

PETITIONER:
JAGIT SINGH

Vs.

RESPONDENT:
DHARAM PAL SINGH & ORS.

DATE OF JUDGMENT 07/11/1994

BENCH:
SEN, S.C. (J)
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SEN, S.C. (J)
AGRAWAL, S.C. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1995 SCC Supl. (1) 422 JT 1995 (1) 120
1994 SCALE (5)130

ACT:

HEADNOTE:

JUDGMENT:

SEN, J.:

1. The appellant, Jagjit Singh, has challenged the result of the election to the Haryana Legislative Assembly at Charkhi Dadri Constituency. The polling took place on 20th May, 1991. The results were declared on 17th June, 1991. Dharam Pal Singh was declared elected having secured 20918 votes as against 20838 votes polled for Jagjit Singh, the appellant herein. Having lost by a narrow margin of 80 votes, Jagjit Singh presented an Election Petition in the High Court of Punjab & Haryana at Chandigarh, challenging results declared and demanding a recount of votes cast. The controversy before the Trial Court has been summarised by the Trial Judge in the

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following manner

"The case, as set out by the petitioner is that the counting arrangements were so made that no effective vigilance of the process of counting was possible, resulting in grave irregularities to his detriment like large scale rejection of valid votes cast in his favour, many of his votes being rendered missing, besides virtual booth capturing of polling both 15 -A.

One of the other respondent, namely Gobind Ram Garg filed a return seeking to endorse the stand of the petitioner.

The returned Candidate, on his part, besides controverting the petitioner's averments, on merits and asserting that counting of votes had been fair and in accordance with the procedure prescribed, also took the preliminary objection that the petition disclosed no cause of action as there

was non-compliance with the provisions of Section 83 of the Representation of People's Act, 1951 (hereinafter referred to as 'the Act'), inasmuch as there was no concise statement of material facts. Great stress was also laid upon the absence of a plea to the effect that the result of the returned candidate had been materially affected. A plea was also raised that after each round of counting the petitioner and all other contesting candidates had affixed their signatures on the prescribed proforma, to denote that the counting in that round had been fair and 'valid and to the entire satisfaction of the candidates. It was thus the respondents' case that the petitioner merely sought a fishing and roving inquiry for collecting evidence, which was not permissible according to law."

The Trial Judge also noted that the following preliminary issues were raised at the hearing:-

"(1) Whether the election petition discloses any cause of action, if not, what is its effect? OPR.

(2) Whether the pleadings of the Election Petition are frivolous, vexatious and unnecessary and as such deserves to be struck out as envisaged under Order 6 Rule 16, C.P.C.? OPR.

(3) Whether the Election Petition contains a concise statement of material facts as required under Section 83(1)(a) of the Act and if not, what is its effect? OPR.

(4). Whether the Election Petition discloses any ground as envisaged under Section 100 of the Act for declaring the election of the returned candidate as void and, if not, what is its effect? OPR.

(5) Whether the petitioner, after admitting the counting to be fair and to his satisfaction, is still competent to ask for recount? OPR.

(6) Whether the petition contains material facts and particulars of the alleged corrupt practice of booth capturing and, if not, what is its effect? OPR.

(7) Whether the paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13 and 18 of the Election Petition disclose any cause of action and, if not, what is its effect? OPR.

(8) Whether the paragraphs 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, 30 and 35 contain material facts and particulars which disclose a cause of action and, if not what is its effect? OPR.

(9) Whether the paragraphs 26, 27 and 31 disclose material facts and particulars of the alleged corrupt practice of booth capturing pertaining to

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booth 15-A and, if not, what is its effect? OPR.

(10) Whether the written statement is not properly verified, if so, its effect?"

2. No arguments were advanced on issue No. 10 and consequently the issue was decided in favour of the respondents and against the appellant.

3. Issues 6 and 9 pertain to corrupt practice of booth capturing. The Advocate appearing on behalf of the appellant, specifically stated that those two issues were not being pressed on the ground of booth capturing. But, it was stated that had there been proper polling at Booth No. 15A, the result of the election would have been different. As regards issue No.5 the trial Judge has observed that it deserves to be taken up with the other issues on merit. Issues Nos. 1 to 4, 7 and 8 were taken up together and were decided against the appellant and in favour of the returned candidate.

