PUNJAB AND HARYANA HIGH COURT

Bhoop Singh

Vs

Bar Council of Punjab and Haryana

Civil Writ Petition No. 6426 of 1975

(S.S. Sandhawalia, Prem Chand Jain and A.S. Bains, JJ.)

30.09.1976

JUDGMENT

S.S. Sandhawalia, J.

1. Whether the infraction of a single statutory rule [i.e. rule 3(k) of the Bar Council of Punjab and Haryana Election Rules, 1968] would invalidate the whole of the election held in accordance with the system of proportional representation by means of a single transferable vote in a multiple member constituency is the significant question which falls for determination by this Full Bench.

2. The salient facts are not in dispute and it is only on marginal matters that the parties are at some variance. It, therefore, suffices to first notice the admitted position on facts on the basis of which the primary arguments have been addressed.

3. Bhup Singh petitioner, an Advocate and a member of the High Court Bar Association at Chandigarh was a candidate for election to the Bar Council of Punjab and Haryana. The said Council is constituted of 20 members. The method of election is by a single transferable vote from amongst the voters in the electoral roll prepared in accordance with the Bar Council of Punjab and Haryana Election Rules, 1968 (hereinafter referred to as the Rules). According to the published programme after the completion of the necessary preliminaries the polling was held on the 28th of July at Chandigarh and later on the 30th of July, 1975, at various district headquarters. Respondent No. 2, the Secretary of the Bar Council was appointed as the Returning Officer for the election and the counting of votes commenced in the Bar Council's office at Chandigarh on the 9th of August, 1975, at 10.00 a.m. The Returning Officer after complying with sub-clause (a) of Rule 26 arranged the voting papers in separate parcels for each of the candidates according to first preferences recorded thereon and, thereafter, credited each of the candidates with the value of the papers in his respective parcels. One of the candidates in the election, namely, Shri Jagdev Sharma, polled 47 first preference votes whilst in the same process the petitioner was found originally to have secured 57 first preference votes though later this figure was corrected to 64. Whilst this process of sorting and arranging all parcels of first preference votes was yet continuing, some person from outside the Counting Hall brought five

ballot-papers which he had picked up from outside the Counting Hall and produced them before the Returning Officer. All these ballot-papers bore first preferences in favour of Jagdev Sharma. It was thereupon discovered that the parcel containing the first preference votes in favour of Jagdev Sharma was missing along with all the ballot-papers therein which had been earlier recorded in his favour. The Returning Officer thereafter, informed the candidates or their agents present in the Counting Hall about this fact and it being already 10.00 p.m. at night it was decided that the matter would be taken up on the following day. A first information report regarding the theft of the ballot-papers was lodged with the police but it is the common case that the abstracted ballot-papers were never traced nor the persons responsible therefor identified. On the 10th of August, 1975, the Returning Officer decided to discontinue the counting and to refer the matter to the Bar Council of Punjab and Haryana. In the meantime the election material including the parcels, etc., were all placed in the strong room of the High Court with the permission of the Hon'ble the Chief Justice. The Bar Council of Punjab and Haryana (respondent No. 1), decided that the Returning Officer should proceed in the matter in accordance with law. However, because of the absence from Chandigarh of Mr. J. N. Kaushal, the then Advocate-General, Haryana, the counting could only be resumed two and a half months later, that is, on, the 25th of October, 1975. The date of the counting, was duly published in the daily 'Tribune' on the 19th of October, 1975, and an intimation of the date was also sent to all the 64 candidates. On the resumption of the counting on the date above-mentioned, the petitioner was not himself present either personally or through an agent but it is the admitted case that Shri J. N. Kaushal, Advocate-General. Haryana and many other candidates or their agents attended the same.

4. In the process of counting, Shri Jagdev Sharma was eliminated in the 18th count and thereupon the Returning Officer declared his decision to treat the 42 stolen votes polled in favour of Shri Jagdev Sharma to be exhausted votes under Rule 3(k) of the Rules. It is the case of the respondent Bar Council, that none of the candidates or their agents who were present at that time raised any objection to the same and the counting thereafter proceeded and continued till the 26th of October, 1975, on which date the petitioner also came to be present at 5.30 p.m. It was only in the early hours of the morning of the 27th of October, 1975, that the result was completed and the list of candidates, so elected, was prepared and submitted by the Returning Officer to the Advocate-General, Haryana for verification and subsequent publication in the gazette in accordance with Rule 33. Twenty candidates, namely, respondent Nos. 3 to 22 were declared elected. The petitioner was not one of the successful candidates.

5. It is the common case that because of the loss of 42 ballot-papers and the same being declared as exhausted papers, the second or the subsequent preferences, if any, regarding those ballot-papers were not and indeed could not be taken into consideration. Consequently in respect of the remaining 52 candidates after the elimination of Shri Jagdev Sharma, the second and subsequent preferences in those votes had inevitably to be excluded.

6. Now, the core of the petitioner's case herein is that the Returning Officer had no power or jurisdiction to declare the 42 lost ballot-papers of Shri Jagdev Sharma as being 'exhausted papers' under Rule 3(k) of the Rules. It is alleged that no statutory rule or instruction of the Bar Council of Punjab and Haryana authorises the Returning Officer to treat the lost and stolen ballot-papers as being exhausted ones and the decision to do so was a patent violation of the rules and entails a gross miscarriage of justice. His claim consequently is that the Returning Officer had no power to continue with the counting after the theft of the ballot-papers was discovered and there was no

other option for him except to order a repoll. That in essence is the relief be claims in this writ petition.

7. As against this, the firm stand of the respondent (No. 1) the Bar Council and the elected candidates is that there were no positive rules or even instructions on the point in case the ballot-papers were stolen and in such a situation the Returning Officer took the only proper decision that was possible and, therefore, no illegality or irregularity has been committed. There was no power in the ReturnIng Officer to either declare the whole process of counting as being vitiated or to order a repoll. In any case the stand is that the result of the election has not been affected far from being materially so. It is submitted that the petitioner had secured only a credit of 15440 votes at the time of his elimination and, therefore, by no stretch of calculation could be possibly have been elected.

8. Before adverting to the merits, it is necessary to notice at the outset that the very maintainability of the present writ petition was opposed tooth and nail by the respondents on a variety of grounds. As I am inclined to decline the relief claimed by the petitioner on merits, it would be perhaps wasteful to consider these preliminary objections in any great detail. It suffices to mention that the arguments centred mainly around Rule 34, which provides for disputes regarding the validity of the elections. It was contended that the provisions of the aforesaid rule provided a complete and adequate remedy to the election petitioner to which resort must be made and further that the writ Court should not assume powers wider than those conferred on the Election Tribunal by sub-clause (6) of rule 34.

