

Shuhil Kumar Sanghi
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either the investigation or approach the Tribunal as he has done. The learned counsel is of the opinion that both the Inspectors must have acted in unison and as a body. This is obviously incorrect, for there would be no point in empowering them to carry out the investigation jointly and severally if every time they are compelled to act jointly. The object of thus appointing two Inspectors with power to conduct the investigation jointly and severally is apparent that each one of the Inspectors may be able to carry on a part of the investigation by himself on a particular aspect of the affairs of the company. So that nothing turns upon this argument.

There were, as stated, a number of other arguments before the Tribunal, none of which has been urged at the hearing here, and all the arguments that have been urged have been found to be unsound and unsupportable. This appeal fails and is dismissed with costs.

Falshaw, C. J.

D. FALSHAW, C.J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before S. B. Kapoor and I. D. Dua, JJ.

NIRMAL SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Merit No. 2623 of 1964

1965

 February. 22rd.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 13-O—Panchayat election—Improper reception of a vote or non-compliance with the provisions of the Act or the Rules—Whether sufficient for setting aside an election—Punjab Gram Panchayat Election Rules (1960)—Rules 16 and 34(b)—Non-compliance of a direction under Rule 16—Whether vitiates election—Official mark to be placed on ballot-papers not conveyed to Presiding Officer—Ballot-papers issued and votes cast without official mark—Whether improper and election liable to be set aside—Election—petition—Nature of—Authority trying an election petition—Duties of—Constitution of India (1950)—Article 226—Jurisdiction of the High Court under—Nature of—Finding of fact—Whether can be interferred with.

Held, that under section 13-O of the Punjab Gram Panchayat Act neither improper reception of a vote or reception of a void vote nor any non-compliance with the provisions of the Act or of the Rules necessarily, by itself and without more, entails the consequence of setting aside of the election of the elected persons. To entail such a consequence there must, in addition, be a finding that the result of the election, in so far as it concerns an elected person, has been materially affected.

Held, that a direction contemplated in Rule 16 of the Punjab Gram Panchayat Election Rules which may or may not be issued by the Director, is not intended to be fundamental or basic, with the result that the marking of ballot-papers with the official mark mentioned in the rule cannot be accorded the vitality of an essential condition precedent to the validity of the ballot-papers irrespective of consequence, and an election held on the basis of unmarked ballot-papers cannot by itself without more be held to be so basically or fundamentally illegal and contrary to the rules that it must automatically be set aside. Where a direction under the Rule has actually been issued and conveyed to a Presiding Officer, but for some reason he does not mark the ballot-papers with an official mark and the election is held on the basis of the unmarked ballot-papers without objection, the election cannot be set aside on this ground alone, unless it is proved that this non-compliance with the provisions of Rule 16 has materially affected the result of the election in so far as it concerns the elected person. Rule 34(b) is merely a direction to Returning Officer to reject a ballot-paper which does not contain the official mark as contemplated by Rule 16 where a direction under that rule has actually been given.

Held, that an election petition is not an action at law or a suit in equity. It is purely a statutory proceeding and the power and jurisdiction of the prescribed authority trying an election petition is circumscribed within the limits which the law imposes on it for this purpose. The authority is expected to abide by the law of pleadings and has no power arbitrarily to travel outside the pleas. It possesses no general power of superintendence over the election which the statute creating it does not confer on it either expressly or by necessary intendment. He must come to a positive conclusion on the pleadings and the material on the record that on account of non-compliance with the provisions of the Act or the Rules, the result of the election, is so far as it concerns the elected person, has been materially affected and not that "there can be a material doubt caused with regard to the genuineness of the votes." Setting aside an election is a serious matter involving as it does, expense to the State and to the candidates; and where an election has not been secured by corrupt or illegal practices, an innocent non-compliance

with a rule which is not basic and fundamental, not materially affected the result of the election should not be considered sufficient for setting aside an otherwise lawful election.

