

Rajinder Singh and others *v.* S. Sunder Singh and others
(Shamsher Bahadur, J.)

(15) I am left with no doubt in my mind that electric energy falls within the definition of "goods" in both the Punjab as well as the Central Acts and the ground on which the application of the petitioner was rejected is erroneous. I would allow the petition and consequently quash the two impugned orders passed by Shri G. K. Bhalla, Excise and Taxation Officer, Sangrur, dated 10th of January, 1964,—*vide* Annexure D and by Shri M. L. Sondhi, Assistant Excise and Taxation Commissioner, Punjab, dated 26th of March, 1964,—*vide* Annexure F. The petitioner is entitled to be registered as a dealer under the law. The Excise and Taxation Officer, Sangrur, is directed to dispose of the application of the petitioner for registration as a dealer in the light of what has been observed above. In the circumstances, there will be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

RAJINDER SINGH AND OTHERS,—*Petitioners*

versus

S. SUNDER SINGH AND OTHERS,—*Respondents*

Civil Writ No. 1216 of 1967

May 3, 1968

Punjab Panchayat Samitis and Zila Parishad Act (III of 1961)—S. 121—Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules (1961)—Rule—3—Election of a Panchayat Samiti—Statutory irregularities committed in the conduct of the election—Prescribed authority not giving a finding that the result of the election has been materially affected by such irregularities—Election—Whether can be set aside.

Held, that Rule 3 of Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, says that the result of an election must have been materially affected or there must have been a failure of justice if there had been any breach

of any election rule. Assuming that there is breach of election rules, it is still the duty of the prescribed Authority to reach a definite conclusion that the result of the election had been materially affected. The words "the result of the election has been materially affected" indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidate as would have brought about the defeat of the returned candidate. If the election is to be set aside for breach of rules it must be shown that failure of justice has occurred or the result of the election has been materially affected. Where there is no such finding by the Prescribed Authority, the election cannot be set aside for mere statutory irregularities. [Para 10].

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other suitable writ, order or direction be issued quashing the order of Shri Sunder Singh, Deputy Commissioner, Ludhiana, dated 17th May, 1967.

H. L. SIBAL, SENIOR ADVOCATE WITH S. S. KANG, ADVOCATE, for the Petitioners.

Y. P. GANDHI, ADVOCATE, for Respondent No. 2.

JUDGMENT

SHAMSHER BAHADUR, J.—What is sought to be quashed in this petition under Articles 226/227 of the Constitution of India is the order of the Deputy Commissioner, Ludhiana passed by him as a prescribed Authority setting aside the election to the Primary Members of the Panchayat Samiti Mangat Block held on 22nd of January, 1965, in an election petition before him preferred by the second respondent, Bachan Singh.

(2) The election to the Primary Members of the Panchayat Samiti Mangat Block was held on 22nd of January, 1965 under the provisions of the Punjab Panchayat Samitis & Zila Parishads Act, 1961 (hereinafter called "the Act") and the various rules framed thereunder. In this election petitioners 1 to 10 were elected as also respondents 3 to 7 while respondents 2 and 8 to 25 were defeated. Bachan Singh, the second respondent, who was a Sarpanch of village Uppal in Mangat Block was declared defeated and he preferred an election petition under section 121 of the Act and this was heard

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by the Deputy Commissioner, Ludhiana. Under sub-section (2) of section 121 the prescribed authority may:—

“(a) if it finds, after such inquiry as it may deem necessary, that failure of justice has occurred, set aside the said election, and a fresh election shall thereupon be held;

(b) * * * * *
* * * * *

(3) Under the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules embodied in Appendix No. 6 of the Rules of 1961 the grounds on which the election can be called in question are reproduced in rule 3, these being:—

“The election of any person as a Member, Vice-Chairman or Chairman of a Panchayat Samiti * * * * * may be called in question by an elector through an election petition on the ground that such person has been guilty of a corrupt practice specified in the Schedule or has connived at, or abetted the commission of any such corrupt practice or the result of whose election has been materially affected by the breach of any law or rule for the time being in force or there has been a failure of justice.”

(4) The election was challenged broadly on four grounds. It was first alleged that out of 17 votes polled in favour of the election petitioner Bachan Singh (now respondent 2), 7 were held to be illegally invalid. So far as this ground is concerned, the Prescribed Authority found against the second respondent and concluded thus:—

“I have looked up the votes that had been rejected and found that there was sufficient ground for rejecting the votes and hence hold that there was no illegal rejection of the valid votes.”