9. I am extremely doubtful whether the nature of the relief which the petitioner claims here namely, the setting aside of the whole of the election and the ordering of a repoll could be claimed by way of an election petition under rule 34(1). No provision in the said rule was brought to our notice which in express terms empowers or warrants the setting aside of the whole of the election (in contradistinction to the election of individual candidates) or to direct a repoll. In any case it is well-settled that the existence of an alternative remedy is not an absolute legal bar to the issuance of a writ, *Sher Singh, Budh Singh and another v. The State of Punjab and others*[1] , was cited in support of the submission that in a given case even the pendency of an election petition would be no bar to the grant of relief under Article 226 of the Constitution of India.

10. In this context it is further unnecessary to elaborate the matter on principle because it seems to be well covered by precedent in *Bishwanath Prasad and others v. Ramji Prasad Sinha and others,*[2]*,* the Division Bench observed -

> "In the present case, the validity of the entire election having been challenged on account of the violation of the provisions of the Election Rules, Rule 62 (which provided for an election petition) cannot be a bar to the petitioners getting relief in the present application and reference may be made to the case of *Parmeshwar Mahaseth v. State of Bihar*[3] ".

and again in *Umakant Singh and others v. Binda Chaoudhary and others*[4]*,* the observations are -

> "* * * * It is the well-settled view of the Court that if the entire election is challenged as having been held under statutes or statutory rules which are invalid or by committing

> illegalities which make the entire election void, it can be quashed by grant of a writ in the nature of *certiorari."*

I am consequently of the view that on the peculiar facts of the present case and the nature of the relief claimed, the objections regarding the very maintainability of the present writ petition are not well-founded.

11. Now, election in accordance with the system of proportional representation by means of a single transferable vote is both well-known and well entrenched. It is perhaps unnecessary to trace the origin and development of this rather complex, but precise system and it suffices to mention that our Constitution has also adopted it as the mode of election for both the President and Vice-President of India by virtue of Article 55(3) and Article 66(1). To effectuate the aforesaid constitutional mandate, the Presidential and Vice-Presidential Election Act, 1952 has been placed on the statute book and thereunder the Presidential and Vice-Presidential Election Rules of 1952 have been promulgated. Similarly Article 80(4) and Article 171(4) respectively provide for the elections to the Council of States and to the Legislative Councils to be held in accordance with the system of proportional representation by means of a single transferable vote. Herein the detailed provisions for this purpose are contained in the Representation of the People Act and the Conduct of Election Rules, 1961.

12. The Bar Council of Punjab and Haryana has obviously adopted the above-said system for the purpose of elections to the Bar Council. The Bar Council of Punjab and Haryana Election Rules, 1968, have been patently framed to give effect to this purpose and Rule 5 in terms states that election to the Bar Council shall be by a single transferable vote from amongst the voters in the electoral rolls. It is unnecessary to analyse the scheme or to advert to the detail of the 36 rules framed in this connection and it suffices to mention that the framers have drawn heavily from the Conduct of Election Rules, 1961, for drafting these rules and indeed in respect of numerous provisions the language has been bodily lifted from the aforementioned set of rules and the provisions are in *pari materia* with each other. Part VII of the Conduct of Election Rules, 1961, provides for the counting of votes at elections by Assembly members or in Council constituencies and the provision contained therein are rules 71 to 85. By way of illustration, it may be noticed, that rule 3 of the Bar Council of Punjab and Haryana Election Rules is the interpretation clause in which material portions are identical with the definitions as laid down in rule 71 of the Conduct of Election Rules, 1961. This is pointedly so as regards the definition of the material provision of 'exhausted paper'. Again rule 74 of the Conduct of Election Rules, 1961 providing for the arrangement of valid ballot-papers in parcels is in part identical with Rule 26 here. Similarity or virtual identity is again evident in Rules 76, 78, 77, 79 and 80 of the Conduct of Election Rules with Rules 27, 28, 32, 29 and 30 respectively in the Bar Council Rules. There is thus no manner of doubt, and indeed the learned counsel for the parties do not dispute, that the system of election to the Bar Council is in substantial or total identity with that provided by the statutory rules for elections to the President and Vice-President of India and to the membership of the Council of States and the Legislative Councils. This similarity or identity, of the relevant provisions and the system would have a material bearing on the nature of arguments which have to be evaluated hereinafter.

13. Learned counsel for the parties are agreed that in actual practice the method of counting votes under this system is one of great complexity and intricacy. This is indeed evident from the

Schedule (see Rule 83) to the Conduct of Election Ruler, 1961, which provides an illustration of the procedure as to the counting of votes at an election on the single transferable vote system when more than one seat is to be filled. Fortunately for our purposes, it is not necessary to delve too deeply into the intricate method of calculating the value of votes under this system because the issues before the Full Bench are primarily legal.

14. Adverting now to the merits, it is evident that three salient factors are not in doubt :-

(a) that 42 ballot-papers bearing the first preferences of Shri Jagdev Sharma (out of a total of 47) were stolen in the course of the counting on the 9th of August, 1975, and have remained untraced so far;

(b) that there exists no express provision which may provide for the contingency of lost or stolen votes in the Bar Council of Punjab and Haryana Election Rules, 1968; and

(c) that the aforementioned 42 lost ballot-papers were declared as 'exhausted papers' under rule 3(k) by the Returning Officer on the 25th of October, 1975, and after the elimination of Shri Jagdev Sharma from the count, the second or subsequent preferences (if any) on the aforementioned ballot-papers were not taken into account.

On the aforementioned premises, Mr. Bhagirath Dass, for the election petitioner had first contended forthrightly that the rules were silent regarding the contingency of lost or stolen votes. According to him such lost or stolen votes could by no stretch of imagination be brought within the definition of 'exhausted papers' as laid down in the rules. The decision of the Returning Officer to treat them as such was, therefore, patently erroneous in law. Consequently he submitted that a glaring infraction of the statutory provision stands both admitted and established on the record.

15. Inevitably the argument has to be appreciated in the light of the statutory provision and for facility of reference, the provisions of rifle 3(k) may first be set down -

"3(k) 'Exhausted Paper' means a voting paper on which no further preference is recorded for a continuing candidate and includes a voting paper on which;

(a) the names of two or more candidates, whether continuing or not, are marked with the same figure and are next in order of preference; or

(b) the name of the candidate next in order of preference whether continuing or not, is marked by a figure not following consecutively after some other figure on the voting paper or by two or more figures; or

(c) there is such effacement, obliteration, erasure, or mutilation as to make any preferences other than the first preference ambiguous."

The stance of the respondents in this context may first be noticed. A proper reading of the return of respondent No. 1, the Bar Council of Punjab and Haryana would itself show that they are not taking the stand that lost or stolen ballot-papers fall squarely within the definition of 'exhausted

paper'. The plea more or less is that in the absence of any positive rules, the Returning Officer took what appeared to be the only proper decision in a contingency unforeseen by the law. Mr. P.S. Jain, on behalf of the respondent in the course of arguments also submitted that at best the stolen or lost ballot papers could be deemed to be exhausted by a fiction of law.

