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SASHI BHUSHAN

v.

PROF. BALRAJ MADHOK & ORS.

October 22, 1971

[K. S. HEGDE AND H. R. KHANNA, JJ.]

B *Election—Serious allegations against Election Commission that it enabled tempering with ballot papers—No direct evidence of allegations—Scrutiny of ballot papers—If should be ordered.*

In the last general election to the Lok Sabha the appellants were declared elected and the respondents, who were the unsuccessful candidates challenged the validity of the election on the ground that the ruling party had rigged the election. According to the respondents many ballot papers C were chemically treated so that the mechanically stamped marks in favour of the successful candidates by using invisible ink emerged and the mark actually put at the time of polling disappeared after a few days. It was alleged that this was done as a result of conspiracy between the ruling party and the Election Commission, and that the Election Commission took certain unusual steps for facilitating the substitution of chemically treated ballot papers. There was no direct evidence of the allegations and the respondents sought to probabilise their version by alleging that the D colour of a large number of ballot papers was different from the colour of the original ballot papers, and that at the time of counting, it was noticed that the marking was uniform and at an identical spot in each of the ballot papers in favour of the appellants.

The trial Judge permitted inspection of all the ballot papers polled. In appeal to this Court it was contended that : (1) that the allegations of the respondent were propaganda stunts wholly devoid of truth; (2) that the E attention of the Returning Officer was not invited to the alleged strange features at the time of counting, and (3) that the scrutiny of ballot papers could not be allowed as it violates the secrecy of the ballot.

Dismissing the appeals,

HELD : (1) Assuming that the allegation made was mere propaganda it was in the public interest that the allegations are required into the propaganda exposed. Merely because allegations made are difficult to F accept they cannot be dismissed summarily. In all such matters the court's aim should be to render complete justice between parties. If the allegations made raise issues of public importance greater care and circumspection is necessary. The allegation that the electoral process has been fouled is a very serious allegation and is a challenge to the integrity and impartiality of the Election Commission and a challenge to the survival of democratic institutions. [180 G-H; 181 A-B; 182 B-C]

G (2) Assuming that the persons concerned did not inform the Returning Officers of what they observed at the time of counting, it does not estop the respondents from taking the pleas in the election petitions. It is only a circumstance to be considered on the question of value to be attached to the allegation. Even assuming that the respondents made the allegations as a result of not merely observing certain facts at the time of counting but on the basis of various rumours, that by itself is not sufficient to brush aside the allegations. [181 G-H]

H (3) No rigid rules have been laid nor can be laid down for allowing inspection of ballot papers. The overriding test is the interests of justice, depending on the facts of each case. A judge while deciding the question

of inspection of ballot papers must bear in mind the importance of the secrecy of ballot. Secrecy of ballot is important but doing justice is more important and it would be more so if what is at stake is the interests of society. The allegations in support of the prayer for inspection must not be vague or indefinite. They must be supported by material facts and the prayer made must be a *bonâ fide* one. Further, the allegations regarding the chemical treatment of ballot papers in the present case, cannot be proved in any other manner than by inspection. [182 C-D; 184 E-G]

But the High Court erred in permitting a general inspection of the ballot papers. It would be sufficient if some substantial number of ballot papers polled by each of returned candidates are selected from different bundles and compared with the ballot papers cast in favour of the respondents. If the trial Judge thereafter comes to the conclusion that the matter should be further probed into he may take evidence on the points in issue including the evidence of expert witnesses, and thereafter, decide if it was necessary direct a general inspection of the ballot papers. [185 F-H]

Ram Sewak Yadav v. *Hussain Kamil Kidwai & ors.*, [1964] 6 S.C.R. 238, *Dr. Jagjit Singh* v. *Giani Kartar Singh*, A.I.R. 1966 S.C. 773 and *Jitendra Bahadur Singh* v. *Krishna Behari & Ors.*, [1970] 1 S.C.R. 852, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1343 and 1473 of 1971.

Appeals by special leave from the judgments and orders dated September 3, 1971 and August 6, 1971 of the Delhi High Court in I.A. No. 1170 of 1971 in Election Petition No. 1 of 1971 and Election Petition No. 2 of 1971.

C. K. Daphtary, M. C. Bhandare and *C. M. Oberoi*, for the appellant (in C.A. No. 1343 of 1971).

D. D. Chawla, B. P. Nanda and *J. B. Dadachanji*, for the appellant (in C.A. No. 1473 of 1971).

S. V. Gupte, U. M. Trivedi, S. N. Marwah, R. P. Bansal, B. R. Sabarwal, N. M. Ghatate and *K. C. Dua*, for respondent No. 1 (in C.A. No. 1343/71).

C. B. Agarwala, S. N. Marwah, B. P. Bansal, A. K. Marwah and *K. C. Dua*, for respondent No. 1 (in C.A. No. 1473 of 1971).

