(27) Though the provisions of the Pepsu Tenancy and Agricultural Lands Act, the vires of which was being considered by the Supreme Court, were not identical with the provisions now under consideration, yet the principle enunciated in *Shivdev Singh's case* does apply to the facts of the case before me.

(28) In the light of the above discussion, I have no hesitation in holding that the aforesaid valuation statement (Annexure A) appended to Rule 2 of 1953 Rules relating to Karnal District, in so far as it does not specify rates for evaluating *Sailab* land as a distinct class, being *ultra vires* the Act, must be struck down as null and void. In the result, the impugned orders, including that of the Financial Commissioner (Respondent 1) passed during the pendency of this writ petition are quashed and the petition is allowed with costs. Counsel's fee Rs. 100.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

NAND LAL,—*Petitioner.*

Versus

RATTAN SINGH AND OTHERS,—*Respondents.*

.. Civil Writ No. 1992 of 1965

July 29, 1968.

Punjab Gram Panchayat Act (IV of 1953 as amended by Act XXVI of 1962)—S. 13—Gram Panchayat Election Rules (1960)—Rules 32, 34 and 35—Panchayat election—Votes already counted—Recount—Whether permissible—Miscount of votes—Remedy against—Stated.

Held, that there is nothing in Gram Panchayat Election Rules, 1960, which permits recount of the votes already counted once by the Returning Officer. There is no such provision in the Punjab Gram Panchayat Act either. So in the case of a Panchayat election under the provisions of the Act and the Rules under it, a recount of votes cannot be claimed by any candidate. However, counting of the ballot-papers is a duty cast on the Returning Officer by rule 32, and as rule 34 provides for rejection of ballot-papers and rule 35 for preparation of return, after count of valid votes, of the successful candidate or candidates, it is evident that the duty cast on the Returning Officer is to do the count correctly. A

mistake in it cannot be corrected by a claim of recount by a candidate before the Returning Officer. However, in section 13-0 (1)(d) (iii) of the Act, it is a ground for an election petition to set aside an election that the result of the election had been materially effected 'by any non-compliance with the provisions of this Act, or of any rules made under this Act.' If the count of the votes is not done by the Returning Officer correctly and there is a case of miscount, that would be non-compliance by him of rules 32 and 35 of the Rules.

(Para 8)

Case referred by the Hon'ble Mr. Justice Prem Chand Pandit on 7th December, 1965 to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by the Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Bal Raj Tuli on 29th July, 1968.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari or any other suitable writ, order or direction be issued quashing the order of Shri K. N. Kashyap, Magistrate, who acted as the Tribunal under the Punjab Gram Panchayat Election Rules, by which he has set aside the election of the petitioner and further praying that the order of the learned Tribunal ordering the recount and scrutiny should be quashed.

R. K. CHHIBBER, ADVOCATE, for the Petitioner.

R. S. MITTAL AND A. S. NEHRA, ADVOCATES for the Respondents.

JUDGMENT

MEHAR SINGH, C.J.—An election for the office of Sarpanch of Umra Gram Sabha, was held on January 3 and 4, 1964, at village Umra. The Returning Officer counted the votes in favour of Nand Lal, petitioner as 754, in favour of Rattan Singh, respondent 1, as 714, and in favour of Lal Chand, respondent 3, as 559, thus declaring the petitioner elected to that office.

(2) An election petition calling in question the election of the petitioner under sections 13-B and 13-C of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), as amended by the Gram Panchayat (Amendment) Act, 1962 (Punjab Act 26 of 1962), was made by Giani, respondent 2, as voter in the Gram Sabha area.

