Bhabhi vs Sheo Govind & Ors on 21 April, 1975

Equivalent citations: 1975 AIR 2117, 1975 SCR 202, AIR 1975 SUPREME COURT 2117, 1975 (1) SCC 687

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, N.L. Untwalia

PETITIONER:
BHABHI

Vs.

RESPONDENT:
SHEO GOVIND & ORS.

DATE OF JUDGMENT21/04/1975

BENCH:
FAZALALI, SYED MURTAZA
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FAZALALI, SYED MURTAZA
UNTWALIA, N.L.

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1976 SCC (1) 687
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R 1980 SC 206 (26)
RF 1980 SC1362 (33)
E 1983 SC1311 (9,10)
F 1984 SC 396 (4)

ACT:
Representation of People Act-Election-Inspection of ballot papers-Principles.

HEADNOTE:
The appellant was elected to the U.P. Legislative Assembly. The appellant defeated respondent No. 1 by a margin of 94 Votes. The respondent No. 1 in his election petition made an application for inspection of the ballot papers on the ground that there were improper reception and rejection of votes. That the election staff was suffering from serious physical strain as they had to work without any rest. There were arithmetical mistakes in the counting. That the staff

was drowsy and was dozing.

The respondent no. 1 made an application praying for a sample inspection of the ballot papers. He examined some witnesses and counting agents, and filed some affidavits. The appellant also produced some evidence. The respondent did not give serial number of a single ballot paper which is said to have been improperly accepted or rejected. Nor did he file an application for recounting of votes.

The High Court without going into the merits of the application ordered a sample inspection of the ballot paper. The High Court did not give any finding whether the evidence or the material adduced by the respondent no. 1 was sufficient for the prima facie satisfaction of the High Court.

HELD : An order for inspection could not be granted as a matter of routine, but only tinder special circumstances. Inspection of ballot paper should not be allowed in such a way so as to make a roving or fishing inquiry in order to discover material for declaring the election void. [205F-G, 206D]

The following conditionss are imperative before a Court can grant inspection or sample inspection of the ballot pepers :-

(1)That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations

(2)That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be Supported by adequate statements of material facts;

(3)The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount ;

(4)That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and

(5)That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials. [230E-H, 231A-B]

Further held that what appeared to have weighed with the High Court was the solitary circumstance that the appellant bad succeeded by a narrow margin and that was a sufficient ground for ordering sample inspection. The Court, however, was unable to agree, with this broad statement of the law by the High Court because if a person is duly elected even by a narrow

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margin of votes there is no presumption that there has been illegality or irregularity in the election. This is a fact which has to be proved by a person who challenges the election of the duly elected candidate. After all in a

large democracy such as our's where we have a multiparty system, where the number of voters is huge and diverse, where the voting is free and fair and where in quite a few cases the contest is close and neck to neck, a marginal victory by a successful candidate over his rival can sometimes be treated as a tremendous triumph so as to give a feeling of satisfaction to the victorious candidate. The Court cannot lightly brush aside the success of the duly elected candidate on an election petition based on vague and indefinite allegations or frivolous and flimsy grounds. [212B-C DE]

Held further, in the instant case, the High Court while passing the order of sample inspection made no attempt to apply the above principles. The High Court actually noticed some of the important decisions and yet did not apply them. The High Court did not record any satisfaction. Allowing the appeal, the matter was remanded to the High Court for disposing of the application for inspection of the ballot papers in the light of the observations made in the judgment. [205 D-F. 211 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 63 of 1975. Appeal by special leave from the Judgment and order dated the 20th September, 1974 of the Allahabad High Court in Election Petition No. 19 of 1974.

J.P. Goyal, Pranab Chatterjee and G. S. Chatterjee, for the appellant.

R.K. Garg, S. C. Agarwala and V. J. Francis, for respondent No. 1.

