Paokai Haokip vs Rishang & Ors on 12 August, 1968

Equivalent citations: 1969 AIR 663, 1969 SCR (1) 637, AIR 1969 SUPREME COURT 663

Author: M. Hidayatullah

Bench: M. Hidayatullah, G.K. Mitter

PETITIONER:
PAOKAI HAOKIP

Vs.

RESPONDENT:
RISHANG & ORS.

DATE OF JUDGMENT:
12/08/1968

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
MITTER, G.K.

CITATION:
1969 AIR 663 1969 SCR (1) 637
CITATOR INFO :
RF 1970 SC2097 (152)
F 1988 SC 637 (8,9,11,12)

ACT:
Representation of the People Act (43 of 1951), s. 100.(1)(d)(iv)-Election petitioner to prove that election result materially affected-Evidence of witnesses, evaluation.

HEADNOTE:
In an election to a Parliamentary constituency, having 2,19,554 voters 1,20,008 votes were polled. of these 4,168 votes were declared invalid. The appellant won by securing 1,541 votes more than the next candidate the respondent. The respondent filed an election petition on the ground that the polling was disturbed as the polling centres were in some cases changed without due notification, at some polling stations almost no votes were cast because of fi'ring at rioters and at some polling stations the polling hours were

reduced. Only 1,894 votes were polled at these polling booths, in which the total number of voters attached were 8,620. so 6,726 voters could not vote. The Judicial Commissioner ordered fresh poll in these polling stations. In appeal by the returned candidate, this Court.

HELD: The appeal must succeed.

The decision of the Judicial Commissioner that the election was in contravention of the Act and the Rules was correct in the circumstances this case but that did not alter the position with regard to s. 100(1)(d) (iv) of the Representation of the People Act. That section requires that the election petitioner must go a little further and prove that the result of the election had been materially affected. And in this case this burden had not been discharged. [643 F]

The evidence in this case which had been brought by the election 'petitioner was the kind of evidence which was criticised by this Court. Witnesses were brought forward to state that a number of voters did not vote because of the change of venue or because of firing and that they had already decided to vote en bloc for the election petitioner. This kind of evidence was merely an assertion on the part of a witness, who could not speak 'for 500 voters for the simple reason that as this Court said the casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of votes wilt go to one or the other candidates. This conclusion is further forified if one examines the polling pattern in this election. Not more than 55% of the voters cast their votes. !This immediately cut down the' figure of 6,726 to a little over half and the margin from which the election petitioner could claim additional votes therefore becomes exceedingly small. From the pattern of voting as was disclosed at the various polling booths to which the voters had gone, it was clear, that 1,541 votes could not. by any reasonable guess, have been taken off from the lead of the returned candidates so as to make the election petitioner successful. 'In ,so far as the other contesting candidates were concerned, they had received so few votes that even if they had received all the votes that had not been cast, it would have mattered little to the result of the election. The Judicial Commissioner reached his conclusion by committing the same error which was criticised in Vashist Narain Sharmas case. He took the statement of witnesses at their word and held on the basis of

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these statements that all the votes that had not been cast would have gone to the election petitioner. [642 B-643 E]

Vashist Narain Sharma V. Der Chandra and Ors. [1955] 1 S.C.R. 509, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 683 of 1968.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the Judgment and order dated January 10, 1968 of the Judicial Commissioner of Manipur in Election Petition Case No. 2 of 1967.

D. Goburdhun, for the appellant.

K.R. Chaudhuri, K. Rajendra Chaudhuri and C.S. Sreenivasa Rao, for respondent No. 1.

The Judgment of the Court was delivered by Hidayatullah, C.J. This is an appeal from the Court of the Judicial Commissioner for Manipur at Imphal under s. 116A of the Representation of People Act. The appeal arises 'from an election to the Outer Mareput Parliamentary Constituency at which the appellant, who was the returned candidate, and five others were the contesting candidates. This Outer Mareput Constituency comprised 14 Assembly constituencies. The dates of poll were 15th, 20th, 24th, 28th February, and 6th March, 1967 and the time of poll was from 7-30 A.M. to 4-30 P.M. This constituency had 2,19,554 registered voters. The total number of votes polled was 1,20,008. Of these 4,166 votes were declared invalid. The returned candidate received 30,403 votes as against the next candidate who received 28,862 votes. There was thus a majority of 1,541 votes in favour of the returned candidate. The result of the poll was declared on March 10, 1967.

The candidate who secured the second largest number of votes filed this election petition on April 20, 1967. The main ground of attack, which succeeded in the Judicial Commissioner's Court, was that the poll was disturbed because of numerous circumstances. These were that the polling centres were in some cases changed from the original buildings to other buildings of which due notification was not issued earlier with the result that many of the' voters who went to vote at the old polling booths found no arrangement for poll and rather than go to the new polling station, went away without casting their votes. 'The second ground was that owing to firing by the Naga Hostiles, the voting at some of the polling stations was disturbed and almost no votes were cast. It was lasfly contended that the polling hours at some stations were reduced with the result that some of the voters who went to the polling station were unable to cast their votes.

