

Supreme Court of India

Ram Nath vs Chhaju Ram on 6 March, 1969

Equivalent citations: 1969 (2) UJ 269 SC

Author: Grover

Bench: Shah, Grover

JUDGMENT Grover, J.

1. This is an appeal from the judgment of the Tammu & Kashmir High Court dismissing the election petition which had been filed by the appellant challenging the election of respondent No. 1 from the Chhamb constituency to the legislative assembly of the State.

2. The appellant was a voter in the Chhamb assembly constituency during the last general election held in 1967. Six candidates contested the election. There were originally 31 polling stations in that constituency, On the representation of the various political parties the number of polling stations was raised to 35. This was done on February 14, 1967. There were further representations and the number of the polling stations was raised to 39 adding four such stations This was done on February 18, 1967 which was only three days before the polling was to take place. The polling took place on February 2, 1967. The counting of the , votes in respect of polling station Nos. 1 to 35 was done on Feb. 26, 1967 and of polling stations Nos. 36 to 39, on March 1, 1967. The result was declared immediately afterwards. Respondent No. 1 was found to have secured 1139 votes more than his nearest rival respondent No. 2. The other candidates secured far less votes. In April 1967 the appellant filed an election petition. An Election Tribunal consisting of Shri Ram Saroop, District & Sessions Judge, Jammu was constituted for the trial of the petition. All the respondents were served but only respondent No. 1 appeared and filed his written statement. The Tribunal was later on abolished by a statute enacted by the State Legislature and the proceedings were transferred to the High Court on September 16, 1967.

The only material issues were :

"(1) Whether the creation of four new polling booths, Nos. 36, 37, 38 & 39 on 19-2-67 only two days before the polling on 21-2-67 was unduly late; whether it was illegal without having been with prior approval of the Election Commission; and whether it has materially affected the result of the election.

(2) Whether the voters residing in Baruta, Tehsil .Samba, Siakalen Tehsil Ranbir Strength Pura and Kirpalpur Tehsil Jammu were illegally and improperly registered as electors from Chhamb Constituency, and whether the addition has materially prejudiced the result of the election."

Before the High Court the controversy under the first issue was confined to the four new polling stations. The case as laid in the election petition was that these polling stations i.e. Nos. 36 to 39 had been created in complete disregard of the statutory provisions of the Jammu and Kashmir Representation of peoples Act, 1957, hereinafter tailed the 'Act' and the relevant Rules. It was alleged that the Returning Officer had, with the previous approval of the Election Commission, originally provided 31 polling stations on 3-1-67 according to the patwar circles where the refugees

were entered as electors. As the number of electors in some of the polling stations was more than 1,000 and respondent No. 2 made a representation that more polling stations should be provided to reduce the number of electors for such polling station, four more such stations were provided on February 14, 1967. These polling stations were situated in Chhamb area itself. Some political parties represented that the polling stations should be provided for the Chhamb refugees in the area where they had been settled in camps. This request was not acceded to by the Election Commission. On February 19, 1967 the Returning Officer, without the previous approval of the Election Commission and without giving proper publicity or intimation to the concerned electors and candidates, provided four more polling stations at (i) Barota in Samba tehsil. (ii) Sian Kalen I & II in R. S. pura and (iv) Kirpal Pur in Jammu tehsil. It was alleged that the distribution of the electors in the matter of polling with regard to the aforesaid stations was so confusing that the electors did not know where to cast their votes. As a result of this confusion more than 2,000 electors were prevented from casting their votes. Detailed illustrations were given in sub-para (i) of para 4 of the Election petition of the manner in which the confusion was caused among the electors. It was further stated that previous to the counting of votes in the newly created polling stations respondent No. 2 was leading by a margin of 781 votes. The Returning Officer did not declare the result but insisted on counting the votes cast at four newly created polling stations which should not have been counted at all as the casting of those votes was altogether illegal.

3. In the written statement which was filed by respondent No. 1 it was denied that the action of the Officers concerned in creating the four polling stations was illegal or in contravention of the provisions of the Act or the Rules. It was pointed out that all the contesting candidates had made their arrangement in respect of polling station Nos. 36 to 39 well before the polling took place and no prejudice had been caused to any of the contesting candidates. The candidates were represented by their polling agents at these stations and no objection had been raised either by any contesting candidate or his agent to votes being received at the four polling stations in question. The electors had also been fully informed and the arrangements which had been made by the authorities were in their interest. By way of additional plea, it was state'd that on account of Indo-Pakistan conflict in the Chhamb area in 1965, the persons residing there had been uprooted in large numbers and had been temporarily accommodated in camps. After the cessation of the hostilities steps were taken for their rehabilitation but persons from forward areas could not be rehabilitated like others for various reasons. They were distributed in the newly created camps in Samba, R.S. Pura, Jammu and Htranagar tehsil. These areas were far from Chhamb area and it was found highly impractical and difficult for these persons to go to that area to cast their votes. It was to meet such a situation and the repeated demands of the electors and the contesting candidates that the aforesaid polling stations were established.

