

PUNJAB AND HARYANA HIGH COURT

Rameshwara Nand

Vs

Madho Ram

Election Petition No. 8 of 1967

(A.N. Grover, Harbans Singh and D.K. Mahajan, JJ.)

16.10.1967

JUDGMENT

A.N. Grover, J.

1. The opinion of the Full Bench has been invited on three questions relating to production, inspection and scrutiny of election papers mentioned in rule 93 of the Conduct of Election Rules, 1961 (hereinafter called the Rules) pertaining to 201 postal ballots, 190 tendered votes and 8 votes alleged to have been cast by dead persons and the procedure to be followed in respect of evidence in the facts and circumstances of the present case.

2. The petitioner and the respondent contested the election to the Lok Sabha from Karnal Parliamentary Constituency held in the early part of the year 1967. The respondent won by a majority of 203 votes only. The grounds on which the election of the respondent has been challenged and a declaration sought that the petitioner has been duly elected, are set out in paragraph 12 of the petition. It has been alleged *inter alia* that the result of the election in so far as it concerns the returned candidate has been materially affected by improper reception, refusal and rejection of vote and by reception of void votes in favour of the respondent and by non-compliance with the constitutional and statutory provisions, rules and orders relating to election. Paragraph 13 contains the concise statement of the material facts on which the petitioner has relied. It is unnecessary to refer to those facts which do not concern the points which have to be decided at this stage. It would suffice to refer to clause (f) of paragraph 18 and paragraphs 14, 15 and 16. It has been alleged that the Assistant Returning Officers and the Returning Officer acting *mala fide* violated the rules pertaining to the casting of postal ballots. These ballots were not sent by post. On the day of counting at 4.05 P.M. such ballots alleged to be of public servants on election duty, were received in a lump by Shri Bhagwat Sarup, Superintendent of Police, Karnal. No intimation in Form 12 was given about them by the respective electors as required by the rules. The ballots were collected by the Superintendent of Police and were got marked by him at his residence in favour of respondent No. 1 and then handed over by him to the Returning Officer. These ballots, it is stated, were obtained by influencing and pressuring the subordinate officials. They were thus void and invalid and could not have been counted in favour of the respondent. In paragraphs 15 and 16 it has been stated that on February 1, 1967 Ram Piara, M.L.A. who was a candidate for Karnal Assembly Constituency filed an application before the

Assistant Returning Office at the time of counting of the votes that no applications in form No. 12 from individual electors had been received for the issuance of the postal ballots as required by Rule 20 of the Rules. A request was made that the applications, if any received, might be shown before the counting of the postal ballots but no such applications had in fact been received and none was forthcoming at that time. A second application dated 21st February, 1967 was also moved by Ram Piara before the Assistant Returning officer in which it was stated *inter alia* that constables and other police ranks had been influenced and pressurised and their votes had been obtained in favour of the Congress by forgery and wrong attestation. In paragraph 14, it was stated that there were 190 tendered votes cast at the election out of which the preponderant majority of these votes had been cast in favour of the petitioner. If the tendered votes were taken into account and the corresponding votes cast by false presentation were to be omitted from counting, the difference of 203 votes between the respondent and the petitioner would stand more than 'counterbalanced.' In the written statement filed by the respondent the allegations relating to postal ballots have been denied and it has further been stated that the petitioner cannot take advantage of the applications made by Ram Piara who was a candidate for one of the Assembly Constituencies. As regards the tendered votes it has been claimed that the preponderant majority of such votes had been cast in favour of the respondent and not the petitioner. The respondent has further disclaimed knowledge as to the number of votes alleged to have been cast by false presentation.

