

Before G. C. Mital and I. S. Tiwana, JJ.

HUKAM SINGH AND ANOTHER,—*Petitioners.*

versus

THE DEPUTY COMMISSIONER, AMBALA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3368 of 1983.

August 9, 1983.

Haryana Gram Panchayat Election Rules, 1971—Rules 30(1) and 34—Election to Gram Panchayat—Acid put in a ballot box of one of the candidates—Acid not damaging ballot box—Rules 30(1) aforesaid—Whether can be attracted to the case—Polling to which such box relates—Whether to be declared void—Some of the ballots in the box damaged—Returning Officer—Whether can take recourse to Rule 34(c)—Effect of damage to ballot papers—Stated.

Held, that a reading of clause (1) of Rule 30 of the Haryana Gram Panchayat Election Rules, 1971 would show that several eventualities have been provided on the happening of which the polling to which the ballot box relates can be declared void by the Deputy Commissioner. A reading of the aforesaid rule would show that the tampering should be with the ballot box and not with the ballot papers and the tampering which was intended by the rule makers was to have direct co-relation with the ballot box. If the seal of the ballot box had been removed and ballot papers had been removed wholly or substantially, then it is a case of tampering with the ballot box justifying the order of repoll after declaring the poll as void within the meaning of 'in any way tampered with' contained in rule 30(1) of the Rules. Where, however, the ballot box is not tampered with the matter will not fall in Rule 30 of the Rules.

(Para 6).

Held, that under rule 34(c) of the Rules, the Returning Officer has the power to reject the mutilated or damaged ballot papers. On a comparative reading of Rules 30 and 34 of the Rules, the only reasonable interpretation would be that if the ballot box is taken away from the custody of the Presiding Officer or is accidentally or incidently destroyed or lost or is in any way tampered with in such a way that the election can be held void, only then rule 30 would apply but if there is tampering with the ballot papers then rule 34 would apply. The rule framers never intended that the polling should be declared void lightly. On the other hand, if there is tampering with ballot papers then that matter would be covered by

rule 34 and if inspite of rejecting some ballot papers, the candidate whose ballot papers have been destroyed, has still got the maximum number of votes, he in law, would be entitled to be declared elected. In a given case in spite of pouring in of acid or similar material, there may be no damage to the ballot papers. In another case there may be damage to very few ballot papers, damaging its corners but still giving out the intention of the voter to vote in favour of the candidate. Such damaged ballot papers will be treated valid and will be counted in favour of the candidate. There may be cases in which some ballot papers may be completely destroyed i.e., burnt due to action of acid or similar material. If the candidate in whose ballot box acid or such like material is poured in is still found to have polled highest number of votes he will deserve to be declared elected. There may yet be cases where large number of ballot papers may be completely destroyed. In that eventuality, so far as the Presiding/Returning Officer is concerned, he will count only those votes which are in order and cannot be rejected under Rule 34 of the Rules and in case after excluding the rejected or completely burnt votes such a candidate loses in the election it will be for him to take up the matter in election petition and prove that he had in fact polled more votes than the candidate who has been declared elected and he has lost because of the mischief caused by pouring in of acid or such like material in his ballot box or boxes, as a result of which, he has been defeated. If in that case the election petitioner is able to prove to the satisfaction of the authority trying the election petition that if acid or such like material had not been poured in the box, it would have been found that he had secured the highest number of votes, then it would be open to such authority to set aside the election and pass such orders as may be deemed just and proper in accordance with law. As such if the ballot papers are damaged or destroyed, the Returning Officer can take recourse to rule 34(c) in the manner stated above and pass appropriate orders according to law.

(Paras 7 and 8).

PETITION under Article 226 of the Constitution of India praying that the following reliefs be granted :—

- (i) *a writ in the nature of a writ of certiorari be issued calling for the records of Respondents 1 and 2, relating to the impugned order dated the 9th of July, 1983, Annexure 'P-2', and after a perusal of the same, the impugned order dated 9th July, 1983 Annexure P. 2, be quashed;*
- (ii) *a direction be issued to Respondents 1 and 2 not to hold any fresh repoll with regard to booth No. 2 alone for the election of Sarpanch of the Gram Panchayat, Ugala ;*
- (iii) *any other suitable writ, direction or order that this Hon'ble Court may deem fit in the circumstances of this case be issued ;*

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- (iv) *an ad-interim order be issued restraining Respondents 1 and 2 from holding any fresh repoll with regard to Booth No. 2 alone pending the decision of this writ petition ;*
- (v) *the petitioners be exempted from serving prior notices of motion on the Respondents ; and*
- (vi) *costs of the Petition be awarded to the petitioners.*

Anand Swaroop Sr. Advocate, for the Petitioner.

