

also said that, in any case, he may be allowed to amend his application for ejection to enable him to urge this additional ground. So far as the first branch of this argument is concerned, it is difficult to decide the question in this appeal. Whether or not the tenancy was a statutory one and, if not, whether or not it was properly terminated, will need investigation into and determination of facts, which it is not possible to do in this appeal. It is also not possible to allow amendment of the application, because, by introducing this plea, the appellant would be introducing entirely a new cause of action and the subject-matter of the dispute would also be completely changed. Even the forum for deciding the suit for possession on the above ground may be different.

Brijender Kumar  
v.  
Lachhman Das  
Kapur, J.

Mr. Mela Ram, learned counsel for the legal heirs of the tenant, impleaded as parties in this Court, relies on a compromise between the then landlord, Mohan Lal, and the tenant, exhibit R. 1, dated the 28th July, 1953. Relying on the said document, he says that the legal heirs are the direct tenants under the landlord. Since I have declined permission to the appellant to amend the plaint, it is not necessary to resolve this controversy. It would be for the parties to consider the relationship that exists between the landlord and the legal heirs at an appropriate stage in an appropriate Court.

Having regard to the circumstances, discussed above, I find no merit in the appeal, which is accordingly dismissed, but the parties will bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

DARBARA SINGH,—Petitioner

versus

THE PUNJAB STATE AND OTHERS,—Respondents

Civil Writ No. 791 of 1964.

*Punjab Gram Panchayat Election Rules (1960)—Rule 25—  
Tendered votes—Whether to be counted along with the other  
votes*

1965

December 10th.

*Held*, that the 'tendered votes' are good votes and greater sanctity attaches to them on account of the fact that the Prescribed Officer of the election booth has to satisfy himself about the identity of the electors before they are allowed to cast tendered

votes. Tendered votes have to be counted along with the other votes if the tenderer is the real voter, even though false personation is not proved. The Prescribed Authority, while deciding the election petition, must decide whether the tendered votes were genuine or not and in whose favour the non-genuine votes were cast so that the non-genuine votes are excluded from counting.

*Petition under Article 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order dated the 21st of April, 1964, of respondent No. 2.*

BALDEV SINGH, ADVOCATE, for the Petitioner.

M. R. AGNIHOTRI AND HARBHAGWAN SINGH, ADVOCATES, for the Respondents.

#### ORDER

Narula, J.

NARULA, J.—The petitioner was elected as Sarpanch of village Kartar Singh Walia, tehsil and district Bhatinda, on his having secured 155 votes against Sham Singh, respondent No. 3 who secured 154 votes. The 155 votes secured by the petitioner included two tendered votes. Sham Singh filed an election petition on the ground that the tendered votes had been legally received and taken into account in favour of the petitioner. The election petition was allowed by Shri Hari Ram, Magistrate, 1st Class, Bhatinda, the Prescribed Authority, by his order dated 21st April, 1964, in which he dealt with the point in issue in the present case in the following words:—

“It is established from the evidence on record that Darbara Singh, respondent secured 153 votes while Sham Singh, petitioner 154 votes. It is also clear from the evidence of Shri Harbans Lal, Head Clerk, Panchayat, that two tendered votes were added in favour of Darbara Singh and as such he was declared elected. It may be added here that the Presiding Officer does not seem to have applied his mind while declaring the result, because it has nowhere been laid down that tendered votes are to be counted at the time of counting the other votes. These votes are only to be kept separately and can be used at the time of election petition only. Thus it is evident that the Presiding Officer has not

counted the votes properly and it has materially effected the result. The plea of the counsel for the respondent was that, no doubt, the Presiding Officer has added two tendered votes in favour of the respondents, yet these two votes were improper votes and as they were polled in favour of Sham Singh, petitioner, they may be deducted from his votes. In that case, he only gets 152 votes and thus Darbara Singh getting 153 votes has been rightly declared elected. I am not at all in agreement with the argument of the defence counsel because there is not an iota of evidence on record that two votes polled earlier were improper. The respondents have not produced Presiding Officer to prove that while issuing tendered ballot-papers, he satisfied himself that these were two right persons who were deprived of their right to vote because some other persons polled votes in their places."

Darbara Singh  
v.  
The Punjab State  
and others  
Narula, J.

Errors of law are apparent on the face of the impugned order of the Prescribed Authority inasmuch as he has held that the tendered votes have not to be taken into account at all. The ground on which he has so held is that it is nowhere laid down that tendered votes are to be counted at the time of counting the other votes. I fail to understand what the Prescribed Authority thought of the purpose of getting tendered votes. Tendered votes are good votes and greater sanctity attaches to them on account of the fact that the Prescribed Officer of the election booth has to satisfy himself about the identity of the electors before they are allowed to cast tendered votes. Rule 25 of the Gram Panchayat Election Rules, 1960, reads as follows:—

- "25. (1) If a person representing himself to be a particular voter named in the electoral roll applies for a ballot-paper after another person has voted as such voter, he shall, after duly answering such questions as the Presiding Officer may ask, be entitled to vote, but his ballot-paper (hereinafter referred to as tendered ballot-papers which shall be in Form II), instead of being given to him for inserting

Darbara Singh  
v.  
The Punjab State  
and others

Narula, J.

in the ballot-box, shall be handed-over to the Presiding Officer who shall ask the elector to write the name of the candidate for whom he wishes to vote or if the elector is illiterate, write the name himself on the reverse of the ballot-paper and then endorse the name of the elector, his serial number in the electoral roll and the name of the village to which the rolls relate and shall place the ballot-paper in a separate packet.

