

APPELLATE CIVIL

Before Dulat and Kapoor, JJ.

SHRI BARU RAM,—Appellant.

versus

SHRIMATI PARSANNI AND SHRI HARKESH,—Respondents.

First Appeal from Order No. 24 of 1958

*The Representation of the people Act (XLIII of 1951)
—Section 33(5)—Non-compliance of—Whether nomination
should be rejected—Production of certified copy of electoral
roll—Whether a matter of substance.*

1958

May, 13th

Held, that the requirement of sub-section (5), of section 33 of the Act is mandatory and failure to comply with it is fatal to a candidate's claim to stand for election. This requirement is extremely important at the stage of scrutiny and failure to produce the electoral roll must be deemed a failure to comply with a substantial provision of the statute. The absence of the relevant electoral roll completely obstructs the returning officer in the performance of his duty in connection with the scrutiny of nominations and it is difficult to see what the returning officer can do except to reject the nomination.

*First Appeal from the Order of Shri Harbakhsh Singh,
Member, Election Tribunal, Karnal, dated 15th February.*

1958, declaring the election of the returned candidate Shri Baru Ram to be void but leaving the parties to bear their own costs.

D. N. AGGARWAL, ABNASH CHANDER and RAJINDER NATH AGGARWAL, for Appellant.

HARBANS SINGH DOABIA and BALKISHAN JHINGAN, for Respondents.

JUDGMENT

Dulat, J.

DULAT, J.—This is an appeal under section 116A of the Representation of the People Act, 1951, against the order of an Election Tribunal declaring the appellant's election void.

The appellant, Shri Baru Ram, was elected to the Punjab Legislative Assembly from the Rajaund Constituency in the Karnal District. Smt. Parsanni, one of the contesting candidates, thereupon filed the election petition out of which this appeal arises. In this petition several corrupt practices were imputed to Shri Baru Ram and further it was claimed that the nomination of one of the candidates was improperly rejected by the Returning Officer. The Election Tribunal was not satisfied with the evidence called to prove the various corrupt practices but found that the nomination of one of the candidates, Shri Jai Bhagwan, was improperly rejected and the Tribunal, therefore, held the election to be void and declared it Mr. Aggarwal for the appellant contends that the nomination of Shri Jai Bhagwan was properly rejected, but that is not the only question in this case because Mr. Doabia on behalf of the respondent contends that apart from this matter the findings of the Election Tribunal in respect of some

of the corrupt practices should be reversed and the final order of the Tribunal, therefore, maintained.

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Regarding the rejection of Shri Jai Bhagwan's nomination, the relevant facts are these : The date for the filing of nominations was the 29th January, 1956 ; the date of scrutiny 1st February, 1957 ; and the date of withdrawals 4th February, 1957. Polling took place on the 14th March, 1957, and the result was declared the next day, Shri Baru Ram having secured the largest number of votes. Shri Jai Bhagwan was not an elector in the constituency, and at the time of the scrutiny on the 1st February, 1957, the Returning Officer found that a copy of the electoral roll of the constituency, in which Shri Jai Bhagwan was said to be an elector, had not been filed as required by subsection (5) of section 33 of the Representation of the People Act, 1951. Shri Jai Bhagwan, it seems, asked for some time to produce the copy and the Returning Officer allowed him two hours' time. The copy, however, was not produced and Shri Jai Bhagwan's nomination was thereupon rejected. The question is whether the rejection was improper. The Election Tribunal has observed in this connection that Shri Jai Bhagwan was prepared to put in an affidavit, which, in fact, he did later, that he was an elector in another constituency and that, in the circumstances, the Returning Officer should have held an enquiry into the matter and should have allowed sufficient opportunity for the purpose, and the time actually allowed was insufficient. Mr. Aggarwal for the appellant contends that this view is untenable and that a mandatory provision of section 33 of the Act having not been complied with, the nomination was bound to be rejected and the Returning Officer had no option in the matter. To appreciate the controversy it is necessary to refer to the relevant provisions of the Act.