(3) In the election petition, filed on January 30, 1964, respondent 2, urged quite a number of detailed and fully comprehensive

grounds challenging the election of the petitioner, but, before the Prescribed Authority or the Tribunal, in the end, only two of those grounds survived. Respondent 2 alleged, giving names and detailed particulars of each, forty-five voters, who were dead, having been personated during the election and the persons personating those dead voters having supported the petitioner. He produced before the Tribunal death certificates of forty such dead voters. The Tribunal on that made an order on May 18, 1965 (Annexure 'C'), ordering scrutiny of the ballot-papers and recount so as to find out whether there was any improper reception of votes, and to eliminate void votes after recount. Respondent 2 had alleged that by personation of forty-five dead voters, the result of the election had been materially affected, as the petitioner received those votes in his favour. He had alleged the other ground that the Returning Officer had the assistance of seven persons in counting of the votes, that those persons counted the votes wrongly to the best of the information of respondent 2 and that the votes of respondent 1 had been declared less in number than the real number found from his boxes, and further that the votes of the petitioner had been declared at a figure above the real one. It was said that wrong declaration about the counting of valid votes for respondent 1 and the petitioner had materially affected the result of the election. It was emphasised that as a matter of fact, respondent 1 secured the majority of votes over the petitioner. So a claim was made that the votes of the various candidates be recounted in accordance with the provisions of rule 34 of the Gram Panchayat Election Rules, 1960, and the exact figures of votes polled be verified. These two grounds prevailed with the Tribunal.

(4) On scrutiny the Tribunal found that votes of twenty-nine of the forty dead voters, whose death certificates had been produced had been polled in favour of the petitioner. There is nothing to show what happened to the remaining eleven votes of dead persons whose death certificates had also been produced. Now, according to the first declaration of the Returning Officer, the votes polled by the petitioner were 754, by respondent 1, 714, and by respondent 3, 559. If twenty-nine of the votes of the dead persons personated in favour of the petitioner were to be eliminated from the votes polled by him, the total of the votes polled by him would still have remained at 725, in which case also he remained with the largest number of votes polled as against the other two candidates, that is to say respondents 1 and 3. However,

the Tribunal then recounted the votes of each one of the three and it appears from his order of May 31, 1965 (Annexure 'B'), that on such recount, after eliminating void and invalid votes, the votes polled in favour of the petitioner came to 712, and those polled in favour of respondent 1 and respondent 3 came to 742 and 571, respectively. It will be seen that the votes polled increased both in the case of respondents 1 and 3, and there was a decrease in the votes polled by the petitioner. On that, by his order of July 2, 1965, the Tribunal proceeded to accept the election petition of respondent 2 and to set aside the election of the petitioner.

(5) It was against the order of the Tribunal that the petitioner filed his petition under Articles 226 and 227 of the Constitution on July 19, 1965, which petition coming for hearing before Pandit, J. and the learned Judge finding a certain conflicts of opinion in *Sheo Chand* v. *Sada Nand* (1). and *Yad Ram* v. *S. P. Karewal* (2), on the question whether the Prescribed Authority or the Tribunal under the provisions of the Act has or has not the power to order recount of the ballot-papers polled by the various candidates at a Panchayat Election, referred the case by his order of December 7, 1965, to a Division Bench. This is how this petition has come for hearing before this Bench.

(6) In *Sheo Chand's case*, of which the judgment was delivered by Narula, J., on August 10, 1965, the learned Judge observed that 'It would depend on the facts of each case whether the Prescribed Authority may or may not allow inspection of ballot-papers to any party'. In *Yad Ram's case*, of which the judgment was delivered by Mahajan, J., on October 26, 1965, the learned Judge also observed—'It will depend on the facts of each case whether the prescribed Authority may or may not allow inspection of ballot-papers to any party'. In *Yad Ram's case*, of which the judgment was delivered by Mahajan, J., on October 2, 1965, the learned Judge observed whether a case has been made out for the inspection of ballot-papers or not . . . .'. So on this aspect of the matter the learned Judges concurred in their opinion. Some argument has been urged by the learned counsel for the petitioner that this was not a case in which the Prescribed Authority or the Tribunal had any adequate or sound reasons to order inspection and scrutiny of the ballot-papers. This argument is apparently without any substance because, as a fact, the Tribunal

(1) 1965 P.L.R. 1211.

