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BALDEV SINGH

v.

TEJA SINGH SWATANTAR (DEAD) & ORS.

January 24, 1975

[A. ALAGIRISWAMI, V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

B *Election—Conduct of Election Rules, r. 63—Returning Officers duty to recount, when arises—Power of Court to order recount—Scope of.*

For a Parliamentary seat in the State of Punjab the appellant, a candidate of the Akali Dal, and the first respondent, the nominee of the Communist Party of India, were two of the contesting candidates. The total number of votes polled were 344073 out of which 7663 were invalidated. The first respondent was declared elected by a margin of 210 votes. Even at the time the counting was completed the appellant applied to the Returning Officer for a recount but the application was rejected as premature. Soon after the announcement of the votes polled by each candidate the appellant applied again for recount, under r. 63(2) of the conduct of Election Rules. The Returning Officer rejected this application also. The appellant filed an election petition and contended that, the attitude of the counting staff was hostile to the appellant and his party, and that there were many irregularities in rejecting votes in favour of appellant, in accepting vote in favour of the 1st respondent, and in the counting and prayed for a general recount.

The High Court, by an interim order ordered a limited recount of votes in one of the segments of the constituency and that order was affirmed by a consent order in this Court to cover the votes of both the contestants. This recount revealed some errors but did not tilt the scale in favour of the appellant. The election petition was ultimately dismissed by the High Court.

HELD : (1) On the evidence there is no force in the appellant's contention about either official bias or of violation of rules. If there had been any manipulation by the counting staff the matter would have been brought to the notice of the Returning Officer and the senior officers present for supervising the counting and deciding disputes, reference to it would have been made in the two applications for recount, and in the appellant's application to the Election Commissioner for inspection. Moreover, the alleged biased behaviour is disproved by the accuracy disclosed in the recount, the marginal error being more or less similar in the case of both the candidates. [388 C-F]

(2) The Returning Officer was in error in disallowing the recount. Under r. 63 the mandate for recount is not the exception, and refusal is restricted to cases, where the demand itself is 'frivolous or unreasonable'. Where the margin of difference is minimal the claim for a fresh count cannot be summarily brushed aside as futile or trumpery. If formal defects had been misconstrued as substantial infirmities or *vice versa* resulting in wrongful reception or rejection, the sooner it was set right the better, especially when a plea for a second inspection had been made on the spot. Prestige or fatigue should not inhibit a fresh or a partial check. The instructions contained in para 17, cl. (nn) of the Procedure for Counting in the Handbook for Returning Officers requires the Returning Officer to ensure further accuracy in the counting of votes by making 5% test check. The Returning Officer, in the present case, had not done so, but that is no ground for this Court to order recount or to reverse the decision of the High Court refusing recount. [385 G-386 B; 392 C-G]

(3) While the Returning officer should be liberal, the power of the Court to order recount which is undoubted, should be exercised sparingly. Even if there is difficulty in giving the serial number of voting papers illegally rejected or received, an application made for inspection of ballot boxes must give material facts which would enable the tribunal or the Court to consider whether in the interests of justice, the ballot boxes should be inspected or not. In dealing general allegations that valid votes were improperly rejected or invalid votes were improperly accepted, would not serve the purpose which is provided for in s. 83(1)(a). In dealing with this question the importance of secrecy of the ballot papers cannot

be ignored. The statutory rules framed under Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes for their proper counting. Care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry into the ballot boxes so as to justify their claim that the returning candidate's election is void, and to threaten the certainty of the poll by flippant recounts. [390 D-H; 392 G-H; 393 C-D]

Jagjit Singh, A.I.R. 1966 S.C. 774, 783 and *Chanda Singh* v. *Choudhary Shiv Ram Verma*, Civil Appeal No. 1185 of 1973, decided on 20-12-1974, followed.

In the present case. the High Court construed r. 56 of the rules in the light of r. 38 and took the view that the ballot paper shall not be rejected merely on the ground of a formal defect as the accidental omission of the signature of the Presiding Officer, without the Returning Officer proceeding to consider if such defect was occasioned by the inadvertance or lapse of the Presiding Officer or the Polling officer, and ordered a limited recount rightly. However, the number of totally rejected ballot papers of all candidates when subjected to a repeated scrutiny yielded disappointing results from the point of view of the appellant. Out of 1096 rejected ballot papers only 17. claimed by the appellant, and 7, by the first respondent, were found faulty. Therefore, the High Court was right in refusing to grant a recount on a comprehensive scale. [387 E-H]

(4) Even in the application to the Election Commission the plea for inspection of the used ballot papers was primarily confined to one Assembly segment and the rejected ballots of other assembly segments. In regard to that plea, the petition gave details, but not a scintilla of evidence, on which the Court could act, was present on the record to prove *prima facie*, what has been alleged. Therefore, refusal of recount was not improper. [391 B, D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 233 of 1973.