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Part V of the Act is headed "Conduct of Elections" and its first chapter deals with nomination of candidates starting with section 30 of the Act. This provides for notification of the last date for making nominations, the date for the scrutiny of nominations, the last date for withdrawals, the date for the poll and the date for the completion of the election. Section 31 provides for public notice of the intended election. Section 32 then says—

"any person may be nominated as a candidate for election to fill a seat * * * if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act * * *".

Then comes section 33, headed "presentation of nomination paper and requirements for a valid nomination" and runs thus—

"Section 33(1). On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper

contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

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- (3) Where a candidate is a person, who, having held any office referred to in clause (f) of section 7, has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.
- (4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

Provided that the returning officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring ~~the~~ ^{them} into conformity with the corresponding entries in the electoral rolls ; and where necessary, direct that any clerical or printing error in the said entries shall be overlooked.

- (5) Where the candidate is an elector of a different constituency, a copy of ~~he~~ ^{the}

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electoral roll of that constituency or of the relevant part, thereof, or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

- (6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency."

It is subsection (5) which is of particular importance in the present case. Then follows section 34 requiring the deposit of a security and it begins by saying "a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited * * *". Section 35 of the Act then provides for notice of nominations and the time and place for their scrutiny. Then comes section 36.

"Section 36. 'Scrutiny of nominations'—

- (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer * * * of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.
- (2) The returning officer shall then examine the nomination papers and shall decide

all objections which may be made to
 any nomination, and may, either on
 such objection or on his own motion,
 after such summary inquiry, if any, as
 he thinks necessary, reject any nomina-
 tion on any of the following grounds :—

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- (a) that the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :—

articles 84, 102, 173 and 191, and Part II of this Act,

* * * or

- (b) that there has been a failure to comply with any of the provisions of section 33 or section 34 ; or
- (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.
- (3) Nothing contained in clause (b) or clause (c) of subsection (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.
- (4) The returning officer shall not reject any nomination paper on the ground of any, * * * technical defect which is not of a substantial character.

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Provided that in case an objection is made the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

- (6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.
- (7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).
- (8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated

candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board."

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It will be observed that section 33 lays down the form in which a nomination is to be made and then indicates the manner in which the returning officer is to scrutinise the nomination. Subsection (4) requires the returning officer to compare the particulars of the nominated candidate as entered in the nomination paper with his particulars in the electoral roll and, if necessary, to have any discrepancy corrected. Subsection (5) requires that if a candidate is not an elector in the very constituency, a copy of the electoral roll of the constituency in which he is an elector must be produced and this must be done at the time of the scrutiny unless, of course, it has been done already. Section 36 of the Act provides in subsection (2) clause (b) that on failure to comply with any of the provisions of section 33 the nomination paper is liable to be rejected.

In the present case, of course, Shri Jai Bhagwan was not an elector in the constituency from which he was seeking election. It is admitted that by the time of the scrutiny he had not produced a copy of the electoral roll or a copy of the relevant entry in the electoral roll of the constituency in which he was an elector. The Returning Officer actually allowed him about two hours' time for the purpose, but he failed to produce the relevant document. It is, therefore, clear that there was failure on the part of Jai Bhagwan to comply with the provisions of section 33 contained in subsection (5). Mr. Aggarwal for the appellant, therefore, contends that the Returning Officer had no option but to reject the nomination paper and, in support, points out that without the copy of the relevant electoral roll the Returning Officer was unable to

