Court is slow to interfere in its extraordinary jurisdiction under Articles 226 and 227 of the Constitution. The petitioner-firm, however, wants relief from illegal demands that are being made and the only efficacious remedy open to the petitioner-firm is to seek a writ from this Court quashing the orders of the respondent on the ground that the industry is not covered by the Act. Such a complicated question is hardly one which can properly be settled by a Magistrate on an objection being raised in a prosecution under section 14 of the Act. In fact, the learned counsel for the petitioner-firm, finding that a writ can either be a civil writ or a criminal petition under section 561-A of the Criminal Procedure Code, has made a statement at the Bar that he does not press his prayer for quashing of the prosecutions because if he once gets a decision of this Court in his favour that the industry is not covered by the Act, the prosecutions will automatically drop.

In view of the above, therefore, I make the rule absolute and quash the orders of the respondent calling upon the petitioner-firm to make contributions under the Act, and hold that the industry in which the petitioner is engaged is not covered by the Act. The matter in controversy being far from clear, there will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh and Shamsher Bahadur, JJ.

PALA SINGH,—*Petitioner*

versus

NATHI SINGH AND OTHERS,—*Respondents.*

Civil Writ No. 131 of 1962.

1962

August, 1st.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 121(2)(a)—Whether void and unconstitutional—Election of successful candidate set aside by Prescribed

Authority—Defeated candidate—Whether can be declared elected—Punjab Panchayat Samitis (Primary Members) Election Rules, 1961—Rule 17—Voter placing mark X on candidate's symbol in column 3 and not in column 4—Whether vote invalid.

Held, that section 121(2)(a) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, is not void and unconstitutional for uncertainty, vagueness or conferment of unguided or uncanalised power. When read with section 115(2)(b) and rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, it is a valid and constitutional piece of legislation which can be effectively and justly put into operation by the Prescribed Authority. Rule 3 and the Schedule giving the list of corrupt practices provides a complete guidance to the Prescribed Authority under section 121 of Punjab Act No. 3 of 1961 in the manner of trying and deciding the question of validity or otherwise of any election. The rules have been made pursuant to a statutory rule-making power and the Prescribed Authority under section 121 cannot move beyond the scope of the rules in trying and deciding an election petition under that section. The expression 'failure of justice' as used in this section though, if left by itself, is vague and indefinite expression, yet in view of section 115(2)(b) and rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, along with the Schedule to the Rules, it gains definite meanings in that the failure of justice in this section 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. This expression must now be read as confined to definite grounds and those grounds are as given in rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961.

Held, that on the setting aside of election of the successful candidate, the Prescribed Authority can only order fresh election and cannot declare the defeated candidate as having been elected.

Held, that if a voter places the mark X in column 3 on the symbol of the candidate and not in column 4 in the ballot paper meant for that purpose, his identity as voter

in favour of a particular candidate can be found out by merely looking at the ballot paper which is invalidated thereby and his vote has to be rejected.

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 impugned order, dated 2nd January, 1962 and declaring that sub-section (2)(a) of section 121 of the Act is void and unconstitutional.*

H. L. SARIN AND K. K. CUCCRIA, ADVOCATES, for the Petitioners.

H. L. SIBBAL, ADVOCATE AND M. R. SHARMA, ADVOCATE, for the Advocate-General, for the Respondents.

ORDER

MEHAR SINGH, J.—In the election for primary members of Panchayat Samiti Block, Palwal, in district Gurgaon, it appears that 16 members were to be elected. The election took place on August 20, 1961. Pala Singh petitioner was one of those who were elected and Nathi Singh, respondent 1, who contested the election, lost it. In his case the returning officer found four ballot papers invalid leaving 9 valid votes for him. He then found a number of other candidates, including the petitioner, having equal number of votes, that is to say 10, and consequently according to rule 16(9)(b) of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, for five candidates lots were drawn and the petitioner was the fifth to be elected in this manner, four others having been elected earlier to him. It is obvious that if four ballot papers of respondent I had not been rejected as invalid, he would have had thirteen votes, in which case lots would only have been necessary for four remaining members and not five. So that in that event the petitioner would have had no chance of being elected to the Panchayat Samiti. Subsequently when the Panchayat Samiti was

Mehar Singh, J.

