SUMITRA DEVI
v.
SHRI SHEO SHANKER PRASAD YADAV & ORS.

November 9, 1972

[A. N. GROVER, K. K. MATHEW AND A. K. MUKHERJEA, JJ.]

Election Petition—Appeal—This Court will not interfere with finding of fact by High Court unless there is grave or pulpable error—Principles for allowing inspection of ballot papers.

The appellant challenged the election of Respondent No. 1 to the Parliament at the 1971 General Election on the ground that there were irregularities in the counting of votes. She asked for inspection of the ballot papers. The High Court disallowed the application for inspection and dismissed the election petition. In appeal under s. 116-A of the Representation of the People Act 1951, the appellant submitted (i) that the evidence of the witnesses examined by her proved the several illegalities committed in the counting of the ballot papers and (ii) that, in any event, the appellant's application for inspection should have been allowed.

HELD : (i) The High Court had taken into consideration all the material circumstances and had appreciated the evidence from the correct perspective. It has been the consistent practice of this Court not to interfere with findings on questions of fact unless there is some grave or palpable error in the appreciation of the evidence on the basis of which the findings were arrived at. [922 E]

Dr. Jagjit Singh v. *Giani Kartar Singh and Others,* A.I.R. 1966 S.C. 773. referred to.

(ii) The High Court was justified in rejecting the application for inspection. The allegations in the election petition were vague and the petition did not contain an adequate statement of the matrial facts. The evidence adduced by the appellant to prove the allegations was found unreliable. No definite particulars were also given in the application for inspection as to the illegalities alleged to have been committed in the counting of the ballot papers. A recount will not be granted as a matter of right but only on the basis of evidence of good grounds for believing that there has been a mistake in the counting. It has to be decided in each case whether a *prima facie* ground has been made out for ordering an inspection. [923 H]

Ram Sewak Yadav v. *Bussain Kamil Kidwai and Others,* [1964] 6 S.C.R. 238, 244, *Dr. Jagjit Singh* v. *Giani Kartar Singh and Others,* A.I.R. [1966] S.C. 773, 783 and *Jitendra Bahadur Singh* v. *Krishna Bebari and Others.*. [1970] 1 S.C.R. 852, applied.

Bhim Sen v. *Gosali,* [1960] 22 Election Law Reports, 288.

CIVIL APPELLATE JURISDICTION : C.A. No. 1015 of 1972.

Appeal under s. 116-A of the R.P. Act 1951, from the judgment and order dated March 8, 1972 of the Patna High Court in Election Petition No. 2 of 1971.

D. V. Patel and *U. P. Singh* for the appellant,

J. P. Goyal, Syama Prasad Mukherjee and *R. A. Gupta,* for respondent No. 1.

The Judgment of the Court was delivered by

MATHEW, J. This is an appeal under s. 116-A of the Representation of the People Act, 1951, from a judgment of the High

A Court of Patna, by which the High Court dismissed the petition of the appellant for setting aside the election of Respondent No. 1 as a Member of Parliament from 31-Khagaria Parliamentary Constituency, in the election held in March, 1971, and to declare the appellant as the duly elected member from the aforesaid constituency.

B According to the election programme, the nominations were to be filed from January 27, 1971 to February 3, 1971; they were to be scrutinized on February 4, 1971; poll, if necessary was to be taken on March 5, 1971; the ballot papers were to be counted on March 10, 1971 and the result of the election was to be declared on March 11, 1971. It was in pursuance to this programme C that the appellant and Respondent No. 1., along with 10 other candidates, filed their nomination papers. Two of the candidates subsequently withdrew and the contest was among the remaining candidates. The poll was held on March 5, 1971. The counting of the ballot papers took place on March 10, 1971. The respondent No. 1 obtained 73,594 votes and the appellant, 73,046. D So, Respondent No. 1 was declared elected by the Returning Officer.

The appellant challenged the election of respondent No. 1 in her petition on the following allegations : There was no proper lighting arrangement in the segments where the votes were counted E and there were frequent failures of electricity. Taking advantage of this, the counting staff showed partiality to respondent No. 1 by counting the votes cast in favour of the other candidates for respondent No. 1. Several undesirable persons who had been working for respondent No. 1 managed to enter the counting compartments and created confusion. They also manoeuvred the counting staff and thereby illegally managed to increase the num- F ber of votes in favour of respondent No. 1. Several ballot papers which had clear seal on the symbol of the appellant were illegally rejected. The counting staff took out several ballot papers of the appellant and mixed them with doubtful ballot papers and, without paying any heed to the objections raised by the counting agents of the appellant, rejected them mechanically by putting the G rejection seal on their back. A large number of ballot papers which should have been rejected were counted in favour of respondent No. 1. Ballot papers having seal on more than one symbol or seal on the shaded area or seal on the back or having no seal or having no official seal on the symbol of respondent No. 1 were illegally counted in favour of respondent No. 1. A H large number of ballot papers bearing no signature of the Presiding Officer or identifying mark on the back were counted in favour of respondent No. 1 merely because they had been placed in the ballot boxes illegally by those controlling the po'ling booths.

