Shradha Devi vs K.C. Pant And Ors. on 23 November, 1983

Equivalent citations: AIR1984SC382, 1983(2)SCALE792, (1984)3SCC458, AIR 1984 SUPREME COURT 382, 1984 ALL. L. J. 200 1984 (3) SCC 458, 1984 (3) SCC 458

Bench: D.A. Desai, O. Chinnappa Reddy

JUDGMENT

1. Despite the commendable pertinacity with which the appellant, Kumari Shradha Devi has, pursued this matter, we are afraid she must fail. In March 1978 there was the biennial election to the Rajya Sabha from the Uttar Pradesh Legislative Assembly Constituency. The members of the Uttar Pradesh Legislative Assembly were required to elect 11 members to the Rajya Sabha. The term for which the members were to be elected was six years. That term will expire in another four months. Such has been the delay of the processes of the law that even if the appellant had been successful in this appeal she would be a member of the Rajya Sabha for hardly four months though the normal term is six years.

2. The facts of the case have been fully set out in the judgment pronounced by this Court on the earlier occasion when the appellant had approached this Court. That Judgment is . Briefly stated the facts are as follows: There were 19 candidates who sought election to the Rajya Sabha from the Uttar Pradesh Legislative Assembly constituency in March 1978 The appellant was one of them Eleven members were to be elected and the election was by means of the single transferable vote 471 members of the Uttar Pradesh Legislative Assembly exercised their franchise Eleven ballot papers were rejected by the Returning Officer as invalid' Thereafter the preferences cast in the remaining ballot papers were valued and the points counted. Respondents 2 to 11 were declared elected in the first count itself and Respondent No. 1 was elected in the fourteenth count. The appellant who was the "runner up", if such an expression may be used, filed an election petition. We are not now concerned with the several allegations in the election petition. We are only concerned with the dispute relating to the rejection of the eleven ballot papers. The Election Tribunal (T.S. Misra, J.) rejected the election petition on a ground which was found by this Court to be wholly untenable in the appeal preferred by Kumari Shradha Devi against the rejection of her election petition. this Court, while allowing the appeal, gave certain directions and remitted the matter back to the Election Tribunal. The Tribunal was directed to examine the ballot papers which had been rejected by the Returning Officer as invalid, ascertain the reasons for their rejection, satisfy itself whether the reasons were tenable, decide upon the validity of each of the ballot papers in whole or in part and direct computation of the preferences over again. It was held by this Court that a ballot paper could be valid in part and invalid in part, for instance, where the first few preferences were validly marked but the later preferences were invalidly marked, in which case the subsequent preferences were to be ignored and the earlier preferences were to be computed. After the remand, the Election Tribunal accepted as valid all the eleven ballot papers which had been rejected by the Returning Officer as invalid. In fact there is no dispute before us that ten out of the eleven ballot papers had been

improperly rejected by the Returning Officer and the Election Tribunal was quite right in accepting them as valid. The dispute is only in regard to one ballot paper marked as Ballot Paper No. 6. This ballot paper was accepted by the Election Tribunal as valid despite the fact that first preference was marked against the names of two candidates, Manohara and Bhattacharya. The Election Tribunal thought that the numeral '1' marked against the name of Manohara was in fact not a mark put by the voter but something which had got stuck to the paper either at the time of manufacture or thereafter. The Election Tribunal, therefere, took the view that the first preference had been marked for Bhattacharya only and proceeding on that basis, the preferences were valued and the points counted. Once again Respondent No. 1 secured more points. The Election Petition was dismissed again and the appellant is once more before us.