Held, that writ jurisdiction is not appellate jurisdiction and it is not possible for the High Court on writ side to appraise or evaluate evidence for itself. No doubt there exists the "substantial evidence" rule of American Administrative law in which decisions may be reviewable to discover whether or not they are based on substantial evidence. English law, however, does not seem so far to have developed any counterpart of this rule. According to binding judicial precedents in India, a decision may be reviewable if it is based on no evidence because in that event, the decision can be construed to have been very likely given upon wrong legal grounds or upon irrelevant considerations which implies legal infirmity properly attracting High Court's jurisdiction. But then, unless the challenge to an impugned decision can establish that it is based on no evidence or has been given upon irrelevant considerations, the writ Court would normally feel bound by the conclusion on facts arrived at in the impugned order, however, erroneous on merits it may be considered to be.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 3, dated 11th November, 1963.

A. S. SIRHADI AND S. S. DHINGRA, ADVOCATES, for the Petitioner.

D. N. AGGARWAL AND G. R. MAJITHIA, ADVOCATES, for the Respondents.

ORDER.

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DUA, J.—This petition under Articles 226 and 227 of the Constitution is directed against the order of Shri Y. P. Raheja, Magistrate, 1st Class, Hoshiarpur, and Illaqa Magistrate, for Police Station Hariana, dated 11th November, 1964, setting aside the petitioner's election as Sarpanch of Gram Panchayat Bulhowal. The election had been held on 6th January, 1964, in which Nirmal Singh had defeated Jacob Naru by a margin of 14 votes. The election petition presented by Jacob Naru, the defeated candidate, contained a number of allegations giving rise to nearly 11 issues for trial, but the controversy in the present proceedings centres round only issue No. 10 which is in the following terms:—

“Was the Presiding Officer required to put any special mark or seal on the ballot-papers and what is the effect of non-compliance of this?”

In the order on issue No. 10, the prescribed authority relying on the testimony of A.W. 8 Man Singh, observed that the instructions issued by the Director of Panchayats contained in Exhibit P.W. 8/A, were conveyed to all the Presiding Officers before the election had been held but the Presiding Officer had apparently not applied his mind properly to these instructions which were conveyed in a meeting held under the aegis of the District Development and Panchayat Officer, Hoshiarpur. In the opinion of the prescribed authority, once such directions were issued, it became imperative on the part of the Presiding Officer to put his official mark according to Rule 34 of the Gram Panchayat Election Rules (1960) (hereinafter called the Rules). Non-compliance with those instructions, therefore, invalidated all the votes polled. After referring to a decision of the Supreme Court reported as *Hari Vishnu Kamath v. Ahmad Ishaque* (1) the prescribed authority proceeded to observe that in the absence of adequate official mark, there was every possibility of wrong votes having been polled and this possibility could materially affect the result of the election. In order, therefore, to give an impression of fair election to all the parties concerned, in the opinion of the authority, the instructions must be strictly followed, for otherwise it may result in injustice to one of the parties.

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The learned counsel for the petitioners has strongly urged that the view taken by the prescribed authority is contrary to law. Our attention has been drawn to a recent decision of D. K. Mahajan, J., in *Sultan Singh v. Man Singh* (2), that the direction to mark the ballot-paper as contained in Rule 16 is not mandatory and it is open to the Director to give such a direction or to desist from doing so. If may, however, be pointed out that in the reported case no direction had been issued under Rule 16, and indeed on behalf of respondent No. 5, it has been contended with a certain amount of force that in the case in hand the prescribed authority has come to a finding that such a direction was in fact issued, with the result that non-compliance with the direction actually issued would take the case out of the *ratio decidendi* of the reported decision. It is further pointed out by the respondent, that according to Mahajan, J., also, once a direction is given under Rule 16, then a

(1) 10 E.L.R. 216.

(2) 1965 Current Law Journal 140 (Punjab).

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ballot-paper which does not bear the mark required by this rule has to be rejected under Rule 34(b). Rule 34(b), according to the respondent's contention, both in form and substance, gives a mandate which is peremptory and it is not open to the Returning Officer to accept a ballot-paper which does not contain the official mark in accordance with the direction.

It is necessary at this stage to reproduce Rules 16 and 34(b):—

“Official mark.

16. The Director may direct that before any ballot-paper is delivered to a voter at a polling station, it shall be marked with such official mark as may be specified by him in this behalf and the official mark so specified shall be kept secret.

Rejection of
ballot-papers

34. A ballot-paper contained in a ballot-box shall be rejected, if—
- (a) * * * *
- (b) in the case, where a direction has been issued under rule 16, that the ballot-paper shall contain an official mark it does not contain an official mark.”.