Sanjeev Pabbi Advocate with him B. S. Panwar, A.A.G. Haryana,
for Respondent Nos. 1 and 2.

M. S. Liberhan Advocate, for Respondent No. 3.

JUDGMENT

Gokal Chand Mital, J.

(1) For the election of Sarpanch for Gram Panchayat Ugala, District Ambala, polling was held on 27th June, 1983 amongst three candidates, namely Hukam Singh, Gurcharan Singh and Narinder Kumar. Two separate polling booths were provided in the building of Government High School, Ugala. In each of the polling booths, three separate ballot boxes containing the name of each of the candidates were placed. After the polling was over the Returning Officer counted the votes, which were found in the two ballot boxes placed in each of the two booths regarding Gurcharan Singh candidate. Then the counting of ballot boxes of Narinder Kumar was undertaken. His ballot box relating to booth No. 1 was opened and the ballot papers contained therein were counted. When his ballot box kept in booth No. 2 was opened, it was found that acid was poured in the same, as a result of which portions of some ballot papers were destroyed. The Returning Officer stopped the proceedings at that stage and did not count the ballot papers polled in favour of Narinder Kumar relating to booth No. 2. The ballot boxes relating to the third candidate Hukam Singh were not opened and the votes polled by him were not counted. He sent the report to the Deputy Commissioner and the Deputy Commissioner by order, dated 9th July, 1983 (copy Annexure P-2) on the basis of the enquiry report submitted by the Sub-Divisional Officer (Civil), Ambala, declared the polling in booth No. 2 as invalid under rule 30(1) of the Haryana Gram Panchayat Election Rules, 1971 as

amended upto date (hereinafter called 'the Rules') and ordered that the voting of all the three candidates relating to polling in booth No. 2 should be held afresh. While doing so regarding the report of the Enquiry Officer, the following observations were made in the order:—

“According to his enquiry acid was found in the poll boxes of booth No. 2 of Shri Narinder Kumar and some portions of the ballot papers were also found burnt.”

Against the aforesaid order Hukam Singh and Gurcharan Singh filed this writ petition to impugn the action of the Deputy Commissioner, who ordered repoll of only booth No. 2, and made the following two prayers :

- (i) that fresh poll of both the booths should take place ;
- (ii) in the alternative the counting should continue and the result be declared.

(2) The third candidate Narinder Kumar also felt aggrieved with that order and filed Civil Writ Petition No. 3388/1983 in this Court and prayed for the quashing of the order of Deputy Commissioner being illegal and without jurisdiction and for issue of a direction to proceed with the counting of votes and declaration of results. Since both the writ petitions arise out of the same proceedings, they are being disposed of by this common judgment.

(3) After hearing the learned counsel for the parties we are of the view that the alternative prayer made by the petitioners in Civil Writ Petition No. 3368 of 1983 and the prayers made by the third candidate in Civil Writ Petition No. 3388 of 1983 deserves to be accepted.

(4) Before we go to interpret the rule under which power has been exercised, the facts of the case deserve to be stated. We had called for the disputed ballot box, which was produced before us during hearing. The ballot box was found to be made of iron sheet and was strong enough and was probably one of the boxes which was used for the election of the membership of Legislative Assembly or the Parliament. The same was in perfect order and was in no way tampered with. Under our orders the seal was removed and box was opened. After seeing the ballot box we found that due to pouring of little acid in the same probably through the

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hole through which ballot paper is inserted, some portions of the ballot papers were destroyed, without affecting the ballot box. The ballot box was again sealed in our presence by the Returning Officer and was ordered to be taken back alongwith other ballot boxes.

(5) Now it has to be seen whether rule 30 of the Rules would be applicable to the facts of the present case. For facility of reference rule is reproduced :

“30. Fresh poll in case of destruction of *ballot boxes*.