16. However, on behalf of some of the other respondents, an argument was raised that the decision of the Returning Officer was wholly within the four-corners of the definition under rule 3(k). Reference was made on their behalf primarily to one of the dictionary meaning of the word 'obliteration' used in clause (c) of the above-quoted definition, namely, "to remove or destroy utterly by any means". On this fragile foundation, it was contended that the effect of the theft or loss here has been either to remove or to destroy the ballot-papers and, therefore, this word would adequately cover the present situation as well.

17. I am unable to agree. It has first to be noticed that the primary meaning of the word 'obliterate' is "to erase or blot out of efface; render undecipherable, as a writing". From this it is evident that in clause (c) the word 'obliteration' has been used in particular context and is preceded by the words "effacement" and "eraser". Obviously a word takes its colour or meaning also from the context in which it is used and the principle of *ejusdem generis* by way of analogy would be patently attracted. It is plain on a reading of clause (c) as a whole that it is difficult to stretch the word 'obliteration' to cover a theft or loss of a thing.

18. This apart, it is manifest that clause (c) is not to be read in isolation but as a continuation of the opening part of sub-rule (k). So construed, the applicable provision would read as -

'Exhausted paper' means a voting paper on which no further preference is recorded for a continuing candidate and includes a voting paper on which there is such effacement, obliteration, erasure, or mutilation as to make any preferences other than the first preference ambiguous."

The underlined words above are of obvious significance. From the use of the words 'on which' it is clear that the provision visualises the presence of the voting paper before the Returning Officer and it is then alone that the rest of the provisions of either sub-clause (c) or those of sub-clauses (a) and (b) would come into play. If the very ballot-paper is missing, then there is nothing on which any obliteration can be detected. Similarly the word 'such' used above refers to the quality and nature of obliteration which can be determined only if the relevant ballot-paper is before the Returning Officer for scrutiny and decision. Lastly the ultimate word 'ambiguous' used herein would show that the nature of the obliteration must be of the kind which renders the subsequent preferences on the voting paper equivocal. For the aforementioned reasons I am of the view that without doing patent violence to the language of the provision it is not possible to bring the case of a loss or theft of a ballot-paper within the word 'obliteration' in clause (c) or of any other clause or word in the definition of rule 3(k). It has, therefore, to be necessarily held that in the present case 42 lost or stolen papers could not in the strict eye of the law be treated as 'exhausted papers' under rule 3(k) because they do not squarely and strictly come within the definition as laid. The decision of the Returning Officer to treat them as such is, therefore, not strictly in accordance with this provision.

19. With this much in his favour, Mr. Bhagirath Dass, learned counsel for the petitioner, forthrightly and rather ambitiously contended that once the infraction of a single statutory rule (as rule 3(k) in the present instance) has been established, then the election of all the 20 respondents

elected to the Bar Council should be set aside *en bloc.* The tall argument was that the least legal informity in the process of the election leaves no choice to the writ Court but to quash the whole proceedings and order the election afresh. Allied to and buttressing this argument was the submission of the learned counsel that, apart from other elections, in any case in an election held in accordance with the system of proportional representation by means of a single transferable vote, no question of establishing that the result of the election has been materially affected arises and indeed the same cannot arise.

20. I am unable to agree with either limb of the aforesaid twin submission. A bare reference to the basic election statute in the country, namely, the Representation of the People Act, 1951, would show that it is only in the case of such fundamental infirmities like the commission of a corrupt practice, the improper rejection of nomination papers, lack of adequate legal qualification in the candidate or the basic errors in the electoral roll itself, that an election would be declared void. It is obvious that these are matters which either go to the very root of the election process, or involve its very purity because of actions involving moral turpitude. Therefore, in such cases the whole election is voided without reference to its effect on the result. On the other hand, so far the mere non-compliance with the provisions of an Act or a rule made thereunder is concerned, the principle is that the election petitioner must show that the result has been materially affected. This applied not only to a mere infraction of a statutory provision, but even to the infraction of the supreme law of the land, namely, the Constitution itself. The Representation of the People Act apart, the whole gambit of other electoral laws, to which detailed reference at this place is unnecessary, would highlight the salient principle that the verdict of the electorate is not lightly to be set aside (except in the cases specifically laid down by the statute) unless it is clear that the result of the election has been materially affected. No principle or precedent has been cited on behalf of the election petitioner to support the overly stringent rule which is canvassed on his behalf that every isolated violation of a statutory rule should *ipso facto* void the whole election. I am of the view that every procedural provision in the election law cannot be raised to such a high pedestal that its violation should *ipso facto* topple the verdict of the electorate.

21. Coming now to the second limb of the contention here, namely, that as a matter of law in an election held in accordance with the system of proportional representation by a single transferable vote no question of establishing that the result has been materially affected can arise, I find that this argument again is based on wholly unsure foundations. In fact, the plain language of the basic statutory provisions to which reference is made hereafter, would patently negative the abstract argument that the issue of material affect on the result of an election under the system of proportional representation cannot arise nor the burden of establishing the same be laid on the person challenging the election. Reference has already been made earlier to Articles 55 and 66 of the Constitution of India, which prescribe the method of election for both the President and the Vice-President to be held in accordance with the system of proportional representation by a single transferable vote.

22. Now, the plain language of Section 18 of the Presidential and Vice-Presidential Elections Act, 1952, tends to belie the argument on behalf of the petitioners. The relevant part of Section 18 is in the following terms;

"18. Grounds for declaring the election of a returned candidate to be void -

(1) If the Supreme Court is of opinion -

(a) * * * * *

(b) that the result of the election has been materially affected -

(i) * * * * *

(ii) * * * * *

(iii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act;

(c) * * * * *

the Supreme Court shall declare the election of the returned candidate to be void.

(2) * * * * * *."

It is patent from the above that apart from the rules the statute herein itself prescribes that the Presidential or the Vice-Presidential elections held in accordance with the system of proportional representation by a single transferable vote can be set aside for a reason of non-compliance with the statutory provision only if the result has been materially affected. The same result flows from a reference to Articles 80 and 171 of the Constitution (already adverted to briefly), which again provide for election to the Council of States and the State Legislative Councils to be held according to this system. It is the common case that the procedural provisions to give effect to the constitutional mandate are given in the Representation of the People Act and the conduct of the Election Rules, 1961 framed thereunder. Section 100 of the Representation of the People Act is applicable as much to the elections held by the system of proportional representation by means of a single transferable vote as to any other election. The relevant provision of Section 100 is in the following terms :-

"100. Grounds for declaring election to be void :-

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion -

* * * * * * *

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

* * * * * * *

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

* * * * * * *

the High Court shall declare the election of he returned candidate to be void.

