

(1964) 04 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh**Case No:** Letter Patent Appeal No. 44 of 1964

Dhan Singh

APPELLANT

Vs

Lakshmi Narain and Others

RESPONDENT

Date of Decision: April 6, 1964**Hon'ble Judges:** P.C. Pandit, J; Dulat, J**Bench:** Division Bench**Advocate:** D.S. Tewatia and M.S. Dhul, for the Appellant; H.L. Sarin and V.P. Sud, for the Respondent**Final Decision:** Dismissed

Judgement

P.C. Pandit, J.

Dhan Singh appellant, and Iakshmi Narain, respondent No. 1 contested the election to the Chairmanship of the Market Committee, Palwal. There were nine members of the Market Committee, who had to vote in this election. All of them took part and the Sub-Divisional Officer (Civil) Palwal, respondent No. 2, who was the Presiding Officer, declared the appellant as elected on the ground that he had secured five votes as against four by respondent No. 1. Since no election petition was provided under the Punjab Market Committee Chairman and Vice-Chairman (Election) Rules, Lakshmi Narain filed a writ petition under Articles 226 and 227 of the Constitution challenging this election on the ground that one of the votes was invalid and should not have been counted, because the voter had put the cross "X" against the names of both the candidates in an ambiguous manner. Moreover, the said mark "X" was encircled, from which the voter could be easily identified. According to respondent No. 1, an objection to this effect had been raised before the Presiding Officer, but he had paid no heed to it and counted that vote in favour of the appellant and declared him as elected.

2. The writ petition was heard by Mahajan J. He remarked that the Presiding Officer had not filed any affidavit controverting the allegation of Lakshmi Naran that the objection with regard to the validity of the ballot paper was raised before him. The

affidavit of the Deputy Commissioner was considered to be of no consequence by the learned Judge, because he was not present at the spot. As regards the affidavit filed by the appellant, the learned judge was of the opinion that he was naturally interested to support his own cause and therefore no reliance could be placed on it. In that situation the learned judge decided to proceed on the basis that the objection to the ballot paper was raised before the Presiding Officer. He then himself examined the ballot paper in dispute and came to the conclusion that there could be no manner of doubt that it should have been rejected as invalid in accordance with Rule 9 of the election rules, because the cross on the same had been placed at such a place that it could not with any certainty be said for whom the elector cast his vote. The learned judge further held that Rule 9, which runs as under, being a mandatory provision, there was no option with the Presiding Officer, but to reject the ballot paper:-

R. 9. Any ballot paper which bears any mark or signature by which the voter can be identified or on which the mark "X" is placed against more than one name or in an ambiguous manner or which does not bear the signature of the presiding officer prescribed in sub-rule (3) of rule 8 shall be declared invalid. According to the learned judge, the mistake was apparent on the face of the record and once the disputed vote was declared as invalid, the result was that both the candidates secured four votes each and in accordance with Rule 8(9) the only course open to the Presiding Officer was to draw the lots. As a result, the writ petition was accepted, the election of the appellant as Chairman of the Market Committee was set aside and the Presiding Officer was asked to draw the lots and declare the result of the election in accordance with the draw. Against this, the present Letters Patent appeal has been filed by Dhan Singh.

3. The first contention raised by the learned counsel for the appellant was that the learned Single Judge was in error in observing that the Sub-Divisional Officer, Palwal, who was the Presiding Officer, had not filed any affidavit controverting the allegation of respondent No. 1 that he had raised the objection regarding this ballot paper before him. Consequently, the learned Single Judge could not decide the case on the basis that the objection to the ballot paper was raised before the Presiding Officer.

4. We have examined the record of this case and we find that the affidavit of the Sub-Divisional Officer is not on the file. Under these circumstances there is no reason to disturb the finding of the learned judge on this point.

5. The next contention of the learned counsel was that the Presiding Officer, after examining the disputed ballot paper, had come to the decision that the mark "X" had not been placed thereon in any ambiguous manner. He was of the opinion that the voter had cast his vote in favour of the appellant. This was a finding of fact which could not have been reversed by the learned Single Judge in writ proceedings. For this, he placed his reliance on the decisions of the Supreme Court in [Shri Ambica](#)

[Mills Co. Ltd. Vs. S.B. Bhatt and Another,](#) and [Syed Yakoob Vs. K.S. Radhakrishnan and Others,](#)

6. In the first place, there is no specific order of the Presiding Officer as referred to by the learned counsel. Since the Presiding Officer had declared the appellant as elected as the Chairman, all that could be inferred was that this vote was counted by him in his favour. We do not know on what grounds he came to that decision. Presumably, he looked at the ballot paper and came to the conclusion that it was not invalid. Secondly, the learned Single Judge examined the disputed ballot paper and came to a firm conclusion that there could be no manner of doubt that it was an invalid one, because the cross on the same had been placed at such a place that it could not with any certainty be said for whom the elector had cast his vote. The question whether a particular ballot paper is valid or not is a question of law. In the present case, if the ballot paper was marked in an ambiguous manner, as has been held by the learned Single Judge, then there is no manner of doubt that according to rule 9, it was invalid. The Supreme Court decisions relied upon by the learned counsel have no application to the facts of the present case.

7. The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs.

Dulat, J.

8. I agree.