Pala Singh
v.
Nathi Singh
and others

Mehar Singh, J.

constituted the petitioner was elected its Chairman. For the constitution of the Panchayat Samiti certain members were co-opted. Afterwards the election of members from the Samiti for the Zila Parishad took place.

An election petition was filed by respondent 1 under section 121 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (Punjab Act No. 3 of 1961). This was heard by respondent 2 as Prescribed Authority under that provision. Respondent 2 found that the four ballot-papers declared by the Returning Officer to be invalid in the case of respondent 1, had mark (x) not in column 4, in which such a mark was required to be made by the voter, but in column 3 in which was printed the symbol of the candidate. In the case of respondent 1 the symbol was 'hand' and it was found crossed either with red or blue pencil as required by the rules instead of the mark (X) being made in column 4 meant for that purpose. The Returning Officer rejected these ballot-papers considering that these did not comply with the rules. The Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, rule 17, provide:—

> "Any ballot-paper which bears any mark or signature by which the voter can be identified or in which the mark (X) is placed in an ambiguous manner or against the names of more than one candidate or which does not bear the official seal or signatures prescribed in sub-rule (3) of rule 16, shall be invalid."

No other material has been placed before this Court but it appears from the order of respondent 2 that "the Returning Officer declared these ballot-papers to be invalid on the ground that there is no marking in column 4 (meant for the purpose)". A number of grounds were taken in the election

petition by respondent 1 but only one survived before respondent 2 and that is the objection as referred to above. Respondent 2, after considering some cases cited before him, came to the conclusion that what is to be seen is the intention of the voter and if that has been clearly and unambiguously indicated, a ballot-paper is not to be rejected on mere consideration that the mark required to be made on it has not been made exactly at the place at which it should have been made. Having come to this conclusion the learned Authority found that the Returning Officer was wrong in rejecting the four ballot-papers of respondent 1. Having found this he proceeded not only to declare that the petitioner had not been elected but also proceeded to declare respondent 1 elected and ordered setting aside of all elections taking place after the election of the Panchayat Samiti and directed re-election of the same. The order of the learned Authority is of January 2, 1962. It is this order that is impugned by the petitioner and there are two main grounds, (a) that section 121 of Punjab Act No. 3 of 1961 is constitutionally invalid being vague and indefinite and conferring uncontrolled and unguided power on the Authority trying the election petition, and (b) that the approach of respondent 2 is incorrect in law and there is a patent error on the face of the record inasmuch as respondent 2 has ignored rule 17 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, in not adverting to the fact that mark (X) having been placed on the symbol of respondent 1, from the ballot-papers the voters were immediately identifiable in this manner that each one of them could go and inform respondent 1 that if he wanted to satisfy himself about the support given to him or otherwise, he could see the ballot-box containing ballot-papers with mark (X) on the symbol.

Pala Singh
v.
Nathi Singh
and others

Mehar Singh, J.

In the return on behalf of respondent 3, State of Punjab, it is accepted that respondent 2 did not act according to law in (a) ordering respondent 1 as having been elected and (b) setting aside the elections after the election of the Panchayat Samiti. Otherwise the position of respondent 2 is supported that his order is correct so far as the question of the validity or otherwise of the four ballot-papers is concerned for the purpose of their acceptance or rejection. It appears that there is no return on behalf of any of the other respondents.

