

**SUPREME COURT OF INDIA**

Smt. Rekha Rana

Vs.

Jaipal Sharma

C.A.No.5891 of 2008

(D.K. Jain and R.M. Lodha JJ.)

10.07.2009

**JUDGMENT**

**D.K. Jain, J.**

1. Challenge in this appeal by special leave is to an interlocutory order dated 20th July, 2007 passed by the High Court of Punjab and Haryana at Chandigarh in CM No. 2E of 2007 in Election Petition No. 1 of 2005. By the impugned order, the High Court has allowed the application preferred by respondent No.1 (hereinafter referred to as "the election petitioner") seeking a direction for opening of sealed marked electoral rolls in order to put the same to a witness summoned by him.

2. Election to Gharaunda Assembly Constituency was held on 3<sup>rd</sup> February, 2005 and the appellant herein was declared as elected by a margin of 21 votes over the election petitioner, who got the second highest number of votes. While the appellant secured 25,237 votes, the election petitioner got 25,216 votes. The other eligible contestants, who are all party respondents in this appeal, got insignificant number of votes.

3. The election of the appellant was challenged by the election petitioner, mainly on the ground that the appellant was the beneficiary of a large number of void votes cast in her favour by impersonation. In nutshell, the allegation was that:

“(i) 96 voters had cast their votes twice during the process of polling;

(ii) 29 votes had been cast in favour of the appellant by way of impersonation, on behalf of the persons who were not available in the constituency on the date of polling;

(iii) 53 votes had been cast in favour of the appellant by way of impersonation on behalf of the persons who had died prior to the date of polling; and

(iv) 10 votes had been cast in favour of the appellant by way of impersonation on behalf of two persons who were serving sentences in jail and on behalf of eight persons who were abroad on the date of polling. The election petition, obviously, was contested by the appellant. Upon consideration of pleadings, six issues were framed. The first three issues viz., (i) whether the election petition does not disclose a cause of action, if so, its effect?; (ii) whether the election petition lacks in material facts and is liable to be dismissed on this ground?; and (iii) whether allegations made in para No.4 raise a triable issue?, were ordered to be treated as "preliminary" issues. Vide order dated 3rd July, 2006, all the said issues were decided in favour of the election petitioner and against the appellant.”

4. In the course of recording of evidence of one of the cited witnesses (PW21), counsel for the election petitioner desired the witness to make a statement after opening the marked electoral rolls, which were available in the court but in sealed covers. This was objected to by counsel for the appellant on the ground that till a specific order was passed by the court in that behalf, the marked electoral rolls could not be opened, which resulted in filing of a miscellaneous application, on which the impugned order has been passed.

5. Briefly taking note of the evidence already led by the election petitioner, the High Court has observed in the impugned order that in the election petition, the election petitioner has expressed the basis of his claim to the minutest details in terms of the provisions of the *Representation of Peoples Act, 1951* (for short "the Act") as well as the *Conduct of Election Rules, 1961* (for short "the Rules"); the pleadings are supported by an affidavit in consonance with Rule 94-A of the Rules; the evidence recorded on behalf of the election petitioner so far is in consonance with the pleadings and therefore, it is not a case where the election petitioner is intending to have a roving enquiry so as to fish out material for raising a challenge to the election of the appellant. The Court felt that the ultimate truth in respect of clear allegations leveled by the election petitioner can only be arrived at on the basis of the marked electoral rolls. Finally, recording its satisfaction that it is a fit case where the prayer made by the election petitioner for leading evidence on the basis of the marked electoral rolls deserves to be allowed and by grant of the said prayer, the norm of "secrecy of ballot" would not be violated, as noted earlier, the Court has directed the opening of the sealed marked electoral rolls. Hence the present appeal.

6. Mr. Vijay Hansaria, learned senior counsel appearing on behalf of the appellant, submitted that the High Court has committed a serious error of law in directing de-sealing of the marked electoral rolls inasmuch as the inspection thereof would result in the infringement of the principle of "secrecy of ballot", so sacrosanct to the electoral process. It was argued that a mere assertion in the election petition that a large number of void votes had been cast in favour of the appellant by resorting to impersonation was not sufficient to allow inspection of any document in terms of Rule 93 of the Rules. In support of the proposition that an order for inspection cannot be granted as a matter of course and the Election Tribunal must record its satisfaction about the necessity of inspection, which, in the present case, the High Court has failed to do, reliance was placed on the decision of this Court in *Ram Sewak Yadav Vs.*

*Hussain Kamil Kidwai*<sup>1</sup>. Relying on another decision of this Court in *Hari Ram Vs. Hira Singh & Ors.*<sup>2</sup> learned counsel stressed that inspection of the electoral rolls is to be allowed very sparingly and only when it is absolutely essential to determine the issue.

