

FULL BENCH

LETTERS PATENT APPEAL

Before Prem Chand Jain, S. C. Mital and A. S. Bains, JJ.

PARKASH CHAND—Appellant.

versus

STATE OF PUNJAB, ETC.—Respondents.

Letters Patent Appeal No. 414 of 1973,

August 2, 1976.

Punjab Municipal Act (III of 1911)—Section 12-B—Punjab Municipal Election Rules 1952—Rules 51 to 53 and 63—Reception of a void vote—Whether sufficient to declare an election void—Proof that the result of the election has been materially affected by such reception—Whether necessary.

Held, that under rule 63 of the Punjab Municipal Election Rules 1952, an election can be declared void if, in the opinion of the Commission, there has been any 'material irregularity' in the conduct of the election. According to the definition in rule 51, reception of any vote which is void or non-compliance with the provisions of the Punjab Municipal Act, 1911 or of the rules made thereunder would be a 'material irregularity' but the fact that there has been reception of any void vote or non-compliance with the provisions of the Act or rules made thereunder would not by itself be sufficient to declare an election void until it is further proved that the result of the election has been materially affected as is evident from the words "as materially affects the result of an election" occurring in the definition of 'material irregularity'. Thus reception of a void vote by itself is not sufficient to declare an election void and it has to be proved that the result of the election has been materially affected by such reception. (Para 5.)

Onkar Singh Versus State of Haryana and others, 1972 P.L.R. 378 overuled.

Case referred by Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice A. S. Bains on 20th April, 1976 to a larger Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice A. S. Bains finally decided the case on 2nd August, 1976.

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment of Hon'ble Mr. Justice M. R. Sharma, in Civil Writ No. 3911 of 1972 decided on 25th April, 1973.

H. S. Sawhney, Advocate,—for the Appellant.

I. S. Tiwana, D. A.G. Punjab, Mr. Ashok Bhan, Advocate with Mr. Vioal Kaushal, Advocate,—for the Respondents.

JUDGMENT

Prem Chand Jain, J.—(1) Parkash Chand has filed this appeal under Clause X of the Letters Patent against the judgment of a learned Single Judge of this Court. This appeal came up for hearing before my learned brother Bains, J. and myself. After hearing the learned counsel for the parties, we found that a Division Bench judgment of this Court in *Onkar Singh v. State of Haryana and others* (1) needed reconsideration and accordingly we referred the appeal for decision to a larger Bench. That is how we are seized of the matter.

(2) Milkhi Ram and Som Nath, respondents, were elected President and Vice-President of the Municipal Committee, Kapurthala. Earlier to the election of the President and Vice-President, a meeting was held on 9th of July, 1972, to co-opt two women in accordance with the provisions of section 12-B of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act). In that meeting Shrimati Pimmi Khosla and Shrimati Nirmala were declared elected. Parkash Chand, appellant, filed a petition under Articles 226 and 227 of the Constitution of India calling in question the election of the President and Vice-President as well as the co-option of the two lady members. The learned Single Judge allowed the petition with regard to the co-option of the lady members while in respect of the election of the President and Vice-President the petition was rejected.

(3) It was sought to be argued by Mr. Sawhney that the election of the two co-opted ladies had been held to be illegal; that the said two co-opted ladies took part in the election of the President and Vice-President and that their election having been held illegal, their mere participation was sufficient to declare the election of the President and Vice-President void. After giving my thoughtful consideration to the entire matter, I find myself unable to agree with this contention of the learned counsel.

(4) The sole question that requires determination in this case is whether the election of the President and Vice-President can be declared void without proving that the result of the election has been materially affected by the reception of the votes of the co-opted members whose election has been held to be illegal. Rule 52 of the

(1) 1972 P.L.R. 378.

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Punjab Municipal Election Rules (hereinafter referred to as the Rules) provides that no election shall be called in question except by an election petition presented in accordance with the Rules. Rule 53 provides the procedure for filing an election petition. Rule 63 provides grounds for declaring an election void. The material clauses of this rule, to which reference would have to be made, read as under —

“63. *Grounds for declaring election void* :—

(1) Save as hereinafter provided in these rules if in the opinion of the Commission—

(a) * * * * *

(b) * * * * *

(c) there has been any material irregularity, or

(d) the election has not been a free election by reason of the large number of cases in which the corrupt practices specified in sub-clause (i) or (ii) of clause (a) of the rule 51 have been committed by a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent or any person is not a candidate or an agent of such candidate or a person acting with the connivance of a candidate or such agent, the Commission shall report that the election of the returned candidate shall be deemed to be void.”

