

# RAJASTHAN HIGH COURT

Dhanpat Lal

Vs.

Harisingh

Civil Spl. Appeal No. 41 of 1966  
(Kan Singh And C.M. Lodha, JJ.)

05.07.1968

## JUDGMENT

### **Kan Singh J.**

1. This is a special appeal under Section 18 of the High Court Ordinance 1949 against the judgment of a learned Single Judge dated 22nd July, 1966 passed in S. B. Civil Writ Petition No. 882 of 1965.

2. The facts giving rise to this appeal may be stated as follows : -

3. The election for the office of Sarpanch Gram Panchayat, Nanagal Rajawatan, District Jaipur, took place on 1-1-1965. Initially three persons filed their nomination papers but the nomination paper of one Badri was rejected with the result that Dhanpat Lal appellant and Harisingh respondent remained in the field. Dhanpatlal secured 395 votes whereas Harisingh secured 397 votes and 55 votes were declared to be invalid. Consequently Harisingh was declared duly elected by the Returning Officer. Thereafter Dhanpatlal and Chhajuram filed separate election petitions in the Court of Munsiff-Magistrate, Dausa under Rule 78 of the Rajasthan Panchayat and Nyaya Panchayat Election Rules, 1960 (hereinafter called "the Rules") challenging the validity of the election of Harisingh. Chhajuram withdrew his election petition and therefore the election petition filed by Dhanpatlal was proceeded with. The main ground, taken in the election petition was that Dhanpatlal had secured more votes than Harisingh. His contention was that some of the votes which had been cast in his favour had been wrongly rejected by the Returning Officer and so also a few votes had been wrongly counted in favour of Harisingh. The learned Munsiff recounted the votes and

found that Dhanpatlal had got 401 valid votes as against 399 secured By Harisingh. Thus the learned Munsif allowed the election petition, set aside the election of Harisingh and declared Dhanpadal to have been duly elected as *Sarpanch*.

4. Aggrieved by the decision of the Election Tribunal i. e. the learned Munsif, Dausa Harisingh filed writ petition before this Court for getting the order of the Tribunal quashed.

5. The only point which was agitated before the learned single Judge was that 5 ballot papers Nos. 534903, 534650, 534843, 534875 and 534668, out of which the first four had been marked for Harisingh and the last one in favour of Dhanpatlal, had been wrongly rejected. The learned single Judge after considering the arguments pro and con came to the conclusion that the aforesaid five ballot papers even though marked on the reverse were valid and came to the conclusion that Harisingh had secured 403 votes as against 402 votes secured by his rival Dhanpatlal. In this view of the matter he set aside the order of the Tribunal and held that Harisingh had been rightly declared by the Returning Officer as Sarpanch. Dhanpat Lal has, therefore, filed this special appeal.

6. The question of law for our determination is whether the marking on the back of the five ballot papers mentioned above is against law and therefore these ballot papers should not have been taken into consideration.

7. For a correct decision of this question, it would be necessary to refer to the relevant provisions of law on the subject. Rule 30 of the Rules deals with the manner of casting votes. It runs as under: -

"30. Manner of casting votes : - (1) An elector shall, on receiving the ballot paper issued to him under Rule 28, forthwith proceed to the polling compartment, there mark his ballot paper by affixing a seal containing a cross mark (x) opposite the name and symbol or on the name or symbol of the candidate in whose favour he desires to cast his vote, fold up the ballot paper thus marked so as to conceal his vote and put the ballot paper, so folded up into the ballot box which shall be placed within the view of the polling officer.  
(2) ... .."

Rule 39 deals with the rejection of ballot papers:

- (1) A ballot paper shall be liable to rejection,
  - (i) if it bears any mark by which the elector can be identified,
  - (ii) if the number of votes recorded thereon exceeds the number of Panchas to be elected,
  - (iii) if no vote is recorded thereon,
  - (iv) if the ballot paper or the vote recorded thereon is void for uncertainty, or
  - (v) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established.
- (2) No ballot paper shall be rejected otherwise than on any of the grounds enumerated in sub-rule (1).
- (3) The Returning Officer shall record on every ballot paper which he rejected a brief statement of the reasons for such rejection.
- (4) The decision of the Returning Officer as to the validity or otherwise of the ballot paper shall be final."