V. P. Joshi, for respondent No. 6 (in both the appeals).
Respondent No. 8 appeared in person (in both the appeals).

The Judgment of the Court was delivered by

Hegde, J. These appeals by special leave arise from the decision of Andley J. (Delhi High Court) permitting inspection of the ballot papers polled during the last general election to the Lok Sabha held last March in the South Delhi Constituency and the Delhi-Sadar Constituency.

A The appellants are the successful candidates. They contested in the two constituencies mentioned earlier on behalf of the ruling Congress party. Their symbol was cow and calf. Their nearest rivals were the Jan Sangh nominees whose symbol was Deepak. The appellants were declared elected. The unsuccessful Jan Sangh candidates have challenged the validity of the B election of the appellants.

The main ground pleaded in support of the election petition was that the ruling party had rigged the election. The process adopted in rigging the election, according to the election petitioners is a somewhat complicated one. That process was explained to us thus : Millions of ballot papers were chemically C treated; the symbol of the congress candidates in those ballot papers was mechanically stamped by using invisible ink. As a result of the chemical treatment of those ballot papers, the mark put at the time of the polling disappeared after a few days and the stamping mechanically placed earlier emerged. The suggestion was that this was done as a result of a conspiracy between D the ruling party and the Election Commission. To carry out the design in question, we were told that quite contrary to the earlier practice, the Election Commission instructed the Returning Officers to forward to Delhi a substantial number of ballot papers of each constituency, ostensibly for the purpose of scrutiny but really for the purpose of carrying out the design mentioned earlier. According to them in place of the ballot papers received, the E Returning Officers were supplied with the ballot papers chemically treated and mechanically stamped. Those ballot papers formed a part of the ballot papers used at the election. It was further said that in furtherance of the above design, the Eelection Commission made two alterations in the practice followed earlier. Firstly it provided a larger interval between the date of polling F and the date of counting and secondly by precipitate alteration of a rule, it provided for mixing up of the ballot papers of various booths and rotating them in drums. We were further told that these innovations were introduced so that the chemical treatment of the ballot papers may have the desired effect.

The election petitioners do not claim to have any direct evi- G dence to support their version. They seek to prove their version primarily on the basis of the examination of the ballot papers. But to probabilise their version, they have put forward various circumstances. They have filed affidavits of two persons who claim to have been present at the time of counting. They supported the allegations in the petitions seeking inspection regard- H ing the facts said to have been observed at the time of counting In those petitions it was alleged that at the time of the counting, it was noticed that the colour of a large number of ballot papers

was different from the colour of the other ballot papers, stamping of the symbols in those ballot papers was uniform, at an identical spot in each of those ballot papers, the stamps were uniform in density and they looked bright and fresh. Those features were quite dissimilar to those found in the other papers including those containing votes in favour of the defeated candidates. The election petitioners in this connection referred to the rumours prevailing about the rigging of the election, the landslide victory of the ruling party which according to them was wholly unexpected and finding of huge quantity of unused ballot papers in a godown in Chandigarh. The material facts supporting the allegation of rigging are those said to have been observed at the time of the counting. In addition they also pointed out the changes made by the Election Commission in the counting procedure and tried to draw an adverse inference therefrom. Whether the observations said to have been made are true or whether they were merely the figment of imagination of some fertile brains has yet to be examined. The only effective way of checking the correctness of those allegations is by inspecting the ballot papers.

We are free to admit that we are unable to comprehend the theories propounded by the election petitioners. But we are conscious of our limitations. The march of science in recent years has shown that what was thought to be impossible just a few years back has become an easy possibility now. What we would have thought as wild imaginations some years back are now proved to be realities. Hence we are unable to reject the allegations of the election petitioners without scrutiny. We shall accept nothing and reject nothing except on satisfactory proof. We are approaching the allegations made in the election petition in that spirit.

The learned trial judge did not hold that the allegations made by the election petitioners were not *bona fide* allegations. We see no reason to come to a contrary conclusion. He took the view that those allegations were of serious character and the material facts stated in suport of those allegations were such as to call for investigation into the truth of those allegations. We are of the same opinion. The allegation that our electoral process has been fouled is a very serious allegation. That allegation is a challenge to the integrity and impartiality of the Election Commission. Those allegations if believed are sure to undermine the confidence of our people in our democratic institutions. Herein we are not merely concerned about the validity of elections in two constituencies. They are no doubt important but in the context of things their importance pales into insignificance. What is more important is the survival of the very democratic institutions on which our way of life depends.

