

Supreme Court of India

Laxman Prasad Vaidya vs Gangadhar Yadeorao Tamaskar on 27 January, 1969

Equivalent citations: 1969 (1) UJ 72 SC

Author: Mitter

Bench: Hidayatullah, Mitter

JUDGMENT Mitter, J.

1. This is an appeal from a judgment and order of the High Court of Madhya Pradesh dismissing a petition for declaring void the election of the first respondent to the Vidhan Sabha seat from the Bemetra constituency in the general election of 1967.

2. The petitioner, the appellant before us, is an unsuccessful candidate who had succeeded in the elections of 1957 and 1962 on a Congress ticket. The persons who contested the seat in the 1967 election, besides the appellant, are the five respondents. The successful candidate was not sponsored by any party. His symbol in the election was a bicycle. The symbols of the second and third respondents were respectively 'Rising Sun' and 'Flower'. In the election of 1962 the official symbol of the Ramrajya Parishad was the 'Rising Sun' but in the 1967 election recognition of that party was withdrawn and the 'Rising Sun' became a free symbol. The symbol 'Rising Sun' was allotted to the second respondent in the 1967 election. The total number of valid votes polled at the election was 35,468; the number of invalid votes 3,663 and tendered votes 11. The petitioner secured 12,024 votes as against 12,319 cast in favour of the first respondent.

3. In the petition filed for declaring the election void the first respondent was charged with a number of corrupt practices. The trial Judge held that none of these were proved with the result that he dismissed the election petition. Before this Court the learned counsel for the appellant was more selective and pressed only a few out of those raised in the petition and we shall deal with them in the order in which they were canvassed, the first charge was one of bribery forming the subject matter of paragraph 10(1) of the petition. In substance, the allegation was that the first respondent had prevailed upon respondent No. 3, Yuvarajsingh, not to withdraw from the election by promising him the use of a jeep for his campaign free of cost. The third respondent, it was pleaded, had lost heart because of the 'Rising Sun' being declared a free symbol which he was hoping to be able to secure as a candidate for the Ramrajya Parishad and was minded to withdraw his nomination. The promise of a jeep was denied by the first respondent. In his oral evidence the petitioner claimed to have learnt of this Corrupt practice from Rameshwar Singh alias Jhullu and one Dhruvkumar from whom he also came to learn that the first respondent had gone to the house of the third respondent in the evening of January 21, 1967 for prevailing upon him not to withdraw. He did not however know whether the first respondent had a jeep to offer. Rameshwar Singh who was examined as P.W. 2 stated that the first respondent had gone to the office of Ramarajya Parishad in the evening of January 21, 1967 and enquired of Yuvarajsingh as to whether he was going to contest the election or not, and on being told by Yuvarajsingh that he had no arrangements for his election work the first respondent proposed that Yuvarajasingh should contest the election and carry on his propaganda in the jeep which the first respondent was going to place at his disposal. According to this witness, the other persons present at the office of Ramarajya Parishad at the relevant time were Dhruvkumar and Dauram. Witness admitted however that the third respondent did not use any jeep after the 21st

January but he was using a tax. Brijraj Singh, P.W.3, gave evidence to the effect that during the course of a conversation he had with the third respondent., the latter had told him that the first respondent had promised. As against this, the first respondent stated that he never had any talk with respondent No. 3 on January 21, 1967 as suggested by Rameshwar Singh and he had never offered any jeep to him. His positive case was that he did not own either a jeep or a car to enable him to make such a promise or offer. The evidence of B-B. Bajpai D.W.6, was that the first respondent had a car 5 or 6 years before 1967 but he never had any jeep. Our attention was also drawn to the oral testimony of Sajjan Singh, D. W. 4 who had stated that he had seen the first respondent using a jeep but he had no idea as to whether it belonged to him or to his elder brother. On this evidence, the learned trial Judge found the evidence adduced by the election petitioner to be unreliable and we fully agree with him.