The Director in rule 16 means the Director of Panchayats appointed under the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act),—*vide* section 3(e). Rule 34, looking at the scheme of the Rules, clearly refers to the obligation of the Returning Officer when votes are polled. Apparently it has nothing to do with the election petitions or the grounds on which an election has to be set aside. I may here appropriately point out that as a result of a decision of this Court the Act was amended in 1962, and Chapter II-A was added providing specifically for procedure on the subject of presentation and trial of election petitions. Sections 13-A to 13-U were, as a result of this amendment, added to the Act. Section 101 was also suitably amended.

In the Rules, a consequential amendment was made, *inter alia*, in Rules 42 and 43. Section 13-D providing for contents of election petitions lays down that an election petition shall contain concise statement of the material facts on which the petitioner relies and section 13-0 sets out the grounds for setting aside elections. Ignoring what is not relevant for our present purpose, section 13-0 provides that if the prescribed authority is of the opinion that the result of the election in so far as it concerns the elected person has been materially affected—

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- (i) * * * * *
- (ii) by the improper reception, refusal or rejections of any vote or the reception of any vote which is void; or
- (iii) by any non-compliance with the provisions of this Act or of any rules made under this Act;

the prescribed authority shall set aside the election of the elected person. It is noteworthy that under this section neither improper reception of a vote or reception of a void vote nor any non-compliance with the provisions of the Act or of the Rules necessarily, by itself and without more, entails the consequence of setting aside of the election of the elected persons. To entail such a consequence there must, in addition, be a finding that the result of the election, in so far as it concerns an elected person has been materially affected. This position does not seem to admit of any doubt or controversy. The respondent's counsel has naturally, therefore, contended that under Rule 34(b), if all the votes polled must necessarily be liable to rejection, then apparently the result of the election in so far as it concerned an elected person cannot but be held to have been materially affected. Emphasis has been laid on behalf of the respondent on the fact that the prescribed authority has come to a conclusion that the instructions issued by the Director of Panchayats contained in Exhibit P.W. 8/A were conveyed to all the Presiding Officers before the election was held and that the Presiding Officer in the case in hand did not seem to apply his mind properly to those instructions which were conveyed in a meeting, held under the aegis of the District Development and Panchayat Officer. This conclusion is based on the testimony of Man Singh

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and, according to the respondents, is not open to challenge in writ proceedings. Our attention has been drawn to the document A.W. 8/A, which contains, *inter alia*, a direction by Shri Net Ram, Director of Panchayats, that "before any ballot-paper is delivered to a voter at a polling station it shall be marked with presiding officer's seal and this official mark shall be kept secret."

The petitioners' learned counsel has in refuting the respondent's argument strongly urged that this conclusion is tainted with an error of law on the face of the record because Man Singh's statement has been misread, and further because other evidence, particularly of Master Dharam Singh, A.W. 6, who was the Presiding Officer in the election in dispute, has not been adverted to by the prescribed authority. It has been stressed that according to Rule 16, the official mark had to be specified and merely saying that the ballot-paper shall be marked with the Presiding Officer's seal without specifying with precision what that seal is, and indeed without supplying the required seal to the Presiding Officer, does not amount to specification of the official mark within the contemplation of Rule 16. There is, according to the submission, no legal direction as postulated by Rule 16. The contention is elaborated by submitting that no Presiding Officer could be expected at his own cost to provide himself with a seal for this purpose.

After devoting my serious consideration to the arguments addressed at the bar and going through the record with care, I feel no hesitation in allowing the writ petition. I, however, do not agree as at present advised, that the impugned order can be set aside on the argument that Man Singh's statement has been misread. This witness who is the Head Clerk, D.D. & P.O., has sworn that he had himself explained the instructions received from the Director to the Presiding Officer at the time of rehearsal. He has also deposed that on the last day after the rehearsal, he had noted on the letter from the Director (Exhibit A.W. 8/A) that the instructions had been explained. The writing marked Exhibit A.W. 8/A 1, has been proved by him to be in his handwriting, and according to his testimony, it also bears the signatures of the D.D. & P.O. The petitioners' learned counsel has argued