7. Per contra, Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the election petitioner, while supporting the impugned order, at the outset, pointed out that order dated 3rd July, 2006 passed by the High Court, deciding all the three aforementioned preliminary issues in favour of the election petitioner shows that all material facts required to be pleaded in an election petition had been clearly stated. It was submitted that in the said order, the High Court had in very clear terms observed that in the present case, the election petitioner had disclosed, as far as possible, all material facts on the basis of which he wished to authenticate the allegations levelled by him against the appellant; the allegations levelled in the election petition were clear and precise and will afford the appellant an adequate opportunity to controvert them. It was thus, submitted that in view of the aforementioned findings, the satisfaction recorded by the High Court that inspection of the electoral rolls was essential for determination of the issue raised by the election petitioner was based on cogent and adequate material and therefore, no fault could be found therewith. Asserting that on the facts of the instant case, in the inspection of electoral rolls there is no element of breach of "secrecy of ballot" principle, learned counsel submitted that in any event, the interest of "purity of ballot" must prevail over "secrecy of ballot". In support of the proposition, learned counsel relied on a three Judge Bench decision of this Court in *A. Neelohitadasan Nadar Vs. George Mascrene & Ors.*<sup>3</sup>. To buttress his stand that Section 83(1)(a) of the Act contemplates only giving of a concise statement of the material facts on which the election petitioner relies, learned counsel pressed in aid the decision of this Court in *Manphul Singh Vs. Surinder Singh*<sup>4</sup>.

8. In the backdrop of the above submissions, the first question for consideration is as to what exactly is the underlying object, scope and ambit of the doctrine of "secrecy of ballot" as enshrined in Section 94 of the Act?

9. Section 94 of the Act provides that except in a case of voting by open ballot, no witness or other person shall be required to state for whom he has voted. The underlying object of the provision is to assure a voter that he would not be compelled, directly or indirectly, by any authority to disclose as to for whom he has voted, so that he may vote without fear or favour and is free from any apprehension of its disclosure against his will from his own lips. The Section confers a privilege on the voter to protect him both in the Court when he is styled as a witness and outside the Court when he may be questioned about how he voted. This precisely is the principle of "secrecy of ballot". The "secrecy of ballot" has always been the hallmark of the concept of free and fair election, so very essential in the democratic principles adopted by our polity. It undoubtedly is an indispensable adjunct of free and fair elections.

10. The true scope and ambit of the doctrine of "secrecy of ballot" was lucidly elaborated by this Court in *S. Raghbir Singh Gill Vs. S. Gurcharan Singh Tohra & Ors.*<sup>5</sup>. It was observed that any interpretation of Section 94 of the Act must essentially subserve the purpose for

which it is enacted. The interpretative process must advance the basic postulate of free and fair election for setting up democratic institution and not retard it. Section 94 cannot be interpreted divorced from the constitutional values enshrined in the Constitution. Expressing the view that "Secrecy of Ballot" as provided in Section 94 of the Act, was mooted "to ensure free and fair elections", the Court opined thus:

"If the very secrecy of ballot instead of ensuring free and fair elections strikes at the root of the principle of free and fair elections this basic postulate of democracy would be utilised for undoing free and fair elections which provide life-blood to parliamentary democracy. If secrecy of ballot instead of ensuring free and fair elections is used, as is done in this case, to defeat the very public purpose for which it is enacted, to suppress a wrong coming to light and to protect a fraud on the election process or even to defend a crime, viz., forgery of ballot papers, this principle of secrecy of ballot will have to yield to the larger principle of free and fair elections."

Noticing that the Act is a self contained Code on the subject of elections and reiterating that "there is one fundamental principle which permeates through all democratically elected parliamentary institutions, viz., to set them up by free and fair elections, the Court observed thus:

"The principle of secrecy of ballot cannot stand aloof or in isolation and in confrontation to the foundation of free and fair elections, viz., purity of election. They can co-exist but as stated earlier, where one is used to destroy the other, the first one must yield to principle of purity of election in larger public interest. In fact secrecy of ballot, a privilege of the voter, is not inviolable and may be waived by him as a responsible citizen of this country to ensure free and fair election and to unravel foul play".

11. Taking note of the law laid down in Raghbir Singh Gill's case (supra) with reference to the principle of "secrecy of ballot", in A. Neelalohitadasan Nadar (supra), this Court observed thus: "But this right of the voter is not absolute. It must yield to the principle of "purity of election" in larger public interest. The exercise of extrication of void votes under Section 62(4) of the Act would not in any manner impinge on the secrecy of ballot especially when void votes are those which have to be treated as no votes at all. "Secrecy of ballot" principle pre-supposes a validly cast vote, the sanctity and sacrosanct of which must in all events be preserved. When it is talked of ensuring free and fair elections it is meant elections held on the fundamental foundation of purity and the "secrecy of ballot" as an allied vital principle."