The learned counsel for the petitioner refers to *Harke* v. *Giani Ram* (1) and contends that in that case section 8(2) (a) of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. 4 of 1953), has been held by the learned Judges to be void and unconstitutional on the ground that the section does not contain any principle by which it can be said with certainty that the legislature has laid down the rules for guidance for setting aside an election, that the legislature has not, in this section or in the Act, declared its policy and purpose so as to guide the Prescribed Authority constituted under the Act with regard to the grounds on which it would come to the conclusion as to whether there has been a failure of justice, and no appeal has been provided against the decision of the Prescribed Authority; and on these considerations the learned Judges were of the opinion that the section left discretion in the Prescribed Authority clothing it with unguided power which may well enable it to discriminate. Section 8(1) and (2) (a) of Punjab Act No. 4 of 1953 says:—

"8. (1) Any member of the Sabha may on furnishing the prescribed security and

(1) I.L.R. (1962) 2 Punj. 74:1962 P.L.R. 213.

on such other conditions, as may be prescribed, within twenty days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the election of any person as a Sarpanch or Panch.

(2) The prescribed authority may—

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

The learned Judges were of the opinion that the expression 'failure of justice' was far too vague in its meaning and scope and the legislature thereby did not lay down either the guiding principle or policy for the prescribed authority, which was, therefore, left by this vague power to proceed at its sweet will and be able to discriminate if it should wish to do so. In section 101 of this very Act rule-making power has been given to the Government and sub-section (2)(c) of this section says that "in particular and without prejudice to the generality of the foregoing power, Government may make rules * * * (c) regulating the procedure of election, suspension or removal of the office-holders of the Gram Panchayat, and Adalti Panchayat *and the settlement of election disputes", and even in this rule-making power no definite, detailed and specific power has been taken to prescribe grounds for invalidating an election as a guide to the Prescribed Authority acting under section 8 of this Act. It appears that no rules were actually made in this respect as any guide to the Prescribed Authority. It was in these circumstances that the learned Judges came to the

Pala Singh
v.
Nathi Singh
and others

Mehar Singh, J.

conclusion as above in regard to the power in the Prescribed Authority under section 8(2)(a) of the said Act.

In Punjab Act No. 3 of 1961, section 121 reads thus:—

"121. (1) Any person who is a voter for the election of a Member may on furnishing the prescribed security and on such other conditions, as may be prescribed, within twenty days of the date of announcement of the result of an election, present to the prescribed authority, an election petition in writing, against the election of any person as a Member, Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad concerned.

(2) The prescribed authority may:—

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

(b) if it finds that the petition is false, frivolous, or vaxatious, dismiss the petition and order the security to be forfeited to the Panchayat Samiti or Zila Parishad concerned, as the case may be.

(3) Except as provided in this section, the election of a Member, Vice-Chairman or Chairman shall not be called in question before any authority or in any Court."

It is at once clear that for all practical and effective purposes section 121(2)(a) of this Act is the

same as section 8(2)(a) of Punjab Act No. 4 of 1953. So far the analogy is complete and if the matter was left there, it is obvious that on the ratio of *Harke* v. *Giani Ram* (1), only one conclusion would be possible and that is to declare section 121(2)(a) of Punjab Act No. 3 of 1961 as void and unconstitutional. But there is something more in this Act and the rules made thereunder which requires consideration. In section 115 rule-making power has been taken by the Government under Punjab Act No. 3 of 1961 and sub-section (2)(b) of that section is in these terms—

"Section 115 (2). In particular, and without prejudice to the generality of the foregoing power, such rules may be made—

(a) * * * * * * * * *

(b) for determining the mode of elections of Panchayat Samitis and Zila Parishads, allowances, if any, payable to members and generally for regulating elections under this Act including rules for the following matters, namely:—

(i) for the definition of the practices at elections held under the provisions of this Act which are to be deemed to be corrupt;

(ii) for the investigation of allegations of corrupt practices;

(iii) for making void the election of any person proved to the satisfaction of the Government to have been guilty of a corrupt practice or to have connived at or abetted the commission of a corrupt practice

