# Mahadeo vs Babu Udai Pratap Singh And Others on 10 November, 1965

## Equivalent citations: 1966 AIR 824, 1966 SCR (2) 564, AIR 1966 SUPREME COURT 824

## Author: P.B. Gajendragadkar

## Bench: P.B. Gajendragadkar, V. Ramaswami

PETITIONER:
MAHADEO

Vs.

RESPONDENT:
BABU UDAI PRATAP SINGH AND OTHERS

DATE OF JUDGMENT:
10/11/1965

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
RAMASWAMI, V.
SATYANARAYANARAJU, P.

CITATION:
1966 AIR 824 1966 SCR (2) 564
CITATOR INFO :
RF 1970 SC2097 (152)

ACT:
Representation of the People Act (43 of 1951), s. 100 (1) (d) (iv) and Conduct of Election Rules, 1961, r. 56(2) (g)--Scope of.

HEADNOTE:
At the general elections for a seat in the U.P. Legislative Assembly, the appellant was declared elected. The name of the 1st respondent who was a defeated candidate,, was inaccurately printed in the ballot papers issued as "Udai Bhan Pratap Singh" though his symbol was correctly shown. Alleging that the incorrect printing of his name had materially prejudiced his prospects of securing the votes of

all his supporters, he challenged the appellant's election by an election petition. The Election Tribunal, and the High Court on appeal, set aside the appellants election. The High Court rejected the 1st respondent's contentions -that the misprinting constituted an irregularity in the form or the design of the ballot paper and that therefore r. 56(2)(g) of the Conduct of Election Rules, 1961, had been. contravened. The High Court, however, held that the misprinting of the 1st respondent's name on the ballot papers rendered the appellant's election void under s. 100(1)(d)(iv) of the Representation of the People Act, 1951.
In the appeal to this Court,
HELD: The appeal should be allowed and the election petition dismissed. [572 E]
The design to which r. 56(2) (g) refers is the form, the pattern or the outline of the ballot paper and not its contents.. The High Court was therefore right in holding that r. 56(2) (g) had not been contravened by the misprinting. [572 B-C]
The High Court and the Election Tribunal were in error when they came to the conclusion that the appellant's election had been rendered void under s. 1 00 ( 1) (d) (iv) by reason of the fact that the 1st respondents same had been misprinted on the ballot papers. The misprinting was an irregularity which fell under the section as it amounted to non-compliance of r. 22 of the Rules. But the proof of such noncompliance did not necessarily or automatically render the appellant's election void. To make the election void, the 1st respondent had to prove the non-compliance and its material effect on the election. Since he had failed to prove the latter fact, his challenge to the validity of the appellant's election could not be sustained. [570 B; 572 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 478 of 1965. Appeal from the judgment and order dated January 29, 1964 of the Allahabad High Court (Lucknow Bench) in First Appeal No. 4 of 1964.

M. C. Setalvad and J. P. Goyal, for the appellant.

Bishan Singh, Bimalesh Chandra Agarwala and C. P. Lai, for respondent no. 1.

The Judgment of the Court was delivered by Gajendragadkar, C.J. The short question which arises in this appeal is whether the Election Tribunal, Lucknow, and the High Court of Judicature at Allahabad, Lucknow Bench, were right in holding that the election of the appellant Mahadeo was invalid under s. 100 ( 1 ) (d) (iv) of the Representation of the People Act 1951 (No. 43 of 1951)

(hereinafter called the Act). The facts leading to this point are not many, and there is no dispute about them. At the General Elections of 1962, for the U.P. Legislative Assembly seat in Constituency No. 133 in Mijhaura, District Faizabad, 6 persons offered themselves as candidates. The appellant was one of them, and in fact, as a result of the election, he was duly declared to have been elected. Respondent No. 1, Udai Pratap Singh was another candidate. The appellant received 17,688 votes, whereas respondent No. 1 received 10,985 votes. There were 4 other candidates besides these two, but we are not concerned with them in the present appeal. Respondent No. 1 challenged the validity of the appellant's election by filing an election petition in that behalf before the Election Tribunal, Lucknow. It appears that the election symbol of the appellant was scales (Tarazu), whereas that of respondent No. 1 was lamp (Deepak) In his petition, respondent No. 1 alleged that his real name is Udai Pratap Singh and not Udai Bhan Pratap Singh. His real name had been recorded in the electoral roll and had been mentioned as such in his nomination paper. Even so, in the ballot paper issued on the occasion of the election, his name was printed as Udai Bhan Pratap Singh; and that, according to him, virtually eliminated him from the contest, because the constituency did not know that he was standing for election.