The Judgment of the Court was delivered by FAZAL ALI, J.-By virtue of an order dated December 20, 1974 Banerji, J., of the Allahabad High Court who was designated as the Election Judge passed an order granting the application of the respondent No. 1 for a sample inspection of the ballot papers. The order directed that a sample inspection of 20 bundles of 50 ballot papers each of the votes counted in favour of the appellant may be taken out and examined along with the 5 bundles of the rejected ballot papers. It is against this order that the appellant has filed the present appeal by special leave and has assailed the order of the learned Single Judge on the ground that the learned Judge has exercised his discretion illegally and improperly in allowing the sample inspection of the ballot papers without there being sufficient proof of the allegations made by the respondent in his petition for setting aside the election of the appellant. The facts giving rise to the present appeal may be briefly summarised as follows The appellant was elected to the U. P. Legislative Assembly from 218, Mubarakpur Constituency in the District of Azamgarh, U. P. The last date of nomination for election to the said assembly was January 24, 1974. The date of scrutiny was January 25, 1974 and that of withdrawal January 28, 1974. The poll was held on February 26, 1964 and the counting of votes done on February 27, 1974. The result of the election was declared on February 28, 1974. The

respondent filed an election petition before the Election Judge of the Allahabad High Court some time in March 1974. The appellant secured 19,728 votes while respondent No. 1 had secured 19,634 votes and thus the appellant defeated respondent No. 1 by a margin of 94 votes and was duly elected to the U.P. Legislative Assembly. In the petition filed by the respondent before the Allahabad High Court the respondent in paragraph-8 of the said petition made a large number of allegations regarding the improper reception and rejection of votes and regarding wrong arithmetical counting of votes and acceptance of votes which were void. The material facts with respect to the allegations were set out in paragraph-9 of the petition which broadly are as follows :

> (1) That the election staff engaged in the work of counting was suffering from serious physical strain as they had to work without any rest on that day as a result of which there were a number of arithmetical mistakes in the counting of votes.
>
> (2) That the staff had become drowsy and was actually dozing and could not efficiently discharge its function of counting the votes properly.

As regards the facts relating to improper rejection of valid ballot papers it is said that a large number of ballot papers in which valid votes had been marked for the petitioner' (respondent No. 1) were declared invalid despite oral protests made by the counting agents of the respondent. Similarly a large number of ballot papers had distinct marks of stamp in the column of the petitioner near the symbol of cow and calf and yet they were improperly rejected by the counting staff on the ground that there were no distinct marks. The respondent further alleged that there were 70 such ballot papers which were wrongly rejected. It was also pleaded that a number of ballot papers which had a valid vote for the petitioner were illegally rejected on the ground that there were some accidental mark made in the column of some other candidate which was not a mark of the stamp or a voting mark and the number of such ballot papers rejected was 50. Finally it was said that a number of ballot papers which carried valid votes for the petitioner were illegally rejected on the ground that there was no seal mark or there was no signature of the Returning Officer on those ballot papers although it was far from the truth. Such were said to be the obvious mistakes in the rejection of the ballot papers and the counting of votes which formed the sheet-anchor of the case of the respondent in challenging the election of the appellant. The appellant in his written statement denied all the allegations made in the petition.

While the election petition was being heard by the High Court an application was filed by the respondent No. 1 praying that a sample inspection of the ballot papers may be allowed. In support of this application some witnesses, counting agents of the respondent and other persons were examined and some affidavits were filed. The appellant also produced some evidence. The learned Judge has mentioned in his order that this sort of evidence was led before him but he has not at all given any finding on the credibility of the evidence. The learned Judge further noticed very prominently that in respect of the allegations made that the counting of votes was wrong and the rejection of the ballot papers was improper, yet the respondent filed no application for recounting of votes as provided by r. 63 of the Conduct of Election Rules, 1961. The learned Judge also noticed that the respondent had not given serial number of a single ballot paper whichis said to have been improperly accepted or improperly rejected. The Judge, however, allowed the application because

he thoughtthat the ends of justice required it. In this connection the learned Judge observed as follows:

> "But before I advert to consider the election petition, the affidavit and the oral evidence to decide whether there should be an order for the general inspection of the used ballot papers, I think it will be in the interests of justice to order a sample inspection of ballot as also a sample inspection of the rejected ballot papers in this case."

These observations clearly show that the learned Judge made no attempt at all to give any finding whether he was prima facie satisfied regarding the credibility of the evidence or the materials adduced before him but ordered a sample inspection in order to test the validity of the allegations made by the respondent. It seems to us that in passing this order the learned Judge, while noticing some of the leading cases of this Court on the point which he has cited in his judgment, viz., Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors. (1) Dr.. Jagjit Singh v. Giani Kartar Singh and others,(2) Jitendra Bahadur Singh v. Krishan Behari & Ors;(3) and Sumitra Devi v. shri Sheo Shankar Prasad Yadav & Ors.(4) has made no attempt to apply the principles laid down in those cases to the facts of the present case. Before, however, dealing with the order passed by the learned Judge it may be necessary to refer to a number of authorities of this Court on the circumstances under which an inspection of the ballot papers, or for that matter a sample inspection, can be allowed. In the case of Ram Sewak Yadav (supra) the matter was considered at great length and this Court pointed out that an order for inspection could not be granted as a matter of routine but only under special circumstances and observed as follows :