4. The grievance of the appellant is that after framing of the issues, the Designated Judge of the High Court ordered on 17.9.91 that a list of witnesses be presented within a week and the evidence of the appellant was to be adduced on and from 21.10.1991. The appellant, accordingly, prepared an application along with the list of witnesses. But, the Designated Judge without recording any evidence took up the case for hearing on 21.10.1991. The judgment was reserved and after a period of three months on 21.1.1992 this judgment under appeal was passed.

5. The election petition filed by the appellant was dismissed mainly on the ground that it did not contain a concise statement of material facts on which the appellant relied. It was also held that vague and general allegations were made about improper rejection of votes. It was further held that serial numbers of the ballot papers, which were wrongly rejected, had not been specifically stated in the petition. The Court ultimately held that material particulars, as required under Section 83(1)(a) of the Act, had not been given. It was held that the appellant had really attempted to embark upon a roving and fishing inquiry which was not permissible under the law. It was also held that as there was no plea in the election petition that the result of the returned candidate had been materially affected by the improper reception or rejection of votes, the election petition was devoid of any cause of action.

6. In our view, the election petition should not have been summarily dismissed. It is true that the appellant had not given the serial numbers of the ballot papers which, according to the appellant, were wrongly rejected. The case of the appellant is that counting of votes took place behind an iron net. The counting agents were made to sit 5-6 feet behind the net and as such could not take down the numbers properly. But he had given full particulars of the valid votes which, according to the appellant, were improperly rejected.

7. Rule 56 of the Conduct of Election Rules, 1961, enumerated the situations in which the returning officer can reject the ballot paper. One of the grounds of rejection is if the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been given. Sub-rule (3) of rule 56 provides that before rejecting any ballot paper, the returning officer shall allow

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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.

8. It is the case of the appellant that at no stage any ballot paper was shown to the agents of the candidates or the candidates at the time of the counting.

9. It has been specifically alleged in paragraph 14 of the election petition that when ballot boxes of Booth No.1 were opened at Table No. 1, the Returning Officer rejected 94 votes. All these 94 rejected votes were polled in favour of the appellant. The main defect in those votes was that even though the mark was made at the proper place in front of the name of the appellant, yet the internal cross within the circle did not come out properly in the stamp mark. The stamping was done with an instrument provided by the Presiding Officer. The voters had clearly indicated their intention to vote in favour of the appellant. The internal cross within circle of the stamp may be either defective or dim. This could not be made the basis for rejection of votes. Shri Surinder Singh, Counting Agent of the appellant at Table No. 1, raised objection from a distance from behind the iron barricade created by the Returning Officer between counting agents and the counting officers, but nobody bothered to listen to him. Like this, at least 94 valid votes of the appellant were declared invalid on Table No. 1 in the first round. In fact, an allegation of animus has been made against the Officer-in-Charge at Table No. 1.

10. Similar allegations about improper rejection of votes on the same ground are contained in paragraph 15 regarding rejection of 44 votes relating to Booth No.73 at Table No. 1, in paragraph 16 regarding rejection of 110 votes relating to Booth No.49 at Table No. 1 and in paragraph 17 regarding rejection of 65 votes relating to Booth No. 100 at Table no.4. In paragraph 34 it is alleged that 13 votes relating to Booth No.55 were improperly rejected at Table No.7 on the ground that the seal of the Presiding Officer, which he has to affix to make a vote valid, was so put that the impression was also visible on the front side of the ballot paper and that this could hardly be a ground for rejecting the votes.

11. It would thus appear that in the aforementioned paragraphs of the election petition the appellant had set out the number of votes which were improperly rejected, the particular booth to which they related, the particular table at which the said votes were counted and the grounds on which the votes were rejected. All that was lacking was the serial numbers of the rejected ballot papers. Explanation for the same is offered in paragraph 12 of the election petition wherein after referring to the requirement laid down in Rule 56(3) of the Conduct of Election Rules, 1961 it is stated that in view of the seating arrangement at no stage any ballot paper was shown to the agents of the candidates or to the candidates at any stage during the counting. The truth or falsity of this explanation will have to be decided on the basis of evidence that is adduced at the trial. But at this stage the said explanation cannot be ignored.