* * * * * * *"

It is manifest, therefore, from the afore-quoted statutory provisions that the law does not only visualise, but indeed provides for the burden of showing that the election result has been materially affected even in cases where the same has been held in accordance with the system of proportional representation by a single transferable vote. It has, therefore, to be held that it is both possible to show that the result of an election held in accordance with the system of proportional representation by a single transferable vote has been materially affected and inevitably to place the burden of such a proof on the person seeking the invalidation of such an election. The contention of the learned counsel for the petitioner to the contrary has, therefore, to be rejected.

23. Repelled on the aforesaid two abstract, and if I may say so extreme, legal propositions, the learned counsel for the petitioners beat a tactical retreat to contend that whatever may be the position in general law, the concrete concept of the result of the election being materially affected cannot be imported into and read as part and parcel of the Bar Council of Punjab and Haryana Election Rules, 1968. He submitted that rule 34 herein does not contain any provision in *pari materia* with the other election statutes which prescribed the burden of the result being materially affected in case of a statutory infraction.

24. Herein learned counsel for the petitioners seen is to be on a firm ground. Reference to rule 34, which virtually is exhaustive as regards disputes as to the validity of elections, would show that the framers of these rules did not choose to incorporate in identical terms that an election is not to be set aside on the ground of infraction of a statutory rule unless the result thereof has been materially affected. It is significant to recall that most of the provisions of the Bar Council Rules have been derived verbatim from the corresponding provisions of Part VII of the Conduct of the Election Rules, 1961, framed under the Representation of the People Act. The framers of the rule, therefore, must be deemed to be fully aware of the provisions of the Representation of the People Act itself and of the statutory rules made thereunder wherefrom they have derived not only the spirit but even the letter of the law whilst enacting the same for themselves. Nevertheless, even in such a situation the authors whilst providing for the decision of election disputes under rule 34 did not incorporate the rule of the result of an election being materially affected for setting aside the same. Consequently it becomes extremely difficult as a matter of construction to import that provision in terms of its strict rigour within these rules in the face of its either deliberate or unintended exclusion therefrom. On behalf of the respondents, it was strongly urged before us that this hallowed principle of not disturbing an election unless the result can be shown to have been materially affected should be either expressly or impliedly read into the rules despite its absence therein. I, however, find that if this argument of the respondents were to be accepted, the end-result would be that *qua* statutes which in express terms make a provision that the election is not to be set aside unless the result is to be materially affected in contra-distinction to those where no such provision is made, the legal consequence would, in effect, be the same. This on the face of it seems incongruous. It would make the provision where the same is positively made as virtually tautologous. On the other hand, to induct bodily into a set of statutory provisions where it is not so made would be an attempt to react something into the provision which the rule-makers themselves had not chosen to provide. It is a settled canon of construction that a causes omissus cannot and should not be readily supplied by means of judicial interpretation. Maxwell's authoritative work 'On Interpretation of Statutes' has this to say on the point at page 12 of the Eleventh Edition :-

> "It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the legislature intended something which it omitted to express. It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do. We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. Words plainly should not be added by implication into a statute unless it is necessary to do so to give he language sense and meaning in its context.....".

Again in 'Craies' celebrated work 'On Statute Law', it has been said at page 70 of the Sixth Edition :-

> "A second consequence of this rule is that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made..... When an Act contains a special saving of another Act, and omits all allusion to a third Act in *pari materia,* it is safer to presume that the omission is deliberate than that it is due to forgetfulness or made *per incuriam."*

In view of the above-quoted canons of construction, I would hold that it is not possible to import into the Bar Council Rules in express terms the strict rigour of the rule that an infraction of a rule is not to invalidate an election unless it materially affects the result.

25. Though this is so in the strict eye of the law, the petitioner secures only a pyrrhic victory because it appears to me that the resultant difference to his case is rather marginal. This result flows by way of analogy from the provisions of sub-clause (8) of rule 34 in the rules and also directly on the general principles of law governing the grant of a discretionary relief under Article 226 of the Constitution. I would briefly elaborate the latter one first.

26. It is well-settled that the discretionary relief under the extraordinary writ jurisdiction is not to be claimed as a matter of right for every technical and inconsequential infraction of the law. Indeed the petitioner in order to entitle himself to the grant of a writ must show that he has suffered manifest injustice by the action which he impugnes. Way back in the fifties it was authoritatively laid in *Veerappa Pillai v. Raman & Raman Ltd. and others*[5], that -

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunal or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice."

The aforesaid enunciation of the law has not been seriously departed from and indeed has received repeated affirmance. It is plain, however, that the term 'manifest injustice' cannot be put into the strait jacket of a precise definition and it must take its hue from the context in which the injustice is alleged to arise. Now what is a manifest injustice in an electoral context ? To my mind it would obviously mean such a failure or negation of the right of franchise which has

inevitably affected the election result. The undesirability of easily disturbing the verdict of the electorate has been highlighted so often by the Courts that it would be pointlessly repetitive to elaborate the issue again on principle. It is, therefore, obvious that unless an exceptional case is made out which goes to the very root of the matter or involves moral turpitude (e.g., the commission of a corrupt practice, defective electoral rolls or the wrongful rejection or acceptance of a nomination paper, etc., without being exhaustive), a writ in an electoral matter would normally issue only if the petitioner at least establishes that the infraction of the rule alleged has necessarily led to materially affect the challenged result. Every technical violation of the letter of the law or any infraction of a procedural rule would not necessarily entitle the petitioner to the discretionary relief under the writ jurisdiction, Manifest injustice, therefore, in an electoral context (excluding the exceptional cases, noticed above) may mean nothing more or less than this that the challenged result has been substantially affected.

27. On behalf of the petitioner, reliance was placed on *Mukhtiar Singh and another v. The State of Punjab and others*[6] and the decision of the Supreme Court in *Joginder Singh v. The Deputy Custodian General, Evacuee Property, Mussorie*[7], to contend that where an infraction of law has been established then manifest injustice can be inferred as a matter of logical consequence. The decisions cited do not support the blanket proposition advanced on behalf of the petitioner, and indeed misses the subtle but meaningful distinction between orders which are wholly devoid of jurisdiction and a mere erroneous decision. A reference to the aforesaid two decisions would show that the observations therein were made in the context of cases where the Court had opined that there was a complete or an intrinsic defect of jurisdiction. Mr. Kuldip Singh on behalf of the respondents has forcefully and in my view rightly submitted that a complete absence of jurisdiction or a basic defect therein is a thing apart from a mere error in a judgment arrived at *bona fide* by a person who undoubtedly is clothed with jurisdiction to decide the same. By virtue of rule 29(iv) it is the Returning Officer who has to decide and evaluate the value of exhausted papers, indeed even on behalf of the petitioner it was not seriously disputed that the declaration of a ballot-paper as exhausted or otherwise is to be done by the Returning Officer. That being so, it is plain that in the present case the highest that can be said for the petitioner is that whilst applying rule 3(k) to stolen, ballot-papers, the Returning Officer decided it erroneously or at best slipped into an error of judgment. His decision in the matter, therefore, cannot be equated as one being entirely lacking in jurisdiction. The rule in *T.C. Basappa v. T. Nagappa and another*[8], that a mere wrong decision cannot be corrected by writ is thus also attracted in the present case. I would, therefore, hold that in order to succeed, it is incumbent on the petitioner when he alleges at the best a mere infraction of a procedural rule that he has suffered manifest injustice which in practical terms implied that the election result which he is challenging has been materially affected. Obviously the burden to establish this must rest on him.

