

(1992) 01 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 1241 of 1991 & Letters Patent Appeal No. 1241 of 1991 and C.M. No's. 1751, 1752 and 1850 of 1991

Manjit Singh Khattrra, Principal, G.H.G. Khalsa College

APPELLANT

Vs

A.S. Bedi, Principal, S.D. College and Others

RESPONDENT

Date of Decision : 09-01-1992

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 37A, 73, 73(2)
Punjab University Calendar Regulations — Regulation 17, 36, 37

Citation : (1994) 1 ILR (P&H) 29

Hon'ble Judges : S.S. Sodhi, J;G.C. Garg, J

Bench : Division Bench

Advocate : V.K. Jindal, for the Appellant; S.P. Jain, Rajesh Kumar for Respondent No. 1 and Anupam Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—The matter here concerned election to the Senate of the Panjab University, Chandigarh from the Heads of affiliated Arts Colleges of Constituency. The controversy being with regard to the validity of just one vote. This, all important one vote, which had been rejected as being invalid, undoubtedly materially affecting the result of the election.

2. According to the result, as declared, first preference Votes secured by the contesting candidates were as under:

1. Umesh Chander - 15 (Respondent-4)
2. Jagmohan Singh - 14 (Respondent-5)
3. A. S. Bedi - 12 (Petitioner)
4. Manjit Singh Khattrra - 11 (Respondents) &
5. H. S. Deol - 10 (Responderit-7)

3. As the disputed vote had been cast in favour of Shri H.S. Deol, had it been treated as valid, both Shri H.S. Deol and Shri Manjit Singh Khattrra, the present Appellant, would have had the same number of first preference votes--a situation where, according to the preferential system of voting, as prescribed in the relevant University Regulations, the writ Petitioner Shri A.S. Bedi would stand elected in preference to Shri H.S. Deol and Shri Manjit Singh Khattrra.

4. Turning to the crux of the matter, namely, the validity of the disputed ballot paper, it would be pertinent to note the format of ballot paper, which is as under:

Name of candidate Designation & address Order of Preference

1.-----

2.-----

3.-----

4.-----

The relevant directions on the reverse thereof read as under:

1. Put figure 1 in the space opposite the name of your first choice. You may also express second, third and other choices by putting figure 2 opposite the name of your second choice, figure 3 opposite the name of your third choice and so on. You may express any number of choice, without regard to the number being elected.

2. xx xx xx

3. xx xx xx

4. xx xx xx

5. xx xx xx

On the disputed ballot paper, the voter had put the figure "1" in front of the name of Shri H.S. Deol, but no in the square under the Head "Order of Preference." This figure "1" was placed after the name of the candidate, that is, Shri H.S. Deol and before the next column of Designation and Address.

5. To determine, whether such a vote could be treated as valid or had to be declared invalid, reference may be made to Regulations 36 and 37 of the Panjab University Calendar, which are relevant to the point in issue. These are reproduced hereunder:

36. Vote shall be recorded on the ballot paper which shall be in the prescribed form an elector shall have one vote only. In giving his vote, he;

(i) shall place on his ballot paper the figure "1" in the square opposite the name of the candidate for whom he votes.

(ii) may, in addition, place on his ballot paper the figure 2 or the figure 2 and 3

or 2, 3, and 4 so on, in the squares opposite the name of other candidates in order of his preference.

37. (i) The ballot paper covers, other than those rejected under Clause (xxv) of Regulation-17 shall be opened and the Ballot Papers taken out and mixed together.

(ii) The Returning Officer shall then proceed to count the votes, rejecting as invalid any Ballot Paper:

(a) on which a voter signs his name or writes any mark, by which it becomes recognisable; or

(b) on which the figure 1 is not marked; or

(c) on which the figure 1 is opposite the names of more than one candidate; or

(d) on which the figure 1 and some other figure are set opposite the name of the same candidate; or

(e) which is void for uncertainty.

(iii) Any defacement of the figure on the ballot paper which makes it doubtful whether the figure is as it was originally made or there has been an attempt to alter, suppress or erase it, shall make the Ballot Paper invalid.

(iv) On every ballot paper so rejected, the Returning Officer shall endorse the word "invalid" and such ballot papers shall be kept in a separate bundle.

6. On a reading of these provisions, what emerges as of material significance is the fact that failure or omission on the part of the voter in placing the figure to denote his preference under the column "Order of Preference" constitutes no ground to render such a vote in-valid. The requirement for the voter, in this context, merely being "to place on his ballot paper the figure 1 in the square opposite the name of the candidate for whom he votes". Precisely, similar provisions are contained in the conduct of Election Rules 1961. Rule 37-A thereof is in the following terms:

37. (1) Every elector has only one vote at an election irrespective of the number of seats to be filled.

2. An elector in giving his vote:

(a) shall place on his ballot paper the figure 1 in the space opposite the name of the candidate for whom he wishes to vote in the first instance; and

(b) may, in addition, place on his ballot paper the figure-2 or the figure 2, 3 and 4 and so on, in the space opposite the names of the other candidates in the order of his preference.

7. Next, the relevant extract of Rule 73 thereof reads as under:

2. a ballot paper shall be in-valid on which--

(a) the figure 1 is not marked, or

(b) the figure 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful for which candidate it is intended to apply, or

(c) xx xx xx

(d) xx xx xx

(e) there a any figure marked otherwise than with the article supplied for the purpose.

8. The occasion to consider these provisions came up before the Supreme Court in *Era Sezhiyan Vs. T.R. Balu and others*, . One of the objections raised to some votes in the election of Members to the Rajya Sabha was that the Figure 1 had been marked not in the right hand column opposite the name of the candidate, but in the left hand column containing the name of such candidate. It was held that this did not render the votes invalid. It being observed in this behalf. It is significant that in this sub-rule also there is nothing to indicate that the preference must be indicated in the column reserved for that purpose, the only requirement being that the figure 1 should be written opposite the name of the candidate. Similarly, Sub-rule 2(b) of Rule 73 only lays down that if the figure 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it applied, the ballot paper would be invalid. Sub-rule (2) of Rule 73 deals with the invalidity of ballot papers and that sub-rule nowhere states that merely by reason of the preference being marked in the wrong column, if the marking is opposite the name of the candidate concerned, the ballot paper shall be rendered invalid. It is true that the column in which the preference should have been marked and intended for that purpose was the column on the right-hand side of the first column where the name of the candidate was to be put, there is no express provision to the effect that unless the preference is marked in the concerned column, the ballot paper would be invalid.

9. In holding so, the Supreme Court referred with the approval to its earlier decision in *S. Sivaswami Vs. V. Malaikannan and Others*, , where, it was held that the primary task of the Court in a case where the question is whether the ballot paper is invalid, is to ascertain the intention of the voter, must be applied. In that case, the Court held that the ballot paper shall not be rejected as invalid if it is reasonably possible to gather a definite indication from the marking so as to identify the candidate in favour of whom the vote had been intended to be given. The Court, however, cautioned that this was, of course, subject to the rule that before a ballot paper is accepted as valid, the ballot paper must not be invalid under any other express provision and intention of the voter must not be expressed in the manner which is contrary to or totally inconsistent with the manner prescribed under the Representation of Peoples Act or the rules made

thereunder.

10. Seen in this light, no exception can indeed be taken to the judgment of the learned Single Judge, directing the Returning Officer to recount the votes treat the rejected vote as valid and then declare the result afresh in accordance with law. The Returning Officer is directed to comply with this order of the learned Single Judge by on or before February 15, 1992.

11. This appeal is consequently hereby dismissed. In the circumstances, however, there will be no order as to costs.