(2) 1965 Curr. Law Journ. (Pb.) 899.

did find that at least forty of the dead voters, whose death certificates had been produced before it, had been personated at the election. When a ballot-paper is issued to an elector, a mark is placed in the copy of the electoral roll against his number to denote of his having received the ballot-paper and the serial number of the ballot-paper issued to him is also to be noted against the entry pertaining to him in the electoral roll (rule 23 of the Gram Panchayat Election Rules, 1960). So when respondent 2 in his election petition named forty-five dead persons who had been personated and thereafter produced death certificates of forty out of them, all that the Prescribed Authority had to do to ascertain whether or not those forty dead persons had been personated was to refer to the information retained at the time of distribution of the ballot-papers according to rule 23. So that without referring to the ballot-papers, in the boxes of each one of the contesting candidates, he could immediately know that at least forty voters had been personated at the election, but he could not know in whose favour the personated votes were polled. This alone justified the Tribunal, for ends of justice, ordering the scrutiny of the ballot-papers, a circumstance which would be covered by the dictum of their Lordships of the Supreme Court in *Ram Sewak Yadav* v. *Hussain Kamil Kidwari* (3), So, on the facts and circumstances of the election petition of respondent 2, the Prescribed Authority or the Tribunal had every justification to order scrutiny of the ballot-papers, and no substantial argument is available on this aspect of his order.

(7) In the two cases already referred to, however, the learned Judges did indicate difference of opinion on the question whether or not the Prescribed Authority or the Tribunal, under the provisions of the Act, which makes no provision for recount either in its main body or under the Rules, can order recount of the votes polled by the various candidates at an election held under the provisions of the Act ? In *Yad Ram's case,* which was a case in which the allegation was of personation of votes of dead or absent persons, Mahajan, J., was of the opinion that "the Tribunal has inherent powers to allow inspection of ballot-papers or itself inspect the ballot-papers though that right has not been given by the statute or the rules to the parties. I am, therefore, unable to accept the contention of the

(3) A.I.R. 1964 S.C. 1249.

learned counsel that under no circumstances the ballot-papers can be inspected". This observation the learned Judge made in answer to an argument that there was no provision in the Act or the Rules thereunder for the inspection of the ballot-papers. If the matter was confined only to mere inspection to find out whether the votes polled were valid or not, in this case, as has been shown, no exception can be taken to what the Prescribed Authority or the Tribunal did. In *Sheo Chand's case* the allegation of the petitioner filing the election petition on the matter of recount was substantially and exactly the same as in the present case. He had alleged that the Returning Officer kept him and his Agent quite away from the place of counting and had wrongly counted the votes to the best of the information received by him, and that according to his information his votes had been declared less than the real number found in the box, and the votes of his opponent had been declared at a figure above the real one. It was stated that the wrong declaration about the ballot-papers for the petitioner in that case and his opponent had materially affected the result of the election. This was characterised by the learned counsel for the opposite party to the petitioner in that case as vague, an argument which prevailed with the learned Judge with an observation that such sweeping alegation very much resembled the kind of allegation that had been made in *Ram Sewak Yadav's case,* relating to illegal rejection or reception of votes and that it was extremely doubtful whether in view of the elaborate method of counting votes prescribed by the Rules, the Election Tribunal could be asked to recount votes merely on a vague allegation of a mistake in counting, particularly when no such objection was taken at the time of counting by the Presiding Officer as in that case. So the learned Judge found (a) the allegation as to misconduct of the votes to be vague, and (b) doubt about the power or jurisdiction of the Prescribed Authority or the Tribunal to order a recount in the wake of the provisions of the rules in regard to counting of votes. No other case has been cited by the learned counsel for the parties before us, which deals with the matter of recount of votes polled in a Panchayat election under the provisions of the Act. The learned counsel for the petitioner has made reference to *Jagar Singh* v. *Genda Lal* (4), but that was a case under the Representation of the People Act, 1951, in which

(4) A.I.R. 1964 S.C. 1200.

the provisions are materially different from those in the Act and the Rules made thereunder.