In support of his case that by the improper description of his name on the ballot papers the whole election had become invalid respondent No. 1 pleaded that as a result of the infirmity in the ballot papers, his opponents spread news throughout the constituency that he had withdrawn from the election. The failure of the ballot papers to print his name correctly and accurately had materially prejudiced the prospects of respondent No. 1 to secure the votes of all his supporters, and that had made the election invalid. As a result of the rumour deliberately spread by his opponents that he had withdrawn from the election, many of the voters did not go to the polling booth. It is on these grounds up.CI/66-6 that respondent No. 1 wanted to challenge the validity of the appellants election.

These allegations were denied by the appellant. He urged that the mistake in the printing of the name of respondent No. 1 on the ballot papers amounted to no more than mis- description of his name, and that at the time of the election, everyone knew that the name Udai Bhan Pratap Singh really referred to respondent No. 1 and no one else. The appellant seriously disputed the allegation made by respondent No. 1 that a rumour had been spread at the time of the election that respondent No. 1 had withdrawn from the election, and he contended that the allegation of respondent No. 1 in that behalf was completely untrue. He also disputed the case made out by respondent No. 1 that a large number of voters did not go to the polls because of the said rumour.

The Election Tribunal considered the evidence led by both the parties and held that the specific case made out by respondent No. 1 about the rumour spread by the opponents of respondent No. 1 that he had withdrawn from the election, had not been proved. Consequently, the further allegation made by respondent No. 1 that many of his supporters did not attend the polling booth because they thought that he had withdrawn from the election, also was rejected. This finding has been confirmed by the High Court, so that this part of respondent No. 1's case does not fall to be considered by us.

The Election Tribunal, however, held that the mistake in the printing of the name of respondent No. 1 on the ballot papers had resulted in the contravention of Election Rule No. 56 (2) (g) of the

Conduct of Elections Rules, 1961 (hereinafter called "the Rules"), and this contravention, according to it, rendered the appellant's election void under S. 100 ( 1 ) (d) (iv) of the Act. In coming to this conclusion, the Election Tribunal recorded a finding that the printing of the name of respondent No. 1 on the ballot papers disguised the fact from the voters that respondent No. 1 had stood for election and made the design of the ballot papers materially defective. It held that Rules 22 and 30 had thus been contravened, and that led to the violation of Rule 56(2) (g) of the Rules.

The decision of the Election Tribunal was challenged by the appellant by preferring an appeal before the High Court. The High Court has confirmed the finding of the Tribunal about the mistake in the printing of respondent No. 1's name on the ballot papers. It has, however, reversed the conclusion of the Election Tribunal about the infirmity in the design of the ballot papers, and consequently, it did not agree that r. 5 6 (2)

(g) of the Rules had been contravened. Even so, the High Court came to the conclusion that the irregularity caused by the misprinting of respondent No. 1's name on the ballot papers rendered the appellant's election void under s. 100(1)(d)(iV) of the Act. That is why the appeal preferred by the appellant before the High Court was dismissed. The appellant then applied for and obtained a certificate from the High Court for coming to this Court in appeal, and it is with the said certificate that the present appeal has been brought to this Court. That is how the only question which arises for our decision in the present appeal is whether the High Court was right in holding that the appellant's election had become void under s. 100 ( 1 ) (d) (iv) of the Act.

Before dealing with this question, it is necessary to consider briefly the legislative history of the statutory provision contained in s. 100 ( 1 ) (d) (iv). The present provisions contained in s. 100 of the Act have been introduced by the Amending Act 27 of 1956. Section 100 ( 1 ) (d) (iv) reads thus "Subject to the provisions of sub-section (2), if the Tribunal is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the Tribunal shall declare the election of the returned candidate to be void".

Before the amendment of 1956, the relevant provision in s. 100(1) (c) read thus :-

> "If the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void".

It would be noticed that the earlier provision dealt with the improper acceptance and rejection of nomination together and in the same manner. The effect of the said provision was that where the validity of an election of any candidate was challenged on the ground that any nomination paper had been improperly accepted, it had to be shown by the party challenging the election that by the said improper acceptance, the result of the election had been materially affected. The same test had to be satisfied where an election was challenged on the ground that any nomination paper had been improperly rejected. In other words, whether the infirmity on which a given election was challenged, consisted of the improper acceptance of a nomination paper, or the improper rejection of a

nomination paper, made no difference; in either case, the party challenging the election had to prove two facts : (1) the improper rejection or acceptance of a nomination paper; and (2) the effect of the said improper rejection or acceptance on the election itself.