From the judgment and order dated the 18th October, 1972, of the Punjab and Haryana High Court in Election Petn. No. 2 of 1971.

Hardev Singh, M. S. Gupta, and *R. S. Sodhi,* for the appellant.

S. C. Agarwala, for respondent no. 1.

M. R. K. Pillai, for respondent no. 4.

The Judgment of the Court was delivered by

KRISHNA IYER, J. The dual prayers in the election petition, by the worsted appellant, related to (a) invalidation of the 1st respondent's election; and (b) the further submission that instead, the petitioner/appellant be declared successful from the 12-Sangrur Parliamentary constituency. The petition was dismissed by the High Court and the appellant has repeated both his reliefs in this civil appeal. However, by the time the appeal came up for hearing, the 1st respondent, the returned candidate, passed away, but Hari Agrawala, Advocate, has sought to appear for an elector from the constituency, on the score that the whole constituency is, a sense, before the Court and anyone from the constituency is entitled to oppose the election petition *and also the election appeal.* There is no doubt that the democratic order sustains itself on the rectitude at the polls and disputes affecting elections are not like private litigation but of public concern. Viewed thus, the question raised is not free from doubt and indeed it may be appropriate for Parliament to consider whether a provision analogous to

A s. 116 of the Representation of the People Act, 1951 (hereinafter called the Act, for short) enabling the constituency to be alerted and to intervene even at the appellate level, should not be explicitly provided for, as at the trial stage. Be that as it may, we do not think it necessary to do anything more than hear Shri Agrawala more as *amicus curiae* than by any right inhering in an elector to intervene B in the appeal. The decisions brought to our notice do not clothe an officious elector with a right to be impleaded in appeal *pro bono publico,* absent express words to that effect. At the close of the appellant's submissions we did not feel the need to hear Shri Agrawala, since nothing in the persuasive arguments of Shri Hardev Singh induced us to alter the finding of the High Court on the sole and central issue of a right to recount.

C The law regarding recount is, by now, well settled although defeated parties are not disenchanted from challenging the validity of the count through election petitions and persistent appeals. On the other hand, election petitions make averments manipulated to meet the requirements each new decision insists on. Even so, the facts of this case—not the merits of the claim—prompt us to make a D pertinent observation. When the primary grievance of a party is error or other vitiating circumstance in the count and some ground not 'frivolous or unreasonable' exists, many candidates trek into the High Court complaining of ignored demands for a fresh counting despite the existing guidelines in this behalf. The circumstances present here constrain us to make some concrete observations on the subject at a later stage in the hope that election authorities will res- E pond sensitively on demand and reduce, by ready recount, the avoidable feeling of injustice of rebuffed rivals in a close contest. The volume of election litigation may well shrink given more creative imagination and liberal approach in the exercise of powers under r. 63 of the Conduct of Elections Rules, 1961, instead of being rigid, resistant and indifferent. A stitch in time saves nine.

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FACTS

A plurality of five candidates ran for the 12-Sangrur parliamentary seat in Punjab in the General Elections held in March 1971. (Sad that we are in 1975, interlocutory litigative episodes having spun to such length despite only a simple issue of recount being involved in the whole case?) The only two contestants who hotly and hopefully G battled for success were the petitioner-appellant, the candidate of the Akali Dal and respondent no. 1, the nominee of the Communist Party of India. The total votes polled were of the order of 3,44,073 of which 7,663 ballots were invalidated. The tiny margin of 210 votes, by which respondent no. 1 was declared successful, apparently appetised the appellant into attacking the methodology, arithmetic and impartiality of the count and, indeed, the High Court went H half-way with him on this score, as we will presently discuss. Even at the time the counting was completed on March 12, 1971 the petitioner presented an application to the Returning Officer demanding a recount. On some minor technical ground the application was