4. The next head of corrupt practice was again one of bribery in that the first respondent was charged with having paid Rs. 100/- to one Patwari, an influential man of the Harijan community in village Bahera for the purpose of repairing the parapet of a well in the said village in order to induce the Harijans of that village using that well to vote for him. This was denied by the first respondent. In support of his story, the petitioner stated in the course of the oral evidence that he had come to learn from Satnami Patwari of the said village 4 or 6 days after the election that the first respondent had gone to the village Bahera on February 19, 1967 to canvass for votes of the Harijans and on being informed by Satnami Patwari that the Harijans would only vote for the person who would get their well repaired, the first respondent had not only agreed to the proposal but had as a matter of fact paid Rs. 100/- to Patwari Satnami. The petitioner stated further that he had also been approached by the Satnamis for getting the well repaired but he had told them that he could not make any commitment during the election. The main evidence on this head was given by Patwari (P.W. 7) who said that the first respondent had visited his village one day before the poll in the evening and had enquired of the Satnamis about their choice of the representative at the election, The Satnamis told him that they would vote only for whosoever would get their well repaired. On this the first respondent promised to help them in return for their votes and requested the witness to meet him alone. As a matter of fact, the witness and one Jhulu went out to him when the first respondent gave him Rs. 100/- for getting the well repaired. In cross-examination he said that after the election, the Satnamis held a meeting to decide about the repairs of the well and the witness gave Rs. 50/- to one Bhikam for purchase of cement in connection with the work but he had nothing in writing to establish this. His further evidence was that besides the sum of Rs. 100/ he had spent Rs. 20/- from his own pocket for getting the well repaired. The oral testimony of this witness suggests that the repair work was taken, up not at the initiative of the Satnamis but on the enquiry made by Bhikam as to when they were going to get the well repaired and on being told that cement was not available, it was Bhikam who had promised to procure the commodity and received Rs. 50/- from the witness. The well, according to the witness, had not been repaired for nearly 20 years. Jhulu, the next witness, gave evidence corroborating that of Patwari and said that he was near at hand when the Rs. 100/- note was made over to Patwari. According to him, however, the well had been constructed by the Government about 8 or 9 years back and had been out of repairs for the last five years. The actual work of repair was said to have been executed by some labourers as well as the witness himself, Patwari and others. At first the witness said that Rs. 50/- or Rs. 60/- had been spent on the repairs but added afterwards that in all a sum of Rs. 100/- had been spent for the

purpose. The first respondent in his evidence denied having gone to the village Behara on the 19th February or having received any offer either from Patwari or any body else regarding the repair of the well of the Harijans. He himself had never promised any money for any such purpose. He even went to the length of saying that he did not know either Patwari or Jhulu and had never seen them before the election case. His evidence was also to the effect that he had only gone to the said village before the 5th February to Jiwanlal Tiwari's house for attending the ceremony of a death anniversary. Bajpai, D.W.6, corroborated the first respondent to the extent that he had accompanied the latter to the village Behara to the house of one Labhram. There the first respondent had met a cultivator whose name the witness did not remember and had asked him for help in the election to which the cultivator had agreed. The learned Judge did not accept the evidence of Patwari and Jhulu and described them as got up witnesses. In our opinion, the testimony of the two witnesses is conflicting. Whereas according to Jhulu the well had been constructed only eight years back by Government, according to Patwari it was a 20 year old well. We also cannot accept the evidence that the first respondent would approach the Harijans only the evening before the date of the poll and there make an offer of payment of money in the presence of a large crowd or that he would pay the money openly to any one. The story about the actual repair of the well is also unacceptable. If it had been a fact that the well is in need of urgent repairs, it is difficult to see why, having got the money the Satnamis should not proceed to do something with it immediately but would wait for two months till Bhikam came along with his offer of procuring cement. In our opinion, the whole story was a concocted one and the trial Judge rightly disbelieved it.

5. The Third head of corrupt practice the first respondent was charged with, was a combination of bribery and publication of petitioner. It was stated in relation to the conduct and character of the petitioner. It was stated in paragraph 10 (iii) of the petition that on February 20, 1967 one Hiranman belonging to the Harijan community had drawn water from a well near the polling booth at Dewada at the instance of the canvassers of the first respondent, Jogiram Naik and Bulakiram which roused the anger of the caste Hindus. Taking advantage of the situation, one Rambharose Praganiha of the said village, another worker of the first respondent, as also Bulakiram, his polling agent and Jogiram Naik gave it out that as the first respondent had instigated Hiranman to defile the well he would after his election tolerate the molesting of their women folk by Satnamis. To make things worse, Jogiram pulled out a bundle of currency notes from his pocket and displaying the same to the crowd which had gathered told them that the first respondent would construct another well for them if they would vote for him. As a result of this, the petitioner was deprived of the votes of the Hindus which he would have otherwise got. In his written statement the first respondent denied that Hiranman had drawn water from the well at the instance of his canvassers. He also denied that Rambharose Parganiha, Bulakiram and Jogiram acted in the manner pleaded in the petition. He denied that any statement had been made by any of these persons as imputed to them in the petition or that there had been a display of currency notes by Jogiram Naik or that Jogiram had done any such thing with his consent. The eye witnesses to this alleged incident examined by the petitioner were Laxminath (P.W.13), Damodar (P.W.14) and Gajndal (P.W.15). Laxminath admitted that he had worked for the petitioner in the election. According to him he tried to pacify the crowd which had taken strong exception to Hiranman drinking water out of the well reserved for the caste Hindus. After about half an hour of the incident Rambharose and Bulakiram appeared on the scene, when the excitement had not abated. Jogiram stated that the people supporting the Congress had used their well and if

