

(1965) 02 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1916 of 1963

Sat Narain Fatech Chand

APPELLANT

Vs

Hardayal Singh and Others

RESPONDENT

Date of Decision : 11-02-1965

Acts Referred:

Municipal Election Rules, 1952 — Rule 51
Punjab Municipal Act, 1911 — Section 225

Citation : AIR 1965 P&H 362

Hon'ble Judges : S.B. Kapoor, J;I.D. Dua, J

Bench : Division Bench

Judgement

Dua J.

(1) This petition under Art. 226 and 227 of the Constitution is directed against the order of the learned Election Commissioner (Ward No. 12 Municipal Committee Abohar Muktsar dated 11-10-1963 by means of which the election as Municipal Commissioner at Sat Narain petitioners was set aside. The only point canvassed in these proceedings relates to issue No. 2 and it has been strongly argued on behalf of the petitioners that the learned Election Commissioner has transgressed the limits of his jurisdiction by holding that the 11 voters mentioned in the impugned order were either minors or bogus and that substantial number of minor votes had been case in favour of the petitioners and that this constituted material irregularity in the election and by setting aside the election on these grounds. Stress has been laid on the fact the no re-count having been claimed it was not open to the Election Commissioner to open the ballot boxes and loot at the votes and sees as to in whose favour those evokes had been case. It has also been argued that it is not established on the record that more than five votes case in favour of the petitioner was invalid and it has be to been so found by the learned Election Commissioner. It is further stressed that merely because some persons have been entered in the election roll who may be in fact minors or may be non-existent is by itself no ground for stetting aside the election roll who may be in fact minors or may be non-existent is by itself no

ground for setting aside the election for this is not a material irregularity in the election and the electoral roll as such is not subject to revision or scrutiny in the proceedings by way of election petition.

(2) The points raised are in my opinion of considerable importance and are likely to arise very frequently in proceedings relating to election to local bodies. It is therefore highly desirable that this writ petition be disposed of by a larger Bench within three weeks. It is therefore highly desirable that this writ petition be disposed of by a larger Bench within three weeks. I would accordingly direct that the papers be laid before my Lords the Chief Justice for passing suitable order under clause (xx) proviso (b) read with clause (xviii) Rule 1 Chapter 3-B High Court Rules & Orders Vol. V. Order may be secured without undue delay.

ORDER OF THE DIVISION BENCH

Dua J.

(3) This is a petition under Article 226 and 227 of the Constitution and has been placed before us in pursuance of my order dated 13-10-1964 which may be read as a part of the present order.

(4) the controversy in question arises out of election to the Municipal Committee Abohar from Ward No. 12 held on 24-9-1961 in which Sat Narain petitioner was declared successful by a majority of five votes. Respondents Nos. 5 to 9 in this Court claiming to be voters in the said ward filed an election petition under the Municipal Election Rules against the petitioner on 9-10-1961 on: various grounds stated wherein. We are only concerned with issue No. 2 which is in these terms:

"Is the election liable to be set aside due to material irregularities and corrupt practice?."

On 11-10-1963 Shri Hardayal Singh Sub-Divisional Officer (Civil) Election Commissioner trying the election petition came to the conclusion on this issue that 11 voters were either minors or bogus. After referring to some decisions and upholding the competency of an Election Tribunal to go into the question of minority of a voter and to its own conclusion on the point he held the material irregularities had been committed in the election which had certainly affected the result of the election. Finding that there was difference of only for votes between Sat Narain petitioners and Ram Sarup who was respondent No. 3 in the election petition the Election Commissioner opened the envelope of the ballot papers cast in favour of Sat Narain and found that substantial number of minor votes had been cast in his favour. Thus holding that material irregularities had been committed in the election he expressed the opinion that this election was accordingly liable to be set aside. The record of the case was it appears forwarded to the Commissioner Jullundur Division who is exercise of the powers of the State Government u/s 225 of the Punjab Municipal Act 1911 delegated to him set aside the election of Sat Narain. The learned Commissioner also observed that after excluding 11 votes from the count the votes pooled by Sat

Narain would be less than those obtained by Ram Sarup. Acting under the proviso to Rule 69 of the Punjab Municipal Election Rules the learned Commissioner also held Ram Sarup to be duly elected from ward No. 12 of the Municipal Committee Abohar.