- (1) If at any election any ballot box or boxes is or are unlawfully taken out of the custody of the Presiding Officer or is or are in any way tampered with or is or are either accidentally or intentionally destroyed or lost, the polling to which the ballot box or boxes relate shall be liable to be declared void by the Deputy Commissioner.
- (2) Whenever the polling at any polling station or stations is liable to be declared void under sub-rule (1), the Presiding Officer, shall, as soon as practicable after the act or event causing such liability has come to his knowledge, report the matter to the Deputy Commissioner, who shall, after holding such enquiry as he deems necessary, declare such polling to be void and shall appoint a day for the taking of a fresh poll in such polling station or stations, as the case may be, and fix the hours during which the poll shall be taken, and the votes cast during the said election shall not be counted until such fresh poll shall have been completed.
- (3) The provisions of these rules shall apply to every such fresh poll as they apply to the original poll.”

(6) A reading of clause (1) would show that several eventualities have been provided on the happening of which the polling to which the ballot box relates can be declared void by the Deputy Commissioner. The only one which can be brought close to the facts of the case is regarding the tampering with the ballot box, as

the present case would not fall in any other category. Therefore, the question which arises for our consideration in this case is whether pouring in of some acid in one of the ballot boxes would amount to tampering with the ballot box of such a kind that the polling of that booth is to be declared void. After considering this matter in depth we are of the considered view that the tampering should be with ballot box and not with the ballot papers. In the present case there is no tampering whatsoever with the ballot box. Moreover, the tampering which was intended by the rule makers was to have direct co-relation with the ballot box. If the seal of the ballot box had been removed and ballot papers had been removed wholly or substantially, then it may have been a case of tampering with the ballot box justifying the order of repoll after declaring the poll as void, within the meaning of in any way tampered with, contained in rule 30(1) of the Rules.

(7) The learned counsel for Narinder Kumar has argued that rule 30 of the Rules was not applicable and on peculiar facts of this case, rule 34 of the Rules may come into operation. The precise argument was that under rule 34(c) of the Rules, the Returning Officer has the power to reject the damaged or mutilated ballot paper and this could be seen in the present case only during the counting of ballot papers in the ballot box in which acid was poured. It is further highlighted that it is an admitted case that the election under the Gram Panchayat Election Rules, is quite different from election process carried out under other elections because generally voters are provided with a ballot paper containing the names and symbols of the candidates and the voter is to mark against the name of the candidate, in whose favour he wished to vote. But in the present election of a Sarpanch, one vote is handed over to each voter and separate boxes containing names of each candidate are kept and the voter has to put the vote in the box containing the name of the candidate, in whose favour he wishes to vote. On this matter it was argued that the Returning Officer will know how many votes in booth No. 2 were found in the box of Hukam Singh and how many in the box of Gurcharan Singh. The votes cast in favour of Narinder Kumar to whom the disputed ballot box belonged could not get votes more than the remaining votes cast. Only on counting it could be found how many votes in fact were polled in his favour because it is quite possible that a voter may take ballot paper and after going in the booth may not cast vote in favour of any candidate. On this basis it was argued that on a comparative reading of Rules 30 and 34 of

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the Rules, the only reasonable interpretation would be that if the ballot box is taken away from the custody of the Presiding Officer or is accidentally or incidently destroyed or lost or is in any way tampered with in such a way that the election can be held void, only then rule 30 of the Rules will apply but if there is tampering with the ballot papers then Rule 34 of the Rules will apply. We find substance in this argument. If pouring in of a little acid or similar thing in a ballot box is held to mean that the polling can be declared void then such malpractice would be followed more oftenly. The Rule framers never intended that polling should be declared void lightly. On the other hand if there is tampering with ballot papers then that matter would be covered by Rule 34 and if inspite of rejecting some ballot papers, the candidate in whose ballot box acid or similar like materials are poured is found to have got maximum number of votes, he in law, would be entitled to be declared elected. Moreover, it is possible in a case that the Presiding Officer or the Returning Officer, as the case may be, may wrongly reject larger number of votes than necessary, or may wrongly accept votes, which may deserve to be rejected, then it would be a matter to be gone into in election petition. There is another safeguard in the election petition. Election is not to be lightly set aside for any illegality or irregularity unless it affects the result of the election. Therefore, tampering has to be with a ballot box of a kind, which may render the poll nugatory liable to be declared void. The present case even remotely does not fall within the four ingredients of rule 30(1) of the Rules, as there is no tampering with the ballot box but with ballot papers. If the case does not fall in the aforesaid rule, it will not clothe the Deputy Commissioner with powers under sub-rule (2) to order a fresh poll.

