

HARI RAM

v.

HIRA SINGH & ORS.

November 25, 1983

[S. MURTAZA FAZAL ALI, O. CHINNAPPA REDDY,
AND E.S. VERNKATARAMIAH, JJ.]

Election Law—Secrecy and Sacrosanct nature and maintenances thereof—In an election petition, whether a court, on an interlocutory application pass an order directing the Returning Officer to produce the marked electoral Rolls for inspection and allow the election petitioner to inspect the counterfoils—Conduct of Election Rules, 1961, Rule 93 read with Section 165 of the Evidence Act.

In the election held for the Metropolitan Council from the Narela Constituency, the appellant Hari Ram secured 12,369 votes and was declared elected. The respondent Hira Singh who secured 12,131 votes filed an election petition before the Delhi High Court making a number of allegations against the appellant. He preferred an interlocutory application praying for a direction to the Returning Officer to produce the marked electoral rolls for inspection and also for allowing inspection of the counter-foils. The High Court granted both the prayers and hence this appeal.

Allowing the appeal, the Court

HELD : 1.1 Before allowing the prayers at an interlocutory stage, the High Court must examine whether proper foundation was laid for inspection and sufficient materials placed before it and pass an order which would result in adversely affecting the secrecy and sacrosanct nature of the electoral process. Inspection of ballot papers and counterfoils should be allowed very sparingly and only when it is absolutely essential to determine the issue. In the garb of seeking inspection, the defeated candidate should not be allowed to make a roving inquiry in order to fish out materials to set aside the election.

[934 A-C]

Bhabhi v. Sheo Govind and Ors., [1975] Supl.] SCR 202, followed.

1.2 The approach of the High Court, in the instant case, at the very outset was legally incorrect. It was under a wrong impression that it had ample powers to direct production of any document under Section 165 of the Indian Evidence Act and over-looked the fact that the Representation of People Act was a special Act and provisions of the Evidence Act or the Code of Civil Procedure would only apply where they are not excluded. [935 D-E]

2.1 A perusal of Rule 93 of the Conduct of Election Rules, 1961 clearly shows that the Legislature intended to make a clear distinction between

one set of documents and another. So far as the counterfoils and the marked copy of the electoral rolls were concerned, there was a strict prohibition for opening these documents unless the court was fully satisfied, that a cost iron case was made out for the same; whereas documents mentioned in clauses (a) and (b) of Sub Rule (2) of Rule 93 (as amended) could be liberally allowed to be inspected. [1937 D-E]

Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors., [1964] 6 SCR 238; applied.

2.2. In the instant case, the attempt of the respondent petitioner for inspecting marked electoral role by making vague allegations was nothing but to fish out material for challenging the election of the appellant and it clearly violated the sanctity and secrecy of the electoral process. [1937 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10062 & 10063 of 1983.

Appeals by Special leave from the Judgment and Order dated the 8th September & 19th September, 1983 of the Delhi High Court in Election Petition No. 2/83.

F. S. Nariman, S. P. Pandey and N. N. Agarwal for the Appellant.

S. N. Marhwa and K. C. Dua for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. By an Order dated 15th November, 1983 we had allowed the appeal of the appellant and set aside the order of the High Court without making any order as to costs. This election appeal arises out of an interlocutory by order passed by the Delhi High Court on an application given by the respondent for directing the Returning Officer to produce the marked electoral rolls for inspection. The Court also granted further prayer of the respondent for allowing inspection of the counterfoils. The High Court granted both the prayers and hence this appeal.

The appeal arises out of the election held for the Metropolitan Council from the Narela Constituency. As a result of the poll the appellant Hari Ram secured 12369 votes and Hira Singh (respondent) 12131 votes. Thus the appellant was declared elected. The respondent-petitioner had made a number of allegations against the appellant but in the present appeal we are only concerned with the interlocutory prayer made by the respondent for inspection of marked electoral rolls and the counterfoils.

A In support of the appeal, Mr. Nariman submitted that the High Court gravely erred in allowing the prayers at the interlocutory stage without examining whether proper foundation was laid for inspection and sufficient material placed before the Court in order to allow the prayer which would result in adversely affecting the secrecy and sacrosanct nature of the electoral process. In our opinion, B the contention of the appellant is well founded and must prevail.