Pala Singh
v.
Nathi Singh
and others

Mehar Singh, J.

or whose agent has been so proved guilty or the result of whose election has been materially affected by the breach of any law or rule for the time being in force;

(iv) for rendering incapable of becoming a member of a Panchayat Samiti or Zila Parishad either permanently or for a term of years any person who may have been proved guilty as aforesaid of a corrupt practice or of conniving at or abetting the same;

(v) for prescribing the authority by which questions relating to the matters referred to in this clause shall be determined; and

(vi) for authorising courts to take cognizance of breach of any such rules on the complaint of the Deputy Commissioner or some person authorised in writing by the Deputy Commissioner; * * * *"

So the Government has taken clear, definite and specific power for regulating elections and in this particular respect making definite rules in regard to corrupt practices, investigation of allegations of corrupt practices, voidability of election on proof of corrupt practices, disqualification of persons indulging in such practices, and making provision for the prescribed authority to try election petitions and questions referred to above. Pursuant to this power respondent 3 has made the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, and rule 3 says —

"The election of any person as a Member, Vice-Chairman or Chairman of a Panchayat Samiti or Zila Parishad, as the

case may be, 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."

In the wake of this rule in the Schedule the corrupt practices have been listed. Under this rule an election can be called in question on the grounds (a) of corrupt practice, or (b) the result of election having been materially affected by the breach of any law or rule for the time being in force, or (c) that there has been failure of justice. This rule when read with the Schedule giving the list of corrupt practices provides a complete guidance to the Prescribed Authority under section 121 of Punjab Act No. 3 of 1961 in the manner of trying and deciding the question of validity or otherwise of any election. The rules have been made pursuant to a statutory rule-making power and the Prescribed Authority under section 121 cannot move beyond the scope of the rules in trying and deciding an election petition under that section. The learned counsel for the petitioner points out that in spite of the detailed, definite and clear provision in section 115 of the Act taking power to make detailed rules on the grounds for questioning an election and in spite of the rule having provided detailed grounds, the fact still remains that in section 121(2)(a) there is only one ground for consideration of the Prescribed Authority in hearing an election petition and that is whether or not there has been failure of justice in the election. But the expression 'failure of justice' as used in

Pala Singh
v.
Nathi Singh
and others

Mehar Singh, J.

this section though, if left by itself, is vague and indefinite expression, yet in view of section 115 (2)(b) and rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, along with the Schedule to the Rules, it gains definite meanings in that the failure of justice in this section 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. This expression must now be read as confined to definite grounds and those grounds are as given in rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961. It is in these circumstances that this expression, otherwise vague and indefinite, obtains definite and clear meanings and provides for the Prescribed Authority clear guidance in the decision of election petitions under section 121 of Punjab Act No. 3 of 1961. The learned counsel for the petitioner then says that even in rule 3 the last ground is that of 'failure of justice', which is correct, but this ground cannot be read in isolation and separately and it is merely the repetition of what is stated in section 121(2)(a) of the said Act and this does not detract from the other two definite and clear grounds given in rule 3. So the meaning and scope of the expression 'failure of justice' as used in section 121(2)(a) and also at the end of rule 3 is clarified and amplified in the other specific and clear grounds for questioning an election as set out in rule 3 and the Prescribed Authority in trying and deciding an election petition under that section is confined to those grounds alone. So in this case the legislature has not left the Prescribed Authority without guidance or with uncanalised and unguided power in the decision of election petitions as was found by the learned Judges in the case of section 8(2) (a) of

Punjab Act No. 4 of 1953. In the circumstances *Harke* v. *Giani Ram* (1), is not helpful to support the argument of the learned counsel for the petitioner and in so far as section 121(2)(a) of Punjab Act No. 3 of 1961 is concerned it is not void and unconstitutional for uncertainty, vagueness or conferment of unguided or uncanalised power. When read with section 115(2)(b) and rule 3 of Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, it is a valid and constitutional piece of legislation which can be effectively and justly put into operation by the Prescribed Authority. The first ground on the side of the petitioner thus fails.

