

PETITIONER:
AJIT SINGH

Vs.

RESPONDENT:
BANSI SINGH & ORS.

DATE OF JUDGMENT 12/07/1995

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
FAIZAN UDDIN (J)

CITATION:
1995 AIR 2417 1995 SCC (4) 758
JT 1995 (5) 284 1995 SCALE (4) 455

ACT:

HEADNOTE:

JUDGMENT:

THE 12TH DAY OF JULY, 1995

Present:

Hon'ble Mr. Justice G.N. Ray
Hon'ble Mr. Justice Faizan Uddin

Mr. D.V. Sehgal, Sr. Adv. and Ms. Naresh Bakshi, Adv. with him
for the Appellant

Mr. K. Madhava Reddy, Sr. Adv. Mr. Mahabir Singh, and
Mr. S.R. Sharma, Adv. with him for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 702 OF 1993

Ajit Singh Appellant

V.

Bansi Singh and Others Respondents

J U D G M E N T

G.N. RAY, J.

This appeal is directed against the judgment dated September 15, 1992 passed by the High Court of Punjab and Haryana in Election Petition No. 15 of 1991. The aforesaid Election Petition was preferred by the appellant Shri Ajit Singh under Section 81 of the Representation of People Act, 1951 (hereinafter referred to as Representation Act) inter alia praying that the election of the returned candidate Shri Bansi Singh, respondent No. 1, should be declared void and the petitioner having secured the next highest score should be declared as returned from Ateli Constituency No. 89 in the State of Haryana in the Vidhan Sabha Election held in 1991. For the election of the Haryana Vidhan Sabha for the year 1991, the following schedule was set up by the Election Commission:-

- 1) Last date for filing nomination papers 26.4.91
- 2) Scrutiny of papers 27.4.91
- 3) Withdrawal of nomination papers 29.4.91

4) Date of polling 20.5.91

5) Date of counting of votes 26.5.91

On account of unfortunate assassination of Shri Rajiv Gandhi on May 21, 1991, the date of counting was postponed to June 16, 1991. The polling had however been held on 20th May as per the Schedule. It appears that initially 46 persons filed their nomination papers but 24 persons had withdrawn and the election petitioner, Shri Ajit Singh, and 20 other candidates contested the said election from Ateli Constituency No.89. The respondent No.1, Shri Bansi Singh, having secured the highest vote as a Congress-I candidate was declared elected from the said constituency.

The validity of election was challenged by the election petitioner on the ground of various irregularities committed in counting the ballot papers. Such irregularities may be stated as hereunder:

a) the counting place was surrounded by high fence and the counting agents were made to sit beyond that fence. Such agents had therefore no access to the counting tables and they could not watch the counting from distance.

b) five persons, named by the election petitioners were stated to be relations or proteges of Shri Bansi Singh who was declared elected, but such persons were deputed as counting Assistants. Although objection was raised about their presence, only one of them, namely, Gianinder Singh was removed from Table No.3 and sent to the reserve staff.

c) Shri Manoj Kumar who was the counting Supervisor of Table No.3 was a close relation of respondent No.1 and despite the said fact being pointed out by the election petitioner no step was taken against such irregularity.

d) On the complaint of Shri N.S.Jadav election agent a random check was held in respect of Booth No.33 and it was found that the respondent No.1 had been given the benefit of nine votes although on rechecking it was found that three votes had been cast in favour of the election petitioner and six of such ballot papers were blank. Six such ballot papers were ultimately rejected and the three polled in favour of the petitioner were added in this counting. Similarly, one ballot paper was found in the packet relating to Booth No.19. On detection, the said blank ballot paper was rejected.

e) Improper acceptance of postal ballots (110 number) after the date of polling.

f) The counting assistants and supervisors rejected the ballot papers on their own without taking any decision from the Returning Officer. The Returning Officer has also no opportunity to apply his mind and no reasons were recorded for the rejection of the ballot papers.

g) The counting agent of the petitioner and that of Nihal Singh another candidate had objected to the bungling

of table No.9 and Nihal Singh also made a complaint and though a request was made for recounting, such request was not adhered to.

h) That in large number of polling booths the column of Form 16 with respect to doubtful ballot papers was kept blank with an obvious intention to manipulate the result in favour of the returned candidate.

i) The instruction of the election petitioner for checking the high percentage of the bungling of the ballot papers for ensuring accuracy was not complied with by the Returning Officer.