> "An order for inspection may not be granted as a matter of course : having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled:
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> (i)that 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 (1)[1964] 6 S.C.R, 238.
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> (2)A.T.R. 1966 S.C. 773.
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> (3)) [1970] 1 S.C.R. 852.
> (4) [1973] 2S.C.R.920.
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> (ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot 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 case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be

granted. But a mere allegation that the petitioner suspects or believe, that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

Two years later in Dr. Jagjit Singh's case (supra) this Court observed on the facts of that case that the discretion to allow inspection of ballot papers should not be used in such a way so as to make a roving or fishing inquiry in order to discover materials for declaring the election void. In this connection, this Court made the following observations "The true legal position in this matter is no longer in doubt. Section 92 of the Act which defines the powers of the Tribunal, in terms, confers on it, by Cl. (a), the powers which are vested in a Court under the Code of Civil Procedure when trying a suit, inter alia, in respect of discovery and inspection.

Therefore, in a proper case, the, Tribunal can order the inspection of the ballot boxes..... An application made for the inspection at 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. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored, and it is always to be borne in mind that the 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. It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper 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 in the ballot boxes so as to justify their claim that the returned candidate's election is void." In Jitendra Bahadur Singh's case (supra) the order of the Election Judge granting inspection of the ballot papers was reversed by this Court because the Court thought that the learned Judge had not followed the essential conditions laid down before granting the prayer for inspection of the ballot papers. In that case the Court held that the allegations were vague and indefinite, no material fact was pleaded and further that the petitioner was present at the time of counting and yet he did not take any objection regarding the illegal rejection of the votes. In this connection Hegde, J., speaking for the Court laid down the following principles (1) that the petition for setting aside the election must contain an adequate statement of the material facts on which the petitioner relies in support of his case; and (2) the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary.

The cases of Ram Sewak Yadav and Dr. Jagjit Singh mentioned (supra) were referred to and relied upon by Hegde, J., in his judgment.

Another case which appears to be in point and which was the sheet-anchor of the argument of the learned counsel for the respondent is the case of Sashi Bhusan v. Prof. Balraj Madhok & Others.(1) It is true that a sample inspection was allowed in that case. But, in our opinion, it was so done because of the special facts of that case. The allegation of the respondents in that case was that many ballot papers were chemically treated so that the mechanically stamped marks in favour of the successful candidates by using invisible ink emerged and the mark actually put at the time of polling

disappeared after a few days. This was undoubtedly an allegation of a very serious nature, which, if true, would have shaken the entire confidence of the people in the electoral process and would have seriously impaired our democratic system. in these circumstances this Court held that it was not only necessary but in public interest that the allegation should be thoroughly examined so as to maintain confidence of the people. In this connection, Hegde, J., while delivering the judgment of the Court, observed as follows :

> "It is true that merely because someone makes bold and comes out with a desperate allegation that by itself should not be a ground to attach value to the allegation made. But at the same time serious allegations cannot be dismissed summarily merely because they do not look probable. Prudence requires a cautious approach in those matters. In all these matters, the court's aim should be to render complete justice between the parties. Further, if the allegations made raise issues of public importance, greater care and circumspection is necessary.
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> These cases have peculiar features of their own. No such case had come up for decision earlier. Hence decided (1) [1972] 2 S.C.R. 177.

cases can give little assistance to us. In a matter like allowing inspection of ballot papers, no rigid rules have been laid down, nor can be laid down. Much depends on the facts of each case. The primary aim of the courts is to render complete justice between the parties. Subject to that overriding consideration, courts have laid down the circumstances that should weigh in granting or refusing inspection.

..... The ratio of that decision is that the inspection of ballot papers should be allowed only when the court thinks that it is necessary in the interests of justice to do so. In. that case this Court did not lay down any hard and fast rule as to when an inspection of the ballot papers can be allowed."

In the instant case, however, the allegations are of a different kind. They relate only to the mistakes in counting and improper rejection of votes. They are not of a sweeping pattern as in the case aforesaid. In these circumstances, therefore, the ratio laid down in Sashi Bhushan's case (supra) cannot be pressed into service for the purpose of supporting the order of the learned Judge.

