

## Ram Sewak vs Election Tribunal And Ors. on 18 October, 1954

**Equivalent citations: AIR1955ALL163, AIR 1955 ALLAHABAD 163**

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Articles 226 and 227 of the Constitution challenging the validity of an order of an Election Tribunal.

2. Elections for membership of the Municipal Board, Konch, district Jalaun, were held on 26-10-1953. The Municipal Board was divided into a number of wards, and I am concerned in the present petition mainly with ward No. 7. From this ward three members were to be elected and there were a number of candidates, including the petitioner and respondents Nos. 2 to 4. The petitioner and respondent No. 2, namely, Ambika Prasad, secured equal number of votes, and the lots, therefore, had to be drawn. The draw went in favour of the petitioner and he was declared elected on 28-10-1953. Respondents Nos. 3 and 4 had secured a higher number of votes and they were, therefore, also declared to have been duly elected.

Respondent No. 2 then filed an election petition, which has ended in his favour. The petition was moved on a number of grounds, but I am concerned only with one of them, namely, the finding of the Election Tribunal concerning the validity of the votes cast by three persons, namely, Raghu-nath Prasad, Gajraj and Gafoor Ahmad. Gajraj and Gafoor Ahmad had voted in favour of respondent No. 2 and their votes have been held to have been wrongly rejected by the Returning Officer. Raghunath Prasad voted in favour of the petitioner and the Election Tribunal has held that the Returning Officer wrongly accepted his vote. In the present petition the decision of the Election Tribunal concerning the validity of the votes of all the three persons, mentioned above, has been challenged before me.

3. I may first dispose of the contentions with respect to the vote cast by Gafoor Ahmad. His vote, cast in favour of respondent No. 2, was rejected by the Returning Officer with an endorsement "Cumulative. Rejected". ^ This expression means that Gafoor Ahmad had cast more than one vote in favour of the same candidate and, therefore, one of the votes cast by him was being rejected.

The contention of respondent No. 2 before the Election Tribunal was that Gafoor Ahmad had really cast three votes in favour of three different candidates one in favour of respondent No. 2, one in favour of respondent No. 3 and one in favour of respondent No. 4. The Election Tribunal has accepted this contention of respondent No. 2 mainly on the ground that three votes cast by Gafoor Ahmad were put separately in three packets containing the votes cast in favour of respondents Nos. 2, 3 and 4 respectively, and the forms Nos. 15 and 16 prepared by the Returning Officer also show that one of the votes was cast in favour of respondent No. 2.

4. The contention of the learned counsel for the petitioner is that the vote having been rejected by the Returning Officer at the time of the counting of the votes, it was the statement of the Returning Officer only which could have explained the position, and the Election Tribunal has acted illegally in holding that Gafoor Ahmad had cast votes in favour of three different persons.

I am unable to accept this contention of the learned counsel. It was a pure question of fact as to whether Gafoor Ahmad had cast votes separately in favour of the three candidates or he had cast more than one vote in favour of one of them. The documentary evidence produced before the Election Tribunal pointed out to the conclusion that Gafoor Ahmad had cast three separate votes and that one of those votes was cast in favour of respondent No. 2. The finding of the Election Tribunal, in my opinion, is not vitiated by any error of law and is a finding on a pure question of fact which must be accepted in the present proceedings.

It was also urged that Gafoor Ahmad's name as a person whose vote was wrongly rejected was not mentioned in the election petition, and it has only come out in the evidence produced by the parties. This may be so, but it does not appear that any prejudice was caused to the petitioner as far as this question is concerned and, in my opinion, it was open to the Election Tribunal to consider whether Gafoor Ahmad's vote cast in favour of respondent No. 2 had been wrongly rejected by the Returning Officer. I uphold the finding of the Election Tribunal concerning the vote of Gafoor Ahmad.

5. I now come to the votes cast by Raghunath Prasad and Gajraj. Both these persons are Government servants who had a right to cast their votes in respect of elections from ward No. 7. But they themselves were appointed to different wards in connection with the same elections to the Municipal Board. Raghunath Prasad voted in favour of the petitioner and Gajraj voted in favour, of respondent No. 2.

The procedure that is to be followed in such cases is provided in rule No. 51. In brief, what this rule provides is that if a Government servant is posted on duty in connection with the very election to a different ward, he may file an application to the Returning Officer for permission to vote by postal ballot. The Returning Officer is required to see whether the claim of the petitioner to cast such a vote is just and whether he is an elector in the ward where he wishes to cast his vote. If he is satisfied on both these points, then he grants the application and intimation of it is given to the Returning Officer of the ward where the vote is to be cast by postal ballot. The applicant, in such a case, is supplied with a registered envelope and he is permitted to send his vote by registered post to the Returning Officer of the ward where he proposes to cast his vote.