It is hardly necessary to set down here the names of the polling stations at which these things happened. In any event, these pelting stations carry rather strange names and it would not help to state them here. The net result may be stated. It was this there were 12 polling centres, at 4 of which the venue for the poll was altered. There were 6 others at which the firing disturbed the poll and In 2 of the polling. centres not a single vote was cast and lastly in one of the polling centres out of 513 voters only one voted.

The following chart discloses the break-up of the figures at these polling centres:

SR.	No. of	No. of

No.	Name of the polling stations (as notified)		voters attached to the station	votes actually cast
1.	Tungam Khullen High School	.....	1,242	522
2.	ChandelJunior Basic School	.....	1,060	172

3. Purum Pantha L.P. School 654 338

4. Litan L.P. School 449 347

5. Toupokpi M.E. School 584 128

6.Chakpikarong M.E School..... 715 67

7.Bolyang Tampak L.P. School..... 868 249

8.Oklu L.P.School 725 17

9.Lorong Khullen J.B.School..... 581 53

10.Lakhmei M.E.School..... 665 --

11.Nagri Khullen M.E.School ..... 564 --

12.Karong Dak Bumgalow..... 513 1 It will be noticed from this chart that out of 8,620 votes which could have been polled, only 1,894 votes were actually received. In other words, 6,726 voters did not vote or could not vote. The election petitioner who ran a deficit of 1,541 votes claimed in the election petition that the result of the poll was prejudicial to him in particular and friar by the non-compliance with the provisions of the Act and its rules, the result of the election in so, far as the returned candidate was concerned had been materially affected. The Judicial Commissioner after examining a large number of witnesses on both sides, came to the conclusion that there was this flaw in the election for this constituency. He went further and held that the result of the election in so far as it concerned the returned candidate had been materially affected. He, therefore, avoided the election and ordered fresh poll in the 12 polling stations. In this appeal, the returned candidate attempted to establish that polling was not so disorganised that it could be said that it did not take place. He attempted to show that even where the polling station was shifted, it was a matter of few hundred yards and the people went to vote knew the new location of the polling booths. He also submitted that, in any event, this had, affected all the contesting candidates equally and the election. petitioner could not, therefore, be said to have suffered more' than the other candidates. Lastly, the returned candidate contended that it had not been established in accordance with the ruling of this Court in Vashist ,Narain Sharma v. Dev Chandra and others(1) that the result of the election had been materially affected so far as his election was concerned. In this connection, the returned candidate relies upon the majority which he had already obtained and refers to the votes which had not been cast, pointing out that on the general pattern of the voting as disclosed in the case it cannot

possibly be said that the election petitioner would have carried such a majority from those votes as to neutralise the successful lead he had already established. The election petitioner as the answering respondent tried to establish that the pattern of the voting clearly showed that the returned candidate had obtained a fortuitous lead which was capable of being wiped off if the voting had proceeded according to the Act and the Rules. Both sides relied upon statistics to establish their cases. The election petitioner in addition relied upon the evidence of witnesses which he pointed out had been accepted by the Juclicial Commissioner and upon the observations of this Court contended that we should not lightly depart from the findings given by the learned Judicial Commissioner. This case without entering into the numerous details, is confined to the above contentions of the rival parties. To begin with, it is hardly necessary for us to go over the evidence with a view to ascertaining whether there had been or not a breach of the Act and the rules in the conduct of the election at this constituency. We may say at once that having read the evidence we are in entire agreement with the decision of the learned Judicial Commissioner that by the change of venue and owing to the firing, a number of voters probably failed to record their votes which they would have gone if the poll had gone on smoothly and according to rules. This shows that the matter is governed by s. 100(1)

(d) (iv).

The question remains still whether the condition precedent to the avoidance of the election of the returned candidate which requires proof from the election petitioner 'that the result of the election had been materially affected in so far as the returned candidate was concerned, has been established in the present case. This part of-the case depends upon the ruling of this Court in (1) [1955] 1 s.C.R. 509.

Vashist Narain Sharmas case(1). In that case there was a difference of 111 votes between the returned candidate and the candidate who had obtained the next higher number of votes. One candidate, by name Dudh Nath Singh, was found not competent to stand and the question arose whether the votes wasted on Dudh Nath Singh, if they had been polled in favour of the remaining candidates, would have materially affected the fate of the election. Certain principles were stated as to how the probable effect upon the election of the successful candidate of votes which were. wasted (in this case not cast) must be worked out. Two witnesses were brought to depose that if Dudh Nath Singh had not, been a candidate for whom no voting had to be done, the voters would have voted for the next successful candidate. Ghulam Hasan, J. did not accept this kind of evidence. It is observed as follows:

> "It is impossible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the petitioner. is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand."

In another passage, it is observed:

> "It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and' it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by s. 100(1)(c) and hold without evidence that the. duty has been discharged."