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fulfil his statutory duty of comparing the particulars of the candidate in the nomination paper with the particulars in the electoral roll. This seems to be sound reasoning. Mr. Doabia says, on the other hand, that the production of the required copy of the electoral roll is a formality and its purpose merely is to satisfy the returning officer about the candidate's right to stand which could be established by production of other evidence, and since there was no objection that Shri Jai Bhagwan was not in fact an elector in another constituency, the Returning Officer need not have troubled about this matter and should have accepted the affidavit stating that the candidate was an elector in another constituency. It is common ground that a nomination cannot be rejected merely because of a defect which is not substantial in character as is clearly indicated by subsection (4) of section 36. At the same time, it is agreed that in respect of certain matters form and form alone can be, and is, of vital importance, and, in case Parliament has in the Act attached particular importance to form, any failure to comply with that form would be fatal. The Supreme Court made this very clear in the case of *Rattan Anmol Singh and another v. Ch. Atma Ram and others* (1). In that case the defect was in the signatures of the proposer and Bose, J., observed—

“When the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there”.

The question, therefore, is whether the Act of Parliament does or does not attach special importance to the production of a copy of the electoral roll by the time of the scrutiny at the latest. Mr. Doabia's main argument in this connection is

(1) A.I.R. 1954 S.C. 510

that if Parliament had intended that on the failure of such production the nomination paper was to be rejected, it would have said so, and, since there is no indication in section 33 that a nomination is not to be considered valid without the production of the electoral roll or its copy, it should be taken that its non-production was not intended to be visited with any particular penalty. This argument, however, overlooks what section 36 of the Act expressly provides, namely, the rejection of the nomination paper on failure to comply with the requirements of section 33. Further, the absence of the relevant electoral roll completely obstructs the returning officer in the performance of his duty in connection with the scrutiny of nominations and it is difficult to see what the returning officer can do except to reject the nomination. Mr. Doabia suggests that he can be satisfied about the eligibility of the candidate by considering other evidence, but the direction of law apparently is that he must be satisfied that the particulars in the nomination paper are the same as those entered in the electoral roll and this can only happen if the relevant electoral roll is before the returning officer. It seems to follow that the requirement of subsection (5) of section 33 of the Act is extremely important at the stage of scrutiny and failure to produce the electoral roll must be deemed a failure to comply with a substantial provision of the statute. It is significant that formerly the requirement now contained in subsection (5) of section 33 was differently worded and was contained in subsection (6) thus—

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“If at the time of presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of

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subsection (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll."

The burden of making good the omission was thus placed, to some extent, on the returning officer. This burden has now been lifted from the shoulders of the returning officer and firmly placed on the candidate, and the latitude allowed to him is that the relevant roll may be produced either along with the nomination paper or later by the time of the scrutiny. The amendment indicates that an obligation has, by Parliament, been placed on the candidate to produce this particular document by a particular time and the obligation cannot be discharged in any other manner.

Mr. Doabia in this connection urged that if every omission to comply with the requirements of section 33 of the Act is to be followed by the rejection of a nomination paper, some absurd results might follow and pointed in this connection to subsection (4) of section 33 which says that "on the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls" and suggested that if the returning officer fails to do this, a necessary requirement of section 33 will not have been complied with and the candidate's nomination paper may have to be rejected. It is unnecessary to comment on this line of reasoning except to say that it is not a reasonable way of looking at the Act, for nobody can be penalised for an omission made by another. No decided case directly bearing on the particular question

before us has been mentioned, and apart from the Supreme Court decision to which I have already referred no other decision is of assistance. On a consideration of the relevant provisions of the Act I am fully persuaded that the requirement of subsection (5) of section 33 of the Act is mandatory and failure to comply with it is fatal to a candidate's claim to stand for election.

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Mr. Doabia finally urged that the Returning Officer should, in any case, have permitted sufficient time to Shri Jai Bhagwan to produce the electoral roll even if he had failed to do so by the time of scrutiny. He conceded that ordinarily an adjournment of such proceedings is not contemplated by the Act, but contended that in this particular case some latitude ought to have been shown to the candidate. I am willing to agree that there may be circumstances in which a returning officer would be acting properly in allowing an adjournment, but there can be no doubt that this is a matter within the discretion of the returning officer to be exercised by him in view of all the circumstances. In the present case, no special circumstance has been disclosed to compel a conclusion that the Returning Officer should, and must, have permitted the candidate any time beyond the time of the scrutiny to make good the omission. Actually, the Returning Officer did allow the concerned candidate about two hours' time, and considering everything I cannot say that he acted improperly when, on failure, he rejected the nomination paper. On this view, it is impossible to allow the finding of the Election Tribunal to stand that the nomination paper of Shri Jai Bhagwan was rejected improperly, and I would, therefore, reverse that finding and hold that the nomination was properly rejected.