4. The High Court found on issue No. 1 that due approval had been accorded by the Election Commission to the creation of the four new polling stations though formal telegram containing the approval was sent after the new polling stations had been created. On the question of the prejudice caused by the creation of the new polling station at the eleventh hour, the High Court examined the evidence with a view to finding out whether the result of the election had been "materially affected" within the meaning of Section 108 of the Act by non-compliance with the statutory provisions. It was observed that although sufficient direct evidence had not been adduced showing that due

publicity had been given with regard to the creation of the new polling stations and the transfer of the names of electors to the same the actual figures of votes which were registered at these polling stations were telltale. The percentage of polling was as high as 78.52 in spite of bad weather. The comparative figures were:

"The percentage of the polling was 94 at the polling station Nos. 10,93 at 33, 90 at 7 stations each, over 80 at 12 polling stations, & between 70 & 80% and 82 at 2 stations. The percentage of polling below 78%. was at four stations At two stations, it was less than 60%. Of course, the percentage was very low at booth Nos. 3, 7, 8 and 32. Taking an over all picture the percentage of polling at the four new polling stations was quite adequate."

The High Court was of the view that the percentage of 78-52 at the four newly created polling stations was adequate enough to show that due publicity had been given and that the electors knew that polling was to take place at these stations. It was found as a fact that out of a total number of 3171 electors at these four polling stations only 681 electors had not come to cast their votes. At polling station Nos. 7, 8 & 32 out of 700 electors only 141 electors turned up to cast their votes. It was claimed before the High Court on behalf of the appellant that 569 unpolled votes could not be cast because of the Confusion which had resulted by the creation of four new polling stations. The High Court examined the evidence which had been produced by the appellant and came to the conclusion that it had not been shown that the result of the election had been materially affected by the creation of four new polling stations.

5. On issue No. 2 it was held that there was no evidence that the refugees living in the constituencies mentioned in that issue had left their homes for good and had settled permanently in those constituencies. That issue was, therefore decided against the appellant.

6. Before us learned counsel for the appellant has confined his argument mainly to two matters arising out of issue No. 1. The first is that the approval of the Election Commission had not been proved to have been accorded to the creation of four new polling stations Nos.36 to 39. Even if it be assumed in favour of the appellant that there was some irregularity in the creation of those stations it is conceded that the election could not be set aside unless it is established that the result of the election had been materially affected by non-compliance with the statutory provisions and the Rules. We have been taken through the sequence of dates and the various figures relating to polling which have been already mentioned. A great deal of stress has been laid on the natural confusion which must have been caused by re-distribution of the electors as a result of the creation of the new polling stations. This also meant that the numbers of electors which was originally 2520 at polling station Nos. 7,8 and 32 was reduced to 710. As all this was done only three days before the polling was to take place it is pointed out that the electors were bound to have been misled about the place where they were to go for casting their votes. In some cases, it is pointed out, the distance between the old polling station and the new one was 50 miles and when the electors went to the old polling station under the impression that they had to cast their votes there, they could not possibly reach the new polling station by covering such a large distance. It is admitted, however, they only 11 electors were produced at the trial of the election petition for showing that they had originally gone to the polling station Nos. 7, 8 and 32 but were told that their names had been transferred to the

newly created polling stations. It must be remembered that the difference between respondent No. 1 and respondent No. 2 was of 1139 votes. The principles on which it has to be determined whether the result of the election has been materially affected were laid down by this court in Vaskist Narain Sharma (Supra) v Dev Chandra and Ors. and have been reiterated in subsequent decisions out of which mention may be made of a recent pronouncement in Paokai Haokip vs. Rishang and Ors. In Vashist Narain Sharma's case it was said that it was impossible to accept the inso dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone io one or the other on some supposed or imaginary grounds. The question is one of fact and has to be proved by positive evidecne. It was, further, observed that the casting of votes 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. In the latest decision, Paokai Kaokip (Supra) v Rishang & Ors. this is what was said:

"The evidence in this case which has been brought by the election petitioner is the kind of evidence which was criticised by this Court. Witnesses have been 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 decided to vote en bloc for the election petitioner. This kind of evidence is me-rely an assertion on the part of a witness, who 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...

Even if we assume that cent percent electors had gone to cast their votes at the newly created polling stations or at polling stations Nos. 7, 8 and 32 it is not possible to predicate how many of them would have voted for respondent No. 1 or respondent No. 2 or any of the other contesting candidates. Apart from this we have no doubt that the number of electors who turned up at the newly created polling stations was reasonably high and it is only with regard to the three polling stations i. e. 7, 8 and 32, that it could he legitimately said that due to misapprehension or confusion a number of electors did not turn up. Even on the assumption that cent percent electors would have gone to cast their votes there their number would have come to 569 in addition to 141. This could not have reduced the majority of respondent No. 1 even if all the 569 votes had been cast in favour of respondent No. 2.

7. In our opinion the decision of the High Court was correct that the result of the election had not been proved to have been materially affected. The appeal, therefore, fails and it is dismissed; but in view of the entire circumstances and in particular the unsatisfactory nature of the evidence produced in the matter of approval of the Election Commission in respect of the creation of four new polling stations the parties are left to bear their own costs in this court.