28. A similar and indeed an identical result also flows when reference is made to the language of sub-clause (8) of rule 34 which is the particular provision tinder this set of rules regarding disputes as to the validity of elections. This is in the following terms :-

> "34(8) No petition shall lie on the ground that any nomination paper was wrongly rejected or the name of any voter was wrongly included in or omitted from the electoral roll or *any error or irregularity which is not of a substantial character."*

29. It is obvious from the words underlined above that the intention of the framers was that an

election once held is not to be set aside even in the course of a regular petition under rule 34(1) unless the alleged error or irregularity is of a substantial character. What did the framers intend by expressly incorporating this provision ? If Mr. Bhagirath Das's argument that every technical infraction of a rule irrespective of its effect on the result of the election would vitiate the whole process were to be accepted, then the afore-quoted provision expressly promulgated by the rules would be virtually rendered nugatory. This is so because the result would be that every violation of statutory rule would invalidate the whole process irrespective of the fact whether the error or irregularity is of a substantial or unsubstantial nature. I am firmly of the view that the incorporation of this provision by its authors was not meant to be a mere surplusage. The very mandate of the law under the rules which is in consonance with other election statutes here is that every irregularity or error is not to be raised to such a high pedestal that a mere technical violation thereof would invalidate the whole election. It is only such errors or irregularities which are of a substantial character which can lead to such a result. It is neither necessary nor perhaps desirable to exhaustively lay down as to what would be an error or an irregularity of a substantial character. One thing, however, is plain that in the context of an election an error or irregularity which does not in any way cast its reflection on the result thereof can hardly be deemed as one of substance. In effect, therefore, the substantial character of the error or irregularity has inevitably to be co-related to the result of the election. The respondents, therefore, seem to be right in urging that merely showing a technical violation of a rule is insufficient to dislodge 20 elected members of the Bar Council. The petitioner must discharge the burden of showing that such a violation was of a substantial nature and in practical terms it may mean no less than establishing that the result of the election has been affected thereby.

30. Herein for clarity's sake I may mention that one may not be understood to imply that the powers of the writ Courts are in any way necessarily hedged down to those of the Election Tribunal under Section 34(8) because it, is evident that those powers derive their source from the wide ranging authority of Article 226 of the Constitution. Sub-clause (8) of Rule 34, however, does give a clear inkling of the intent of the rule makers as to the nature or quality of errors or irregularities which should form the foundation of a challenge to the electoral process in the particular context of these rules.

31. Confronted with an apparently unsurmountable hurdle in his way the last throw on behalf of the petitioner has been the assertion that in fact it has been established that the result of the election has indeed been materially affected to his disadvantage. Relying on some vacillating averments in paras 6 and 14 of the petition, Mr. Bhagirath Dass had sought to contend that out of the 42 lost votes of Shri Jagdev Sharma, the petitioner may well have secured 25 to 30 second preferences in his favour. The submission was that on the assumption of this possibility there was a fair chance that the result might ultimately have turned in his favour and he might have been elected in place of the last successful candidate, namely, respondent No. 22. Counsel argued that in case the second preferences of Shri Jagdev Sharma, if any were to be added to those of the petitioner then in an election held in accordance with the system of proportional representation by a single transferable vote the ultimate result cannot be postulated or imagined. Reference was made to rules 29 and 30 which provide for the exclusion of a candidate after a count and the transfer of the surplus votes to the remaining candidates and the complicated method of calculating the value of each voting paper in such a situation. Relying on these, the submission was that so many permutations and combinations would arise as a necessary consequence that the result of the election might well be affected. In picturesque language it was submitted that the

infraction of the rule and the consequent elimination of the second preference in the lost votes of Shri Jagdev Sharma would create a chain reaction and it could not be estimated to which side the votes would have tilted had those 42 votes been in fact taken into consideration for one or other of the candidates in the field. Mr. Bhagirath Dass went firmly to the logical and indeed to the extreme length of contending that even if a single vote in such a process were to he wrongly included or excluded then the result of the election may well be deemed to have been affected and no further burden in this regard can be cast on the petitioner.

32. It is in this context (as already noticed at the outset) that the parties seem to be sharply divergent even on facts. The petitioner in para 6 of the petition had averred that whilst the counting staff was sorting out the votes he had noticed that nearly 25 to 30 or the 47 ballot-papers bearing the first preferences of Shri Jagdev Sharma bore second preferences in favour of the petitioner. This was alleged to be so on the ground that most of the votes polled by Shri Jagdev Sharma were from Kaithal, Narwana and Karnal, because before shifting his place of practice to Chandigarh. He was earlier practising as an Advocate at Kaithal. The petitioner's claim is that he belongs to Narwana where his father is still practising as an Advocate and further that Kaithal is the strong-hold of the political and personal friends of the petitioner and his father.

33. The respondent Bar Council has categorically controverted these averments made on behalf of the petitioner. It is pointed out on their behalf that it was physically impossible for the petitioner and for that matter any other candidate to observe the second preference votes on any ballot-paper at the time of the counting of first preference votes. It is stated in unequivocal terms that the candidates were not allowed to go near the counting staff during the counting process and thus neither a candidate nor his agent could see even the first preference votes far from being able to observe the second preference votes also. The petitioner's claim of the Kaithal area being his particular strong-hold has been labelled as simply bombastic and unreal and it is highlighted that out of the five stolen votes of Shri Jagdev Sharma which were retrieved, the petitioner did not secure even a fraction of a vote. It is then pointed out that this complete absence of the opportunity of observing the second preferences by any candidate is self-evident from the fact that the petitioner has not been able to give the exact number of the alleged second preference votes observed by him and is merely making an approximation. The firm and categorical stand of respondent No. 1 in this context is contained in para 14 of the reply averring that the allegation of the petitioner that he did observe or could possibly observe the second preference votes in the 42 stolen votes of Shri Jagdev Sharma was on the face of it fantastic and false.

34. In this context the petitioner's replication in para 6 again seems to detract from rather than add to his case. It is averred that on the first day when the counting started on the 9th of August, 1975, the arrangements were rather haphazard and all the candidates or their counting agents present at the time of the counting were hovering over the tables of the counting staff and were observing and seeing the votes though in a disorderly manner. It is then added that at the stage of the resumed counting the petitioner found a barricade between the counting tables and the candidates and their agents who were made to sit six to seven feet away from the counting tables. The petitioner's grievance is that he and the other candidates were denied the opportunity of seeing the votes and this involves such a violation of Rule 25 that the election must be deemed to be bad on this account as well.