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This then brings us to Mr. Doabia's plea that some of the findings of the Election Tribunal on the question of bribery and undue influence are wrong and should be reversed. Mr. Doabia has confined his submissions to five allegations of corrupt practices, and the main controversy has really been round only one. It was said in the petition that Shri Baru Ram had persuaded three of the candidates—Sher Singh, Ghisa and Jagjit Singh—to withdraw from the contest, two of them, Sher Singh and Ghisa, by payment of a bribe of Rs 500 each and the third, Jagjit Singh, by promising to find for him a good job. Further, it was said that some of the Harijan voters of Rajaund had been threatened by Shri Baru Ram and his supporters and, in the result, dissuaded from exercising their votes. The Election Tribunal considered the evidence in support of these allegations but found no substance therein, and, although Mr. Doabia has taken us through the evidence, he has not been able to find any serious fault with the view taken by the Tribunal. Regarding the payment of Rs. 500 each to Sher Singh and Ghisa, the main evidence is given by these two men and, as they were clearly accomplices in the transactions, the Tribunal was justified in distrusting their evidence without further corroboration which was not forthcoming. Similarly, about Jagjit Singh the story that he had been offered a good job finds no particular support from any independent testimony and is otherwise wholly unconvincing, as it does not at all appear that Shri Baru Ram or any of his supporters was in a position to secure any job for Jagjit Singh. Two witnesses, Mehar Singh and Lila Ram P.Ws. 2 and 29, did say that Jagjit Singh had been persuaded to withdraw on the promise of a job, but neither of these witnesses is independent and Mehar Singh is shown to have been actively helping Shri Baru Ram in these proceedings.

Regarding the allegation that a number of Shri Baru Ram Harijan voters of Rajaund were threatened, the evidence is no more satisfactory. It is said that some of these voters did not, in fact, vote, but that by itself is nothing because at every election a fairly large number of voters do not exercise their right. There is otherwise nothing to show that Shri Baru Ram was in a position to effectively threaten these Harijans belonging to another village and the suggestion that he gave out that he would not let the Harijans live in the village is, in the context of modern day conditions, entirely unconvincing. Nor is there evidence that any large number of Harijans actually refrained from voting. His evidence is such that even Mr. Doabia did not seriously press it for our acceptance.

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There remains the last allegation, which is legally substantial and in support of which there is, in my opinion, very good evidence which, although considered by the Tribunal, has not been given due weight. The allegation is that Shri Baru Ram had on the 14th March, 1957, being the day of polling, appointed one Puran Singh as his polling agent at booth No. 15 in village Kotra and that Puran Singh acted as such polling agent on that day. He was a member of the Armed Forces. In this manner, Shri Baru Ram was guilty of a corrupt practice within the meaning of subsection (7) of section 123 of the Representation of the People Act, 1951. The fact that Shri Puran Singh was employed in the Armed Forces is now not in dispute, although originally in the written statement this was not admitted. The only question is whether Puran Singh was appointed polling agent by Shri Baru Ram and acted as such. The direct evidence in this connection is given by the respondent, Smt. Parsanni, as P.W. 49 and by Banwari Lal, P.W. 25, who belongs to Kotra. The main

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evidence, however, is in the form of a document Exhibit P.W. 48/1, which, it is claimed, is the written authority under which Puran Singh was appointed polling agent by Shri Baru Ram. Section 47 of the Act authorises a contesting candidate to appoint polling agents in accordance with the rules, and rule 13 made under the Act prescribes the manner in which such appointments must be made. The rule provides for the appointment of one polling agent and two relief agents at each polling station and then says—

“Every such appointment shall be made in form 10 and shall be made over to the polling agent for production at the polling station or the place fixed for the poll, as the case may be.”

and then further says—

“No polling agent shall be admitted into the polling station or the place fixed for the poll unless he has delivered to the presiding officer the instrument of his appointment under sub-rule (2) after duly completing and signing before the presiding officer the declaration contained therein”.