The facts are patent and not in dispute. The four ballot-papers invalidated by the Returning Officer had the mark (X) not in column 4 meant for that purpose but in column 3 on the symbol of respondent No. 1.

Whether the Prescribed Authority is right or not in its opinion that placing of mark (X) in column 3 instead of in column 4 is not an ambiguous manner of voting and showing the intention of the elector, but what it has done is to completely ignore, on the facts patent or admitted, another part of rule 17 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, and that is that any ballot-paper which bears any mark or signature by which the voter can be identified is to be declared invalid. It is obvious that the voter could say that his ballot-paper can be identified and thus his identity as voter in favour of a particular candidate can be found out by merely looking at the ballot-paper and because of the fact of his having crossed the symbol of the particular candidate. This is patent and it is this that the learned Prescribed Authority has completely ignored. The facts being undisputed the

Pala Singh
v.
Nathi Singh
and others

Mehar Singh, J.

question raised is one of law as to non-application of rule 17 on accepted facts. The learned Prescribed Authority refers to this rule in its order and while it points out the other two conditions of invalidating a ballot-paper it does not refer to the condition in regard to the identity of the voter by any mark on the ballot-paper. This peculiar marking of the ballot-paper laid bare the identity of the voter as soon as he disclosed the manner of his voting. It has been urged that this reasoning was not placed before the Prescribed Authority nor has it been stated in so many words in the petition, but the facts being undisputed and the provision of the rules being clear all that the Prescribed Authority had to do was to apply its mind to both and the conclusion is obvious. It is by ignoring part of the rule which when applied to the admitted facts leads to the inevitable conclusion that what the Returning Officer did was right according to this rule. So the learned Prescribed Authority has erred in law in interfering with the election of the petitioner and the error is patent on the record. In this approach the order of the learned Prescribed Authority cannot be upheld and has to be quashed.

The learned Prescribed Authority has declared respondent 1 elected in this case. Section 121 (2)(a) of Punjab Act No. 3 of 1961 says that the Prescribed Authority may, if it finds, after such inquiry as it may deem necessary, that a failure of justice has occurred, set aside the election, and a fresh election shall thereupon be held. It is obvious that under this provision a fresh election was the only course open if the order of the Prescribed Authority was to stand, but the learned counsel appearing for respondent 1 has contended that the word 'shall' in section 121(2)(a) be read as 'may' and directory and so the order of

Pala Singh
v.
Nathi Singh
and others

Mehar Singh, J.

the learned Prescribed Authority be upheld. His reason is that if the approach of the learned Prescribed Authority is correct, it comes to this, that if the Returning Officer had not made the mistake in invalidating the four ballot-papers in favour of respondent 1 this respondent must have been elected, and on discovery of the mistake by the learned Prescribed Authority, the same result must follow. This logic cannot prevail against the express words of the statute under which on the setting aside of election the only course provided is a fresh election and not declaration of election of a defeated candidate. I do not consider that without express statutory enactment that in certain circumstances a defeated candidate may be declared elected, an authority hearing an election petition has any such power on consideration of the type of arguments that have been urged by the learned counsel. In any case, in the present case, the question does not arise because of the approach to the case as above.

In consequence this petition is accepted and the order of the Prescribed Authority, respondent 2, dated January 2, 1962, setting aside the election of the petitioner is quashed. In this petition the parties are left to bear their own costs.

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—I agree.

B.R.T.

APPELLATE CRIMINAL

Before S. B. Capoor and R. P. Khosla, JJ.

THE STATE,—*Appellant*

versus

MOTI RAM AND ANOTHER,—*Respondents*

Criminal Appeal No. 750 of 1961.

1962

August, 1st.

Prevention of Food Adulteration Act (XXXVII of (1954)—S. 20—Food Inspector duly authorised by State