35. It is evident from the above that the parties are totally divergent on these issues of fact. The

respondent Bar Council is firm and categorical in its stand that the petitioner did not, and in fact could not, observe the second preference votes on the 42 ballot-papers of Shri Jagdev Sharma, which were subsequently stolen. Mr. P.S. Jain appeared to be on firm ground when he stated that in view of para 6 of the replication itself the petitioner has virtually conceded that it was not possible for him to notice as to in whose favour the second preference votes of Shri Jagdev Sharma were cast. In the writ jurisdiction it is not ordinarily possible to travel into the field of disputed questions of fact, nor am I of the view that the present one is a case in which any such exceptional action of determining these facts is called for. Indeed no such claim has even been made on behalf of the petitioner and *prima facie* it does not appear to be even possible to have any evidence which could conclusively determine this matter. It has, therefore, to be held that there is no factual foundation for the petitioner's rather optimistic claim that had the 42 stolen votes been counted, then 25 or 30 votes therein would have borne second preferences in his favour.

36. This apart, it appears to me that the petitioner's claim herein lacks plausibility and appears to stem from fond and wishful thinking rather than from solid foundations of fact. It has to be borne in mind that on the opening clay of the count there were as many as 64 candidates in the field and more thin 5,000 votes had been cast. Assuming for a moment (though there is no adequate warrant therefor) that the petitioner's version that the counting on the first day was proceeding in a disorderly and haphazard manner is true, even then his version is lacking in plausibility. At that stage, there was obviously no occasion for assuming that the votes of any particular candidate or for that matter of Shri Jagdev Sharma would be lost. There does appear no reason as to how the petitioner could visually keep pace with all the second preference votes of all the candidates who were yet in the field and not only he did so but retained in memory the second preferences of every one of them, including, as he alleges, those of Shri Jagdev Sharma, which he can give only by an approximation.

37. Even otherwise it is axiomatic that the voters in an election conducted by secret ballot are always unpredictable and any wishful thinking about areas of influence can, at best, be uncalled for or flimsy. Even the assumption of the petitioner that the first preference votes cast in favour of Shri Jagdev Sharma would necessarily bear second preferences in his favour suffers from a triple fallacy. Reference to Rule 23, which prescribes the method of voting, would show that a voter is necessarily called upon to give his first preference votes, but it is entirely optional for him to five second, third or fourth preferences, etc. The petitioner, therefore, on conjectural reasons, presumes that all the lost ballot-papers must necessarily have had second preferences. The second assumption appears to be all the 42 lost ballot-papers of Shri Jagdev Sharma were necessarily from the Kaithal area. The constituency for the election to the Bar Council is spread over both the States of Punjab and Haryana as well as the Union Territory of Chandigarh. The candidates had canvassed widely over all areas and the assumption that all the first preference votes of Shri Jagdev Sharma or necessarily the majority of them were from the Kaithal area, is again one in the realm of fantasy. The third assumption, therefore, that had the votes been cast from the Kaithal area then the petitioner would necessarily have the second preference votes in most of the relevant ballot-papers seems to be entirely on a slippery ground. The chain of causation appears by itself to be too remote and, as already noticed, any foundation of fact is categorically eroded by the firm denial on behalf of the respondent Bar Council. Indeed it is possible, in these circumstances, that, in fact, all the lost votes might have gone in favour of entirely other candidates and if taken into account the same might have even adversely affected

the petitioner's tally or valuation of the votes. This inference receives support from the fact that 5 votes, which were retrieved out of the original 47 which were lost, did not bear even one second preference in favour of the petitioner. On behalf of the respondents, it was argued that in the absence of other circumstances even the pattern of voting may be looked at for arriving at a reasonable inference as to what would have been the trend thereof. It was forcefully contended that the absence of a single second preference vote in favour of the petitioner out of the 5 recovered votes was a material, if not a conclusive, pointer towards the pattern of voting which would show that the lost votes of Shri Jagdev Sharma, if traceable, would have gone in favour of the candidates other than the petitioner. Reliance was placed on *Paokai Haokip v. Rishang and others,*[10] wherein in the context of the burden of proving that the result of the election has been materially affected, their Lordships observed as follows :-

> "* * *. While we do not think that statistics can be called in aid to prove such facts, because it is notorious that statistics can prove anything and made to lie for either case, it is open to us in reaching our conclusion to pay attention to the demonstrated pattern of voting. Having done so, we are quite satisfied that 1541 votes could not, by any reasonable guess, have been taken off from the lead of the returned candidate so as to make the election petitioner successful."

It is evident from the above that the pattern of voting can well be taken into consideration for arriving at a reasonable conclusion. Herein the second or the later preferences on the five recovered votes of Shri Jagdev Sharma tend indeed to belie the petitioner's claim that all or substantially the majority of the first preference votes of Shri Jagdev Sharma bore second preferences is his favour. The petitioner's claim herein appears to be primarily, if not entirely in the field of conjecture than that of fact.

38. The conclusion herein seems inescapable that the petitioner has been wholly unable to establish that had the 42 lost votes been taken into account, the result would in any way have been affected in his favour. Indeed it is equally possible that these votes might in fact have gone in favour of entirely other candidates and resulted in an adverse effect upon the petitioner's tally or evaluation of his votes. Even putting the petitioner's case at the highest that 25 or 30 second preference votes might have been added to his count there was no guarantee that these would have resulted in his election or necessarily ousted one of the twenty elected candidates. The petitioner has to make out a very plausible or at least a reasonable case that the result would have certainly gone in his favour. Here at the highest he has been able to show that there was a remote possibility of the same being affected one way or the other. That in my opinion is patently insufficient. Merely suggesting that the result may have been affected is distinct and different from establishing reasonably that it must have been materially so affected. As has been said in the context of another jurisdiction between 'may' and 'must', there is a wide gap. This must be traversed and filled by concrete and established facts and this is what is patently lacking in the present case. It must, therefore, be held that the petitioner's claim that the result of the election would have been different and that he would necessarily have been declared elected appears to be entirely conjectural.

39. Some grievance was made on behalf of the petitioner about the heavy burden that would fall upon him in case he has to show manifest injustice by establishing that the election result was materially affected. That may perhaps be so but a complete and authoritative answer to this is

provided by the unequivocal observations of their Lordships in Paokai Haokip's case -

> "* * * That section requires that the election petitioner must go a little further and prove that the result of the election had been materially affected. How he has to prove it has already been stated by this Court and applying that test, we find that he has significantly failed in his attempt and, therefore, the election of the returned candidate could not be avoided. It is no doubt true that the burden which is placed by law is very strict; even if it is strict it is for the Courts to apply it. It is for the Legislature to consider whether it should be altered. If there is another way of determining the burden, the law should say it and not the Courts."