‘Material irregularity’ has been defined in Rule 51 as follows :—

“ ‘Material irregularity’ in the procedure of an election includes any such improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void or non-compliance with the provision of the Act or of the rules made thereunder, or mistake in the use of any form annexed thereto as materially affects the result of an election.”

(5) Under rule 63 an election can be declared void if, in the opinion of the Commission, there has been any ‘material irregularity’ in the conduct of the election. According to the definition in rule 51, reception of any vote which is void or non-compliance with the provisions of the Act or of the Rules made thereunder, would be a

'material irregularity', but the fact that here has been reception of any void vote or non-compliance with the provisions of the Act or the rules made thereunder would not itself be sufficient to declare an election void until it is further proved that the result of the election has been materially affected as is evident from the words "as materially affects the result of an election" occurring in the definition of 'material irregularity'. In other words, before any relief can be granted it has to be proved that by the reception of the void votes the result of the election has been materially affected.

(6) Adverting to the facts of the case in hand, there is no dispute that the challenge against the election is on the ground that there has been a material irregularity inasmuch as two co-opted lady members, whose election was held to be void, had taken part in the election of the President and the Vice-President. What was sought to be argued by Mr. Sawhney was that mere participation of such persons, who could not legally vote, would render the election void as that fact by itself would lead to an inference that the result of the election has been materially affected. In support of his contention, Mr. Sawhney drew our attention to a Bench decision of this Court in *Onkar Singh's case*, wherein in similar circumstances the learned Judges observed that participation of a non-member in the proceedings vitiates the entire proceedings. The learned Judges in making the aforesaid observations had relied on the decision of North, J. in *Lane v. Norman*, (1891) 66 L.T. 83. There can be no gainsaying that the observations in the aforesaid judgment of *Onkar Singh's case* do lend support to the contention raised before us by Mr. Sawhney, but with utmost respect, I am unable to subscribe to the aforesaid view which goes counter to the well settled proposition of law that the election can be declared void on the ground of material irregularity in case of reception of void votes or non-compliance with the provisions of the Act or of the rules made thereunder only if it is further proved that the result of the election has been materially affected. See in this connection the decisions of their Lordships of the Supreme Court in *Vashist Narain Sharma v. Dev Chandra and others* (2) and *Paokai Hookip v. Rishanq and others* (3). I am, therefore, clearly of the view that mere participation of such persons who could not legally vote, would not by itself lead to an inference that the result of the election has been materially affected.

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

(3) A.I.R. 1969 S.C. 663.

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(7) It may further be observed that beyond the averment of mere participation, there is no other allegation as to how factually the election in question has been materially affected and rightly so; Milkhi Ram and Som Nath, respondents Nos. 6 and 7 (successful candidates), obtained 10 votes each as against their opponents who secured only 7 votes each, and even if we presume that the two co-opted lady members had voted for respondents No. 6 and 7, then also, after taking out these votes, respondents Nos. 6 and 7 would have secured 8 votes each, which are more than those of the defeated candidates. Thus, I find that even on merits no case has been made out that by the receipt of the two void votes the result of the election has been materially affected.

(8) Before parting with the judgment, another contention of Mr. Sawhney may be noticed that the appellant's case fell within the purview of clause (d) of sub-rule (1) of Rule 63 inasmuch as by the presence of the two co-opted lady members, whose election had been declared illegal, the election of the President and Vice-President would have to be held not to be a free election. In my opinion, the argument on the face of it is fallacious. The bare perusal of clause (d) would show that it has no applicability to the facts of the case in hand. Under clause (d) if the Commission arrives at a finding that the election has not been a free election by reason of the large number of cases in which the corrupt practices specified in sub-clauses (i) or (ii) of clause (a) of Rule 51 had been committed by a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent or any person who is not a candidate or an agent of such candidate or a person acting with the connivance of a candidate or such agent, then it shall report that the election of the returned candidate shall be deemed to be void. I fail to understand on what basis it was sought to be argued by the learned counsel that the case of the appellant fell within the purview of clause (d) of sub-rule (1) of Rule 63.

(9) No other point was urged.

(10) For the reasons recorded above, we find no merit in this appeal and accordingly dismiss the same with costs.

S. C. Mital, J.—I agree.

A. S. Bains, J.—I also agree.