the Congress candidate was returned at the election he might get their women-folk molested by Satnamis. Jogiram also took out a bundle of Rs. 100/- notes and told the people that the first respondent would get a well constructed for the caste Hindus if they supported him at the election. The incident was narrated to the petitioner 2 or 3 days after the publication of the result of the election. The oral testimony of Damodar was much to the same effect. He however stated that on Hiran touching the well Hindu Samaj people started rebuking him as well as Laxminath. The latter was taken to task because it was thought that Hiran had touched the well at the instance of Laxminath. It was then that Jogiram, Rambharose and Bulakiram came on the scene and on being apprised of what had happened, Jogiram made the speech imputed to him and displayed the currency notes. Gendal's evidence, was on the same lines as that of Damodar.

6. In his evidence the first respondent stated that Bula kiram and Jogiram were not his workers. Notwithstanding such denial Bulakiram being a polling agent would be an agent for the purpose of Section 123 of the Act, But we have to address ourselves to the question as to whether the story of the parts alleged to have been played by the named persons on the date of the poll is borne out by the evidence of unimpeachable character. Jogiram, D.W.

2, stated that he did not go to Dewada village on the date of the poll; neither did he know any body by the name of Hiran. He had never addressed any crowd as alleged nor flourished a bundle of currency notes nor asked people to vote for the first respondent as alleged. Rambharose, D.W. 6, professed to know both Jogiram and Bulakiram. He admitted that Bulakiram was a polling agent in the village of Dewada for the first respondent but he himself did not work for the latter. He denied that there had been any conspiracy between himself, Jogiram, Bulakiram and the first respondent that Hiran should touch the Hindu well to spark off a dispute on caste Hindus of which advantage might be taken. He further denied that any impropriety had been imputed to the supporters of the Congress as alleged or that Jogiram had exhibited a bundle of currency notes to allure the caste Hindus. The whole story is a fantastic one and was lightly disbelieved by the trial Judge who remarked that if the incident had really taken place, Laxminath, the worker of the petitioner, would have made no delay in bringing it to the notice of the presiding officer. He further accepted the evidence of Rambharose to the effect that if such a thing had happened the matter would have been brought to the notice of the gram panchayat of which he was the sarpanch. The learned Judge relied on the witness' statement that there was no private well of the Hindus at Dewada and the well situated in the school premises was a Government well which everybody was free to use. He also relied on the fact that the final result of the election showed that the first respondent had got only 139 votes from this particular polling booth while the petitioner had secured 190 votes. In our view, no exception can be taken to the finding of the trial Judge which we fully endorse.

7. The next head of corrupt practice charged against the first respondent was the hiring of bullock carts for the transportation of voters from the village Boris on the date of polling. In paragraph 10 (v) of the petition it was stated that one Rajendra Gupta of village Bhera, polling agent of the first respondent and Dr.C.P. Agarwal of village Berla, his election worker, had visited the village Boria on February 20, and Rajendra Gupta had given Rs. 50/- to one Halal as hiring charges for bullock-carts to transport voters from his village to the polling center of Behra. It was further pleaded that Halal