(8) In interpreting rules 30 and 34 of the Rules, we have kept the practical aspect of the matter in view. If pouring in of acid or such like material in ballot box is considered to attract Rule 30(1) of the Rules, then the Deputy Commissioner would be able to declare the polling of that booth void, whether the ballot papers are affected or not. The intention of the rule-framers was clear and what they meant by words 'in any way tampered with' was to have such an affect as would be if a ballot box is unlawfully taken out of the custody of the Presiding Officer or is accidentally or intentionally destroyed or lost. The election process is not only time consuming but is an expensive one and cannot be lightly

interfered with and on that background also rule 30 of the Rules has to be interpreted so as to promote the intended result. Keeping in view that there may be tampering with the ballot papers rule 34 of the Rules was framed which is in the following terms :—

34. *Rejection of ballot paper.*—A ballot paper contained in a ballot box shall be rejected if—

- (a) it bears any mark or writing by which the voter can be identified.
- (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 official mark ;
- (c) the Presiding or the Returning Officer, as the case may, be, is satisfied that the ballot paper is spurious or that it has been so damaged or mutilated that its identity as a genuine ballot paper cannot be established.”

In a given case in spite of pouring in of acid or similar material, there may be no damage to the ballot papers. In another case there may be damage to very few ballot papers, damaging its corners but still giving out the intention of the voter to vote in favour of the candidate. Such damaged ballot papers will be treated valid and will be counted in favour of the candidate. There may be cases in which some ballot papers may be completely destroyed i.e. burnt due to action of acid or similar material. If the candidate in whose ballot box acid or such like material is poured in is still found to have polled highest number of votes he will deserve to be declared elected. There may yet be cases where large number of ballot papers may be completely destroyed. In that eventuality, so far as the Presiding/Returning Officer is concerned, he will count only those votes which are in order and cannot be rejected under Rule 34 of the Rules and in case after excluding the rejected or completely burnt votes such a candidate loses in the election, it will be for him to take up the matter in election petition and prove that he had in fact polled more votes than the candidate who has been declared elected and he has lost because of the mischief caused by pouring in of acid

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or such like material in his ballot box or boxes, as a result of which, he has been defeated. If in that case the election petitioner is able to prove to the satisfaction of the authority trying the election petition that if acid or such like material had not been poured in the box, it would have been found that he had secured the highest number of votes, then it would be open to such authority to set aside the election and pass such orders as may be deemed just and proper in accordance with law. But it will be wholly wrong to say at the threshold at the time of counting of votes that because some acid or such like material has been poured in, in any one of the ballot boxes, the polling can be declared void under Rule 30 of the Rules. Accordingly, we find that order Annexure P2 passed by the Deputy Commissioner is wholly illegal and without jurisdiction.

(9) Even if we were to uphold the order of the Deputy Commissioner, the counsel for the petitioners in CWP No. 3368/1983 was not right in urging that repoll should be ordered in both the booths, because in view of rule 30(1) and (2) of the Rules the polling in booth, where the tampered box was found, could be declared void and repoll ordered in that booth only.

(10) One more point has been raised in C.W.P. No. 3368/1983 that the Returning Officer had wrongly accepted the nomination paper of Narinder Kumar, in spite of the objection of the petitioner that he was disqualified on account of the fact that he was in un-authorized occupation of the Panchayat Land. This raises disputed questions of fact and cannot be gone into a writ proceedings. The proper course to raise this point would be in election petition. Accordingly, we decline to go into this matter at this stage.

(11) For the reasons recorded above, both the writ petitions are allowed and the order of the Deputy Commissioner, Annexure P-2 is quashed. Direction is issued to the Returning Officer to forthwith proceed with the counting of votes from the stage, he had left and after the process is completed to declare the results in accordance with law. The parties will bear their own costs.

H.S.B.