A It was said, on behalf of the appellants that those allegations were nothing but propaganda stunts and they were wholly devoid of truth. If that is so, it is in public interest that the falsity of that propaganda should be exposed. The confidence in our electoral machinery should not be allowed to be corroded by false propoganda. It is of utmost importance that our electorate B should have full confidence in the impartiality of the Election Commission. Even the very best institutions can be maligned. In all countries, at all times, there are gullible persons. The effectiveness of an institution like the Election Commission depends on public confidence. For building up public confidence, public must be given the opportunity to know the truth. C Any attempt to obstruct an enquiry into the allegations made may give an impression that there might be some truth in the allegations made.

From the records we gather that the allegations with which we are concerned are being made in several places in this country with some persistency. It is not unlikely that a section of D our people, rightly or wrongly, have persuaded themselves to believe in those allegations. Such a situation should not be allowed to remain. The strength of a democratic society depends on the knowledge of its ordinary citizens about the affairs of the institutions created to safeguard their rights. It is dangerous to allow them to feed themselves with rumours.

E It was urged on behalf of the appellants that the scrutiny of ballot papers is a very serious thing; the secrecy of the ballot is of utmost importance; except on very good grounds, inspection of ballot papers should not be allowed and the petitioners have failed to make out a case for inspection. It was further urged that at the time of counting, the attention of the Returning Officer F was not invited to the strange features mentioned earlier nor was the acceptance of any of those ballot papers objected to on the ground that they were spurious ballot papers.

According to the election petitioners, they did invite the attention of the Assistant Returning Officer to the various features mentioned by them. It is not necessary for us to go into G that controversy at this stage. Assuming that the persons concerned did not inform the Assistant Returning Officer of what they had observed, it does not estop the Election petitioners from taking the pleas in question in the election petitions though undoubtedly it is a circumstance to be considered on the question of the value to be attached to the allegations made regarding the H observations said to have been made at the time of the counting. Assuming that the conclusion reached by the election petitioners was the result of not merely observing certain facts at the time of the counting but on the basis of various circumstances, some of

which came to their notice before the election, some at the time of the counting and some after the counting, that by itself is not sufficient to brush aside the allegations.

It is true that merely because someone makes bold and comes out with a desperate allegation, that by itself should not be a ground to attach value to the allegation made. But at the same time serious allegations cannot be dismissed summarily merely because they do not look probable. Prudence requires a cautious approach in these matters. In all these matters, the court's aim should be to render complete justice between the parties. Further, if the allegations made raise issues of public importance, greater care and circumspection is necessary.

These cases have peculiar features of their own. No such case had come up for decision earlier. Hence decided cases can give little assistance to us. In a matter like allowing inspection of ballot papers, no rigid rules have been laid down, nor can be laid down. Much depends on the facts of each case. The primary aim of the courts is to render complete justice between the parties. Subject to that overriding consideration, courts have laid down the circumstances that should weigh in granting or refusing inspection. Having said that much let us now examine the cases read to us on behalf of the appellants.

In *Ram Sewak Yadav* v. *Hussain Kamil Kidwai and ors.*(1), one of the defeated candidates challenged the election of the appellant, the returned candidate, *inter alia*, on the ground that there had been improper reception of invalid votes and rejection of valid notes at the time of counting and that on a true count he would have received a majority of valid votes. Hence he claimed that he was entitled to be declared duly elected. He claimed that by inspection of the ballot papers, he will be able to establish his case. He averred that on the aforesaid allegations, the Tribunal was bound to grant an order for inspection, because he had tendered the sealed boxes of ballot papers in evidence, and on that account all the ballot papers were part of the record. The Tribunal in its order stated that nothing was brought to its notice which would justify granting an order for inspection. It further observed "if in future from the facts that may be brought to the notice of the Tribunal, it appears that in the interests of justice inspection should be allowed, necessary orders allowing an inspection could always be passed". Thereupon another application was submitted by the election petitioner asking for inspection but no additional materials were placed before the Tribunal and no oral evidence was led at the trial. The Tribunal rejected the application for inspection. On appeal the High Court

(1) [1964] 6 S.C. R. 238.

A held that ballot papers had actually been called for from the Returning Officer and were before the Tribunal and there was nothing in the Code of Civil Procedure which prevented the Tribunal from allowing inspection of the ballot papers in the custody of the Court. In the opinion of the High Court the Tribunal rejected the application for inspection without any ade-
B quate reasons. On a further appeal, the question for determination before this Court was whether the election Tribunal erred in declining to grant an order for inspection of the ballot papers which had been, pursuant to an order in that behalf, lodged before the Tribunal in sealed boxes by the Returning Officer. This Court ruled that by the mere production of the sealed boxes,
C the ballot papers did not become part of the record and they were not liable to be inspected unless the Tribunal was satisfied that such inspection was in the circumstances of the case necessary in the interests of justice. The ratio of that decision is that the inspection of ballot papers should be allowed only when the court thinks that it is necessary in the interests of justice to do so. In that case this Court did not lay down any hard and fast rule as
D to when an inspection of the ballot papers can be allowed.