"Thus, the Court reiterated that out of the two competing principles, the "purity of election" principle must have its way and that the "rule of secrecy", as contemplated in Section 94 of the Act, cannot be pressed into service to suppress a wrong coming to light and to protect a fraud on the election process."

12. Having noted the law on the point, the next question requiring adjudication is whether on facts at hand, the impugned direction infringes the principle of "secrecy of ballot" and therefore, it is bad in law?

13. As already noted above, the case of the election petitioner, pleaded in the election petition, is that a number of votes had been cast by impersonating electors, who were either not available in the constituency on the date of election or had died much prior to the date of election or were serving jail sentences or were abroad on the relevant date. The factum of casting of votes by a particular elector could be proved only on the basis of marked electoral rolls. More so, when the names of the voters who were alleged to have double voted or have died etc., were specifically mentioned in the election petition. From a marked electoral rolls, it is only possible to ascertain whether or not a vote had been cast in the name of a voter from a particular polling booth but it is never possible to decipher therefrom as to who is the beneficiary of the said vote as there is no indication on the electoral roll showing for whom the voter had cast his vote. It is to be borne in mind that the marked electoral roll is maintained primarily for the purpose of identifying the elector and as such, we fail to see how its production would impair the "secrecy of ballot" principle. Accordingly, we reject the contention of learned counsel for the appellants on this aspect.

14. We feel that having regard to the nature of allegation, the stand of the appellants must also fail when tested on the touchstone of the "purity of election" principle as enunciated in Raghbir Singh Gill's case (supra). Sub-Sections (4) and (5) of Section 62 of the Act respectively bar double voting and voting by a person who is confined in a prison for any reason and a vote cast by any such person shall be void. As observed in A. Neelalohitadasan Nadar's case (supra), the exercise of extrication of void votes under Section 62(4) of the Act would not in any manner impinge on the "secrecy of ballot", especially when void votes are those which have to be treated as no votes at all. "Secrecy of ballot" principle pre-supposes a validly cast vote, the sanctity and sacrosanct of which must in all events be preserved. Therefore, we are in complete agreement with the High Court that on the pleadings of the parties, a case for inspection of the marked electoral roll had been made out. We do not find any infirmity in the impugned direction warranting our interference.

15. Before closing, we may also deal with the argument advanced by learned counsel for the appellants in regard to the scope of Rule 93. The stand of the appellants is that the election petition lacks sufficient facts on the basis whereof the court could record the requisite satisfaction as stipulated in the said Rule before ordering inspection of the Electoral Roll. Rule 93 provides that the documents mentioned in sub-rule (1) thereof shall not be opened and their contents shall not be inspected by, or produced before any person or authority except under the orders of the competent court. Clause (d) of Sub-rule (1) of Rule 93 refers to marked copy of the Electoral Roll. It is trite that inspection under the said Rule can be allowed only when the following two conditions are satisfied:

“(i) The material facts on the basis of which inspection of documents is sought, must be clearly and specifically pleaded; and

(ii) The Court must be satisfied on evidence, even if in the form of affidavit, that it is necessary to allow inspection in the interest of justice. (See: *Hari Ram Vs. Hira Singh & Ors.*<sup>6</sup>) It is equally well settled that the inspection of the documents mentioned in sub-rule (1) cannot be allowed as a matter of course and a prayer for inspection must be refused by the Court if it is satisfied that in the garb of inspection, a defeated candidate is indulging in a roving enquiry in order to fish out materials for getting the election set aside. Nevertheless, if precise allegations of material facts are available on record and the Court is satisfied that inspection of the documents is necessary to determine the issue arising for the decision in the case as also in the interest of justice, then the Court must exercise its power under the said rule to allow inspection. Needless to emphasise that recording of reasons in either of the two situations is a pre-requisite for exercise of power under the said Rule.”

16. In the instant case, as noted earlier, the election petitioner has specifically mentioned the names of the persons who had been impersonated or had double voted. Moreover, while dealing with the three preliminary issues, in its order dated 3 July, 2006, the Court had recorded a categorical finding that the election petitioner had placed on record sufficient material to substantiate the allegations made in the election petition. In view of the said finding, we do not find any substance in the contention of learned counsel that the twin conditions as contemplated in Rule 93 were not satisfied.

17. In view of the foregoing discussion, we do not find any merit in the appeal, which is dismissed accordingly with costs.

<sup>1</sup>*AIR 1964 SC 1249*

<sup>2</sup>*(1984) 2 SCC 36*

<sup>3</sup>*1994 Supp (2) SCC 619*

<sup>4</sup>*(1973) 2 SCC 599*

<sup>5</sup>*1980 Supp. SCC 53*

<sup>6</sup>*(1984) 2 SCC 36*