held premature, the formalities of completing Form 20 not having been gone through. However, soon after the announcement of the votes polled by each candidate under sub-r. (1) of r. 63 of the rules, the petitioner made a second, timely, application for recount under sub-r. (2) of that rule. The Returning Officer, however, rejected this application also although here were sat out several grounds, some of which are the same as those urged in the election petition itself. The petitioner, however, moved the Election Commission for a recount under sub-r. (1) of r. 93. The Commission 'having been satisfied that the inspection, as prayed for by the appellant, is necessary to further the ends of justice without, at the same time, violating the secrecy of the ballot' directed the District Election Officer of Sangrur District to open the sealed box of votes polled in favour of the candidates in respect of 86-Dhuri Assembly Constituency, a segment of 12-Sangrur parliamentary constituency, and the packets containing the rejected votes of the Sangrur Parliamentary Constituency and permit the appellant to inspect them. However, this operation was not gone through since the High Court, when moved by writ petition, stayed the order of the Commission; and, thereafter, a regular election petition was filed where the whole focus was turned on the issue of recount. The various grounds warranting a recount put forward by the petitioner were duly denied by the 1st respondent. The limited recount of one of the segments of the Parliamentary constituency, namely, Sherpur, was allowed by the High Court and affirmed by a consent order by this Court, amplifying the recount to cover the votes of both the contestents. This revealed some errors but did not produce the desired result of tilting the scales and the petitioner pressed for a wholesale recount alleging serious infirmities which we will presently refer to.

The petitioner has set out as full a statement as he could of the material facts and particulars on which he relied in his election petition. The prejudicial features about the telling process were both general and segmantwise. Let us take a look at them. The Akali Dal was the ruling party and the subordinate services had pressed militantly for increased dearness allowance and the State Government is alleged to have rejected the plea even for interim relief, with alleged hostile repercussions :

> "The hostile attitude of the Subordinate Services Federation and its employees against the Punjab Government and the ruling party of which the Petitioner was a candidate had prompted the counting assistants and the counting supervisors at different stations to act malafidely, arbitrarily and discriminately in the scrutiny, counting and bundling of the votes at the different centres and it was for this reason that whereas the Petitioner had received a majority of votes but in the counting of the votes which was done in an unfair, uniust, illegal and malafide manner, the Returning Officer, Shri C. D. Cheema, declared respondent No. 1 elected though in fact he had not secured majority of votes.

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Prompted by the same animus,

> "the counting agents of the petitioner were not allowed any opportunity to inspect and note the serial numbers of the ballot papers which had been either illegally rejected though in fact polled in favour of the petitioner or wrongfully accepted and counted in favour of the returned candidate. This request of the counting agents of the petitioner was turned down on the plea of secrecy of votes and the counting agents were told by these assistants and other staff that they had been directed not to allow any counting agents or candidate to know or note down the serial numbers of the ballot papers."

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Admittedly, certain reforms had been made in the manner of mixing all the ballot papers and the mechanics of counting and bundling. The serial number of the ballot was no longer printed on its face but on the reverse which disabled identification of the said number by the telling agents of the candidates. These mutations in methodology were motivated by the need to secure better the secrecy of the vote, a sanctified principle of free elections, and applied to the whole country. But the petitioner was aggrieved that his men could not note the serial numbers and the new method threw hurdles in the way of proper check by the telling agents of the scrutiny of the voting papers.

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The election petitioner (vide para 9 of the petition) proceeded to particularise the prejudice he suffered, Assembly constituency-wise, and claimed that the result of the poll had been materially and adversely affected thereby. He has specified distinct and different grounds regarding the various 'segments' or Assembly constituencies and naturally he cannot telescope or mix up these distinct mischiefs or mistakes or switch grounds from one to the other. We will examine the omnibus criticisms and special complaints voiced in the petition against the background of a brooding fear of a negligible lead the 1st respondent had obtained as being possibly due to unwitting error in the considerable, continuous counting simultaneously on several tables, in environment not altogether tranquil.

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The petitioner levelled many general accusations, apart from bias of the counting staff, about the whole process of counting and has examined P.W. 5, the Returning Officer, to substantiate these infirmities. The witness did candidly admit that he did not do any 5% test-check or any other random count. Had he been faithful to the instructions in the Handbook of Instructions issued, he might have acted differently. For, the instructions contained in clause (nn) of para 17 of the Procedure for Counting given at p. 74 of the Handbook for Returning Officers, runs thus :

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> "To ensure further accuracy in the counting of votes, five per cent of the total number of bundles of valid ballot

papers of the different contesting candidates shall be counted by you. You will make your selection of this five per cent in such a manner that it contains bundles pertaining to the different contesting candidates."