3. The petitioner examined 37 witnesses on the dates allotted for his evidence besides his own statement which he made as P.W. 37. Out of these witnesses, six police constables were produced in connection with the postal ballots. Similarly six witnesses were produced with reference to the tendered votes and three witnesses were examined with regard to the votes alleged to have been cast by eight persons who are stated to have died before the elections were held. The counsel for the petitioner has filed various miscellaneous petitions (Civil Miscellaneous 126-E of 1967 to 129-E of 1967 and 134-E of 1967 to 138-E of 1967). In one of these petitions (Civil Miscellaneous 134-E of 1967) it has been pointed out that the petitioner had filed a list of witnesses on August 8, 1967, in which he had included the names of six constables in whose names the postal ballots were said to have been cast. It is stated that before filing the list the petitioner's counsel had brought it to the notice of the Court that so far as the postal ballots and tendered votes were concerned, the petitioner intended to produce all the persons in whose names the postal ballots were alleged to have been cast and all the persons who had cast the tendered votes. The Court at that stage observed that the petitioner should, in the first instance, lead evidence and produce half a dozen witnesses regarding the petitioner's allegations and that the request for summoning other witnesses on these matters would be considered at a latter stage. It is claimed that the evidence led so far establishes that the provisions relating to the issuance, receipt and casting of the postal ballots had been flagrantly violated and that the votes cast by postal ballots were invalid and similarly it had been proved that the votes cast as tendered votes were the genuine votes and the earlier votes which had been wrongly cast against entries of the names in the electoral rolls were invalid and deserved to be excluded. It has been prayed that the remaining persons who had cast their votes by postal ballots as also who had cast their votes as tendered votes be all summoned and their evidence recorded. It may be mentioned that some such observation was made by me because I wanted to be satisfied, in the first instance, before such a large number of witnesses (about 391) were allowed to be examined that a *prima facie* case had been made out for the production, inspection and scrutiny of the postal ballots, the tendered votes and the votes cast by dead persons and it could be determined only thereafter

whether and how many witnesses would be material and should be allowed to be examined. In the other miscellaneous petitions the details of which need not be mentioned, the prayers relate mainly to production, inspection and scrutiny of the aforesaid types of ballot papers and allied procedural matters.

4. Now before the evidence is discussed for the purpose of seeing whether a *prima facie* case had been made out by the petitioner for granting the prayers relating to production, inspection and scrutiny, the relevant rules relating to postal ballots and tendered votes may be mentioned. Part III of the Rules relates to postal ballot. Clause (c) of rule 17 contains the definition of 'voter on election duty'. In the present case 210 police constables who were alleged to have cast their votes by postal ballot were voters on election duty. Rule 18 confers a right on such voters including others to vote by post. According to rule 20, a voter on election duty who wishes to vote by post at an election shall send an application in Form 12 to the Returning Officer so as to reach him at least seven days or such shorter period as the Returning Officer may allow before the date of poll, and if the Returning Officer is satisfied that the applicant is a voter on election duty, he shall issue a postal ballot paper to him. Although under rule 23, a postal ballot paper shall be sent by post under certificate of posting to the elector together with a declaration in Form 13A, a cover in Form 13B, a large cover addressed to the Returning Officer in Form 13C and instructions for the guidance of the elector in Form 13D, but according to the proviso, the Returning Officer may in the case of a voter on election duty, deliver the ballot paper and the forms or cause them to be delivered to such voter personally. Rule 24 provides that an elector who has received a postal ballot paper and desires to vote shall record his vote on the ballot paper in accordance with the directions contained in part I of Form 13D and then enclose it in the cover in Form 13B. Clause (d) in part II of Form 13D makes it clear that the larger cover containing the ballot paper, etc., can be sent to the Returning Officer by post or messenger, Rule 42 deals with tendered votes. According to it if a person representing himself to be a particular elector applies for a ballot paper and another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the Presiding Officer may ask, be entitled, subject to the provisions given in the rule, to mark a ballot paper to be referred to as a 'tendered ballot paper' in the same manner as any other elector. Every such person has before being supplied with a tendered ballot paper to sign his name against the entry relating to him in a list in Form 15. The elector, after making a tendered ballot paper in the voting compartment and folding it, has to give it to the Presiding Officer instead of putting it into the ballot box. The Presiding Officer has to place it in a cover specially kept for the purpose.