In the case of Sumitra Devi (supra), Mathew, J., after reviewing the previous authorities of this Court, held as follows :

> "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 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."

In S. Baldev Singh v. Teja Singh Swatantar (dead) & Ors(1) Krishna Iyer, J., remarked as follows :

> "Coming to the facts of this case, we have already indicated that no good grounds for a Court order for inspection and recount, particularly after the Sherpur experiment, exist. Although we are free to admit that an imaginative Returning Officer might have quietened the qualms and silenced the scepticism of the appellant by a test check or partial recount, proceeding to a full recount if serious errors were found, we are inclined to agree with the High Court, there being no reason to reverse its elaborately discussed conclusions, and the relief of recount was rightly rejected."

(1) Civil Appeal No. 233 of 1973 decided an 24-1-1975.

In Beliram Bhalaik v. Jai Beharl Lai Kachi and Anr.(1) Sarkaria J., speaking for the Court, observed as follows :

> "Since an order for a recount touches upon the secrecy of the ballot, it should not be made lightly or as a matter of course. Although no cast iron rule of universal application can be or has been laid down, yet, from a beadroll of the decisions of this Court, two broad guidelines are discernible : that the Court would be justified in ordering a recount or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (ii) the Court/Tribunal trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

In Suresh Prasad Yadav v. Jai Prakash Mishra & Ors.(2) while summarising the principles laid down by this Court from time to time in granting prayer for inspection of ballot papers, the Court adumberated the circumstances in which a prayer for inspection of ballot papers could be considered and observed as follows :

> "Before dealing with these contentions, we may recall, what this Court has repeatedly said, that an order for inspection and recount of the ballot papers cannot be made as a matter of course. The reason is twofold. Firstly such an order affects the secrecy of the ballot which under the law is not to be lightly disturbed. Secondly, the Rules provide an elaborate procedure for counting of ballot papers. This procedure contains so many statutory checks and effective safeguards against trickery, mistakes and fraud in counting, that it can be called almost foolproof. Although no hard and fast rule can be laid down, yet the broad guidelines, as discernible from the decisions of this Court, may be indicated thus The Court would be justified in ordering a recount of the ballot papers, only where :

"(1) the election-petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded; (2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and (3) The Court trying the petition is prima facie satisfied that the making of such an order is imperatively (1) A.I.R. 1975 S.C. 283.

(2) A.I.R. 1975 S.C. 376.

necessary to decide the dispute and to do complete and effectual justice between the parties." These principles were reiterated in Chanda Singh v. Ch. Shiv Ram Varma and others,(1) where speaking for this Court, Krishna Iyer, J., observed thus "On all hands, it is now agreed that the importance of the secrecy of the ballot must not be lost sight of, material facts to back the prayer for inspection must be bona fide, clear and cogent and must be supported by good evidence. We would only like to stress that in the whole process, the secrecy is sacrosanct and inviolable except wherestrong prima facie circumstances to suspect the purity,propriety and legality in the counting is made out by definite factual averments, credible probative material and good faith in the very prayer. We may even say that no winning candidate should be afraid of recount and, conditions as they are, a sceptical attitude expecting the unexpected may be correct, informed of course by the broad legal guidelines already set out." Lastly in Ch. Manphul Singh v. Ch. Surinder Singh(2) the Court upheld the order of the High Court allowing inspection of ballot papers because the High Court had given a finding that the evidence of the witnesses was sufficient to prove the allegation of impersonation, in that case. The Court further held that the High Court did not act arbitrarily in granting the prayer for inspection.

Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a Court can grant inspection, or for that matter sample inspection, of the ballot papers :

(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations; (2) That before inspection is allowed, the allocations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties; (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the (1) AIR 1975 SC 403.

(2) AIR 1975 SC 502.

applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials. If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper.