(5) It is this order which is being challenged in the present proceedings. The learned counsel for the petitioners has submitted that in the election petitioners it had nowhere been alleged that Shiv Kumar Ram Gopal, Lekh Raj, Darshan Lal, Indrajit Jai Chand, Hardawari Lal, Shakuntala and Jagwanti had voted for the petitioners. These voters it may be pointed out have been held by the learned Commissioner to be minors. In paragraph 4 (f) and (g) of the election petitioners all that has been stated is that minors were added to the voters list on affidavit without inviting objections. In the list of voters mentioned in these two subparagraphs we find the names of Shiv Kumar, Ram Gopal, Lekh Raj, Darshan Lal, Jai Chand, Hardawari Lal, Shakuntala and Jagwanti. It has been emphasised that unless it was specifically pleaded that these persons had voted for the present petitioners, the learned Commissioner had no jurisdiction to go to this question for had it been pleaded the present petitioners would have tried to show that there were also certain minors who had voted for Ram Sarup and therefore those minors who voted for Ram Sarup and therefore those minor votes should be excluded from his count as well. The question of the result of the election having been decided differently. It has further been pointed out that the question of Ram Piari being a bogus voter and also of Shri Lachhman having been absent and some one else having cast his vote in favour of the present petitioners could also have been taken into account against the present Petitioners in the election petition.

It has finally been contended that the question of minority of the voters could not be determined on the basis of school certificates. Our attention has been drawn to Rule 51 (e) of the Municipal Election Rules 1952 in which "material irregularity" in the procedure of an election has been defined to include any such improper acceptance or refusal of a nomination or improper acceptance or refusal of a vote or reception of any voter which is void or non-compliance with the provisions of the Punjab Municipal Act or of the Rules made thereunder or mistake in the use of a form annexed thereto as materially affects the result of an election. This according to the counsel does not include wrong preparation of electoral roll and therefore if in the election petition the grievance is centered round the irregularity in the preparation of the electoral roll that would not fall within the purview of this definition. Reference has in this connection been made to an unreported decision of a learned Single Judge of this Court in *Sher Singh Budh Singh and Another Vs. The State of Punjab and Others*, . In course of that judgment the learned Single Judge has also referred to *Lekh Raj v. Cantonment Board Jullundur* AIR 1958 Mys 73 and to *Lajpat Rai v. Khilari Ram* ILR (1960) Punj 192. To *Lajpat Rai's* case ILR (1960) Punj 192 and to *Lekh Raj Vs. The Cantonment Board, Jullundur Cantonment and Others*, Shri Gupta has also made a specific reference before us. The electoral roll it has been strongly urged must be held final and unassailable in the election petitioners. It is on improper

reception or refusal of a vote which according to the argument can form the subject matter of enquiry and not the allegedly wrong entries in the electoral roll. Our attention has further been drawn to Keshab Govind Kulkarni Vs. Extra Assistant Judge, Sourth Satara and Others, and Ghulam Mohiuddin Vs. Election Tribunal for Town Area Sakit and Another, . The Full Bench decision in relied on by the Election come has been sought to be distinguished on facts as also on the ground that the reported case related to the Representation of the People Act and it is therefore of little assistance in the present case.

(6) In regard to the votes of Ram Piari and Lachhman it has been stressed that in the election petition there is not allegation that Ram Priaris" vote had been cast by someone else in favour of the petitioners and that she had herself attempted to vote for Ram Sarup. As regards Lachhman also it has been contended that there is not plea in the election petitioners that someone else had presented him and voted for the petitioners.

(7) Shri Lakhan Pal on behalf of the State has stated that his instructions are not to oppose the writ petitioners. Shri Sibal has also not been able to support the impugned order and he has felt constrained to concede that the impugned order is unsupportable. He has only attempted to persuade us to sent the case back to the Election Commissioner to come to a fresh decision in accordance with law. It is pressed upon us that this Court in writ proceedings cannot and has indeed no jurisdiction to pass any order on the merits: It can only either quash the impugned order then according to the lard counsel this would be tantamount to our passing an order dismissal the election petition on the merits which may be the function of the Court of appeal but not of the writ Court. It is very seriously argued that the writ Court has not jurisdiction to pass such an order.

Support for this contention has been sought from a recent decision of the Supreme Court in T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Others, . In developing this submission it has been urged that under R. 8 (d) of the Municipal Election Rules which prescribed conditions for registration every person whose is not less than 21 years of age on the qualifying date is entitled to be registered in the roll for the constituency in which he is ordinary residing. This of course is subject to the provisions contained in R 8 (a), (b) and (c). According to the submission the condition of the voter being 21 years of age is imperative and a person who does not fulfill this condition must be considered to be disqualified for registration. If therefore a person who is under 21 years of age has voted at the election in dispute then this must be held to be a material irregularity within the contemplation of R. 63(1)(c). The learned counsel has seeking support from these provision strongly urged that this matter has to be decided by the Election Tribunal.