5. I propose to deal first with the evidence relating to postal ballots. Exhibits P. 2 to P. 202 are the applications purporting to have been made by 201 police constables on election duty in Form 12. On the left hand side of these applications, the place and date of making the application are not mentioned and have been left blank except that in a few applications the place is mentioned as 'Karnal'. At the back of each application an officer whose designation is shown as Deputy Superintendent of Police, Karnal, has certified that the particular applicant has been put on election duty without giving any date. There is then an order in ink "Issue P.B.P. for 'P' Constituency". This is signed by an officer whose designation has been shown as Assistant Returning Officer for Parliamentary Constituency, the date being 14th February, 1967. With the consent of the respondent's counsel, the ballot papers including the declarations, etc. of the six constables who appeared as witnesses, were directed to be produced from the sealed covers relating to the postal ballot papers and the relevant documents were duly exhibited. Out of the six

constables who have been examined, the ballot papers of only two were accepted, namely, Sube Singh P. W. 15 and Bhim Singh P. W. 17. The ballot papers of the other four were rejected presumably on the ground that their declarations in Form 13A were apparently defective as they did not bear their signatures and were almost blank. P.W. 15 Sube Singh stated that he was posted in the Police Lines, Karnal, during the election days and was assigned election duty at Police Station, Rajaund in Tehsil Kaithal. His signatures were obtained in the Police Lines on a form by the Moharrir there. He never cast any vote by postal ballot and had never received any paper relating to such ballot. However, signatures had been obtained from him on two papers. He denied that the signatures on Exhibit P. 169, an application in Form 12 were his. The sample of his signatures was obtained in Court and it is contained in Exhibit C/21. Even a casual comparison of the signatures shows that Exhibit P. 169 could not have been signed by him. In Exhibit P. 169, the signatures in Hindi are 'Suba Singh' and his sample signatures are 'Sube Singh'. Even otherwise the formation of the letters is quite different and *prima facie* he does not appear to have signed Exhibit P. 169. It may be added that his signatures on Form 13A, Exhibit C16 are exactly the same as his sample signatures and are quite different from the signatures found on Exhibit P. 169. Nothing was brought out in his cross examination which might throw any doubt on the veracity of his statement in the examination-in-chief. It is somewhat significant that Exhibit P. 20 which is the application in Form 12 of police constable Balwan Singh who has appeared as P. W. 12 and who has denied having made any application for being issued a postal ballot, contains his signatures which clearly appear to be the writing of the same person who wrote 'Suba Singh' on Exhibit P. 169. The suggestion of the counsel for the petitioner is that all these applications in form 12 were filled in by persons other than the electors as a part of a scheme or a design to obtain all the postal ballots for the purpose mentioned in paragraph 13(f) of the petition. Bhim Singh, P. W. 17, who was posted at Karnal, during the election days and who had also been put on election duty stated that he never cast any vote at any polling station, According to him, signatures had been obtained from him on a certain form by the Lines Officer where many other persons were present who were signing the forms. He stated that the signatures which he had appended on the form were in Hindi. He did not put any mark across any of the symbols himself on the ballot paper which was inside the cover. He admitted that the signatures on Exhibit P. 150, the application in form 12, were his. The other witnesses Daya Nand P.W. 13, Sukhrampal P. W. 14, Bhim Singh P.W. 16, and as already mentioned, Balwant Singh P. W. 12, had also stated that they never cast any vote by postal ballot nor had they submitted any application for being supplied a postal ballot paper for casting any vote. They denied that the applications relating to them in Form 12 bore their signatures. Certain other evidence was also ? produced namely, of Lachman Das P. W. 31, who deposed that he went to the house of Pandit Bhagwat Sarup, Superintendent of Police, Karnal, on the evening of 18th February, 1967, and when he was sitting in his office, he noticed that the Reader who was a Sikh, was putting mark on ballot papers which were stated to have come from the police lines. P.W. 38 Daulat Ram, a member of the Municipal Committee, Gharaunda, deposed that he had gone to Karnal to see the General Assistant of the Deputy Commissioner 10 or 12 days before the elections. He was sitting underneath neem trees outside the Bar Room when he saw the Superintendent of Police and the respondent going together busy talking. He heard the Superintendent of Police saying to the respondent that he would get all the votes of the members of the police force cast in his favour.