that the document on the record does not bear the signatures of the D.D. & P.O., and it is strongly urged that Man Singh, is for this reason not telling the truth. It is emphasised that Man Singh had really added this endorsement afterwards so that no blame may come to him for non-compliance with the direction and that the suggestion made to him to that effect during cross-examination has been falsely denied by him. On the other hand, the respondent's counsel has submitted that the document on the record is merely a copy of the letter from the Director and is not the original letter, as is clear from the examination-in-chief of the Head Clerk. In view of these rival contentions, I do feel that it would have been far better and more appropriate for the prescribed authority to have noted on the record that the original document had been returned to the witness after persual and a true copy retained. However, on the existing record, I am inclined to think that had the original document not borne on it the signatures of the D.D. & P.O., I have little doubt that the counsel cross-examining Man Singh would or at least should have drawn his attention to this fact in order to controvert the assertion that Exhibit A.W. 8/A 1, bore the said officer's signatures which were affixed on the spot on the last day of the rehearsal. The criticism that the order of the prescribed authority is open to challenge on the ground that the evidence of Master Dharam Singh, the Presiding Officer, has not been adverted to while deciding issue No. 10 is also not easy to sustain. That the prescribed authority was aware of the testimony of Dharam Singh is clear because his statement, so far as relevant, has actually been reproduced in the order. Writ jurisdiction, I may repeat, is not appellate jurisdiction and it may not be possible for this Court on writ side to appraise or evaluate the evidence for itself. I am not unmindful of the existence of the "substantial evidence" rule of American administrative law in which decisions may be reviewable to discover whether or not they are based on substantial evidence. English law, however, does not seem so far to have developed any counterpart of this rule. According to binding judicial precedents in this country, a decision may be reviewable if it is based on no evidence because in that event, the decision can be construed to have been very likely given upon wrong legal grounds or upon irrelevant considerations which implies legal infirmity properly attracting this'

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Court's writ jurisdiction. But then, unless the challenge to an impugned decision can establish that it is based on no evidence or has been given upon irrelevant considerations the writ Court would normally feel bound by the conclusion on fact arrived at in the impugned order, however, erroneous on merits it may be considered to be.

Proceeding, therefore, on the assumption that the directions in Exhibit A.W. 8/A, were read out to the Presiding Officer during rehearsal, I have next to see whether the impugned order is liable to be quashed and set aside on other legal infirmities pressed. The correctness of the decision of Mahajan, J., in *Sultan Singh's case* has not been questioned before me. It must, therefore, be assumed that the direction contemplated in Rule 16, which may or may not be issued by the Director, is not intended to be fundamental or basic, with the result that the marking of ballot-papers with the official mark mentioned in the rule can not be accorded the vitality of an essential condition precedent to the validity of the ballot papers irrespective of consequences, and an election held on the basis of unmarked ballot-papers cannot by itself without more be held to be so basically or fundamentally illegal and contrary to the rules that it must automatically be set aside. The question naturally arises; where after a direction contemplated by Rule 16 has been actually issued and conveyed to a Presiding Officer, but for some reason he does not mark the ballot-papers with an official mark and the election is held on the basis of unmarked ballot-papers without any objection, can such election be set aside by the prescribed authority on this ground alone? It must be remembered that an election petition is not an action at law or a suit in equity. It is purely a statutory proceeding and the power and jurisdiction of the prescribed authority trying an election petition is circumscribed within the limits which the law imposes on it for this purpose. The authority is expected to abide by the law of pleadings and has no power arbitrarily to, travel outside the pleas. It possesses no general power of superintendence over the election which the statute creating it does not confer on it either expressly or by necessary intendment. As noticed earlier, an election petition has to contain concise statement of material facts on which the election petitioner relies. In

the election petition before us, an objection relating to non-compliance with Rule 16 is contained in paragraph 4 (o) (vii), which so far as relevant reads as follows:—

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“4 (e) That on 6th January, 1964, the following corrupt practices, personations, irregularities and illegalities have been committed by Shri Nirmal Singh, his agents with his active support and consent at Bulhowal:

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* * * * *

(vii) There was no official mark on the ballot-papers, as required by rule 16 and, this created a chaos; for instance two *shanakhti parchis* were found in the petitioner's box.”