The next case relied on is the decision of this Court in *Dr. Jagjit Singh* v. *Giani Kartar Singh*(1). Therein the question of inspection of ballot papers was dealt with in paragraph 31 of the judgment. This is what the Court observed :

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> "The true legal position in this matter is no longer in doubt. Section 92 of the Act which defines the powers of the Tribunal, in terms, confers on it, by cl. (a), the powers which are vested in a Court under the Code of Civil Procedure when trying a suit, *inter alia*, in respect of discovery and inspection. There-
> F fore, in a proper case, the Tribunal can order the inspection of the ballot boxes and may proceed to examine the objections raised by the parties in relation to the improper acceptance or rejection of the voting papers. But in exercising this power the Tribunal has to bear in mind certain important considerations. Section
> G 88(1)(a) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies, and in very case, where a prayer is made by a petitioner for the inspection of the ballot boxes, the Tribunal must enquire whether the application made by the petitioner in that behalf contains a concise statement of the material facts on
> H which he relies. Vague or general allegations that valid votes were improperly rejected, or invalid votes were

(1) A.I.R. 1966 S.C. 773.

improperly accepted would not serve the purpose which s. 88(1)(a) has in mind. An application made for the inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice, the ballot boxes should be inspected or not. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored, and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting. It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void. We do not propose to lay down any hard and fast rule in this matter : indeed, to attempt to lay down such a rule would be inexpedient and unreasonable."

The above observations succintly bring out the circumstances under which an inspection can be ordered. The overriding test laid down there is the interests of justice. Facts naturally differ from case to case. Therefore it is dangerous to lay down any rigid test in the matter of ordering an inspection. It is no doubt true that a judge while deciding the question of inspection of the ballot papers must bear in mind the importance of the secrecy of the ballot papers. The allegations in support of a prayer for inspection must not be vague or indefinite; they must be supported by material facts and prayer made must be a *bona fide* one. If these conditions are satisfied, the court will be justified in permitting inspection of ballot papers. Secrecy of ballot is important, but doing justice is undoubtedly more important and it would be more so, if what is in stake is the interests of the society.

The last decision relied on by the appellant is *Jitendra Bahadur Singh* v. *Krishna Behari and ors.*(1). To this decision one of us was a party. There an elector (1st respondent in that appeal) challenged the election of the appellant to the Lok Sabha. He alleged, *inter alia*, in the election petition that there were improper rejection and improper reception of votes. In the

(1) [1970] 1. S.C.R. 852.

A Schedule to the petition, he gave some figures of votes improperly rejected as well as accepted. In the verification to the election petition, he stated that the concerned allegations were made on the basis of information received from his workers and counting agents. It was, however, not stated who those persons were and what was the basis of their information. No written objection B was filed during the counting either to the acceptance or to the rejection of any vote. Nor was any application made for re-counting. Before the trial of the election petition, the election petitioners filed an application to inspect the ballot papers. In the affidavit filed in support of the petition, the election petitioner claimed to have been present on one of the days when counting C went on and thus came to know about the improper acceptance and rejection of ballot papers. This was not a claim put forward in the election petition. The High Court allowed the inspection and permitted the scrutiny solely on the basis of the allegations in the election petition and the affidavit filed by the petitioner. This Court reversing the decision held that on the facts established, D the High Court was not justified in allowing the inspection of the ballot papers. This Court came to the conclusion that relevant allegations were vague and indefinite; they were not supported by material facts and there was no basis for coming to the conclusion that inspection of the ballot papers was necessary for doing justice between the parties.

E At the hearing of the appeals we enquired with the Counsel for the appellants whether the allegation regarding the chemical treatment of the ballot papers can be proved in any other manner than by inspecting the ballot papers. We got no satisfactory reply to our querry. In the very nature of things the allegations in question can be proved or disproved only by inspecting the F ballot papers.

The next question is whether it is necessary to inspect all the ballot papers as has been ordered by the trial judge. We think that a general inspection should not be permitted, until there is satisfactory proof in support of those allegations. For finding out whether there is any basis for those allegations, it would be G sufficient if some ballot papers, say about 600 out of those polled by each of the returned candidates are selected from different bundles, or tins in such a way as to get a true picture. He may also select about 200 ballot papers cast in favour of the election petitioners for comparison. All the selected ballot papers at the first instance be examined by the learned judge with the assis- H tance of the Counsel for the parties as well as the parties. If the learned judge comes to the conclusion that the matter should be further probed into, he may take evidence on the points in issue including evidence of expert witnesses. Thereafter it is open to

him to direct or not to direct a general inspection of the ballot papers. But in doing so he will take care to maintain the secrecy of the ballot. A

Subject to the directions given above, these appeals are dismissed but in the circumstances of the case we make no order as to costs in these appeals. B

V.P.S. *Appeals dismissed.*