A passing reference has also been made to S. 100 of the Representation of the People Act, 1951 by way of analogy and assistance has been sought from the decision of the Supreme Court in Jamuna Prasad v. Lachhi Ram, AIR 1954 S C 686 and Vashit Narain Sharma Vs. Dev Chandra and Others, . It has been laid

down in the first case that before the Tribunal acting under S. 100(1)(b) could declare a person to be duly elected it must be proved that but for the votes obtained by the returned candidate would have obtained a majority of valid votes. In *Vashit Narain Sharma Vs. Dev Chandra and Others*, the words " the result of the election has been materially affected "in S. 100(1)(c) of the Representation of the People Act 1951 have been held to indicate increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting of the returned candidate but by proof of the fact the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. It has further been held in improper acceptance is not he be regarded to fatal to that the result has been materially affected and this opinion should be based on speculative or conjectural grounds.

The learned counsel has indeed gone to the length of submitting that the view taken by the Bombay and Allahabad decision cited above is wrong in law. According to him nine person below 21 years of age having been found to have cast their votes an enquiry must now be held by the Election Commissioner as to for whom those person in fact voted and then to count all the votes and see as to which candidate can be considered to have been validly elected. Strong reliance has been placed on the fact that names of these nine minor persons have been given in the petition as to for whom these person to allege in the petitioners as to for whom these persons had voted in wholly immaterial and it would be incumbent on the Election Commissioner himself to hold an enquiry and then come to his conclusion. He has also cited *Veluswami Thevar v. Raja Nainar* AIR 1959 S C 42 which is an authority for the proposition that in an election petitioners under the Representation of the People Act challenging an order of the Returning Officer rejecting a nomination paper it is open to the parties to raise grounds of disqualification other than those urged before the Returning Officer.

(8) In my opinion the respondents submission is difficult to sustain. The observations of the Supreme Court Bench consisting of Gajendragadkar J as he then was and K. C, Dass Gupta in *State of Andhra Pradesh Vs. Gundugola Venkata Suryanarayana Garu*, on which this submission is based are contained in the concluding part of the judgment and may be reproduced:--

"Incidentally, we ought to point out that even if the Division Bench was right in holding that the impugned order should be corrected by the issue of a writ of certiorari it would have been better if it had not made its own order in that behalf. In writ proceeding if an error of law apparent on the face of the record is disclosed and as writ is issued the usual course to adopt is to correct the error and sent the case back to the special Tribunal for its decision in accordance with law. It would we think be inappropriate for the High Court exercising it writ jurisdiction to consider the evidence for itself and reach its own conclusion s in

matters which have been left by the legislature to the decisions of specially constituted Tribunal."

These observations point out that what the writ Court had better not do is to make its own findings on the evidence and pass its own order in that behalf in other words not to convert itself into a Court of appeal or revision. That these observations are confined within these narrow limits of the High Court clearly considering the limits of the High Court jurisdiction in issuing a writ of certiorari in respect of orders like the one pronounced by the Commissioner of Labour in that case. The provisions of the Madras Shops and Establishments Act were before the Court and it was in this context that keeping in view section 51 of the Madras Shops and Establishments Act stress was laid that the writ Court should not make its own findings on the evidence and pass its own order in that behalf. I may point out at this stage that the formulation of a rule in a judicial decision is invariably embedded in the rest of the judgment and the entire context must be taken into account to discern the Court intended meaning rather than take the formulation in isolation.

The observations reproduced have not laid down any new rule of law for the first time. They merely reiterated that the functions of a writ Court cannot be equated with those of an appellate or revisions Court and therefore the findings of fact reached by the inferior Court as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings. This has earlier been classified by Gajendragadkar J. (as he then was) speaking for the Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, as also in *State of Orissa v. Murlidhar Jana* AIR 1963 SC 404. Reference to the observations of the Court at p. 412 in *Nagendra Nath v. Commissioner of Hills Division* AIR 1958 SC 393 is in my opinion also instructive. Any finding on the evidence on the record after holding that on the pleading the Election Commissioner could not in law go into the question in which he has gone or to open the envelope of votes for the purpose of finding out that substantial number of minor voters had cast their votes in favour of Sat Narain. Such enquiry is not at all called for on the existing pleadings. The jurisdiction of the Election Commissioner it must never be forgotten is strictly confined within the narrow limits prescribed by the relevant statute. On the record of this case the impugned order must be held to be tainted with serious legal infirmities as discussed above and must be quashed. and nothing more remains to be done for said. There is clearly no occasion for remitting the case back to the Election Tribunal.

(9) This writ petition accordingly succeeds and is allowed with costs only against respondent No. 11 who alone has seriously argued that the case be set back for a fresh decision.

S.B. Capoor J.

(10) I agree.

FI/ A. G. J/ R. G. D

(11) Petition allowed.