(8) In the election under consideration in this case there were three polling stations and counting of votes in regard to same fell under rule 32 of the Rules made under the Act. Sub-rule (3) thereof deals with the actual counting which has to be done in the presence of any candidate or polling agent who may be present. Clause (a) of this sub-rule says that the Returning Officer shall 'count the ballot papers with the aid of persons appointed to assist in the counting of votes. An account of the ballot-papers found in each box allotted to each candidate shall be recorded in a statement in Form VI. which shall be prepared separately for the offices of Chairman and Panches', and the subsequent clause says that after that had been done, the result of the election shall be declared by the Returning Officer. It is rule 35 which provides for preparation of the return on the basis of compliance with rule 32, in which return, the names of the contesting candidates, the number of valid votes given for each candidate, and the name, or in the case of plural constituency the names of the candidates, of the candidate declared to have been elected are to be stated. There is nothing in he rules which permits recount of the votes already counted once by the Returning Officer. This is unlike the provision for recount of votes in rule 63 of the Conduct of Election Rules, 1961, made with reference to the Representation of the People Act, 1951 (Act 43 of 1951). There is no such provision in the Act either. So in the case of a Panchayat election under the provisions of the Act and the Rules under it, a recount of votes cannot be claimed by any candidate. This is, as stated, specifically provided for in the rules under the Representation of the People Act, 1951. However, counting of the ballot-papers is a duty cast on the Returning Officer by rule 32, and as rule 34 provides for rejection of ballot-papers and rule 35 for preparation of return, after count of valid votes, of the successful candidate or candidates, it is evident that the duty cast on the Returning Officer is to do the count correctly. A mistake in it cannot be corrected by a claim of recount by a candidate before the Returning Officer. However, in section 13-O (1)(d)(iii) of the Act, it is a ground for an election petition to set aside an election that the result of the election had been materially affected 'by any non-compliance with the provisions of this Act, or of any rules made under this Act'. If the count of

the votes is not done by the Returning Officer correctly and there is a case of miscount, that would be, in my opinion, non-compliance by him with rules 32 and 35, and in a given case may be also of rule 34, of the Gram Panchayat Election Rules, 1960, for in miscounting of votes he shall not have carried out the duties cast upon him by those rules.

(9) According to Parliamentary Election Act, 1868 (31 & 32 Vict. c. 125), section 5 (now repealed by the Representation of the People Act, 1949), any election of a member to serve in British Parliament could be challenged on the ground of 'an undue return or undue election'. A miscount was a ground for challenging an election under this section. Rogers on Elections, Volume II, 1928, at page 171, says—"A considerable number of petitions has been presented which have claimed the seat on the ground of miscount of the ballot papers : see e.g., Renfrew (1874), 2 O'M & H. 213; 1 Scotch Sess. Cas. (4th Series), 834, sub nom. Irwin *v.* Mure; Greenock (1892), Day's El.Cas. 20, 21; Halifax (1892), Day's El.Cas. 20; 4 O'M. & H. 203; North Lonslale (1910) 6 O'M & H. 97; Chippenham (1911), *ibid,* 99; Mile End (1911), *ibid,* 100; Gloucester (1911), *ibid,* 101; West St. Pancras (1911); *ibid.* Such a petition is clearly good as being a petition 'complaining of an undue return' within the meaning of section 5 of the Parliamentary Elections Act, 1868. Formerly a Parliamentary Committee would have examined the Poll-books. and, if necessary, amended the return : Dublin, 1 P.R. & D. 193". See also to the same effect Halsbury's Volume 14, Simonds' Edition, paragraph 426, at page 244. To my mind the provisions of section 13-O(1)(d)(iii) of the Act making non-compliance with the provisions of the Act and of the Rules made thereunder. When the same has materially affected the election, a ground to challenge an election, is substantially parallel to the ground of such challenge of an election on the basis of an undue return or undue election in section 5 of the Parlimentary Elections Act, 1868. So, under section 13-O(1)(d)(iii) of the Act, miscount is a ground to challenge an election to a Panchayat under the Act. Once this conclusion is reached, the Prescribed Authority or the Tribunal under the Act, it follows, has the power and jurisdiction to recount the votes polled and to find out whether, in fact, there has or has not been a miscount, which has materially affected the result of the election. So, in the present case, the Prescribed Authority or the Tribunal had