The respondent No.1 the elected candidate, however, contested the said election petition and by filing written statement controverted the allegations made by the election petitioner. The learned Judge of the Punjab and Haryana High Court after elaborate discussions and after dealing with the contentions raised in the election petition and the evidences adduced in the case, inter alia came to the finding that the counting had been properly made. No irregularity was committed in counting votes or accepting and rejecting the ballot papers as contended by the election petitioner. He therefore dismissed the said election petition by the impugned judgment.

At the hearing of this appeal, the learned senior counsel appearing for the appellant has challenged the impugned decision of the High Court mainly on four grounds which have been indicated in the written submissions filed at the hearing of this appeal. It has been contended that admittedly the fencing was made in the hall where ballot papers were counted and the Assistants counting the ballot papers sat inside the fence but the election agents were compelled to sit outside the fence. All such election agents could not sit at the front row and many of them including the agent of the election petitioner on occasions had to sit at the back benches and there was hardly any opportunity to see the counting of votes and the rejection of invalid ballots. It has been contended that Rule 53 of the conduct of Election Rules, 1961 provides that the returning officer shall exclude from the place fixed for counting of votes all persons except

- a) such persons (to be known as counting supervisors and counting assistants) as he may appoint to assist him in the counting
- b) persons authorised by the Election Commission
- c) public servants on duty in connection with the election
- d) candidates, their election agents and counting agents.

It has also been contended by the learned counsel that the Hand book for Returning Officer issued by the Election Commission in 1984 (re-printed in 1988) provides in para 7 of Chapter XIV that the Returning Officer shall post constables on duty at the door or the doors of counting halls and shall not allow any person to enter or leave the room without his permission. Rule 55 provides for scrutiny and opening of ballot boxes. Rule 56 gives minute details regarding the procedure of counting. Sub-rule (2) of Rule 55 prescribes that before rejecting any ballot paper under Sub-rule(2), the Returning Officer shall allow each counting

agent present, a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper. In the election petition, the appellant has made grievance that the counting place where the counting tables were laid was surrounded by high fence and counting agents were made to sit beyond the fence. Such counting agents had no access to the counting table and had to photography of the counting process was taken and it transpires that the video tape which was placed before the Court was not dubbed or edited or manipulated in any manner whatsoever and the Court had occasion to see the original video tape. We have been taken through the evidences by the learned counsel for both the parties and also the decision of the High Court. It appears to us that there was reasonable apprehension of disturbances at the time of counting of votes and Returning Officer had justification to place police officials in the counting hall so as to avoid any disturbances. It is an admitted position that large number of candidates contested the election and if election agents of a large number of candidates are to be admitted at the place of counting the ballot papers, the Returning Officer had no alternative but to place benches in rows so that the election agents could sit in such benches placed in row on the basis of first-cum-first sit. In our view, it has been clearly established by evidence that whoever had occupied the first row of the benches on the basis of coming first was allowed to sit there and whenever such person left his seat the other persons sitting in the second or third row had come and occupied the said seat. Placing of fence, in the facts and circumstances of the case, was necessary to prevent any untoward situation developing at the time of counting. Such precautionary measures taken by the Returning Officer, in our view, cannot be held to be unjustified thereby rendering the counting process invalid. It may also be indicated that in the central table Returning Officer and the candidates were allowed to sit and from such place, the process of counting could be seen by the persons sitting at the central table. The learned Judge, in our view, has given detailed reasons as to why the contentions as to improper counting of ballot papers for not giving reasonable access to the election agents to see the counting should not be accepted. Such finding, in the facts and circumstances of the case, is fully justified and we do not find any reason to take a different view.

