

ALLAHABAD HIGH COURT

Swarup Sing

Vs.

Election Tribunal

Civil Misc. Writ No. 3504 of 1958

(O.H. Mootham, C.J. and Raghubar Dayal, J.)

22.04.1959

JUDGMENT

Mootham, C. J.

1. I agree that this petition must be dismissed. The question is whether the five ballot papers which had been marked on the back are valid. The circumstances in which the question arises are, it is to be hoped, most unusual. On the face of these ballot papers are printed four vertical columns headed respectively (in Hindi) Serial number; Names of candidates with party affiliation, if any; Facsimile of symbols assigned; and Space for marking. On the back of the form is printed the number of the form and the instructions for voters. In the case of each of these ballot papers, with the doubtful exception of ballot paper No. 140, the ink used for impressing on the face of the ballot paper the vertical and horizontal lines, the names of the candidates and the symbols has penetrated the ballot papers with the result that everything printed on the face of the ballot papers appears also on the back of it, although of course the order of the columns, the symbols and the names of the candidates are reversed. The symbols are perfectly clear, but the names of the candidates cannot be read as each letter is reversed. A literate voter would therefore be able to distinguish between the front and the back of the form, but an illiterate voter might well be in doubt.

2. Now paragraph 43 of the U. P. Municipalities (Conduct) of Election of Members) Order, 1953, provides that an elector shall "make a mark on the ballot paper opposite the name of the candidate or each of the candidates for whom he intends to vote", and clause (g) of paragraph 64(1) provides that the Returning Officer shall reject a ballot paper "if no vote is recorded thereon". The argument is that the phrase "on the "ballot paper" means, and means only, on the face of the ballot paper. It is therefore contended that as the electors in the case of these five ballot papers have marked their choice on the back, the ballot papers were rightly rejected by the Returning Officer and ought not to have been counted by the Election Tribunal. There is however

a presumption that every voter who applies for a ballot paper intends to vote for one or more candidates. Each of the marks made on these five ballot papers is opposite the reversed symbol assigned to a candidate, and I do not think that there can be the slightest doubt with regard to the candidate or candidates for whom the elector was voting. It is true that the marks made by the votes are not opposite the names of the candidates for the printing of these names, being reversed, is not legible. But I understand that the whole purpose of assigning a symbol to a candidate is to substitute something easily recognizable by a voter who owing to his illiteracy is unable to read the names of the candidates. The symbol, in other words, must be treated as taking the place of the name. For all practical purposes, so far as illiterate voter is concerned, a mark opposite an assigned symbol is a mark opposite a name, and in the peculiar circumstances of this case I am of opinion that the mark made by the voter on the back of the ballot paper is a mark "on the ballot paper" within the meaning of paras 43 and 64 of the 1953 Order. I have some hesitation in holding that the Election Tribunal was right in counting the votes recorded on ballot paper no. 140, but as the exclusion of this ballot paper would not affect the result, the matter is not of importance.

3. I agree with the order proposed by my brother.

Dayal, J.

4. This is a petition under Article 226 of the Constitution by Swarup Singh whose election to a seat for scheduled caste candidate on the Municipal Board Aligarh was set aside by the Election Tribunal on the election petition filed by Champa Lal who had obtained the next highest number of votes. Swarup Singh, according to the declaration, obtained 1255 votes and Champa Lal, respondent No. 2, 1246 votes.

5. One of the grounds on which the election of Swarup Singh was challenged was that twelve of the votes cast for Champa Lal were wrongly rejected by the Returning Officer and that he had wrongly counted one vote cast for Swarup Singh as valid. The Election Tribunal held in favour of Champa Lal that eleven of the rejected votes had been wrongly rejected and that one vote counted for Swarup Singh should be rejected. In the result therefore Champa Lal according to the Election Tribunal obtained 1257 votes and Swarup Singh obtained, 1254 votes. The Election Tribunal therefore set aside the election of Swarup Singh and declared Champa Lal to be the duly elected candidate.