Though the statutory provision thus treated the two infirmities alike and required in either case the proof of the effect of the said infirmities on the election in a material way, judicial decisions rendered by Election Tribunals and Courts appeared to make a distinction between the two categories of cases. In regard to cases of improper rejection of a nomination paper, it was held that the material effect of such improper rejection on the election itself was implicit and could be presumed without any evidence. This view proceeded on the ground that it would be practically impossible for a party to demonstrate by evidence that the electors would have cast their votes in a particular way, that is to say, a substantial number of them would have cast their votes in favour of the rejected candidate. Even so the fact that one of the several candidates had been kept out of the arena is itself a substantial 'and material consideration which may justify the presumption that such a keeping out the candidate has materially affected the result of the election (vide Surendra Nath Khosla and Anr. v. S. Dalip Singh and others) (1).

On the other hand, in regard to the category of cases where the infirmity was improper acceptance of a nomination paper, different considerations had to be taken into account. In Vashist Narain Sharma v. Dev Chand & Others(1), it was held by this Court that "in the case of improper acceptance of a nomination : (a) if the nomination accepted was that of the returned candidate, the result must be materially affected;

(b) if the difference between the number of votes is more than the wasted votes, the result cannot be affected at all;

(c) if the number of wasted votes is greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes, it cannot be presumed that the wasted votes might have gone to the latter and that the result of the election has been materially affected. This is a matter which has to be proved and, though it must be recopied that the petitioner in such a case is confronted with a difficult situation, he cannot be relieved of the duty (1) [1957] S.C.R. 19.

(2) 10 E.L.R. 30.

imposed upon him by S. 100 ( 1 ) (c), and if the petitioner fails to adduce satisfactory evidence in support of his plea, the Tribunal would not interfere in his favour and would allow the election to stand".

This position has now been clarified by the Legislature itself by amendings.100 in 1956. The amended s.100(1)(a),(b)& 2(c) refer to three classes of cases where the election is set aside on proof of facts enumerated in the said clauses. Clause (a) refers to a case where a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act at the date of his election. As soon as this fact is proved, his election is set aside. Similarly, under cl.

(b), if any corrupt practice is shown to have been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, the election of the returned candidate is set aside and declared void. Likewise, cl. (c) provides that the election of a returned candidate shall be declared void if it is shown that any nomination has been improperly rejected. It would thus be seen that the view which the Election Tribunals and the Courts had been consistently taking in dealing with the question about the effect of the improper rejection of any nomination paper, has been con- firmed by the Legislature and now, the position is that if it is shown that at any election, any nomination paper has been improperly rejected, the improper rejection itself renders the election void without any further proof about the material effect of this improper rejection. The Amending Act of 1956 has thus separated the cases of improper rejection of nomination papers from those where nomination papers have been improperly accepted. It will be recalled that both these cases had been grouped together under s. 100(1) (c) of the un amended Act. Now, the cases of improper rejection have been taken under s. 100(1) (c), whereas cases of improper acceptance fall to be dealt with under s. 100 ( 1 ) (d) (iv). Where it is alleged that a nomination paper has been improperly accepted, it obviously means that the acceptance is the result of non-compliance with the provisions of the Constitution or of the Act or of any rule or order made under the Act; and as we have seen, the case for respondent No. 1 in the present appeal is that the ballot papers were rendered invalid by virtue of the fact that they contravened r. 56(2) (g) of the Rules. Therefore, there can be no doubt that in dealing with the contention raised by respondent No. 1, we will have to enquire whether it has been shown by respondent No. 1 that by reason of the infirmity in the ballot papers, the result of the election has been materially affected. This part of the statutory requirement has not been properly appreciated by the High Court as well as by the Election Tribunal when they came to the conclusion that the election of the appellant had been rendered void under s. 100(1) (d) (iv) of the' Act by reason of the fact that the name of respondent No. 1 had been misprinted on the ballot papers. It is plain that apart from the allegation made by respondent No. 1 that as a result of the misprint in question a false rumour was spread by his opponents that he had withdrawn from the election, no other allegation has been made and no evidence adduced to show that the said misprint had in any manner materially affected the result of the election. Let us now examine the character of the infirmity on which the election of the appellant has been declared void by the High Court as well as the Election Tribunal. We have already noticed that the ballot papers show the name of respondent No. 1 as Udai Bhan Pratap Singh, whereas it should have been shown as Udai Pratap Singh. It has been urged before us by Mr. Bishan Singh for respondent No. 1 that evidence on the record shows that Udai Bhan Pratap Singh is, in fact, the name of the grandfather of respondent No. 1, and he attempted to argue that the printing of Udai Bhan Pratap Singhs name on the ballot papers may have given a wrong impression to the voters that it was the grandfather of respondent No. 1 who was standing for election and not respondent No. 1 himself. Such a plea has not been made by respondent No. 1 in his election petition and does not appear to have been pressed either before the Election Tribunal or the High Court. Therefore, we do not propose to consider this plea.