P.W. 5 was unmindful of this guideline, which was a *faux pas.* While we are not disposed to direct a recount solely on the basis of this peccadillo, we stress the need for strict adherence to instructions calculated to make returns error-proof by officers concerned. Cavalier attitude or jaded indifference cannot be condoned.

The petitioner has itemised separate infirmities in regard to each segment with inventive ability and imaginary precision. But we are not inclined to attach weight to these seeming grievances in the light of P.W. 5's clear testimony that barring the requests for recount 'no complaint of any kind was voiced before me by anyone in connection with the counting of votes'. Indeed, he added: 'no complaint regarding any official was received from the Akali party during the election campaign in this constituency'. Disposed, as we are, to accept this evidence, we find no force in the petitioner's be wailing about official bias and violation of rules. One complaint which needs mention is that the counting officials declined to disclose the serial numbers of voting papers which were objected to. It is true that there is a clear departure in the present system, recently introduced, whereby serial numbers are printed on the reverse so as not to be visible on the face. This is intended to ensure secrecy of the ballot. May be that in consequence candidates who challenge illegal rejection or reception of votes may not be able to furnish the serial numbers of the ballot papers in their election petitions or elsewhere. Some rulings of this Court (see for eg. *J. B. Singh* v. *K. Behari*) (1) based on the earlier practice of printing serial numbers had indicated the need to give these numbers to persuade the Court to grant a recount. The change in the method of printing the serial numbers obviously makes it difficult to observe what is at the back of the paper and we agree that this omission cannot go against an otherwise well-grounded request for inspection of ballots by court. Judicial approach must be readjusted to the new ballot printing. But the question is, has the appellant rested his bare wish on other telling testimonial basis - None that we can discern. Nor can the reform in the numbering on the back of the ballot be a reason for recount. Several issues were struck and an enormous volume of evidence came on record around the core demand for recount and the Returning Officer, a key witness in the case, P.W. 5, was also examined. We have the additional circumstance of an application for an interim count which was allowed partially with reference to Sherpur constituency (a segment of the concerned parliamentary constituency). While many issues related to some facet or other of the flaws in the counting, the highlight of the discussion by the trial Court was around issue no. 6 :

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

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> "Is the petitioner entitled to inspection, secrutiny and recount of the ballot papers and, if so, to what extent?"

The interlocutory order really covered the crucial issue aforesaid. The court held that a case for inspection and scrutiny of votes had been made out and observed :

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> "Issue no. 6 is, accordingly, found in the petitioner's favour and the interests of justice require that the inspection and scrutiny prayed for be allowed."

Although this might appear to be widely worded, the Court has confined that scope of this recount by a cautious direction :

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> ". . since the petitioner's allegation with regard to the rejection of such votes which do not bear the prescribed signature is confined to the Sherpur Assembly constituency alone and the number of such votes is stated to be 450... I consider it expedient at this stage to inspect and scrutinise only the petitioner's rejected votes relating to that segment of the parliamentary constituency."

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As earlier noticed, on appeal to the Supreme Court, the inspection and scrutiny was widened to cover the 'rejected' ballots of both candidates.

The main ground which appealed to the High Court in making this order for a fresh inspection, scrutiny and recount of the Sherpur segment was the alleged illegal rejection of votes on the score that the signature of the Presiding Officer was absent on the ballot paper.

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The Court construed r. 56 of the rules in the light of r. 38 and took the view that the ballot paper shall not be rejected merely on the ground of such a formal defect as the accidental omission of the signature of the Presiding Officer, without the Returning Officer proceeding to consider if such defect was occasioned by the inadvertence or lapse of the Presiding Officer or the Polling Officer. This approach is sound in law and a recount was rightly undertaken. However, the

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number of totally rejected ballot papers of all the candidates when subjected to a repeated scrutiny yielded disappointing results from the point of view of the petitioner. Out of 1096 rejected ballot papers only 17 claimed by the petitioner and 7 by the 1st respondent were found faulty. One of the rejected papers of the petitioner was mutilated and its rejection was thus justified. The net result was

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that the petitioner gained 16 votes and the 1st respondent 7. The lead being only 9, proved colourless so far as the conclusion was concerned. Undaunted by the flimsy difference, the petitioner hopefully urged that the other segments of the Parliamentary constituency should be similarly put through a second inspection and recount. The basis being jejune. the learned Judge declined the request. However, the general contentions raised by the petitioner about the

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unfair counting and biased processing were examined by the High Court. Those contentions were :

> "1. The attitude of the counting staff was hostile to the petitioner and his party.

