appellant, the seals of about 100 ballot boxes were found tampered with. This allegation was made with a view to support the submission that 20,000 valid votes polled in favour of the appellant were removed from the ballot boxes and replaced by 20,000 spurious votes marked in favour of the respondent. The appellant addressed complaints to the District Electoral Officer and the Chief Election Commissioner and copies of the complaints were annexed to the election petition.

8. Altogether 12 witnesses were examined by the appellant, while 15 witnesses were examined on behalf of the respondent. The High Court, after considering the evidence on the record and pleading of the parties, came to the conclusion that the appellant had miserably failed to prove that 20,000 spurious ballot papers had been counted in favour of the respondent in place of equal number of valid votes polled in favour of the appellant which were removed from the ballot boxes.

9. After hearing learned counsel for the parties, we are of the opinion that the findings recorded by the High Court are correct and based on proper appreciation of the evidence and material on the record.

10. Although the appellant, in the election petition, had initially proceeded with the allegation that 20,000 votes cast in this favour had been illegally removed from the ballot boxes and replaced by 20,000 spurious ballot papers which were counted in favour of the respondent, in the High Court, he himself gave a go-by to his case insofar as non-counting of 20,000 ballot papers cast in his favour is concerned. The High Court noticed in para 8 of the impugned judgment:

"In other words the case of the election petitioner that 20,000 valid votes cast in his favour were not counted has no legs to stand and has got to be outright rejected and cannot be accepted as true. Learned counsel appearing for the election petitioner was fair in not pressing this part of the election petitioner's case and instead laid emphasis on that part of the election petition relating to counting of spurious ballot papers in favour of the respondent." and again in para 15 observed:

11. The High Court then opined :

"The whole case is now based on the allegation that 20,000 spurious ballot papers had been counted in favour of the respondent. Thus the allegation is either of improper reception or reception of void votes in favour of the respondent. Even if the allegations were to be proved it would not materially affect the result of the respondent. It is the admitted case of the parties and is also obvious from the final result sheet (Ext. 4) that respondent had been declared elected by a margin of 26, 490 votes. The respondent had polled 41,248 votes as against 14, 758 votes polled by the election petitioner. Thus even if 20,000 votes polled by he respondent were to be excluded on the ground that they were spurious ballot papers, it would not materially affect the result of the respondent as he would even in that case be held to have polled the maximum number of votes. In other words even if the election petitioner had succeeded in proving his allegation that 20,000 spurious ballot papers had been counted in favour of the respondent, he would not have succeeded in getting the election of the respondent declared void under Section 100(1)(d)(iii) of the Representation of the People Act."

12. Thus, the High Court has found that even if the allegation of reception of void votes in favour of he respondent, for the sake of arguments, was found to be proved, it would not have made any difference and could not have materially affected the result of the election insofar as the respondent is concerned so as to declare his election as void within the meaning of Section 100(1)(d)(iii) of the Representation of the People Act.

13. We agree with the approach of the High Court and the findings recorded by it. In this connection, we would also like to point out that in the complaints made by the appellant to the District Electoral Officer and the Chief Election Commissioner (pp.30 and 32 of the paper-book), he is conspicuously silent about the allegations that 20,000 spurious votes had been cast in favour of the respondent or that 20,000 valid votes cast in his favour ahs been illegally removed. The entire story appears to have been coined at the state of election petition, as reflected in paras 13,14,20 and 21. It is an afterthought and it appears that the allegations which have been made in the election petition were perhaps made with a view to somehow or the other bring the case within the parameters laid down by this Court in *Shashi Bhushan v. Prof. Balraj Madhok* ((1972) 4 SCC 594 : AIR 1972 SC 1251) and to seek an inspection of the ballot papers. It is pertinent to not here that no objection was raised during the counting by any of the counting agents of the appellant to the reception of the so-called spurious votes in favour of the respondent.

14. We must, therefore, hold on the basis of the material on record that the appellant miserably failed to establish his case.

15. Thus, for what we have said above, we find that these is no merit is this appeal which fails and is dismissed but in the circumstances of the case, we leave the parties to bear their own costs insofar as this appeal is concerned.