- (2) The name of the voter, his serial number in the electoral roll and the name of the polling station to which the roll relates shall be entered in a list bearing the heading "tendered votes list". The person tendering such ballot-paper shall sign his name and address thereon or affix his thumb-impression against the entry in that list.
- (3) The 'tendered votes list' shall be prepared by the Presiding Officer in Form III, separately for the offices of Chairman and Panches."

It is not disputed that the tendered votes in dispute were cast under the above said rule and that they were properly entered in the prescribed form. That being so, the petitioner was entitled to have those votes counted to his credit. Tendered votes have to be counted, if the tenderer is the real voter, even though false personation is not proved.

This does not, however, mean that if the two persons who had falsely personated for the real electors, had voted for the petitioner, he would be entitled to have their votes also taken into account so as to get credit of 4 votes at the hands of two electors. In that case he would have to be deprived of those two votes. If, however, the non-genuine votes were cast in favour of the election-petitioner, his quota of votes would be reduced further by another two votes. This is a matter which the Prescribed Authority was bound to go into. Mr. B. S. Jawanda, the learned counsel for the petitioner, has asked me to open the sealed cover and to check up the fact myself. It is impossible for this Court to do the job of the

Prescribed Authority. Moreover it would be open to the election-petitioner to show that the votes cast in the name of the two disputed persons were the genuine votes and that the persons who gave the tendered votes, were not the genuine electors. The burden to prove such an allegation would of course be on the election-petitioner. This kind of an inquiry cannot be held here.

Barbara Singh  
v.  
The Punjab State  
and others  
Narula, J.

It is strange that the Prescribed Authority has observed that the tendered votes are only to be kept separately and can be used at the time of the election petition only and still he did not decide at the time of the hearing of the election petition whether those votes were cast by the genuine electors or not. This would have depended on the finding as to which of the votes cast in the name of Nihal Kaur, wife of Lal Singh, and Surjit Kaur, wife of Gurnam Singh, were the genuine votes. The Prescribed Authority will have to decide that question before finally disposing of the election petition of respondent No. 3. The election-petitioner will have to show if he so desires that the tendered votes were cast by false personation.

I find from the record of this case that a clear allegation had been made on behalf of the petitioner before the Prescribed Authority to the effect that the alleged spurious votes had been cast in favour of respondent No. 3, i.e., the election-petitioner. This is again a matter into which the Prescribed Authority can go and will have to go. If persons who cast those votes falsely personated the real voters, those votes must be excluded from consideration.

I fail to understand why the case was decided against the petitioner on the additional ground that he had not produced the Presiding Officer to prove the issuing of tendered ballot-papers. This is something which had been done by the Presiding Officer in exercise of his official functions and in the discharge of his official duties and a presumption of the thing having been done by him properly and in accordance with law arises. If any body wanted to rebut that presumption, it would have been for him to lead evidence for doing so and the petitioner could not be made to suffer for such evidence not having been produced.

Darbara Singh  
v.  
The Punjab State  
and others  
Narula, J.

This petition, therefore, succeeds and is allowed. But the parties are left to bear their own costs. The Prescribed Authority will now decide issue No. 3 on merits after examining the relevant ballot-papers in question and after taking such evidence as the parties may produce before him in accordance with law, keeping in view the observations made in this judgment.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

BHIM SEN,—Petitioner

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ No. 1630 of 1964.

1965  
December 10th

*Arms Act (LIV of 1959)—Ss. 17 and 18—Refusal to renew arms licence—Grounds on which can be made—Renewal refused on the ground that licensee gave false evidence in a case—Whether valid—Copy of the order refusing renewal—Whether to be supplied to the applicant.*

*Held*, that under section 17(3) (b) of the Arms Act, 1959, the renewal of an arms licence can be refused by the appropriate authority either in the interest of securing public peace or in the interest of public safety. The renewal of the licence cannot be refused on the ground that the applicant had given false evidence and did not support the prosecution in a criminal case. Such a ground is wholly extraneous and is not even relevant under section 17 of the Act as it is not in any manner relatable to the security of public peace.

*Held*, that a licensee, whose prayer for renewal of arms licence is declined, is ordinarily entitled as a matter of right to obtain a certified copy of the order refusing to renew his licence. Such an order is appealable under section 18 of the Arms Act and the rules require that a copy of the order under appeal should be filed with the petition of appeal.

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the orders of the respondents, and the petitioner's arms licence be restored.*

M. R. SHARMA, ADVOCATE, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL, WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.