Further it is pointed out that the burden of proof in England the exact reverse of that laid down by the Indian statutes. There, the returned candidate has to prove that the non-compliance or mistake does not affect the result of the election. In our country, the burden is upon the election petitioner to 'show affirmatively that the result of the 'election has been materially' affected. (1) [1955] 1 S.C.R. 509.

Therefore, what we have to see is whether this burden has been successfully discharged by the election petitioner by demonstrating to the court either positively or even reasonably that the. poll would have gone against the returned candidate if the breach the rules had not occurred and proper poll had taken place at' all the polling stations including those at which it did not. The evidence in tiffs case which led by the election petitioner is the kind of evidence which was criticised by this Court. Witnesses have stated that a number of voters did not vote because of the change of venue or because of firing and that they had decided to vote en bloc for the election petitioner. This kind of evidence is merely an assertion on the part of each witness, and he cannot speak for 500 voters for the simple reason that as this Court said the casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of votes will go to one or the other of the candidates. We cannot therefore accept the statement even of a Headman that the whole village would have voted in favour of one candidate to the exclusion of the others.

This conclusion is further fortified if one examines the polling pattern in this election. To begin with, it is wrong for the election petitioner to contend that of the 6,726 votes which were not cast, he would have received all of them. The general pattern of poll not only in this constituency but in the whole of India is that a11 the voters do not always go to the polls. In fact, in this case, out of 2,19,554 voters, only 1,20,008 cast their votes. Even if we were to add to them the 6,726 votes, it is obvious that not more than 5 5 % of the voters would have gone to the polls. This immediately cuts down the figure of 6,726 to a little over half and the margin from which the election petitioner could claim additional votes therefore. becomes exceedingly small. When we turn to the pattern of voting, as is disclosed at the various polling booths at which the voters had in fact gone, we get reasonably clear picture. At 9 polling centers, 1893 votes were actually polled. Of these, 524 votes were received by the election petitioner and 413 by the returned candidate and 1,097 votes went to the other candidates. In other words, out of 20 votes, 11 went to other candidates, 5 to the election petitioner and 4 to the returned candidate. If one goes by the law of averages and applies these figures reasonably to half of the votes which were not cast, it is demonstrated at once that the election petitioner could not expect to wipe off the large arrears under which he labored and that he could not have therefore made a successful bid for the seat even with the assistance of the voters who did not cast their votes. It is pointed out that at Tungam Khullen High School, he received 401 out of

522 votes. If this had been the general pattern, one could say that he would have got almost the votes that had not been cast. But look at the other polling stations. At Litan L.P. School, he obtained 41 out of 347, at Chandel Junior Basic School he got 34 out of 172, at Purum Pantha L.P. School he got 11 out of 338, at Toupokpi M.E. School 18 out of 128, at Oklu L.P. School 8 out o.f 17, at Chakpi Karong M.E. School 2 out of 67, at Larong Khullen L.P. School 1 out of 53 and at Bolyang Tampak L.P. School 8 out of 249. While we do not think that statistics can be called in aid to prove such facts, because it is notorious that statistics can prove anything and made to lie for either case, it is open to us in reaching our conclusion to pay attention to the demonstrated pattern of voting. Having done so, we are quite satisfied that 1,541 votes could not, by any reasonable guess, have been taken off from the lead of the returned candidate so as to make the election petitioner successful. In so far as the other contesting candidates are concerned, they had received so few votes that even if they had received all the votes that had not been cast, it would not have mattered little to the result of the election. The learned Judicial Commissioner reached his conclusion by conrefitting the same error which was criticised in Vashist Narain Sharing's(1)) case. He took the statement of the witnesses at their word and held on the basis of those statements that all the votes that had not been cast would have gone to the election petitioner. For this, there is no foundation in fact; it is a surmise and it is anybody's guess as to how these people, who did not vote, would have actually voted.

In our opinion, the decision of the learned Judicial Commissioner that the election was to contravention of the Act and the Rules was correct in the circumstances of this case; but that does not alter the position with regard to s. 100(1)(d)(iv) of the Act. That section requires that the election petitioner must go a little further and prove that the result of the election had been materially affected. How he has to prove it has already been stated by this Court and applying that test, we find that he has significantly failed in his attempt and therefore the election of the returned candidate could not be avoided. It is no doubt true that the burden which is placed by law is very strict; even if it. is strict it is for the courts to apply it. It is for the Legislature to consider whether it should be altered. If there is another way of determining the burden, the law should say it and not the courts. It is only in given instances that, taking the law as it is, the courts can reach the conclusion whether the burden of proof has been successfully discharged by the election petitioner or not. We are satisfied that in this case this burden has not been discharged. The result is Sup. Cl/69--10 that the appeal must succeed and it is allowed. The election of the returned candidate will stand. The costs in the Judicial Com.missioner's Court will be as ordered. The election petitioner who apparently was not so much at fault as the Government in changing the polling stations, shall bear only half the costs of the appellant in this Court.

Y.P. lippeal allowed.