2. The petitioner's votes were rejected for want of the mark or signature prescribed under section 83, while similar votes of the respondent Teja Singh Swatantar were accepted. A

3. That the votes of the petitioner were wrongfully put in the bundles of the respondent No. 1 to inflate his count. B

4. That a number of votes marked in favour of the petitioner were rejected simply because they were smudged due to folding of ballot papers.

5. That some of the votes counted for the contesting respondent were invalid because of multiple markings while others were mutilated and the markings thereon did not clearly indicate for whom they had been cast." C

The Court negatived the charges on sound grounds and we are disposed to agree. We feel, with the learned Judge, that had there been any manipulation by the counting staff the matter would have been immediately taken to the notice of the Returning Officer and reference to it would have been made in the two applications to the Returning Officer for recount or at least in the application to the Election Commission for inspection made on March 17, 1971. Their silence really silences the grievance. Indeed, it must be stated with satisfaction that although government officials at the subordinate level have been, time and again, going on strikes, starting agitations and making demands almost everywhere in the country, hardly any serious or widespread instance of foul play has been established in their functioning in the election process over the last span of a quarter of a century. Moreover, the contention of biased behaviour of the counting staff is nailed by the revealing accuracy disclosed in the recount of the Sherpur segment and the marginal error being more or less noticed in the case of both candidates. The activist, non-partisan presence of senior officers to supervise the counting and deciding of disputes regarding the reception and rejection of votes etc., was a reassuring factor. The conclusion of the learned Judge, which meets with our assent, was expressed thus : D E F

"In view of these facts, I am of the opinion that no case has been made out for any further inspection or scrutiny of ballot papers, especially when we find that the claim of the petitioner that in Sherpur segment as many as 450 votes polled by him had been rejected solely on the ground that they did not bear the prescribed signature or the mark, but 200 similar votes were counted for the respondent, stands falsified by the scrutiny that has already been undertaken. Scrutiny of votes of the remaining segments will be nothing but a fishing or roving enquiry which is not permitted by law." G H

The general charge of hostility of subordinate government staff in counting is unproved, as already held. Even so, we must underscore

A the utmost importance of the independence, fairness and activism of the Election personnel from the Commission to the counting staff. If their discretion is sensitive to the party in power or their antipathies are inflamed during election time, the cherished parliamentary system will be the casualty. Every conscientious citizen has a public duty to desist from making reckless mud-slinging and tendentious smearing B of the men who makes the machinery, promoted by chimerical doubts, and there is cast a countervailing obligation on all who make up the election personnel to be knowledgeable, sensible, sympathetic, sensitive and stern to every candidate alike. Even seeming stiffness on chumming up or ignorant obstinacy will discredit the instrument.

In the Returning Officer's evidence (as P.W. 5) we find an obscure C reference to a telephonic call by the Prime Minister even as the counting was going on. He deposed :

> "It is correct that when the counting of postal ballot papers was going on, D. S. P. Charan Singh of the Punjab Police, who was then on duty at the gate, told me that there was a telephonic call for me. He whispered this in my ear. D I, however, asked him to say it loudly in the presence of everyone present from where that call was. He then said it was from the Prime Minister of India. As I was busy in counting I did not consider it proper to attend to the telephonic call and I refused to go to the telephone. I also did not ask anyone to receive the message meant for me. I did not instruct Shri Sher Singh, who was then the Sub-Divisional E Magistrate, Sangrur, to go and hear that telephone and I do not know whether he ever received any telephonic message."