It follows from the above-quoted enunciation that even in the larger content of the writ jurisdiction the petitioner has to establish manifest injustice which would entitle him to the grant of a writ in order to dislodge as many as 20 candidates declared duly elected in a multiple member constituency. That he has not been able to do. It has to be noticed even at the cost of being platitudinous that the remedy in the writ jurisdiction is discretionary and in a case where no manifest or material injustice has been established on behalf of the petitioner there would be no warrant in upsetting the verdict of the electors and to order an expensive and cumbersome repoll. On behalf of the respondents it has been expressly averred that the Bar Council election involves huge labour and expenditure on the part of respondent No. 1. Equally the expense and the exertion incurred by more than 60 candidates therein have to be kept in mind. Indeed without adequate and sufficient cause to upset such an election would appear to be a remedy which perhaps is worse than the disease.

40. There is yet another hurdle in the way of the petitioner which independently blocks the relief which he claims. Mr. Mohinderjit Singh Sethi, learned counsel for the respondent Nos. 8 and 19 contended with plausibility and force that far from having established any material injustice, the petitioner's claim of having the whole election set aside and a second repoll, if allowed would itself involve a patent violation of the statutory rules which is even more direct and flagrant than the rather sketchy one that has been established in regard to Rule 3(k). Reliance herein is placed on Rule 28 which is in the following terms :-

"28. Candidates with quota to be elected :- If at the end of any count, or at the end of the transfer of any parcel or sub-parcel of an excluded candidate, the value of voting papers credited to a candidate is equal to or greater than the quota that candidate shall be declared elected."

The language of the rule is pre-emptory and it was not even contended on behalf of the petitioner that it was in any way directory. Now it is the common case that the quota for the election in the present case was fixed at 239. Shri Surinder Singh, respondent No. 21 in the relevant count was found to have secured 449 preference votes which far exceeded that quota. Consequently he was duly declared elected under rule 28 and there is no manner of doubt that this is the substantive provision whilst Rule 33 which follows is merely procedural which provides for giving effect to the result of the election by registration and publication of the same. It is indeed not in dispute that up to the stage of declaration of respondent No. 21 as having been elected there was not even a hint of any infirmity or irregularity in the conduct of the election or the counting process. It is patent that at least the election of this respondent was one without any legal blemish.

41. The petitioner is, therefore, faced with a serious obstacle when he claims that the whole of the election including that of the aforementioned respondent No. 21 should be set aside. I would notice in clear terms that the petitioner's firm stand herein has been that the whole of the present election is a single integral whole which has to stand or fall together. It was not even for a moment contended on his behalf that the election of respondent No. 21 may be left aside and a repoll ordered for the remaining 19 seats. Rather Mr. Bhagirath Dass's firm contention was that any such partial relief would involve an infraction of the rules because all the electors would have to be given a second opportunity to cast first preference votes which some of them have already exercised in favour of respondent No. 1. Learned counsel was, therefore, categorical in his stand that the election of respondent No. 21 has therefore, also to be set aside if relief is to be granted to the petitioner.

42. It is evident from the diametrically opposite stand of the parties that if the claim of repoll by the petitioner is to be granted it would necessarily involve a patient violation of the mandatory provisions of rule 28 under which respondent No. 21 has been duly declared elected without any legal default. Upon larger considerations also such a relief would apply inequitably to a party at whose door no blame can be laid. Therefore, the relief and remedy which the petitioner claims on the basis of a marginal infraction of rule 3(k) here would on the other hand involve a flagrant and direct violation of rule 28. The writ Court when faced with this Hobson's choice would perhaps have to be content with declining to grant a discretionary relief which necessarily involves an infraction of a statutory rule both in its letter and spirit. I am extremely doubtful if the writ Court can issue mandate which in itself runs patently counter to, and negates a result expressly enjoined by law as in the present case by rule 28. Consequently for this reason also (along with others already noticed) the petitioner in the eye of law is either desentitled to the relief he claims, or in any case faced with such a situation the only course left with the Court is to refuse to exercise its discretionary power in a manner which would inevitably involve the violation of an enacted provision.

43. I may now advert to the last but certainly not the least of the contentions raised on behalf of the respondents. It was submitted that the Bar Council of Punjab and Haryana Election Rules, 1968, had not in terms provided for the unforeseen contingency of the polled votes being either stolen or being abstracted in any other manner. This, however, is not exceptional and it appears that even so comprehensive a statute as the Representation of the People Act had suffered from a similar lacuna till the year 1966. It was only by the amending Act 47 of 1966 that Section 64(A) was introduced in the above-said Act to make provision for the destruction, loss, damage or tampering of the ballot-papers at the time of counting. Admittedly the rule makers here either did sot visualise but in any case did not provide for such a contingency. The end-result admittedly is that in the present set of rules with which we are concerned there is obviously a lacuna or in any case they are completely silent on the issue of polled votes being either stolen, destroyed or abstracted in an unauthorized manner. Counsel submitted that in this peculiar situation, the Returning Officer, who was entrusted with the counting and the declaration of the result could arrive at no other decision than the one which he did of excluding the lost votes from consideration and treating them as exhausted papers. The contention was that in the absence of an express provision, rule 3(k) was the nearest rule which could be attracted to the situation.

44. The aforesaid submission is not devoid of either plausibility or merit. One has only to visualise the predicament in which the Returning Officer entrusted by law to complete the result

of the election was apparently placed in the present case. It is significant to note that the rules give no power to the Returning Officer to order a repoll or perhaps for that matter to any other authority. No provision either directly bearing on this point or even having a remote analogy for such a power could be brought to our notice on behalf of the petitioner. Mr. Bhagirath Dass, however, kept on contending that in such a situation the Returning Officer should rather have ordered a repoll than to arrive at the decision to treat the lost ballot-papers as exhausted ones. He was rightly countered on behalf of the respondents that had he done any such thing, his action might well have been alleged as being entirely without jurisdiction and unauthorised by law. Similarly the Returning Officer could not leave the election result in the lurch and refuse to proceed with the counting because if he did so he would be equally failing in the duty laid upon him by the Rules. It is the forceful submission of the learned counsel for the respondent No. 2 that if he were to leave the election in the midstream the candidates would be entitled even to claim a mandamus against him to proceed in the matter and declare the result.

45. It is in the above-context that the issue rightly arises that where there is a lacuna in the statute and the dictates of the law are silent, whether the Returning Officer could validly fall back on the dictates of reasons and logic to decide the matter ? The ancillary issue further is that where acting *bona fide* he arrives at a decision which is reasonable (though not in the strict conformity with the letter of the law) then whether such decision can be assailed or quashed in the writ jurisdiction for the sole reason that the law had not strictly provided for the situation. To my mind the twin issues of *bona fide* action and a reasonable conclusion become material in such a situation.