Nevertheless, it cannot be disputed that there has been a printing error in the matter of the name of respondent No. 1 on the ballot papers and that has introduced an infirmity in the ballot papers. It is common ground that r. 22 requires that the postal ballot paper shall be in such form, and the particulars therein shall be in such language or languages as the Election Commission may direct;

and the form quite clearly imposes the obligation on the authorities concerned to print the name of the candidate correctly. But it is also clear that the symbol chosen by respondent No. 1 which was a lamp (Deepak) has been correctly shown against the misprinted name; and it would not be unreasonable to take into account the fact that a large majority of voters concen-

trate on the symbol chosen by the candidate rather than on his name. In fact, some of the evidence adduced in the pasent case itself shows that the voters looked at the symbols and put their votes. Mr. Gur Datta Singh who was the election agent of respondent No. 1 has given evidence in the present proceedings. He has frankly admitted that when he went to cast his vote, he was in a hurry, and so, he affixed the seal in the second column on the symbol of Deepak; he did not see the name written in that column. In fact, as we have already mentioned as many as 10,985 voters voted for respondent No. 1. so we think the irregularity on which respondent No. 1 strongly relies loses some of its significance and cannot be treated as anything more than a misdescription of his name. From such misdescription it would be wholly unreasonable to infer that the voters must have come to the conclusion that respondent No. 1 was not a candidate at the election at all. The High Court has rejected the case of respondent No. 1 in so far as he had alleged that his opponents had spread a rumour that he had withdrawn from the election; and yet, in a part of its judgment the High Court seems to have held that the result of the misprint was that from the point of view of the voters, respondent No. 1 had, in substance, been eliminated from the election. We are unable to agree with this conclusion.

Then as to the design of the ballot paper, the High Court has reversed the finding of the Election Tribunal that the design of the ballot paper suffered from any irregularity. The Rule in respect of the design is r. 30. Clause (1) of this rule says that every ballot paper shall be in such form, and the particulars therein shall be in such language, or languages as the Election Commission may direct. Then follow the other two clauses of this Rule which are not relevant. This Rule in terms deals with the form of the ballot paper and this fact has to be borne in mind in considering the applicability of r. 56 on which respondent No. 1 relies. Rule 56(1) provides that the ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinised. Sub-rule (2) then enumerates the cases in which the returning officer has to reject the ballot paper. One of these cases is specified in cl. (g) of sub-Rule (2); if the ballot paper bears a serial number, or is of a desire, different from the serial numbers or, as the case may be, design, of the ballot papers authorised for use at the particular polling station, the ballot paper has to be rejected. The argument urged by respondent No. 1 before the Election Tribunal was that the misprint of the name constituted a serious irregularity in the form or design of the ballot paper, and that attracted the provisions of r. 5 6 (2) (g) of the Rules; and since, notwithstanding the contravention of r. 30, the ballot papers had not been rejected, that made the election invalid. We are unable to see either the logic or the reasonableness of this argument. The design to which r. 56 (2) (g) refers, is the form, the pattern, or the outline of the ballot paper and not the contents of the ballot paper. The symbol chosen by respondent No. 1 was correctly shown on the ballot papers, though his name had been misprinted. On these facts, we are satisfied that the High Court was right in holding that r. 5 6 (2) (g) had not been contravened.

Therefore, we are left with only one irregularity, and that has been introduced by the misprinting of the name of respondent No. 1 on the ballot papers; and this irregularity can legitimately be treated

as falling under S. 100 ( 1 )

(d) (iv) of the Act. Misprinting of the name of respondent No. 1 on the ballot papers amounts to non-compliance with r. 22 of the Rules; but the proof of such non-compliance does not necessarily or automatically render the election of the appellant void. To make the said election void, respondent No. 1 has to prove the non-compliance in question, and its material effect on the election. This latter fact he has failed to prove, and so, his challenge to the validity of the appellant's election cannot be sustained. The result is, the appeal is allowed, the order passed by the High Court is set aside, and the election petition filed by respondent No. 1 before the Election Tribunal is dismissed with costs throughout.

Appeal allowed.