6. Even though for the time being the last two witnesses, namely, Lachhman Dass P.W. 31, and Daulat Ram P.W. 38, be not considered reliable, it does appear *prima facie* that there was non-compliance with rule 20 relating to sending applications in Form 12 by the electors. There is then

the positive statement of the two police constables that they never put any mark on the ballot paper and that they were just made to sign certain forms by their superior officers. If that be so, then their votes which were cast in favour of the respondent, will have to be excluded. The case of the petitioner is that he would be able to establish by production of all the other police constables that the casting of their votes by postal ballot was similarly vitiated, and that in the interest of justice and for ensuring the purity of elections this Court should allow the production, inspection and scrutiny sought. Before, however, that can be done, it will be essential to inspect and scrutinise the relevant ballot papers, declaration forms, etc., in order to determine how many votes were counted as valid and how many were treated as invalid. This course will apparently have to be followed in order to limit the number of witnesses who may be allowed to be examined, otherwise a good deal of unnecessary evidence may be introduced as, for instance, in the case of four constables who have been produced but whose ballot papers had been rejected.

7. As regards the tendered votes, the petitioner examined Jasmat Singh P.W. 18, Rura P.W. 19, Ranjit Singh P.W. 20, Kishan Lal P.W. 21, Rupa P.W. 22, and Sadhu Ram P.W. 23, all of whom stated that when they went to their respective polling stations, they were told that someone else had already voted in their names. On their remonstrance and protest, the Presiding Officers made enquiries and verified their identity from the Sarpanch, the Lambardar, and the co-villagers and allowed them to cast their votes which now form part of the tendered votes in question. According to the petitioner, a *prima facie* case has been made out for production, inspection and scrutiny of all the ballot papers and other relevant documents relating to tendered votes so as to determine the number of witnesses who might be allowed to be produced by the petitioner with regard to the tendered votes. It is noteworthy that apart from rule 42, there is no other provision which has been brought to our notice either in the Representation of the People Act, 1951, or the rules with regard to the use to be made of the tendered votes. It is quite obvious that it will be for this Court in the election petition to determine how many of the tendered votes are valid and how many are invalid and then decide whether any evidence and how much evidence should be allowed to be produced with regard to them. There can be no manner of dispute that at no prior stage could it be determined either by the Presiding Officer or by the Returning Officer as to how many votes out of the tendered votes have been cast validly and can be taken into account provided it is established that they were cast by the genuine voters. Simultaneously, the votes cast by so-called spurious electors in the name of the genuine electors will have to be included or excluded as the case may be and the production, inspection and scrutiny of their ballot papers will also become necessary. As regards the third category of persons which consists of a small number only (8) who are alleged to have died before the elections and in whose names the votes are stated to have been cast, the evidence which has been produced of three witnesses (Sub-Inspector Mohan Singh P. W. 1, Sadhu P.W. 8, and Manglu P.W. 10) establishes a *prima facie* case for the production, inspection and scrutiny of the ballot papers relating to such persons.

8 Mr. C.L. Lakhanpal has firmly opposed the prayers relating to production, inspection and scrutiny of the ballot papers in question. He has relied on sections 94 and 128 as also rule 93 of the Rules for showing that the principle of secrecy of the ballot should be fully preserved. The law on the subject is contained in the decisions of their Lordships in *Bhim Sen v. Gopali*¹, *Ram Sewak Yadav v. Hussain Kamil Kidwai*², and *Dr. Jagjit Singh v. Giani Kartar Singh*³. In the first case it was laid down that definite particulars about the number and nature of the void votes that had been counted could only be supplied after inspection of the ballot papers and that the election petition as originally presented in that case contained the material particulars and the amendment

petition was to be treated merely as an application for clarification of the pleadings. In the second case it has been laid down that an order for inspection may not be granted as a matter of course having regard to the insistence upon the secrecy of the ballot papers, but the Court would be justified in granting an order for inspection provided two conditions are fulfilled :

- (i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case ; and
- (ii) the Tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

It has further been observed that such an order for inspection cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. In *Dr. Jagjit Singh v. Giani Kartar Singh* (supra) after a review of the earlier decisions it has been said that in the matter of inspection of ballot papers the importance of secrecy cannot be ignored. Emphasis has been laid on the fact that statutory rules framed under the Act are intended to provide adequate safeguards for the examination of the validity or invalidity of votes and for their proper counting. It may be that in some cases the ends of justice would make it necessary to allow a party to inspect the ballot boxes and consider his objections about improper acceptance or improper rejection of votes tendered by voters at any given election but in considering the requirement of justice care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void.