12 The pleadings in the instant case, are no different from the pleadings in Arun Kumar Bose v. Mohd. Furkan Ansari & Ors., (1984) 1 SCR 118, wherein similar averments were contained in paragraph

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9(1) of the election petition. This Court observed:-

"So far as averment in paragraph 9(1) of the election petition is concerned, we find that the number of ballot papers alleged to have been wrongly rejected has been furnished, the counting table number has been given, the booth number has also been disclosed and th

ground for rejection has even been pleaded. Respondent 'No. 1 pleaded that the particulars of the ballot papers could not be obtained as during counting they were not shown. (pp. 126-127)

We agree with the High Court that in the facts and circumstances of the case the pleading in paragraph 9(1) set out the material facts in a proper way and no defect can be found with it."

13. The trial Judge was, therefore, in error in holding that the averments in paragraphs 14, 15, 16, 17 and 34 read with paragraph 12 of the election petition do not contain material facts as required by Section 83(1)(a) of the Act.

14. With regard to complaint about missing votes, we find that though in paragraph 22 a general allegation has been made in respect of 49 votes stated to be missing the necessary facts setting out the booth number, the number of votes and table number are contained in paragraph 24. The mere fact that the total number of votes in respect of which these facts are mentioned in paragraph 24 is less than 49, does not justify the conclusion that the averments in the said paragraphs do not contain a concise statement of material facts.

15. There is also another serious grievance. It has been alleged that Booth No, 15A for the purpose of polling was arranged in a tent in Harijan Basti of village Dohka Moji. After the voting had started, and hardly a score of people had cast votes, a storm broke out. The Presiding Officer-in-Charge of the Polling Booth realised that the majority of the voters were casting votes in favour of the appellant. Due to the storm, some papers inside the booth were scattered as the tent was in the open. Instead of collecting those papers and controlling the situation, he declared the polling closed. All the people who had come to cast their votes were sent home.

16. When the storm subsided, Shri Ram Phal, Polling Agent of Smt. Bimla, Respondent No. 12, requested the Presiding Officer to restart the polling, but he replied that since the polling had been interrupted, it could not be restarted as the intimation had already been sent to the higher authorities.

17. The polling agent of the appellant remained in the village till the evening, but the polling was not started. On that very day, late in the evening, the said polling agent informed the appellant that the polling in Booth No. 15A had been disrupted due to storm and not more than 15/ 20 votes were polled.

18. Strangely enough at the time of the counting, total votes polled were shown as 167, whereas total voters on this booth were 181. Therefore, there was more than 90 per cent polling at this booth, which was impossible. Out of 167 polled votes, 152 were said to have been polled in favour of the returned candidate which, according to the appellant, was more than 90 per cent of the polled votes and was an impossibility.

19. Reference was made to the
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instructions issued by the Chief Election Commissioner. The Deputy Commissioner-cum-District Election Officer, Bhiwani, sent a wireless message dated 22nd April, 1991 to the Returning Officers-cum-Sub Divisional Officer (C), Dadri, Lohari and Siwani, stating therein:-