had used his own bullock cart and procured those of some others for transporting about 40 voters. A further charge was made in that Rajendra Gupta had falsely told the voters who were proceeding on foot towards Behra that they should wait for a vehicle arranged by the Congress for the purpose and that one Phoolchand who had been given directions for the purpose found no such vehicle at Behara and returning to Boria informed the voters that no vehicle of the Congress party was coming to fetch them; but by the time he went there it was already past 5 p. m. and people who wanted to vote were prevented from doing so on account of the false statement of Rajendra Gupta. It was said that these voters were Satnamis who in the usual course would have voted for the Congress candidate. The whole story was denied by the first respondent in his written statement. The material witnesses who were examined to prove this were Halal (P.W. 16) and Phoolchand (P. W. 17). Halal said that he did not know either the petitioner or the first respondent but that Dr. C.P. Agarwal and Rajendra Gupta had gone to their village at about noon on a motor cycle and Rajendra Gupta had enquired of him as to whether he was willing to give his cart on hire and whether it was possible to secure carts belonging to others and giving his answer in the affirmative had received Rs. 50/- from Rajendra Gupta. The carts, so arranged were those belonging to Paklu, Bishamber and Phoolchand. The money was distributed equally between the cart owners and the witness had taken 10 persons in his cart to Behra to cast their votes. In cross-examination he said that he had taken his cart to Behra at about 10 'Clock that the distance of Behra from his village was about three miles and that he had returned at about 3 p.m. He did not ask the voters about the choice of their representative but had heard them saying that they would vote for the person who had bicycle for his symbol. According to him the other three carts reached Behra after this and many people were transported to the polling booth from his village. Phoolchand's evidence was that he had been approached by Halal at about 12 noon and informed about the payment of Rs. 500/- by Rajendra Gupta for carrying voters to Behra. He also said that On reaching Satnamipara he had found Rajendra Gupta enquiring of the Satnamis proceeding on foot to Behra as to the candidate of their choice and learning of the Congress candidate being their choice asking them to wait for the transport arranged by the Congress party. Rajendra Gupta had also told him at Behra to see that the Congress transport was sent to the village without delay but, the witness could not find any such conveyance at Behra and when he reached his village there was no time left for Satnamis to go to the polling booth and cast their votes. In the witness box respondent No. 1 disclaimed all knowledge of the transporting of voters from Boria to Behra or of payment of Rs. 50/- for the purpose, Neither had he any personal knowledge of Halal and Phoolchand carrying any voters to the polling booth. Rajendra Gupta gave evidence to the effect that he had acted as a polling agent of the first respondent at Behra Polling booth and that he was there from 7.30 a.m. to 6 pm. on 20th February 1967 with the exception of about a quarter of an hour when he had gone to his house at about noon to take his meal. He denied having gone with Dr. C. P. Agarwal to Boria on that date as alleged or having paid any sum of money to Halal for transporting the voters. He also said that he did not know Phoolchand Satnami and had never told him that he should go to Behra to direct any vehicle engaged on behalf of the Congress to Boria for transporting voters to the polling booth. C.P. Agarwal was not examined but on the evidence before him the trial Judge negatived the plea. It appears to us that the story is a wholly improbable one. Rajendra Gupta who was acting as a polling agent would not, in the normal course of things, be expected to rush about arranging for transport of voters from a place which was three miles away from the booth. It is also difficult to believe that transport of voters by bullock carts would be sought to be arranged after the midday from such a distance. . The evidence of Halal and Phoolchand would

induce one to believe that the voters were only too eager to vote provided transport was arranged for them. This is against common experience. It is also unbelievable that people who had set out to walk the distance would, on being told about the prospect of a vehicle coming to pick them up wait by the road side till it became too late for them to exercise their franchise. In our view, there was no substance in the pleas and no truth in the testimony of the witnesses who came to support the same.

8. Another head of corrupt practice charged in the petition was based on allegations to the effect that the first respondent had, with the help of one B.B. Bajpai, an advocate of Bemetara, one of the polling agents at the election, prevailed upon a Tehsildar and Magistrate at Bemetara, Mehare by name, to use his influence over one Sajjansingh, a prominent person of the Sikh community by showing favour to Attarsingh, a close relative of Sajjan Singh, charged with an offence under the Prohibition Act to work for him in the election. The particulars of the charge as laid in the petition were that Bajpai and Sajjansingh had gone to; Mehare's house on February 8, 1967 and the Tehsildar had asked Sajjansingh not to work for the Congress candidate but to help the first respondent, assuring him of his own help in all matters. According to the petition, Mohan Singh, a deed writer had accompanied Bajpai and Sajjansingh to Mehare's house on that date. A further instance of the influence exercised by the Tehsildar was given in the petition to the effect that he had asked Udayaram, the leader of kolars, to work for the first respondent and desist. from working for the petitioner at the instance of Bajpai on the 7th February when a criminal case against Udayuram was pending in the court of the said Magistrate. All this was denied by the first respondent in his written statement. The only evidence on this charge on the side of the petitioner was the oral testimony of Mohan Singh, the petitioner's evidence being hardly material on the point. Mohan Singh P.W 4 deposed to the effect that he knew Sajjansingh, Attarsingh and B.B. Bajpai and that, there was a criminal case pending against Attarsingh in the court of the Naib Tahsildar at the relevant time. He said that about fifteen days before the poll Bajpai had gone to the house of Sajjansingh accompanied not only by the first respondent but also by the witness himself. Bajpai then requested Sajjan Singh to work for the first respondent but the latter expressed his inability to do so on the ground that hts relative Attarsingh was being prosecuted, whereupon Bajpai promised to help him out of the.