The document produced in this connection, Exhibit P.W. 48/1, is in the prescribed form, i.e., form 10. It purports to be signed by Shri Baru Ram in token of his having appointed Puran Singh as his polling agent and below it is the prescribed declaration which purports to be signed by Puran Singh in the presence of the presiding officer, and the signatures of the presiding officer are duly affixed to the document bearing the date 14th March, 1957. This document was called from the election office and thus came from proper custody. Shri Baru Ram in his evidence denied his signatures on the

document and so did Puran Singh, who was called as P.W. 48. We have to consider whether this document was, in fact, signed by Puran Singh and Shri Baru Ram before it was handed over to the presiding officer. Usually such a document is on a printed form, but this particular form, Exhibit P.W. 48/1, happens to be all handwritten. There is another document produced in this connection, Exhibit R.W. 16/A, which is admitted to be genuine and which Shri Baru Ram admittedly executed in favour of Pal Chand appointing him as polling agent. The appellant's case, in fact, is that for the polling station in village Kotra his sole polling agent was this Pal Chand appointed through the authority of Exhibit R.W. 16/A and that no other polling agent was appointed. It is only necessary to place these two documents—Exhibits P.W. 48/1 and R.W. 16/A—side by side to conclude that both of them are written in the same hand. Each of them contains an identical mistake at an identical place. This is in the form of a short sentence on the left-hand side of each of these documents which runs—

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“I agree to act as such *following agent*”.

The mistake in each case consists in the use of the words “following agent” in place of “polling agent”. Mr. Aggarwal appearing for the appellant was unable to get out of the plain conclusion that a comparison of these documents induces and that is that one and the same person wrote out both these forms. It is quite obvious that the person, who wrote these documents—Exhibits R.W. 16/A and P.W. 48/1—must have been a friend or supporter of Shri Baru Ram and once it is clear—as is admitted—that document Exhibit R.W. 16/A is genuine, great difficulty arises in suggesting that the document Exhibit P.W. 48/1 is not genuine. The matter, however, does not rest there. The

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appellant's case is that at the polling station in Kotra there was only one polling agent appointed by and acting for him, namely, Pal Chand. A witness appearing for the appellant, however, (Jangi Ram, R.W. 10) clearly admitted that there were two agents of Shri Baru Ram working at the polling station. It is true that, according to him, these two were Pal Chand and one Jagtu, but it is admitted now that nobody named Jagtu ever acted as the appellant's agent, nor in fact anybody else, and the suggestion, therefore, is well-founded that the second agent was the one appointed under the authority of Exhibit P.W. 48/1.

It is quite clear from the rules that nobody but a candidate's polling agent could have access to the polling station and equally clear that the document, Exhibit P.W. 48/1, could have been handed over to the presiding officer only by a person claiming to be a duly appointed polling agent and that he had to sign the document at one place in the presence of the presiding officer. There is no serious dispute about the fact that Exhibit P.W. 48/1 was presented to the presiding officer and accepted by him. It was said at one stage that the presiding officer had not been called to give evidence. This happened because the request for his production was made to the Election Tribunal at a late stage and the Tribunal declined to summon the presiding officer. When the matter was raised before us, we suggested that the presiding officer could now be called to clear any doubt about the matter, but Mr. Aggarwal for the appellant did not think any useful purpose would be served, as he did not himself doubt the fact that this document was produced before the presiding officer and kept by him along with the other papers concerning the election from where it was summoned by the Tribunal. It is, therefore, clear that somebody claiming to be Puran Singh and claiming to