"NO.546/ELECTIONS DATED 22.4.91. CEO MR'S W.M.
NO.ELEC. 91/1AE2400 DATED 10.4.91 REPRODUCED

BELOW FOR NECESSARY ACTION AT APPROPRIATE TIME. QUOTE. ELECTION COMMISSION OF INDIA'S W.M. NO.464/91 L & A DATED 13.4.91 IS REPRODUCED BELOW. QUOTE. REGARDING INSTRUCTIONS ON BOOTH CAPTURING CONTAINED AT ITEM XVIII OF THE CONSOLIDATED INSTRUCTIONS, IT IS CLARIFIED THAT HEREAFTER, IF THE RETURNING OFFICER AT THE STAGE OF COUNTING OF VOTES FINDS THAT IN A PARTICULAR POLLING STATION NINETY PERCENT VOTES HAVE BEEN CAST AND OUT OF THEM NINETY PERCENT HAVE GONE IN FAVOUR OF ONE CANDIDATE AND THE VOTES CAST IN FAVOUR OF THE OTHER CANDIDATE ARE VERY NEGLIGIBLE, HE SHOULD KEEP ASIDE THE BALLOT PAPERS CONTAINED IN THE BALLOT BOXES USED IN THAT PARTICULAR POLLING BOOTH IN A SEALED COVER IN THE PRESENCE OF COUNTING AGENTS OF CANDIDATES WITHOUT TAKING THEM INTO ACCOUNT IN THE RESULT SHEET, IF AND ONLY IF THE RESULT OF THE ELECTION IS NOT AFFECTED AFTER IGNORING THESE VOTES. RETURNING OFFICER MAY DECLARE THE RESULT, IF ON THE OTHER HAND THE MARGIN BETWEEN THE FIRST TWO CANDIDATES IS LESS THAN THE TOTAL VOTES SET APART, THE RETURNING OFFICER IS PROHIBITED FROM DECLARING THE RESULT AND HE SHOULD SEEK ORDERS OF THE COMMISSION AND ONLY AFTER RECEIPT OF THE ORDERS OF THE COMMISSION SHOULD PROCEED FURTHER. THESE ORDERS ARE NOT RELAXABLE BY ROS UNDER ANY CIRCUMSTANCES. UNQUOTE. YOU ARE REQUESTED TO KINDLY ENSURE THAT THE ABOVE DIRECTIONS OF THE ELECTION COMMISSION ARE COMPLIED WITH IN THE FORTHCOMING GENERAL ELECTIONS TO LOK SABHA AND VIDHAN SABHA."

20. It has been alleged that the Returning Officer ignored the directions of the Election Commission and despite objections raised on behalf of the appellant proceeded to count the votes and declared the result. It has been alleged that the objection made by the appellant was torn off on the ground that this objection did not fall within the jurisdiction of the Returning Officer.

21. On behalf of the respondent, it has been pointed out that the allegations made in the election petition are vague. The appellant had lost narrowly in the election and wanted to make a roving and fishing inquiry to nullify the declared result. It was contended that after each and every round of voting, the appellant and the respondent No. 1 had affixed their signatures on the prescribed proforma. This indicated that both sides were satisfied about the counting of the votes. No explanation, however, was given on behalf of the respondents as to why the instructions of the Chief Election Commissioner were ignored in counting the votes cast at polling booth ' No. 15A.

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22. We are of the view that no satisfactory explanation has been given as to why the instruction of the Chief Election Commissioner was not followed in the matter of counting of votes polled in Booth No. 15A. These votes had a material bearing on the outcome of the election.

23. The trial Judge has held that since, there is no averment in the petition that the result of the election was materially affected by improper rejection or acceptance of votes, it is devoid of cause & action. We are unable to agree that the absence of such an averment in the facts of this case is fatal. As pointed out by this Court, there may

be cases where the obvious conclusion to be drawn from the circumstances is that the result of the election has been materially affected and that Section 100(1)(d) of the Act is not intended to provide a convenient technical plea in a case where there can be no dispute at all about the result of the election being materially affected by the alleged infirmity. [See: *Durai Muthuswami v. N. Nachiappa*, (1974) 1 SCR 40]. In the present case, the appellant in the election petition has stated that he has lost by a margin of 80 votes only. From the various averments in the election petition it was evident that the number of valid votes of the appellant which are alleged to have been improperly rejected is much more than 80. From the averments contained in the election petition it is thus obvious if the appellant succeeds in establishing his case as set out in the election petition the result of this election, insofar as it concerns the returned candidate, would be materially affected.

24. For the reasons aforementioned we are of the view that in the facts of this case the election petition should not have been dismissed on the ground that it does not contain a concise statement of material facts and is devoid of any cause of action.

25. In that view of the matter, we allow the appeal and remit this case back to the trial court, to hear it afresh and decide finally the aforesaid contentions raised on behalf of the appellant.

26. We make it clear that we have not expressed any opinion on the merits of the case or correctness of the allegations made by the appellant or the respondents. It will be entirely open to the trial court to find out the facts and to decide the case in accordance with law and as it thinks fit.