difficulty in case Sajjansingh supported the cause of the first respondent. About three days after this talk, Bajpai, Sajjansingh and the witness had gone to the house of the Magistrate. The witness waited outside while Sajjansingh and Bajpai went in and had a talk with the Magistrate and on coming out told the witness that the Magistrate had promised to help Sajjansingh who thereafter espoused the cause of the first respondent. All this was denied by the first respondent in his oral testimony and he was supported therein by Sajjansingh, D.W. 4 and B B. Bajpai, D. W. 6. It is not possible to believe the evidence given by Mohan Singh. If Bijpai and the first respondent were minded to secure the help of Sajjdnsingh through the instrumentality of the Tahsildar and Magistrate, one would not expect them to be so unguarded and unwise as to take Mohan Singh with them when the latter could render them no help in the matter. One cannot also lose sight of the fact that by such uncorroborated testimony the petitioner sought to establish serious charges against the conduct and character of two respectable persons like a magistrate and an advocate. We have no hesitation in rejecting Mohan Singh's evidence and agreed with the High Court that no such corrupt practice was committed by the first respondent.

9. Besides the above, the petitioner sought to have the election set aside on some other grounds. One of these pressed before us was to the effect that the presiding officer at Basani polling booth had wrongfully disallowed 70 persons to cast their votes. The plea on this head as set out in paragraph 14 (1) of the petition was that at about 4.45 p.m. on the date of the polling more than 100 persons had assembled in the compound of the Basani polling booth when the presiding officer asked them to secure chits from the patwari and get them signed by himself before these persons could cast their votes. He however did not sign any of the chits given by the patwari to voters and some of the voters were left without this signature. When these persons went to cast their votes, an objection was raised on behalf of respondent No. 3 whereupon the presiding officer refused to allow them to poll. The petitioner himself was present at the time and he requested the presiding officer to allow these persons to vote. The Zonal Officer who happened to turn up at that time told the presiding officer that anybody who had come to the booth before 5 p. m. was entitled to exercise his franchise but he left it to the presiding officer to act according to his own judgment. The presiding officer however closed the poll and did not allow about 70 persons to cast their votes. Seventeen of them made a written complaint to the presiding officer. The polling agent of the petitioner, Chaitram also made a written complaint. These complaints were not accepted by the presiding officer and they were later sent by post to the Assistant Returning Officer Bemetara. The action of the presiding officer was said to be in violation of the mandatory provision of Rule 43 of the Conduct of Election Rules 1961 and Section 62 of the Representation of the People Act, 1951.

10. Under Rule 43 it is obligatory on the presiding officer to close the polling station at the hour fixed in that behalf under Section 56 and it was not open to him to admit any elector into the polling station thereafter. He however had to allow all electors present at the polling station before it was closed to cast their votes. The oral testimony adduced on this plea was that of Ravishankar (P.W. 19) Sunderlal (P. W. 20), Janaklal (P. W. 21), and Vinay Shankar (P.W.22) on behalf of the petitioner, besides the petitioner himself." The petitioner's version in the deposition was set-out in the petition itself. According to Ravi Shankar, a polling agent of the petitioner, some chits were produced before him after 7.30 p. m. at Basni polling booth which were not signed by the presiding officer but which bore the signature of the patwari. He repeated the story as narrated by the petitioner and said that after the Zonal Officer had gone away the presiding officer allowed a few votes to be cast and then closed the polling. The evidence of Janaklal, another polling agent, was to the same effect. Vinay Shankar Awasti was the Zonal Officer of Bemetara constituency. He deposed to having visited Basni polling station between 7 and 8 p.m. on the date of the poll and noticed some excitement among the persons gathered. He told the presiding officer on his enquiry that voters who had arrived before 5 p.m. within the compound of the polling booth should be allowed to vote and they should be given identity chits by the patwari and signed by the presiding officer. According to him there was a crowd of over 50 persons gathered there at the time. The first respondent had no personal knowledge about all this. The learned trial Judge discussed the evidence in some detail and commented on the fact that Ravishankar Misra had not stated that voters who had come before 5 p. m. in the polling booth compound were not allowed to vote. He was of the view that the evidence of Sunderlal, a worker of the petitioner, was not reliable. In rejecting the plea, the Judge strongly relied on the fact that not a single elector out of the 17 persons alleged by the petitioner to have made a complaint came to the witness box to depose to that fact. He accepted Ravishankar Misra's evidence; but this, as already noted, was not of any help to the petitioner. According to the Judge the best evidence on