If this were true, it was unfortunate to say the least. If it were untrue, the officer's glib-tongued testimony should have invited censure. Anyway, there is no tangible trace, anywhere in the record, even to a vague suggestion of influencing the counting by the Prime Minister. It also looks incredible especially since neither of the serious contestants is a Congress candidate. Frivolous suggestions linking persons in high office should not be allowed to be flung in court, without sound basis previously laid. The same witness has unburdened his bosom in the witness box to swear that the Education Minister of the State (the ruling party was the Akali party and his quondam Personal Assistant was the candidate in the constituency) desired to 'see' him when the G fever of election was on. P.W. 5 said on oath in cross-examination :

> "It is correct that S. Surjit Singh, P.W. 4, who was the then Education Minister, Punjab, visited Sangrur in the course of the election campaign several times. I do not know if S. Surjit Singh was camping at Sangrur on 10th, 11th or 12th of March, 1971. I, however, recollect that on the even- H ing of 11th March, 1971, the Superintendent of Police told me that S. Surjit was at his residence. The Superintendent of Police did not give me any message and merely said that S. Surjit Singh wanted to see me. I, however, could not see

him as I was busy at the time and later when I went to the residence of the Superintendent of Police, I found that S. Surjit Singh had already left."

If it is true, it is unhappy, but it has the flavour of a fiction. Further if it was true, it gave the appearance to outsiders of pressure by Ministers on the poll officers—a vice which must be condemned. If it were untrue, the officer has damned an innocent Minister.

Another fatal blow to the plea for recount of other segments pressed by the petitioner-appellant needs mention. We have already stated that the petitioner, with what would appear to be uncanny intuition, stated in para 9 of his petition, details of wrongful reception of invalid votes etc., with numerical precision and wonder of observation possible under the present system of counting only by resort to resourceful fiction or extra-sensory perception. Disingenuous averments do not promote prospects of judicial recount and will be dismissed as devices to comply with requirements suggested in some ruling or other. Counsel did press before us many citations, a few of which alone we propose to refer to, the ground covered being overlapping, the law laid down, the same, and the determining role being the judicial response to the key facts of each case. In *Jagjit Singh*(1) this Court stated :

"Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted, would not serve the purpose which s. 83(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 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."

(1) A.I.R. 1966 S.C. 774, 783.

A The law has been the same, before and after (*Ram Sewak Yadav* v. *Hussain Kamil Kidwai*(1); and *Swami Rameshwaranand* v. *Madho Ram*(2). A judicial recount is not a matter of right (*Sumitra Devi* v. *Sheo Shankar*(3) and convincing, not conclusive, specificity is of the essence.

In the light of what has been said above and with due regard to B the findings of the High Court, we are unable to grant a recount on a comprehensive scale. It is noteworthy that P.W. 5 had heard both sides on the demand for a recount. He has sworn significantly;

> "No request was, however, made to me by the petitioner or his counsel S. Gurdev Singh for check count or random count. I vehemently deny the suggestion that the order C Exhibit P.W. 5/b.1 was not dictated in open soon after the announcement of the verbal order rejecting the application for recount. While arguing the application for recount the petitioner's counsel said that the recount may be confined only to the votes relating to Dhuri Assembly constituency and his request for recount of the remaining votes may be ignored."

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Even in the application to the Election Commission the plea for inspection of the used ballot papers is primarily confined to Dhuri Assembly segment and the rejected ballots of other assembly segments. Thus it is a fair inference to draw that the grievance centred round the Dhuri segment. In regard to that plea, the averment in para 9(a) gives details including figures, absence of seal and other irregularities E like multiple marking and voting. Not a scintilla of evidence on which a court could act is present on the record prima facie to prove what has been alleged. Therefore the refusal of recount was not improper.

This case has made us reflect anxiously on the dichotomy in the matter of recount between the counting station and the court hall. We think it necessary to elucidate the legal lines to be drawn at the F two stages, as this is a fit case which calls for such demarcation.

The largest democracy in the world, India, naturally has the most numerous electorate for a territorial constituency. Several thousands to a few lakhs of ballots for a constituency are polled and have to be inspected and counted in a rapid process; computers and like electronic devices which achieve in a twinkle what manual eyes and G hands take long hours to perform are denied to us due to underdevelopment and indigence. But we have human resources in abundance, to sort out, bundle up, count, check, scrutinize and so on. Our poll finale relies on human power, and judging by the millions of votes which have passed through the assembly-line processes of mixing, bundling, scrutinising, counting and rebundling—what with mammoth numbers and continuous work—the errors are microscopic. This H tribute to Indian ability goes to the lesser level staff—the clerks and

(1) (1964) 6 SCR 238; (2) 40 E.L.R. 281.
(3) A.I.R. 1973 S.C. 215.

teachers, say—who bear the mechanical brunt of the Himalayan labours. When colossal heaps of votes are processed, the tellers may make chance mistakes. Even computers are not totally error-proof and, to err is human, physically fatigued and brain-fagged as they may be occasionally. Scrutiny by vigilant officials and test-checks may be good but jaded spirits cause slips. Complacent assumption of perfection, when the operation is gigantic, is a frailty of abdurate minds. That is why realism has induced r.63 and issuance of instructions to returning officers, rooted in practical wisdom. Given lively realism and imaginative understanding in the Returning Officers, many honestly sceptical and legitimately suspicious candidates who have lost the election may be stilled in their doubt by a recount, and the winner, after all, has no vested interest in error and cannot reasonably object. Such is the interpretative perspective r.63 which has wrongly been lost sight of by P.W. 5, the Returning Officer, in the present case.