Learned counsel for the appellant has also challenged the acceptance of postal ballots beyond the date fixed for such acceptance in Form 13-D. He has also contended that improper acceptance of the postal ballots in favour of the returned candidates has adversely affected the election result. It has been contended by the learned counsel that Section 59 of the Representation Act indicates that the manner of voting in the elections is to be prescribed. Part III of the Conduct of Election Rules, 1961 prescribes voting by postal ballot. Rule 27(1) lays down that after an elector has recorded his vote and has made his declaration under Rule 24 or Rule 25, he shall return the ballot paper and declaration to the Returning Officer in accordance with the instructions communicated to him in Part II of Form 13-D so as to reach the Returning Officer before the hour fixed for commencement of counting of votes. Form 13-D was sent to the electors, who were to cast their votes by postal ballot. Such Form clearly contains a direction send the ballot papers to the Returning Officer before 12.00 noon on May 26, 1991. It also makes clear that if the cover reaches the Returning Officer after the said time and date, the vote

will not be counted. Rule 51 vests the power with the Returning Officer to fix the date and time at which counting will commence and if necessary, he may alter the date, time and place so fixed. Rule 54A (2) enjoins the Returning Officer that no cover in Form 13-C received by him after the expiry of the time fixed in that behalf shall be opened and no vote contained in such cover will be counted. Learned counsel has contended that casting of vote by postal ballot is an integral part of the polling. So, the vote cast by the postal ballot should also be cast by the date of the polling. The amendment brought out in 1971 simply gives an allowance for receipt of the postal ballot by the date of counting instead of the date of polling but that does not change the character of casting of vote by postal ballot. It has been contended by the learned counsel for the appellant that in view of the unfortunate assassination of Shri Rajiv Gandhi the counting was postponed for a long time but that would not mean that a voter can exercise his right to vote by postal ballot even after the date of the polling. In this connection, reference has been made to Halsbury's Laws of England, Fourth Edition, volume 15, Para 612 and 616. The learned counsel has submitted that the practice followed in England in election matters is also applicable in India. In this connection, the learned counsel has referred to the decision of this Court in Jitendra Bahadur Singh versus Krishna Behari (1970 (1) SCR 852). It has been held that election law in India is patterned on English Law. It has been contended by the learned counsel for the appellant that in all, 374 postal ballots were received and entertained by the Returning Officer. Out of them only 264 postal ballots were received upto May 26, 1991. 110 postal ballots were received between May 27, 1991 to June 16, 1991. So 110 postal ballots received after May 26, 1991 ought not to have been counted by the Returning Officer. The counting of such 110 postal ballots has materially affected the result of the elections.

It may be indicated here that Rules 54 provides for time and place of counting of votes. The Returning Officer is required to fix the date for the poll at least one week before such date of polling and is also to appoint the place or places where the counting will be done and the date when votes will be counted and send a notice of the same in writing to each candidate or his election agent. The proviso to Rule 54, however, empowers the Returning Officer to alter the date, time and place for counting, if it is deemed necessary to do so, after giving notice to each candidate or his election agent.

Rules 54 A deals with counting of votes received by post. Rule 54 A may be set out hereunder:-

- 1) The Returning Officer shall first deal with the postal ballot papers in the manner hereinafter provided.
- 2) No cover in Form 13-C received by the returning officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted.

Rule 27 makes the postal ballots valid if they are received "before the hour fixed for commencement of votes." Rule 27(2) gives instructions to the Returning Officer as to the manner in which he has to keep a postal ballot which has been received after the hour fixed for commencement of counting.

It appears to us that Rule 27 makes the postal ballot valid if they are received before the commencement of

counting of votes. The right to franchise by postal ballot should not be defeated on technicality or narrow interpretation of the rules and instructions issued. It may be indicated here that Rule 27 dealing with the return of the ballot paper has undergone a change about the time within which Form 13-D is to reach the Returning Officer. Previously, it was indicated that Part II of Form 13-D should reach the Returning Officer on the date fixed for the poll. In 1967, the said Rule 27 underwent a change. In sub-rule 27, for the figures and letters 10 a.m. the words the hour fixed for the close of the poll had been substituted. By Notification issued on January 27, 1971, the words the hour fixed for the close of the poll were substituted by the words "the hour fixed for commencement of counting of votes." It is thus evident that the rule making authority has enlarged the time by which an elector casting his votes through postal ballot can send the ballot paper through post so as to make it valid. Rule 27, in our view, should be given its due import so as not to deprive an elector to exercise his right to vote by postal ballot, when the said rule, in view of the amendment and enlargement of time, validate the receipt of the postal ballot upto the hour fixed for commencement of counting of votes. accordingly, postal ballots of counting of votes. Accordingly, postal ballots though received after May 26, 1991, but before the counting of votes fixed by Election Commission could not have been rejected.