Several bundles having less than 50 ballot papers were counted in favour of respondent No. 1 as having 50 ballot papers. As a result of these irregularities in the counting of the ballot papers, about 3,000 ballot papers which should have been rejected were counted in favour of respondent No. 1 and 1,000 ballot papers which should have been counted in favour of the appellant were illegally rejected and this materially affected the result of the election.

To substantiate these allegations, the appellant examined as many as 23 witnesses including herself. After the evidence was closed, the appellant had put in a petition for inspection of the ballot papers. The High Court rejected the petition for the reason that the appellant had not pleaded the material facts in the petition to set aside the election.

The High Court, after a careful consideration of the evidence of the witnesses found, that the allegations in the election petitions were vague and that evidence adduced to prove them was unreliable, and so, dismissed the petition.

The appellant submitted before us that the evidence of the witnesses examined by her would prove the several illegalities alleged to have been committed in the counting of the ballot papers and that, in any event, the appellant's application for inspection should have been allowed.

We are satisfied that the High Court has taken into consideration all the material circumstances and has appreciated the evidence from the correct perspective. It has been the consistent practice of this Court not to interfere with findings on questions of fact unless there is some grave or palpable error in the appreciation of the evidence on the basis of which the findings were arrived at [see *Dr. Jagjit Singh* v. *Giani Kartar Singh and Others*(1)].

We also think that there is no substance in the contention of the appellant that the High Court was in error in rejecting her application for inspection of the ballot papers. As already stated, the High Court rejected the application for the reason that the allegations in the election petition were vague and that the petition did not contain an adequate statement of the material facts. In *Ram Sewak Yadav* v. *Hussain Kamil Kidwai and others*(2), this Court said that an order for inspection would not be granted as a matter of course : that having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection only where the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case and it is

(1) A.I.R. 1966 S.C. 773. (2) [1964] 6 S.C.R. 238, 244.

A necessary to decide the dispute and to do complete justice between the parties. The Court also said that an order for inspection of ballot papers would not be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The Court emphasized that mere allegations that the petitioner suspects or believes that there has B been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection. In *Dr. Jagjit Singh* v. *Giani Kartar Singh and Others*(1) this Court again said that an election petition should contain a concise statement of the material facts on which the petitioner relies, that vague or general allegations that valid votes were improperly rejected or invalid C votes were improperly accepted, would not serve the purpose and that an application made for the inspection of ballot boxes must give material facts which would enable the tribunal to consider whether, in the interests of justice, the ballot boxes should be inspected or not. The Court further said that in dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored and that, it has always to be borne in mind that the D statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting. The Court emphasized that in some cases, the ends of justice would make it necessary for the tribunal or Court to allow a party to inspect the ballot boxes and consider his objection about the improper acceptance or improper E rejection of votes tendered by voters at any given election; but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry into the ballot boxes so as to justify their claim that the returned candidate's election is void.

F In *Jitendra Bahadur Singh* v. *Krishna Behari and Others*(2), this Court observed that in view of the importance of maintaining the secrecy of the ballot papers, scrutiny can only be ordered if the election-petition contains an adequate statement of the material facts on which the petitioner relies, that is, the material facts disclosed must afford an adequate basis for the allegations; and, the election tribunal must be *prima facie* satisfied that in order to G decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary.

In the case at hand, the allegations in the election petition were vague and the petition did not contain an adequate statement of the material facts. The evidence adduced by the appellant to prove the allegations was found unreliable. No definite particulars were also given in the application for inspection as to the illegalities alleged to have been committed in the counting of the

(1) A.I.R. [1966] S.C. 773, 783. (2) [1970] 1 S.C.R. 852.

ballot papers. A recount will not be granted as a matter of right but only on the basis of evidence of good grounds for believing that there has been a mistake in the counting. It has to be decided in each case whether a *prima facie* ground has been made out for ordering an inspection.

Counsel for the appellant relied on *Bhim Sen* v. *Gomali*(1) and contended that an inspection of the ballot papers should be granted even if no *prima facie* case has been made out by the allegations in the election petition. That case was considered by this Court in *Ram Sewak Yadav* v. *Hussain Kamil Kidwai and ors.*(2) and the Court was of the view that unless an election petition contains an adequate statement of the material facts, an election tribunal would not be justified in ordering an inspection of the ballot papers. As the appellant did not make out a case for inspection, the High Court was justified in dismissing the application. In these circumstances, we do not think that there is any substance in the prayer of the appellant for a recount of the votes.

We dismiss the appeal with costs.

G.C. *Appeal dismissed.*

(1) [1960] 22 Election Law Reports, 288.
(2) [1964] 6 S.C.R. 238, 244.