8. From the aforesaid provisions it would be clear that a ballot paper should be marked by affixing a seal containing a cross-mark opposite the name and symbol or on the name or the symbol of the candidate in whose favor the voter desires to cast his vote. R. 39 mentions a number of grounds for either or more of which the Returning Officer is bound to reject a ballot paper. The first question is whether the marking on the reverse of a ballot paper in this particular case is against the provisions of Rule 30. This rule directs the voter to make a mark on the ballot paper opposite the name and symbol of the candidate for whom he intends to vote. The ballot paper mentions not only the names of the candidates but also the distinct symbols allotted to them. It is significant that in the present case the symbols were clearly visible on the back of the ballot paper. This is the finding given by the learned single Judge and no just exception can be taken to it. The learned single Judge has clearly observed that the ballot papers in dispute are translucent and even an illiterate voter can distinguish which is the face of the ballot paper and which is the back of it. He has also observed that the lines demarcating the compartments and the symbols are visible on the back side. It is further clear that 4 of them are marked for Harisingh and one for Dhanpatlal. In these circumstances marking of the ballot papers on their back cannot be said to be against the rule. We find ourselves unable to accept the contention on behalf of the appellant that the direction in the rule to mark the ballot paper by putting a mark

opposite the name and symbol amounts to a positive direction to mark on the face of the ballot paper only. In our view the entire sheet or paper is the ballot paper, one side of which is its face and the other side is the back. In this connection reference may be made to a bench decision of the Allahabad High Court - *Swarup Singh v. Election Tribunal*,<sup>1</sup> wherein their Lordships were pleased to observe as follows : -

"The entire sheet of paper is the ballot paper, of course one side of it is the face of the ballot paper and the other is the back side of the ballot paper."

This authority was brought to the notice of the learned single Judge and he was of the opinion that the marking of a ballot paper which is printed on one side means marking on the face of it only and in this view of the matter he expressed his dissent with the view taken in the Allahabad case. In the later part of his judgment, however, the learned single Judge went on to say that "the intention behind Rule 30 thus is that the ballot paper should be marked on the face, and not on the back." However, after referring to an earlier decision of his own: *Ramdayal v. Munsif, Rajgarh*,<sup>2</sup> the learned single Judge observed "that Rule 30 is directory and a ballot paper cannot be rejected if the intention of the voter can be clearly ascertained from it." The learned Judge then proceeded to ascertain the intention of the voters with respect to the ballot papers in dispute and came to the conclusion "that they marked them on the back with the intention of voting for the candidate, on the back of whose compartment the mark was affixed." With great respect we find ourselves unable to agree with the reasoning adopted by the learned single Judge. Once he came to the conclusion that the marking of a ballot paper means marking on the face of it only and that the intention behind R. 30 was that the ballot paper must be marked on the face and not on the back, the only course open to him, in our opinion, was to treat these ballot papers as invalid as there was no room left for ascertaining the intention of the voter. We might state at once that the later reasoning adopted by the learned single Judge is more just and reasonable.

9. Lord Halsbury has observed.\*

\* Halsbury's Laws of England, Third Edition Vol.14 at p. 319 in para 240.

"240. Ballot papers rejected for uncertainty : -

A ballot paper which is unmarked or void for uncertainty is void and must not be counted, but a ballot paper on which a vote is marked elsewhere than in the proper place, or otherwise than by means of a cross or by more than one mark is not by

reason thereof to be deemed to be void (either wholly or as respects that vote) if an intention that the vote shall be for one or other of the candidates, or at a poll consequent on a parish meeting, for or against any question, clearly appears and the way the paper is marked does not of itself identify the vote and it is not shown that he can be identified thereby."

10. Learned counsel for the appellant has invited our attention to a Pontardawe Rural District Council, Election Petition, (1907) 2 KB 313 in which the marks although outside the compartment were placed directly opposite the names of certain of the candidates, so as to leave no doubt for whom the voters intended to vote. Ridley, J. while upholding the validity of such ballot papers held that so long as the mark is opposite the name of the candidate so as to make it clear that the voter intended to vote for him the vote is good. Phillimore-J. agreeing with Ridley, J. further observed that the mark put directly opposite the name of a particular candidate was a good vote. Mr. Tewari, learned counsel for the appellant seeks to argue that this principle laid down by Ridley and Phillimore, JJ. would have no application to a case where the mark is put on the reverse of the ballot paper. In our view the submission made by Mr. Tewari is not correct. Once we accept the principle that the dominant consideration for deciding the validity of the vote is to ascertain the intention of the voter, it makes no difference whether the mark is put outside the compartment, opposite the name of the candidate or is put on the reverse so long it is clear that the voter intended to vote for a particular candidate. There is, however, one exception in our view, and it is this that if the marking is against the provisions of the Statute then the vote would be invalid even though the intention of the voter may be clear from the marking on the ballot paper. The question, therefore, arises whether in the present case the marking is against the provisions of the Rules. As we have already observed above Rule 30 does not make it imperative that the ballot paper must be marked on the face of it and on this point we find ourselves unable to agree to the observations made by the learned single Judge that the intention behind R. 30 was that the ballot paper must be marked on the face only and not on the back. While construing the provisions of Rule 30 we cannot forget that the conditions in our country are different from those prevailing in the western countries. A vast majority of voters in our country are illiterate and that is why symbol has been introduced in the ballot paper for each candidate.