It has been contended by the learned counsel for the appellant that although the complaints relating to irregularities in the counting of votes were made by the election petitioner and his agent, the Returning Officer failed to consider the same. The learned counsel has submitted that PW 13 has stated that he could get only a chance to sit at the back bench in the third row. When a seat was vacated by another counting agent, he was able to occupy the front row and was able to see the counting of votes properly. When he sat in the front row, he could see some blank valid papers being filed in the bundle of ballots counted in favour of the elected candidate Shri Bansi Singh. PW 13 has also stated that he cried at a loud voice addressing Narinder Singh PW 9 drawing his attention about such irregularities. PW 9 has also stated that he advanced the complaint to the Returning Officer about the bungling in the counting of votes being done by Gianinder Singh at Table No. 3. On an application (Exhibit P-7) made by Narinder Singh it was found that as many six blank ballot papers had been tied in the bundle of votes in favour of Shri Bansi Singh and three ballots which were actually cast in favour of the appellant were also counted and tied in the bundle of respondent No.1 at table No.3. Om Parkash PW 11 who was counting agent of Rao Nihal Singh PW 7 at Table No.9 had told that he noted bungling of 56 ballot papers at Table No.9. He observed such fact by sitting in the front row as one of the counting agents who had earlier occupied the seat had left for about 15 minutes. He informed Rao Nihal Singh PW 7. He has also stated that he made a complaint about Table No.9 and on checking, he found that 56 ballots out of which 40 had been polled in favour of Shri Nihal Singh and 10 in favour of Ajit Singh the appellant, 5 in favour of BJP candidate have been tied in the bundle relating to ballot papers counted in favour of Shri Bansi Singh respondent No.1. On his complaint Shri Inder Singh the counting Assistant was removed. On checking the above, irregularities were detected and out of frustration in the manner in which the counting had taken place, the said Shri Nihal Singh left

the counting hall after 5th round. The learned counsel has submitted that unfortunately the complaint made by Shri Nihal Singh is not on record, but its reference is available only in the letter p-5 addressed by the Returning officer to the Counting Supervisor and the reply by the counting Supervisor and the reply by the counting Supervisor. Narinder Singh pw 9 has started that he made a second complaint during the fifth round of counting and a third complaint at the beginning of third round of counting. Specific reference to these complaints has been made in the election petition and the factum of these complaints has been stipulated by Shri Ajit Singh and also by Shri Rao Nihal Singh in their depositions. The learned counsel has submitted that unfortunately both these complaints are missing from the records and in the absence of the complaints made by Rao Nihal Singh and 2nd and 3rd complaints made by Narinder Singh, it becomes very difficult to appreciate the extent of irregularities in counting in respect of which the complaints were made.

The learned Judge in the impugned judgment has held that PW 9 Shri N.S. Jadav was one of the counting agents and in the certificate of satisfaction, he has described himself as Chief Counting Agent of the election petitioner and in Ext. P-7 which was a complaint moved by him, he also described him as Chief Counting Agent for Shri Ajit Singh. It has been indicated by the learned Judge in the impugned judgment that a reference to the testimony of Shri N.S. Jadav will show that Jadav had held several high offices and he admittedly fought elections to the State Assembly in the year 1968 and again the year 1972 from the very same Constituency but he lost in such elections. As a matter of fact, in the year 1972 he fought the election against Shri Banshi Singh respondent No.1. The said Shri Jadav moved an application Ext. P-7 alleging irregularity in the counting when he had found that Gianinder Singh who was one of the counting assistants had misconducted himself. On the basis of this application scrutiny and rechecking were made and discrepancies were found. Accordingly, corrections were made with respect of such Booth and it has been found that six blank ballots and three ballots polled in favour of the petitioner had been tied in the bundle of votes counted in favour of Shri Banshi Singh and with respect of Booth No. 18 one blank ballot paper had been found in the ballot papers counted in favour of Shri Banshi Singh. Even before this application was moved, the Returning Officer had removed Gianinder Singh from his duty. In para 4 of the application (Ext. P-7), It was stated:

"So to ensure Justice please call bundles of ballot papers and check that pertains to candidate for whom voter voted and not otherwise."