3. As already mentioned, the dispute is now confined to Ballot Paper No. 6. All the three of us (Desai, Chinnappa Reddy and Varadarajan, JJJ) examined the ballot paper with the naked eye and with the aid of a magnifying glass as well. We are not a little surprised that the Election Tribunal came to the conclusion that it did. The Tribunal said, I have perused that mark. At the outset it must be mentioned that the alleged mark is not in ink. It has also not been made with the aid of any other instrument. It seems that it is something which has stuck with the paper. Either it was stuck while the paper was being manufactured or thereafter but it is not mark made by any elector.... Now I have also seen the ballot paper myself very closely and I am of the definite opinion that it is not a first preference mark made by the elector. It is something which is a manufacturing defect or any impurity, The tip of the mark is in the nature of'Y' and is not a mark made by the elector with the aid of any instrument whatsoever.... I, therefore, record a finding that there is no mark of first preference set opposite the name of Smt. Manohara. That being the position, there was only one first preference mark set opposite the name of Sri G.C. Bhattacharya.

We do not have the slightest hesitation in saying, that there was clearly a markthe numeral '1'against the name of Manohara and that there was no manufacturing or other defect in the paper and nothing was stuck to the paper. Dr. Chitaley appearing for respondent No. 1 tried to persuade us to accept the view of the Tribunal hut we find 5 it difficult to let our imagination run away.

4. As we found at the earlier stage of hearing that two first preferences were marked in Ballot Paper No. 6, we came to the conclusion that it had to be excluded from the count as invalid. On that-basis we required two officers of the Election Commission, who were appointed by us as Commissioners for that purpose, to value the preferences and count the points. The Commissioners have reported to us that as a result of the fresh count made by them, they have found that the first respondent has secured 3338 points and the appellant has secured 3315 points. The appellant has objected to the computation made by the Commissioners. The appellant says that the Commissioners were in error in making a recount by valuing all the 420 valid ballot papers instead of confining themselves to the ten disputed ballot papers which have been found to be valid. The submission was that the 10 ballot papers which have been rejected by the Returning Officer, but which have now been accepted may be treated as valid for fixing the minimum quota to be obtained by a candidate in order to be declared elected, but should be ruled out for the purpose of counting votes cast in favour of any candidate. The submission is wholly devoid of any merit. We do-not see how a recounting could be done in the manner suggested by the appellant. Such a method of recounting would be wholly alien

to the scheme of counting explained and adumbrated at such length in the Schedule to the Representation of the People Act. The appellant attempted to take advantage of a sentence occurring in the earlier judgment of this Court where it has been said, "the scrutiny and recount was to be confined specifically to the decision of the Returning Officer rejecting eleven votes as invalid." this Court was not intending to lay down any new method of recounting the points. All that was meant was that the 11 rejected ballot papers were to be scrutinised in the light of the judgment of the Court and thereafter a recount was to be made. The recount had to be in accordance with the provisions of the Representation of the People Act and the rules. Here we may refer to the following observations of this Court in Anirudh Prased v. Rajeshwari Saroj Das and Ors. 1976 (SUPPR) SCR, 91 Initially, 306 ballot papers were accepted as valid by the Returning Officer. The minimum quota was accordingly fixed at 2551 : (306x100=30600/11 + 1 = 2550 + 1=2551). The High Court held that 6 ballot papers were Wrongly rejected by the Returning Officer as a result of which the number of valid ballot papers rose to 312. The minimum quota correspondingly rose to 2601: 45 (312X 100 = 31200/ 12 = 2600 + 1=2601). The minimum quota which is fixed primarily on the basis of valid ballot papers is the key-point of counting and transfer of surplus votes. 'Surplus Votes' means votes in excess of the minimum quota and it is such surplus votes that are transferred to other candidates left in the field. The various rules and their working as illustrated in the Schedule to the Rules show that the system of proportional representation by a single transferable vote involves a progressive inter-linked method of counting votes. It is, therefore, difficult to accept the appellant's argument that a ballot paper may be treated as valid for fixation of the minimum quota but should be ruled out for purposes of counting the votes cast therein in favour of any candidate. If the ballot paper Ex.B/2 is valid, it must be treated as valid for all purposes and therefore the 1st preference vote contained therein in favour of respondent 8 must be counted in his favour. This would be so especially when the process can involve no recrimination between respondent 8 and the appellant, both of whom were successful candidates".

5. We have no hesitation in holding that the Commissioners appointed by the court recounted the points correctly in the manner provided by the Act. The result is that the appeal fails and is dismissed. There is no order as to costs.