We frown upon frivolous and unreasonable refusals of recount by Returning Officers who forget the mandate of r.63 that allowance of recount is not the exception and refusal is restricted to cases where the demand itself is 'frivolous' or 'unreasonable'. These are strong words. The circumstances of each case decide. Where the margin of difference is minimal, the claim for a fresh count cannot be summarily brushed aside as futile or trumpery. If, as in this case, for the Sherpur segment, a uniform view, founded in legal error, has led to wrong rejection of votes, rectification by a recount on the spot, when a demand is made, would have been reasonable. If formal defects had been misconstrued at some table as substantial infirmities, or vice versa, resulting in wrongful reception or rejection, the sooner it was set right the better, especially when a plea for a second inspection had been made on the spot. Many practical circumstances or legal misconceptions might honestly affect the legal or arithmetical accuracy of the result and prestige or fatigue should not inhibit a fresh, may be partial, check. Of course, baseless or concocted claims for recount or fabricated grounds for inspection or specious complaints of mistakes in counting when the gap is huge are obvious cases of frivolous and unreasonable demands for recount. Malafide aspersions on counting staff or false and untenable objections regarding validity of votes also fall under the same category. We mean to be illustrative, not exhaustive, but underline the need, in appropriate cases, to be reasonably liberal in re-check and re-count by Returning, Officers. After all, fairness at the polls must not only be manifest but misgivings about the process must be erased at the earliest. Indeed, the Instructions to Officers are fairly clear and lay down sound guidelines.

Judicial power to direct inspection and recount is undoubted but will be exercised sparingly. In a recent decision *Chanda Singh* v. *Choudhary Shiv Ram Verma*(1) this Court observed :

> "A certain amount of stability in the electoral process is essential. If the counting of the ballots is interfered with by too frequent and flippant recounts by courts a new threat

(1) Civil Appeal No. 1185 of 1973, decided on 20-12-1974;

A to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only a few hundred votes as here, to ask B for a recount Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declared returns, unless the Court restricts recourse to recount to cases of genuine apprehension of miscount or illelgality or other compul- C sions of justice necessitating such a drastic step."

This implies no break from the liberal stance we have indicated for Returning Officers. Election petitions come to Court after a month and a half and ripen for trial months later and then the appeal, statutorily vested, inevitably follows. In this Operation Litigation, which is necessarily protracted, liberal recount or lax re-inspection of votes D may create belated uncertainties, false hopes and a hovering sense of suspense, long after elections are over, governments formed and legislatures begin to function. Moreover, while a recount, within the counting station, with the entire machinery familiar with the process still available at hand and operational, is one thing, a reinspection and recount, which is an elaborate undertaking with mechanics and machinery of a specialised nature and which cannot be judicially E brought into existence without an amount of time, toil and expense is a different thing. This Court has laid down clear principles on the subject, meeting the ends of justice, but, without opening the floodgates of recounts on flimsy grounds. Less election litigation is a sign of the people's adult franchise maturity and adventurist election petitions are an infantile disease to be suppressed. Our view of r.63, the relevant wholesome instructions by the Commission and the rulings F of this Court, harmonise with the overall considerations of law and democracy.

Coming to the facts of this case, we have already indicated that no good grounds for a Court order for inspection and recount, particularly after the Sherpur experiment, exist. Although we are free to admit that an imaginative Returning Officer might have quietened G the qualms and silenced the scepticism of the appellant by a test check or partial recount, proceeding to a full recount if serious errors were found, we are inclined to agree with the High Court, there being no reason to reverse its elaborately discussed conclusions, and the relief of recount was rightly rejected. Necessarily, no foundation for a declaration in the appellant's favour has been laid and so we dismiss the appeal but, in the circumstances, without costs.

H

Appeal dismissed.

V.P.S.