this plea would have been that of the 17 persons who were said to have made a complaint in writing and in the absence of these persons from the witness box and of any proof of any complaint by them, he decided the issue in favour of the first respondent and we agree with this finding.

11. The petitioner also complained of the conduct of the presiding officer in Chandnu polling booth in that he had allowed one Dukhitrarn, Kotwar of Chandnu to put in his ballot paper in the ballot box after it had been sealed at the instance of the polling agent of the first respondent in spite of protests, thereby Violating Rule 43 of the Conduct of Election Rules. The evidence on this point was that of Manharanlal (P. W.23), Sukhitram (P.W. 38), Ravi Shankar (P.W. 19) and Anjuram (P.W. 24) besides that of the petitioner himself. The learned trial judge discussed the evidence in some detail and came to the conclusion that the petitioner had not proved that the Ballot box at Chandnu had been tampered with as alleged or that it had materially affected the result of the election and we see no reason to come to a different conclusion.

12. Another similar charge was raised in paragraph 14 (iii) of the petition that at Berla polling station the presiding officer had broken the seal of the ballot box after 5 pm. and had wanted the polling agents of the first respondent to re-affix their seals in violation of the Conduct of Election Rules. On this point the oral evidence adduced was that of Tanwar (P.W.9), Bachuram (P.W.10) and Amar Nath (P.W. 11) besides that of the petitioner himself, According to the testimony of Amarnath, after the ballot boxes had been closed and sealed, the presiding officer told him that the ballot papers of two blind persons had not been put in and he was under the impression that they were required to be sent to the returning officer; but as under the instructions given to him they had to be put in the ballot boxes, he broke open the seal of one box and put them in.

13. Under Section 58(1)(a) it was obligatory on the returning officer to report the matter forthwith to the Election Commission if any ballot box used at a polling station had been tampered with to such an extent that the result of the poll at that polling station could not be ascertained. Rule 55 (4) of the Rules prescribes that if the Returning Officer is satisfied that any ballot box had in fact been tampered with, he shall not count the ballot papers contained in that box and shall follow the procedure laid down in Section 58 in respect of that polling station. In dealing with this issue, the trial Judge observed that no report in terms of Section 58 had been made and even assuming that the presiding officer had put two ballot papers of blind voters in the ballot box as alleged, it had not affected the result of the election materially. The trial Judge decided the plea against the petitioner and we concur with him.

14. In Paragraph 15 of the petition it was stated that on February 12, 1967 at the time of counting of votes a large number of ballot paper were rejected on grounds not covered by Rule 56-A of the Conduct of Election Rules and many ballot papers which ought to have been rejected were treated as valid and the petitioner applied to the Returning Officer in writing for a general recount and this was turned down without any decision. The petitioner therefore prayed for a recount as a result of which he hoped to make up the deficiency of 300 votes which was the margin between him and the first respondent. In this connection, it is necessary to note that in the written application presented on February 22, 1967 no valid ground for recounting was made out. The only ground which may be noted in this connection was that:



"Some seal marks were on account of wrong-folding bearing impression of the opposite side should be treated as invalid." The petitioner also alleged in that application that he thought that there was a clerical error in counting and calculating and totalling. The order made on this application shows that at the stage of counting not a single complaint or any doubt was raised in respect of the manner or the efficiency of the counting. The Returning Officer further noted that he had supervised the counting along with the Additional Collector and other persons and doubtful ballot papers had been subjected to rigorous examination by the Assistant Returning Officer with the help of a magnifying glass. He dismissed the application on the ground that the candidate himself had failed to give any reasons for the recount. The learned Judge of the High Court held that the application had been properly rejected and the learned counsel for the appellant was unable to put forward any ground for departure from the Judge's conclusion. In our view, no proper case for a recount had been made out. If we had felt that there was any substance in the complaint raised we would have ordered at least a partial recount by way of sample, but on the facts of this case we are not inclined to take that view.

In the result, the appeal fails and is dismissed with costs.