9. Mr. Lakhanpal's objection is that all the material facts have not been stated in the petition relating to postal ballots and tendered votes and, therefore, their inspection and scrutiny cannot be and ought not to be allowed. It has been urged that the allegations about the Superintendent of police having manipulated the casting of votes by postal ballot have not even been *prima facie* established. The material facts which have been stated in the petition have, already been set out and it is difficult to understand what other facts and particulars could have been stated by the petitioner when his deposition is kept in mind. According to him (he appeared as P. W. 37) when the final counting took place on February 23, 1967 in the Court of the Deputy Commissioner, who was the Returning Officer, the postal ballot papers in which the votes had been cast by members of the police force were opened first. There was no postal mark on the envelopes containing the ballot papers. The time of receipt which was noted on them was 4.05 P.M. He made a request for inspection of the applications relating to the postal ballot papers but that request was declined on the ground that he had no right to see them and that there was no application with the Returning Officer. The petitioner asked the Returning Officer to show him the register, relating to the receipt and issue of the postal ballot papers but that officer repeated the same thing. The petitioner further stated that all the votes in the postal ballot papers had been cast in favour of the respondent. In these circumstances, there is nothing to show that the petitioner could have given any more material facts than were let out in the petition. At any rate, the question to be seen is whether the facts which were stated, fulfilled the statutory requirement of section 83 (i) (a) of the Act. In my view they were not deficient and the objection of Mr. Lakhanpal is without any force. As regards the tendered votes, no other material facts or

particulars could be stated as has been already pointed out and Mr. Lakhanpal has not been able to refer to anything which may make the allegations relating to tendered votes deficient in the recital of material facts. It is also noteworthy that in the present case the production, inspection and scrutiny which is sought is confined only to about 400 votes in all of certain specified categories which was not the case in any of the matters which went up to their Lordships in which the question was about the inspection and scrutiny of all the ballot boxes.

10. Mr. C.L. Lakhanpal has next strenuously contended that production inspection and scrutiny could not be allowed of the ballot papers in question till after the petitioner has led the entire evidence relating to the postal ballots, the tendered votes, etc., and that such production, inspection and scrutiny at the present stage would only enable the petitioner to make a roving or fishing enquiry which cannot be permitted under the law. At an earlier stage, the reasons and the practical difficulties in the way of following this course have already been indicated. Under subsection 7 of section 86 of the Act an election petition has to be decided by this Court within six months or within a reasonable time thereafter. If the entire evidence which the petitioner wishes to examine relating to the aforesaid ballot papers is allowed to be produced, the trial besides entailing a lot of expense on the part of the petitioner, will become very much protracted and the record will be burdened with a lot of unnecessary and irrelevant evidence. Moreover, even under the Civil Procedure Code, discovery production and inspection can be ordered on a proper case being made out at a stage well before the leading of evidence otherwise the real object of such discovery, production and inspection may be defeated.

I would, therefore, answer the questions referred to the Full Bench thus :-

"(1) In the present case the two essential conditions, viz., the election petition should contain an adequate statement of the material facts and the Court should be *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties, production, inspection, and scrutiny is necessary, have been duly fulfilled. Therefore, production, inspection, and scrutiny should be allowed of the ballot papers and other documents mentioned in question No. 1.

(2) The petitioner will be allowed to examine only such witnesses who will be material and relevant for the purpose of proving his case relating to postal ballots and tendered votes as the evidence relating to the third category has already been examined.

(3) in view of the answer to the first two questions, it is unnecessary to return any answer to the third question.

Harbans Singh, J.

11. I agree.

D.K. Mahajan, J.

12. I also agree.

Order accordingly.

Cases Referred.

122 E.L.R. 288

2AIR 1964 SC 1249

3AIR 1966 SC 773