be polling agent for Shri Baru Ram appeared before the presiding officer on the 14th March, 1957, at the polling station and produced the document Exhibit P.W. 48/1 and completed it. Mr. Aggarwal suggested that somebody may have personated for Puran Singh and the document may thus have been smuggled in. It is, however, difficult to conceive that motive anybody could have had at that time to run a risk of this kind. No one could have easily at that stage anticipated the result of the election or then contemplated the possibility of an election petition. The suggestion made, therefore, is far fetched. Apart from this, I find that had anybody else but a properly authorised agent actually appeared before the presiding officer and claimed to act as polling agent for Shri Baru Ram, he would have been immediately challenged by Shri Baru Ram's real polling agent, namely Pal Chand. Pal Chand has given evidence and stated that he was present at the polling station throughout—from the time the ballot-boxes were first examined to the time the polling ended—and he would have at once detected the fraud. Other polling agents and possibly some candidates must also have been present at the polling station. In these circumstances, the suggestion that somebody wholly unauthorised personated as Puran Singh and produced the authority, Exhibit P.W. 48/1, which happened to be in the hand of the same person who had written out the authority granted to the appellant's genuine agent, seems to me fantastic.

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There is other evidence that the signatures on Exhibit P.W. 48/1 are the signatures of Puran Singh. An expert was procured to offer his opinion, but more important is the opinion of a wholly disinterested witness, Jemadar Sri Chand, P.W. 52, under whom Puran Singh has been serving and in whose presence Puran Singh has, on

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several occasions, signed various pay-bills. Jemadar Sri Chand stated that the signatures appearing on Exhibit P.W. 48/1 resemble the signatures of Puran Singh made on official documents. It is significant in this connection that when Puran Singh was asked to supply his specimen signatures by the Tribunal he wrote out his name in capital letters, while the fact is that he has been signing official documents in the Army in the normal manner and those signatures clearly resemble the signatures appearing on Exhibit P.W. 48/1. Considering the whole evidence, therefore, I am convinced, in spite of the denial by Puran Singh and Shri Baru Ram, that this document Exhibit P.W. 48/1 was in fact signed by both and produced before the presiding officer, and there is no doubt in my mind that the authority was given in writing by Shri Baru Ram appellant. It was pointed out that the signatures of Shri Baru Ram on Exhibit P.W. 48/1, appear to have been overwritten, but this is hardly of any consequence because either the overwriting happened to be made at the time of the signatures, or, if made later, it could only have been done by or at the instance of Shri Baru Ram to cast some suspicion on its genuineness. Nobody else could have been interested in this overwriting. About the fact that the authority appointing Puran Singh as polling agent was given by the appellant, I have on the evidence no doubt whatever.

Mr. Aggarwal sought to contend that even if Puran Singh had been appointed polling agent by the appellant, it does not follow that Puran Singh acted as such. In view of the actual case made out at the trial Mr. Aggarwal had considerable difficulty in pressing this suggestion, but, even apart from that, the circumstances leave no doubt that Puran Singh was appointed to act as polling

agent and he presented the authority to the presiding officer and could have done it only for the purpose of acting. This is apart from the direct evidence of Smt. Parsanni and Banwari Lal who saw Puran Singh acting for the appellant. The Election Tribunal has considered the evidence bit by bit and not really considered the cumulative effect of the whole set of circumstances and consequently fallen into error. I am on the evidence satisfied that the appellant did appoint Puran Singh as his polling agent, that Puran Singh did act as his polling agent, and since Puran Singh was admittedly a member of the Armed Forces this amounted to a corrupt practice under section 123, subsection (7) of the Act. It is conceded that on this finding the order of the Election Tribunal declaring the appellant's election void cannot be disturbed. The present appeal must, therefore, fail, although for reasons wholly different from those recorded by the Election Tribunal. I would, therefore, order that the appeal be dismissed, but, in the peculiar circumstances of the case, the parties left to their own costs in this Court also.

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