There appears to be no doubt so far that both Raghunath Prasad and Gajraj were permitted to give their votes by postal ballot, as they were posted on duty in connection with elections in wards other than ward No. 7. Gajraj sent his vote by registered post, but Raghunath Prasad's vote was found in the ballot box of ward No. 7. The Election Tribunal has held that the vote cast by Raghunath Prasad was not a valid vote, inasmuch as he should have sent it by registered post, as required by the rules, and he was not authorised to cast his vote in the ballot box of ward No. 7.

But it has held that the vote cast by Gajraj was a valid one inasmuch as Gajraj had sent it by registered post to the Returning Officer.

6. The argument of the learned counsel for the petitioner as regards both these votes is that it has not been proved in this case that applications were made by these persons for permission to cast the votes by postal ballot and that, assuming that such applications were made, there is no evidence that the Returning Officer applied his mind to a consideration of the question whether the prayer of these persons was just and whether they were electors in the ward.

The finding of the Election Tribunal is that applications were filed by both these persons and the Returning Officer duly granted those applications. But the argument of the learned counsel is that, according to the statement of the only witness produced in the case -- a clerk in the election department -- it appears that the Returning Officer had verbally given directions that all such applications should as a rule be granted and permission be given to the applicants to cast their votes by postal ballot. He argues that the Returning Officer was directed by law to apply his mind to the case of each and every applicant and then to come to a conclusion whether the prayer was just or not.

I am unable to accept the contention of the learned counsel on this point either. Shankar Lal's statement comes to this that the Returning Officer had given oral instructions to his clerk to issue permissions for voting by post if the applications were otherwise regular. This means that instructions were that applications by officials appointed to other wards should be allowed and they be permitted to vote by postal ballot if they were electors and authorised to cast their votes. The only two matters which the Returning Officer was expected to see were whether the prayer was a just one and whether the applicant was an elector in the ward. Instead of applying his mind to each and every application separately he issued general oral instructions saying that such applications be granted if they were otherwise in order. It means that they were to be granted if the applicants were electors. Of course the instructions applied only to those cases where the officials had been deputed to different wards in connection with this very election held on the same date.

I am of the opinion that these general oral instructions were quite sufficient to comply with the requirements of Rule 51 (2). It has been fully proved in the case that both Raghunath Prasad and Gajraj were officials deputed to work in different wards and they were entitled to cast their votes. They were both granted permissions to vote by postal ballot and, on the proof of these facts, I have no doubt that the Returning Officer very rightly permitted them to vote under Rule 51. When an official, who is entitled to vote, is deputed on duty to a different place, it is clearly just that he should be permitted to cast his vote by postal ballot, which is really the only manner in which he can exercise his right. I think that on the findings arrived at by the Election Tribunal, it must be held that both Raghunath Prasad and Gajraj were properly permitted to cast their votes by postal ballot. It is true that the applications that they made are not forthcoming, but it is quite apparent that no permission to them could have been granted to vote by postal ballot if they did not actually file the applications for that permission. On the circumstances of the case and the evidence that is on the record, I am inclined to agree with the finding of the Election Tribunal on this point also that both these persons also applied for permission to send their votes by registered post.

As stated above, Raghunath Prasad had not sent his vote by post, but it was actually found in the ballot box of ward No. 7. Under the provisions of Rule 51, after having once obtained permission to send his vote by registered post, I am of the opinion that that was the only manner in which he should have cast his vote, and the vote cast in the ballot box of ward No. 7 has rightly been rejected by the Election Tribunal. In any case, it cannot be said that the decision of the Tribunal on any of the above points was manifestly wrong, so as to justify interference under Article 226.

7. The other point argued by the learned counsel was that Raghunath Prasad's vote could not be rejected because the grounds on which a vote can be rejected are all contained in rule No. 64, and this rule contains no ground which would cover the facts of the present case. The argument is that that being the position, Raghunath Prasad's vote should not have been rejected. Here again in my opinion the contention of the learned counsel for the petitioner is not correct. Rule 64 contains the grounds for rejection of ballot papers properly placed in the ballot boxes. It assumes that the ballot papers had been properly put and it then narrates the grounds on which those papers can be rejected. The rule would have no application to a case like this where the procedure is provided by a different rule, namely, Rule 51. After an application under Rule 51 for sending a vote by post has been accepted, then the official can send his vote only in that manner, and if he "does not send his vote in that manner, his vote should not be accepted.

8. For the reasons given above, I do not see any force in this petition which is hereby rejected.