the power and jurisdiction to carry out the recount and in this respect its order is not open to any argument.

(10) The only question that then remains for consideration is whether the allegation in regard to miscount of votes, by respondent 2 in his election petition, was vague. In section 13-D(1)(a) of the Act it is stated that an election petition shall contain a concise statement of the material facts on which the petitioner relies. On count of the votes, the petitioner may have an idea that there was a miscount, but may not be able to give the exact figure of votes whereby miscount occurred. The question then is whether his omission to give such exact information is so vague as Narula, J., was of the opinion in *Sheo Chand's case*, that he is to be denied relief ? *In the matter of the Election for the Borough of Halifax* (5), which was obviously a case of an election petition under section 5 of the Parliamentary Elections Act, 1868, challenging an election on the ground of miscount, the allegations of the petitioner were—"The petitioner Alferd Arnold, Clare-hall, Halifax, wire manufacturer, who was one of the candidates at the last election, on the 9th of February last, and claimed to have had a right to be returned, stated in his petition (which was on the 17th of February) that Mr. Rawson Shaw, himself, and a Mr. Lister were candidates, and that the Returning Officer declared the numbers to be—for Shaw, 4,617 votes; for Arnold, 4,249; for Lister; 3,028, majority for Shaw, 368; and thereupon declared Mr. Shaw to be duly elected. The petitioner alleged that a majority of the votes was given to him, but that mistakes were made by the Returning Officer, his Assistants, and Clerks in the counting of the votes, votes given to the petitioner having been counted for Mr. Shaw or Mr. Lister and votes given for Lister having been counted for Shaw, and that by reason of such mistakes the result of the poll was not duly ascertained; and, therefore, he prayed that the votes might be recounted". This prayer of the petitioner was on such allegations, which, it will be seen, are, in substance; the same as the allegations of respondent 2 in this case in his election petition allowed. It was not discounted on consideration that it was a prayer based on a vague allegation, which did not furnish material particulars. In that case although some mistake in the count was found on recount,

(5) (1892-93) 9 T.L.R. 563.

but the candidate who had already been declared successful was still found to have polled majority of the votes. On that both sides applied for withdrawal of the petition, which application was rejected by the learned Judges, may be so as not to permit the petitioner in that case to escape forfeiture of security and burden of costs. So that this is a case which supports the view that the allegations in the election petition of respondent 2 for miscount in this case were not vague and on this ground the Prescribed Authority or the Tribunal could not have proceeded to dismiss his petition, and, in this Court, there cannot be interference with the decision of the Prescribed Authority or the Tribunal on this matter in a petition of the petitioner under Articles 226 and 227 of the Constitution. No doubt frivolous petitions on this ground may come before the Prescribed Authority or the Tribunal for challenging elections, but the consequences will be forfeiture of security as required from a petitioner under section 13-C of the Act and the burden of the opposite party's costs on him.

(11) In the result, this petition fails and is dismissed with costs, counsel's fee being Rs. 100.

BALRAJ TULI, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

MALVINDERJIT SINGH,—*Petitioner*

Versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 2719 of 1965

July 29, 1968

Punjab Civil Services Rules *(1953)—Volume I, Part I—Rule 7.3—Applicability of—Whether limited to those suspensions of Government servants where departmental inquiry is held—Suspension of a government servant—Whether can be ordered only during the pendency of a departmental inquiry against* him.