11. In order to test the correctness of the view we have been persuaded to take, we might also examine the conditions under which a ballot paper may be rejected. As

already stated Rule 39 of the Rules deals with the rejection of a ballot paper and mentions six grounds for either or more of which the Returning Officer is bound to reject a ballot paper. The only two grounds which have been relied upon by the learned counsel for the appellant for rejection of the ballot papers in the present case are grounds Nos. (iii) and (iv) which are as under :

"(iii) if no vote is recorded thereon,  
(iv) if the ballot paper or the vote recorded thereon is void for uncertainty."

When a voter has made marks on the ballot paper though on the back side, it cannot be said that no vote has been recorded on that ballot paper at all. We are, therefore, of opinion that the Returning Officer could not validly reject these ballot papers on the ground mentioned in sub-clause (iii). A ballot paper on which a vote is recorded can however be rejected if the Returning Officer is unable to make out as to for which candidate the vote has been given. The question then arises whether there is any doubt in the present case as for whom the vote has been cast in the ballot papers in question. It is not disputed before us that in the ballot papers Nos. 534903, 534650, 534843 and 534875 the marks were for Harisingh and in ballot paper No. 534668 the mark was for Dhanpat Lal. It is further clear as observed by the learned Single Judge that the lines demarcating the compartments and the symbols were visible on the back side of these ballot papers. These ballot papers could not therefore be rejected under sub-clause (iv) either.

12. Learned counsel for the appellant has referred to a number of cases cited in the English and Empire Digest, Volume 20, pages 112 and 113 and also the observations made by Lord Halsbury, Vol. 14, Third Edition, page 140) in the following terms : -

"A ballot paper marked on the back only should not be counted, even though the mark shows through the paper on to the front".

We have gone through some of the cases which were made available to us cited by Lord Halsbury as well as in the English and Empire Digest and an overall examination of these cases goes to show that the observations contained in these cases were bad on the particular language of the Act, which was under consideration for instance in 7 Supreme Court Reports Canada (1883) Section 45 of the Election Act, 1874 has been referred to. It provided that the mark by making a cross with a pencil must be placed on any part of the ballot paper within the division. Thus it is clear from this provision

that the Statute itself made it obligatory that the mark must be contained within the division containing the name of the candidate. As we have already stated in the earlier part of our judgment there is no such statutory prohibition in the Rules against marking the ballot paper on the back and in our opinion the English Authorities referred to by the learned counsel for the appellant are not of much assistance for interpreting Rule 30 of the Rules.

13. Learned counsel for the appellant has also submitted that the Allahabad case relied upon by us is distinguishable on facts inasmuch as the ballot papers in the Allahabad case were transparent and the symbols on those ballot papers could be seen through the back, whereas in the present case, they are translucent. We do not find force in this contention inasmuch as in the present case also the lines demarcating the compartments of the symbols are visible on the back side of the ballot papers. Another contention raised by the learned counsel is that in the facts and circumstances of the present case when two views were possible the learned Judge was not justified in interfering with the decision of the Tribunal.

Suffice it to say that the question whether certain ballot papers had been wrongly excluded from consideration and whether marking on the back of these ballot papers was against the directions contained in the Rules is a question of law. The only fact found by the Tribunal was that the markings on these ballot papers had been made on the reverse and the symbols were visible on the back, and that these markings had been made opposite the names of particular candidates. The learned single Judge accepted these facts found by the Tribunal and thereafter examined the question of law whether these ballot papers were valid. The learned counsel is therefore not correct in his submission that the learned single Judge should not have interfered in writ. In our opinion, the only correct view in the facts and circumstances of the case is that the ballot papers in question were valid, and the tribunal had wrongly rejected them. The view taken by the learned single Judge in our opinion is correct though on different grounds.

14. For the reasons stated above we see no force in this appeal and hereby dismiss it, but make no order as to costs.

Appeal dismissed.

## Cases Referred.

1. AIR 1960 All 66
2. 1961 Raj LW 499