The learned Judge has indicated that the said complaint refers to the bundle which had been counted in favour of the candidates. Request for rechecking was made in respect of such bundles. There was no reference to the rejected ballot papers in the complaint. The learned Judge has held that from the said application it was obvious that the rejected papers in fact were rejected in the presence of the candidates and their election agents at the central table. He has also indicated that after the rechecking, the said Shri N.S. Jadav issued the following certificate:

"On rechecking being done 6 plus 1-7 votes of Banshi Singh were found and three votes of Ajit Singh were in Banshi Singh's account were wrongly counted."

But the R.O. removed these defects to my satisfaction and result amended. Role of R.O. is appreciable."

The learned Judge in the impugned judgment has also indicated how the scale had been tilting in favour of the election petitioner Shri Ajit Singh and returned candidate Shri Bansi Singh at different stages. He has indicated that Shri Bansi Singh respondent No. I did not make any complaint at any stage although on occasions he was trailing behind. The learned Judge has therefore indicated that since the counting had been done properly, the said returned candidate could not raise objection even though he had been trailing behind on some occasions. The learned Judge has also indicated that Shri N.S. Jadav who had experience of previous elections, was not expected to sleep over the matter when it related to the non examination of the ballot papers by the Returning Officer. It has been indicated by the learned Judge that Shri Bansi Singh had made a definite statement that invalid ballots were being sorted out by the counting supervisors and the counting Assistants but the final order of rejection was being passed by the Returning Officer. The learned Judge has also indicated that there is evidence on record that after every round, the Returning Officer had been preparing a certificate of satisfaction which was being signed by the candidate or his election agent or by an agent present at the central table who had been described as Chief Counting Agent. Shri Ajit Singh has admitted that he had signed one of the certificate of satisfaction which was probably after the first round. He has however described that certificate as a record of presence of the candidate. The learned Judge has indicated that such certificate was not a certificate of the presence of the candidate as sought to be contended by Shri Ajit Singh because the document since signed by Shri Ajit Singh on the face of it. Indicates that it is certificate of satisfaction. PW 7 Nihal Singh has admitted having signed such certificates Exts. R4, R5, and R6. Shri N.S. Jadave has admitted having signed certificates Exts. R7, R8 and R9. The learned Judge has indicated that the election petitioner Shri Bansi Singh himself has stated that after each count, the Returning Officer was obtaining the signatures of the candidate or his counting agent in token of acceptance of the counting as correct.

We have been taken through the judgment impugned dealing with contentions about improper counting and non consideration of the objections and rejection of ballot papers at the level of counting assistants and supervisors and non consideration of such rejected ballot papers by the Returning Officer. We have considered the elaborate reasons given by the learned Judge in the impugned judgement for not accepting the contentions of the election petitioner about the aforesaid irregularities in counting of votes thereby materially affecting the election results. In our view, the finding made by the learned Judge does not warrant any interference. We may indicate here that although from a decision rendered in an election petition appeal lies before this court and this Court can interfere with finding of fact by making independent appraisal of evidences, this court as a matter of prudence, is not inclined to interfere with finding of fact unless there is a very clear, convincing, cogent and unimpeachable evidence against the correctness of the finding made by the High Court. In this connection, reference may be made to the decisions of this Court in N.I. Singh versus L.C. Singh and others (1977 (1) SCR 573) and Mohd. Yunus Saleem versus Shiv

Kumar Shastri and others (1974 (3) SCR 738). It has been held by this Court that unless there are convincing and clinching reasons to take a different view, the finding arrived at by the High Court should not be interfered with.