It is clear that the only grievance urged in the election petition was that as a result of failure to mark the ballot-papers with an official mark, there was a resultant chaos and this was sought to be supported by the plea that two *shanakhti parchis* were found in the petitioner's box. It is not the election petitioner's case in the election petition that the entire election was void because no ballot-papers were marked by the official mark mentioned in the direction issued by the Director under Rule 16. Nor is it his case that this had materially affected the result of the election, so far as it concerns the returned candidate. The two *shanakhti parchis* found in the petitioner's box obviously could not affect the result of election so far as the successful candidate is concerned because he had won the election by a margin of 14 votes. Indeed, the respondent's counsel has not argued that these two ballot-papers have so affected the result of the election. Rule 34(b) appears to me to be a direction merely to the Returning Officer to reject—a ballot-paper which does not contain the official mark as contemplated by Rule 16 where a direction under that rule has actually been given. It is noteworthy that in the present proceedings it is nobody's case that any objection to a ballot-paper on the ground of absence of official mark was raised at the time of polling. Had it been raised, the Returning Officer would have in the discharge of his duty specifically dealt with it, expressing his categorical opinion whether or not this direction had been given to him and if it had been so given, he would have in fairness also stated the reason for not putting the official mark on the ballot-papers before issuing them. It is, of course, not

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stated even by Man Singh, that any seal was supplied to the Presiding Officer or that the Presiding Officer was in possession of any seal which was to be considered to be the official mark within the contemplation of Rule 16. If no objection is taken to a ballot-paper at the time of polling, and in the election petition also, it is not pleaded that any vote had been improperly received or any void vote had been received, then, in my opinion, there is no occasion for attracting the operation of Rule 34(b). The plea contained in the election petition would in that case seem to me to fall within section 13-0(1)(d)(iii) which means non-compliance with the provisions of the Act or of any rules made thereunder. Now except for the allegation that on account of absence of official mark on the ballot-papers chaos had been created, there is no other plea for sustaining the ground that the result of the election in so far as it concerned the elected person had been materially affected on account of such non-compliance. The plea of chaos in the circumstances of the case would seem to be inadequate for sustaining the challenge on this ground. Both parties having indisputably polled votes under similar circumstances and no objection having been raised by any one at the time of polling to the absence of an official mark on the ballot-papers, I am unable to conclude that this non-compliance with the provisions of Rule 16 has materially affected the result of the election within the meaning of section 13-0(1)(d)(iii).

The prescribed authority has made reference to the decision of the Supreme Court in *Hari Vishnu Kamath's* case, but that decision seems to me to deal with an entirely different state of facts as also with a different provision of law. In the opinion of the prescribed authority since there could be a material doubt caused with regard to the genuineness of the votes not bearing the official mark, as directed by Rule 16, the impugned election must be set aside in order to give an impression of fair election to all the parties concerned. This, in my view is a clear error of law apparent on the face of the order. The authority trying an election petition has to come to a positive conclusion on the pleadings and the material on the record that on account of non-compliance with the provisions of the Act or the Rules, the result of the election, in so far as it concerns the elected person, has been materially affected

and not that (to reproduce the words of the prescribed authority in this case) "there can be a material doubt caused with regard to the genuineness of the votes". The prescribed authority seems to me to have misconceived its own power and functions under the law and also to have failed to fully grasp the grounds on which alone an election is liable to be set aside under the law. Setting aside an election, it must always be remembered, is a serious matter, involving as it does, expense to the State and to the candidates; and where an election has not been secured by corrupt or illegal practices, an innocent non-compliance with a rule which is not basic and fundamental, not materially affecting the result of the election should not be considered sufficient for setting aside an otherwise lawful election.

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For the foregoing reasons, this petition succeeds and allowing the same I quash the impugned order, with the result that the election petition must be held to be dismissed. The petitioners will have their costs of proceedings in this Court.

S. B. CAPOOR, J.—I agree.

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CIVIL MISCELLANEOUS

Before D. Falshaw, C. J., and Mehar Singh, J.

RADHAKRISHNA CHATURVEDY,—*Petitioner.*

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THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Civil Writ No. 685-D of 1962.

Constitution of India (1950)—Arts. 14 and 16—Recruitment to Indian Administrative Service in Rajasthan from existing services—Lists prepared for recruitment forthwith and in future—Officers in the Lists treated differently for determination of seniority—Whether can ask for quashing of the orders on the ground of discrimination—Indian Administrative Service (Regulation of Seniority) Rules (1954)—Rules 3(2), 4(2) and 5—Respective Scope of.

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March, 1st.