46. Now in the present case, the *bona fides* of the Returning Officer are not at all under challenge and indeed the learned counsel for the petitioner has been fair enough to say so in express terms. These are otherwise writ large on the admitted facts. The moment it was discovered that the 42 votes had been stolen and apparently finding that the rules did not provide for such a situation, the Returning Officer forthwith stopped the counting. The ballot papers etc. were placed in proper and safe custody. Finding no clear guidance in the statutory provisions he referred the matter for decision to the Bar Council of the State. It is also the admitted position that the Bar Council of India also took notice of the matter but did no find it either necessary or desirable to issue any direction in the matter and merely recorded the fact that they had noticed the occurrence regarding the theft. The Bar Council of the State of Punjab and Haryana, however, after consideration of the matter merely directed the Returning Officer to proceed with the counting in accordance with the law as it stood. It was in such a situation that after nearly two and a half months the counting was resumed on the 25th of October, 1975, and the Returning Officer then made the impugned decision to treat the votes as exhausted papers under Rule 3(k). It is manifest from the above that the facts evidence the maximum *bona fides* on the part of the Returning Officer in taking the action which he did.

47. I have opined earlier that in the strict letter of the law a lost vote does not squarely fall within the ambit of rule 3(k). Nevertheless, what could the Returning Officer decide in the peculiar situation in which he was placed ? There is force and plausibility in the contention on behalf of the respondents that the lost or stolen votes though not strictly within the letter of the law could by some stretching be brought within its spirit. It was submitted that to effectuate its purpose, the law itself does resort to very sizeable fictions. Without adverting to the wide ranging and accepted theory of fictions in the realm of law it was contended on behalf of the respondents that

it would be a valid exercise of power by the Returning Officer to deem the lost votes as exhausted papers or by a fiction to treat them as such because the statutory provision which was nearest to cover the category was no other than rule 3(k) in the absence of a specific provision providing for lost or stolen votes.

48. An argument by way of analogy was also drawn from Section 64-A, sub-clause (2)(b) of the Representation of People Act which, as already noticed was introduced as late as 1966. Herein also in the case of the destruction, loss, etc., of ballot-papers, the Election Commission is empowered after taking all material circumstances into account to issue such directions to the Returning Officer as it may deem proper for the resumption and completion of counting. On these premises it is contended that in situations of such unforessem nature the discretionary power of the authority clothed with jurisdiction is inevitable and if the decision is made in good faith and is one which can be reasonably arrived at then the same cannot, or at least should not be disturbed in the writ jurisdiction.

49. I have found earlier that the action of the Returning Officer was completely *bona fide.* It has to be equally concluded that the decision to treat the stolen ballot papers as exhausted papers is one which could be reasonably arrived at in the peculiar circumstances of the situation and though not within the strict letter of the law could perhaps be brought by some stretching within the spirit of the rule. Can such an action, therefore, be struck down by the writ Court merely because the relevant rules are silent on the point and the strict letter of the law may not have been complied ? Undoubtedly the Returning Officer alone had the jurisdiction to decide the matter. Even if he erred marginally in arriving at the decision, the allowed rule is that an authority having jurisdiction to decide may do so either rightly or wrongly and the writ Court would be loath to disturb such a decision. Therefore, at the highest the impugned action of the Returning Officer can be called a marginally erroneous decision which is not a fit matter for the grant of a writ as has been authoritatively laid down in Y. C. Basappa's case (supra) and this is more so in view of my earlier finding that the petitioner has failed to establish any manifest injustice to him. On this ground as well, therefore, the petitioner is not entitled to the relief he claims.

50. In fairness to Mr. Bhagirath Dass, reference may first be made to *R.M. Seshadri v. G. Vasantha Pai and others*[10], on which he placed reliance to contend that in an election held in accordance with the principle or proportional representation by means of a single transferable vote, no question of showing the result having been materially affected arises and the only remedy is to order a fresh poll. A close reference to the judgment, however, snows that this was a case involving allegations of the commission of the corrupt practice of hiring and procuring of vehicles for the carriage of voters which was held as established and their Lordships further opined that the voters so carried were not free from complicity therein. The observations on which reliance was placed were made particularly in the background of these facts and in particular in connection with the claim under Section 101 of the Representation of the People Act, that the election petitioner be declared elected. It was in those circumstances that their Lordships had opined that no recount could be ordered nor the election petitioner be declared elected. In my view this judgment is no authority for the proposition that in an election held by means of a single transferable vote, no question of the material result having been affected arises or that a repoll must necessarily be ordered even in multiple member constituency.

51. Counsel had then made passing reference to *Shyam Chand Basak v. Chairman of Dacca*

Municipality and others[11], in support of his submission that it was for the respondents to show that the infringement of rule 3(k) had not affected the result. The relevant observations in this case were made in the context of the infringement of rules 17 and 17-A framed under the Bengal Municipal Act whereby a sizeable part of the electors had been deprived of their right to exercise their franchise which obviously went to the very root of the election. The matter came up before the Division Bench in an appeal from a regular civil suit. As is evident, the case is a pre-constitution one and, therefore, the concepts manifest injustice in the writ jurisdiction and the particular provisions of rule 34 sub-clause (8) upon which I have relied by way analogy, did not and could not arise for consideration in this case. Consequently the judgment is entirely distinguishable.

52. Before parting with this judgment I am reminded that it not unoften that both the Bench and the Bar have cavilled at the draftsman's errors in various statutes. As is apparent from this judgment, the Bar Council of Punjab and Haryana Rules, 1968, also seem to suffer from certain obvious lacuna and at places the language of some of the provisions leaves much to be desired. The council constituted as it is of the cream of the legal profession, would perhaps be well advised to have a second look at these rules generally and to fill up the lacuna which has surfaced in the course of the arguments before us.

53. I have elaborated the variety of reasons which incline me to decline the relief which the petitioner herein claims. In an electoral matter one cannot too often recall the dictum of Chief Justice Chagla speaking for the Bench in *Bhairulal Chunilal v. State of Bombay*[12]-

> "It is not suggested that the result of the election has in any way been affected by what took place in the course of the election. The Courts must always be reluctant to interfere with elections except on the clearest and strongest of grounds. An election is a luxury which a democracy cannot be expected to indulge in too frequently, and once the people have recorded their votes and expressed their confidence in their representatives, the Court should be loath to interfere with the decision of the people merely because some technicality has not been observed or some irregularity has been committed."

54. This writ petition is accordingly dismissed, but in view of the ticklish question involved, the parties are left to bear their own costs.

Prem Chand Jain, J.

55. I agree.

A.S. Bains, J.

56. I also agree.

Petition dismissed.

Cases Referred.

1AIR 1965 Pun 361
2AIR 1964 Pat 459

[3]AIR 1958 Pat 149

[4]AIR 1965 Pa t459

[5]1952 SCR 588

[6]1970 PLR 697

[7]C.A. 457/58 decided on 26th March, 1962

[8](1955) 1 SCR 250

[9]AIR 1969 SC 663

[10]AIR 1969 SC 692

[11]AIR 1920 Cal 669

[12]AIR 1954 Bom 116