It has also been contended by the learned counsel for the appellant that the election petitioner has specifically stated in para 8 of the election petition that Gianinder Singh, Malkhan Singh, Pratap Singh, Dalip Singh, Hari Ram Yadav who were counting assistants/Supervisors were the relations and despite the petitioner's pointing this fact, the Returning Officer did not remove them from the duty. Manoj Kumar, who is the grandson of the brother of respondent No.1 (brother's daughter's son, was posted as counting Supervisor at Table No.13 and despite the objection he was not removed. Ajit Singh the appellant made a written complaint before the Returning Officer. The learned counsel has submitted that the learned Judge in disposing of the aforesaid contention has wrongly held on speculation that the appellant must have felt satisfied and did not press his application.

It may be stated here that the learned Judge has rightly indicated that in the election petition the aforesaid persons were described as relations/proteges of the returned candidate Sri Banshi Singh. But at the hearing of the election petition the election petitioner tried to improve his case by contending that the said persons had also canvassed for Sri Banshi Singh. As the said case was not pleaded, in our view, the learned Judge has rightly discarded such contention made at the hearing. Admittedly Manoj Kumar was a relation of Banshi Singh. It however transpires that as the objection against Manoj Kumar was made at a late stage, the Returning Officer could not accede to the request of changing him. Manoj Kumar was placed in table No. 13. there is no specific allegation against Manoj Kumar that he acted mala fide and prejudicial to the interest of the election petitioner. We also agree with the learned Judge that it was quite likely that Manoj Kumar being a relation of Banshi Singh, the election agent of the petitioner had kept close watch on his performance. In the absence of any convincing evidence about improper conduct on the part of Manoj Kumar, we do not think candidate is liable to be set aside on the score that a relation of Shri Banshi Singh was deputed for the counting of votes. Pratap Singh had no role to play in the matter of counting of votes for the Vudhan Sabha because he was entrusted with the duty for counting of votes for the Parliamentary Constituency. Gianinder Singh, as already stated, was changed by the Returning Officer and the errors in his counting were rectified to the satisfaction of the election were rectified to the satisfaction of the election. As a matter of fact, Sri Jadhve the Chief Election Agent of the petitioner expressed his satisfaction in writing and appreciated the role of the returning Officer in taking appropriate steps regarding the irregularities committed by Gianinder Singh. Malkhan Singh was only a co-villager of Shri Banshi Singh. In the absence of any convincing and reliable evidence about misconduct by Malkhan Singh in the matter of counting votes, the objection of the petitioner against Malkhan Singh has rightly been rejected by the learned Judge. So far as Sri Hari Ram Jadhve is concerned, it appears that he was not initially entrusted with the duty of counting of ballot papers and was kept on reserve. It was only when Sri R.D. Singh was relieved of his duty on his own request, Sri Jadhve had been brought in by the Returning Officer. Sri Jadhve is a lecturer of a Government College. He was initially appointed as a lecturer

in 1961 on and hoc basisi but became permanent in 1969. Sri Jadav had been holding office in the Government College since 1984 and on one occasion he was transferred to another Government College scince 1984 and on one occasion he was transferred to another Government collage but later on came back to the Governmenment college to which he was posted earlier. The learned Judge, in our view, has rightly held that there was no evioence wortny of credence to hold that Sri Jadave was either appointed or posted at the Government college at the instance or with the help of Shri Bansi Singh. In our view, the learned Judge, is justified in holding that when complaints about irregularity committeed in respect of a teble was made, the returining Officer had justification to place sri Jadav, a responsibl;e professor of Government College at that table. We, therefore find no substance in the contention raised about engagement ofd relation/proteges of sahri Bansi singh in the duties of counting ballot papers.

It has also been continended by the learned consel for the appellant that objections raised by the election petitioner and his agents and also by Sri Roa Nihal Singh had not been considered by the returning Officer properly and gross irregularity in counting of ballot papers in favour of the returned candidate was allowed by the inaction of the Returning Officer. In our view, there is no substance in such contention. The Returning Officer has taken appropriate steps in changing Gianinder Singh and rectifying the mistake committed by him in counting ballot papers. As indicated earlier after each round of counting, the certificate of satisfaction about proper counting by the candidates or their election agents had been obtained by the Returning Officer. There is no convincing and unimpeachable evidence about irregularities in counting of votes materially affecting the election result. In the aforesaid circumstances, there was no occasion to set aside the election result. We, therefore, find no merit in this appeal and the same is dismissed without, however, any order as to cost.