(5) The second ground on which the election was challenged was a breach of rule to which I would briefly advert. It was stated that the ballot-box was not shown to the candidates to satisfy them that it was empty. It was neither locked nor sealed in the presence of the contesting candidates nor were they afforded opportunity to

affix their seals. The relevant rule is contained in the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961 and rule 16(2) is to this effect:—

“Immediately before the commencement of poll, the Returning Officer shall show the ballot-box to such contesting candidates as may be present to satisfy them that the ballot-box is empty. The Returning Officer shall thereafter lock the ballot-box and affix his seal as well the seal, if any, of the contesting candidates, if they so desire, upon it in such a manner as to prevent its being opened without breaking such seals.”

(6) The Returning Officer was examined and stated that the empty ballot-box was shown to the persons concerned though the note which he made to that effect was not on the file. It may be assumed in favour of the second respondent that the conclusion of the Prescribed Authority is correct that there was a breach of rule 16(2).

(7) The third ground on which the election was challenged was that the contesting candidates were not permitted to be present at the time of counting which was done in their absence. The Prescribed Authority has found that the Returning Officer though he stated that he allowed all the contesting candidates to witness the counting, had to admit that there was not enough room for all the persons who wanted to come inside. Under sub-rule (9) of rule 16 of the (Primary Members) Election Rules, the Returning Officer shall, after the voting is over, count the votes, with the aid of persons appointed under rule 15 in the presence of such contesting candidates as desire to be present, prepare statement in Form VI and declare the results in the following manner:—

“(a) * * * * *
 (b) * * * * *”

(8) It may again be assumed in favour of the second respondent that the persons who wanted to be inside the room at the time of counting — at least some of them — could not be present there and there was some breach of rule 16(9). The last ground of challenge is that the Returning Officer did not sign or affix his seal on the ballot-papers before supplying the same to the voters. The relevant

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rule is 16(3) of the (Primary Members) Election Rules, 1961 which requires that:—

“ * * * * *

The Returning Officer shall also affix on the ballot-paper, before supply to the voters, a stamp or his signature so as to indicate its authenticity.”

(9) It is the finding of the Prescribed Authority that the ballot-papers were initialled and not signed by the Returning Officer. So there was an element of breach of this rule as well.

(10) It has been very strenuously contended by Mr. Sibal that even these three statutory irregularities did not entitle the Prescribed Authority to set aside the election without a finding that the result of the election had been materially affected or a failure of justice had resulted. All that the Prescribed Authority could state and has stated is that in his opinion “some of the mandatory provisions of the election rules have not been followed and this might have resulted in injustice to some of the candidates including the petitioner”. This is a finding which is vague, uncertain and speculative. Rule 3 of (Election Petition) Rules says that the result of an election must have been materially affected or there must have been a failure of justice if there had been any breach of any election rule. Assuming in favour of the second respondent that there has been a breach of election rules it was the duty of the prescribed Authority to reach a definite conclusion that the result of the election had been materially affected. The Prescribed Authority was not certain in his own mind that injustice would positively have resulted in consequence of the breaches. It was ruled by their Lordships of the Supreme court in *Vashist Narain Sharma v. Dev Chandra and others* (1) that the words “the result of the election has been materially affected” indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned

(1) A.I.R. 1954 S.C. 513.

candidate. In the words of Mr. Justice Ghulam Hasan speaking for the Court "the language is too clear for any speculation about possibilities". The court should be able to reach the conclusion in a positive manner that the result of the election has been materially affected. The words "the failure of justice has occurred" have to be read *ejusdem generis* and it must be found that the breach of the rules has either materially affected the election or that failure of justice has actually occurred. In *Pala Singh v. Nathi Singh and others* (2) a Division Bench of this Court in construing section 121 of the Act observed that the expression "failure of justice" though, if left by itself, is vague and indefinite expression, yet in view of section 115(2) (b) of the Act and rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, it gains definite meaning in that the failure of justice means failure of justice in the wake of the provisions of rule 3 and the commission of any of the corrupt practices as given in the schedule to the said rules. So read with rule 3 the effect of section 121 of the Act is that if an election is to be set aside for breach of rules it must be shown that failure of justice has occurred or the result of the election has been materially affected. There is no finding of the Prescribed Authority that the result has been materially affected. The halting nature of the finding that there may have been some injustice cannot be equated with a finding that failure of justice in fact has resulted. In this view of the matter the order of the prescribed Authority is unsustainable and must be quashed. This petition will, therefore, be allowed and the order of setting aside the election quashed. In the circumstances of the case I will make no order as to costs.

(2) I.L.R. (1963) 1 Punj. 49—1962 P.L.R. 1110.
K.S.K.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand Pandit, JJ.

M/S. SHREE BHIWANI COTTON MILLS, LTD.,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 231 of 1968

May 22, 1968.

Punjab General Sales Tax Rules (1949)—Rules 20 & 25 and Forms S.T. VIII and S.T. VIII-A—Whether invalid and liable to be struck down.