6. Swarup Singh by this petition prays for the quashing of the order of the Election Tribunal.

7. The learned counsel for the petitioner does not challenge the finding of the Tribunal about the wrong rejection of six votes, namely votes recorded on ballot papers nos. 2994, 148, 167, 3109, 218, and 3013. He has challenged the finding with respect to the other five ballot papers, namely nos. 117, 140, 79, 3019 and 2607. The voters who voted on these ballot papers made the marks

on the back of the ballot paper and not on the front and were probably led to do so because the symbols which were more prominent than the written names appeared clearly on the back of the ballot papers as well. The Returning Officer rejected these ballot papers because the voters marked on the back side of the ballot papers. The Election Tribunal did not consider it to be a good reason to reject it and the contention raised on behalf of the petitioner is that any mark made on the back of the ballot paper amounts to the non-marking on the ballot paper by the voter. It is not contended and could not have been successfully contended that the marks on the back side were not meant for the respondent Champa Lal. The questions of law for determination in the case are whether such a marking on the back of the ballot paper is against the directions contained in paragraph 43 of the U. P. Municipalities (Conduct of Election of Members) Order, 1953 as amended upto January 3, 1958 and whether such a ballot paper would be covered by sub-clause (g) of clause (1) of paragraph 64 of the aforesaid Order.

8. I do not consider such marking in this particular case, to be marking against the provisions of paragraph 43. This paragraph directs the voter to make a mark on the ballot paper opposite the name of the candidate for whom he intends to vote. To ascertain the candidate the ballot paper mentions the name and also depicts the symbol allotted to that particular candidate. The symbol was clearly visible on the back of the ballot paper. The name was not. In the circumstances marking on the back of the ballot paper cannot be said to be against this direction. I do not agree with the contention for the petitioner that the direction to mark on the ballot paper amounts to a direction to mark on the face of the ballot paper and that it is the face of the ballot paper alone which is really the ballot paper. The entire sheet of paper is the ballot paper, of course one side of it is the face of the ballot paper and the other is the back side of the ballot paper.

9. Paragraph 64 clause (1) mentions seven grounds for either or more of which the Returning Officer is bound to reject a ballot paper. The only ground relied upon by the petitioner in justification of the Returning Officer's rejecting these votes is the ground mentioned in sub-clause (g). That ground is that the Returning Officer shall reject a ballot paper if no vote is recorded thereon. When a voter has made marks on the ballot paper though on the back side it cannot be said that no vote has been recorded on that ballot paper. I am therefore of opinion that the Returning Officer could not validly reject these ballot papers on the ground mentioned in sub-clause (g). No other ground mentioned in clause (1) affects the present case.

10. Clause (2) of paragraph 64 really deals with the rejection of a ballot paper on which a mark indicating the vote has been placed. This clause is :

"A vote recorded on a ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such manner as to make it doubtful to which candidate the vote has been given :". The proviso to this clause is not relevant for the purpose of the case. A ballot paper on which a vote is recorded can be rejected only if the Returning Officer is unable to make out as to which candidate the vote has been given. There could

be no case of a doubt in the present case as for whom the vote has been cast. The votes had been cast for Champa Lal as they were marked opposite his symbol. These ballot papers therefore could not have been rejected in view of the provisions of clause (2).

11. We were referred to the notes in paragraph 240, p. 140, Volume 14, Halsbury's Laws of England, Third Edition. The note is :

"A ballot paper marked on the back only should not be counted, even though the marks shows through the paper on to the front. A ballot paper marked both on the back and on the front may, however, be counted."

These short notes however do not indicate on what provisions of law such an interpretation was placed and therefore this reference of these notes is not of help to the petitioner when the provisions of Clause (2) of paragraph 64 are so clear.

12. For the reasons stated above I am of opinion that this petition has no force. I would accordingly reject it with costs.

BY THE COURT

13. The petition is dismissed with costs.

14. The interim order of stay granted by this Court on the 26th November 1958 is discharged.

Petition dismissed.