In the instant case we find that the learned Judge while passing the order of sample inspection made no attempt to apply the principles mentioned above to the facts of the present case. What is more important is that the Court actually noticed some of the important decisions of this Court which we have discussed and yet it did not try to test the principles laid down on the touchstone of the allegations and the material facts pleaded by the respondent. Another error into which the learned Judge had fallen was that he did not realise that by allowing sample inspection he had provided an opportunity to the respondent to indulge in a roving inquiry in order to fish out materials to justify his plea in order to declare the election to be void a course which has been expressly prohibited by this Court, because it sets at naught the electoral process and causes a sense of instability and uncertainty amongst the duly elected candidates. Thirdly, while the learned Judge has observed that the Court must be prima facie satisfied regarding the truth of the materials, but it did not choose to record its satisfaction on the application of the respondent at all and has readily accepted the suggestion of the respondent for sample inspection on the ground that it was necessary for the ends of justice. Such an approach, in our opinion, is legally erroneous. While indicating in his order that both the parties had produced some affidavits before him in support of their pleas, the learned Judge has not at all tried to appreciate or consider the evidence in order to find out whether it was worthy of credence. In the absence of any such finding it was not open to the learned Judge to have passed an order for sample inspection just for the asking of the respondent.

Finally there were intrinsic circumstances in this case which went to show that unless the respondent was able to place cogent materials this was not a case for allowing sample inspection at all. in the first place although the counting agents of the respondent were present at the time when the votes were counted no application for a recount was made under r. 63 of the Conduct of Election Rules,' 1961. The nature of the allegations made by the respondent in his petition as alluded to above was such as could have been easily verified at the spot by the Returning Officer, if his attention was drawn to those facts by an application made under r. 63 of the Conduct of Election Rules, 1961. Secondly the learned Judge overlooked that the respondent had not given the material particulars of the facts on the basis of which he wanted an order for sample inspection of ballot papers. No serial number of the ballot paper was mentioned in the petition nor were any particulars of the bundles containing the ballot papers which were alleged to have been wrongly rejected given by the respondent. Even the segment in which the irregularity had occurred was not mentioned in the petition. We, however, refrain from making any further observation as to what would be the effect of non-disclosure of these particulars because we intend to remit the case to the learned Judge for rehearing the matter and deciding the application for inspection. What appears to have weighed with the Judge is the solitary circumstance that the appel- lant had succeeded by a narrow margin and that was a sufficient ground for ordering sample inspection. We are, however, unable to agree with this broad statement of the law by the learned Judge because if a person is duly elected even by

a narrow margin of votes there is no presumption that there has been illegality or irregularity in the election. This is a fact which has to be proved by a person who challenges the election of the duly elected candidate. After all in a large democracy such as our's where we have a multi-party system, where the number of voters is huge and diverse, where the voting is free and fair and where in quite a few cases the contest is close and neck to neck, a marginal victory by a successful candidate ,over his rival can sometimes be treated as a tremendous triumph so as to give a feeling of satisfaction to the victorious candidates The Court cannot lightly brush aside the success of the duly elected candidate on an election petition based on vague and indefinite allegations or frivolous and flimsy grounds. The learned counsel for the respondent submitted, however, that in view of the amended provisions of the Representation of the People Act and the rules made thereunder the question of maintenance of secrecy has now become obsolete, because under the present system which was in vogue at the time when the election of the appellant was held it is difficult to find out as to which voter voted for the candidate. It is, however, conceded by the learned counsel for the respondent that if the counter-foils which are scaled and kept separately are made to tally with the ballot papers, then it can be ascertained with some amount of precision as to which voter voted for whom. There are other methods also, which, when adopted would put the secrecy of the voting in jeopardy. In these circumstances, therefore, the question of maintenance of secrecy does not become obsolete as argued by Mr. Garg appearing for the respondent. We have adverted to a long course of decisions of this Court where it has been insisted on the maintenance of the secrecy of the ballot and the new methodology adopted by the Act has not made any material change in this concept. Lastly it was submitted by the counsel for the respondent that the learned Judge had to satisfy himself whether or not a case had been made out for allowing sample inspection and if he had exercised his discretion one way or the other, this Court should not lightly interfere with that discretion. This argument, however, is wholly untenable for the reasons we have given in holding that the order of the learned Judge is not in accordance with the law. The learned Judge has not at all applied the principles laid down by this Court in the cases referred to above. It is manifest that the Court has the undoubted power to (,rant prayer for inspection, but this discretion has to be exercised according to the sound and sacrosanct principles laid down by this Court. In the instant case, the discretion has been exercised by the learned Judge in an arbitrary manner without the application of the mind to the material facts and circumstances as discussed above. For the reasons given above, we allow this appeal, set aside the order of the learned Single Judge of the Allahabad High Court dated December 20, 1974 and remand this case to the learned Election Judge for disposing of the application of the respondent for inspection of the ballot papers in accordance with the law and in the light of the observations made above. The appellant will be entitled to his costs in this Court.

P.H.P. Appeal allowed.