C It is now well settled by a long course of decisions of this Court that inspection of ballot papers and counterfoils should be allowed very sparingly and only when it is absolutely essential to determine the issue. This Court has further laid down that in the garb of seeking inspection the defeated candidate should not be allowed to make a roving inquiry in order to fish out materials to set aside the election. In the case of *Bhabhi v. Sheo Govind & Ors.*⁽¹⁾ this Court clearly observed thus:—

D “Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a Court can grant inspection, or for that matter sample inspection, of the ballot papers :

E (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

F (2) That before inspection is allowed the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

... ..

G (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish (out) materials for declaring the election to be void; and H

(1) [1975] Suppl. S.C.R. 202.

- (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the *prima facie* satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.”

After going through the judgment of the High Court and the application of the respondent-petitioner for inspection of the documents concerned, we are satisfied that no case for inspection was at all made out and the the High Court erred in allowing the prayers of the respondent and acted against the settled principles as extracted above.

To begin with, the High Court seems to have been under the impression that the Court had ample powers to direct production of any document under section 165 of the Indian Evidence Act. In doing so with due deference, the High Court overlooked that the Representation of People Act was a special Act and provisions of the Evidence Act or the Code of Civil Procedure would only apply where they are not excluded. Thus, at the very outset, with due respect, the approach of the High Court was legally incorrect. Furthermore, in the case of *Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors.*⁽¹⁾ this Court while interpreting the provisions of Rule 93 of the Conduct of Election Rules, 1961 framed under the Act, made the following observations:—

By rule 93 of the Conduct of Election Rules, 1961, it is provided that:

“(1) While in the custody of the returning officer—

- (a) the packets of unused ballot papers;
- (b) the packets of used ballot papers whether valid, tendered or rejected;
- (c) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of section 152; and

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

- A (d) the packets of the declarations by electors and the attestation of their signatures;

shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court or tribunal.

- B (2) All other papers relating to the election shall be open to public inspection subject to such conditions and to the payment of such fee, if any, as the Election Commission may direct.

- C (3) Copies of the returns by the returning officer forwarded under rule 64 or as the case may be under sub-rule (3) of rule 84 shall be furnished by the chief electoral officer of the State concerned on payment of a fee of two rupees for each such copy.

D The rule makes a clear distinction between ballot papers and other election papers; ballot papers may be inspected only under the order of a competent court or tribunal, but other documents are, subject to certain conditions, open to public inspection."

E The Court further observed :

F "The Returning Officer is not a party to an election petition, and an order for production of the ballot papers cannot be made under O.11 Code of Civil Procedure. But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interests of justice demand it, the Tribunal may call upon the Returning Officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers...

G An order for inspection may not be granted as a matter of course: having regard to the insistence upon the secrecy of the ballot papers, Court would be justified in granting an order for inspection provided two conditions are fulfilled:

- (i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and
- (ii) the Tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

An order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts."

A perusal of this rule clearly shows that the Legislature intended to make a clear distinction between one set of documents and another. So far as the counterfoils and the market copy of the electoral rolls were concerned, there was a strict prohibition for opening these documents unless the Court was fully satisfied that a cast-iron case was made out for the same; whereas documents mentioned in clauses (a) & (b) of sub-rule 2 of Rule 93 (as amended) could be liberally allowed to be inspected.

We are afraid that the High Court has not kept these principles in view while allowing the prayers of the respondent. The main ground put forward by the respondent was that there were a number of dead persons for whom also votes were cast. Despite this allegation no details and particulars were given nor was it even mentioned whether the Polling Agent of the respondent had made any note of the fact that votes were actually cast for dead persons and the number of these votes. The allegations made by the respondent-petitioner in his application for inspection are frightfully vague. There is no allegation as to whether any vote was cast for the dead persons and this is what the respondent sought to find out by inspecting the marked electoral rolls. It is manifest that this attempt of the respondent was nothing but to fish out the material for challenging the election of the appellant and it clearly violated the sanctity and secrecy of the electoral process. Thus, the High Court was clearly wrong in allowing such prayers for inspection. As far as the inspection of counterfoils, was concerned, even the respondent did not press for the same realising that he had not made out any strong case for such an action.

A For the reasons given above, we, therefore, allow the appeal and set aside the order of the High Court dated 19th September, 1983 and reject the prayers for inspection of marked rolls and counterfoils. There will be no order as to costs.

S.R.

Appeal allowed