
(2016) 10 UK CK 0006
In the Uttarakhand High Court
Case No : Appeal from Order No. 370 of 2016

Anju Lunthi

APPELLANT

Vs

Deepika Bora

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Uttar Pradesh Kshetra Panchayats (Election of Pramukh and Up-Pramukh and Settlement of Election Disputes) Rules, 1994 — Rule 26, Rule 35

Citation : (2017) 120 ALR 162 : (2017) 134 RD 505

Hon'ble Judges : Servesesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Smt. Anjali Bhargava, Brief Holder, for the State/Respondent No. 4; Mr. Sanjay Bhatt, Advocate, for the Respondent Nos. 2 and 3; Mr. Rajendra Dobhal, Senior Advocate, assisted by Mr. Devang Dobhal, Advocate, for the Respondent No. 1; Mr. Siddhartha Singh,

Final Decision : Allowed

Judgement

Servesesh Kumar Gupta, J. - By means of this appeal, the judgment and order dated 27.6.2016 rendered by the District Judge, Pithoragarh has been challenged. By the impugned judgment, learned Judge dismissed the petition of Smt. Anju Lunthi.

2. Background facts of the controversy, sans unnecessary details, are that for the post of Block Pramukh, there was a contest between Smt. Anju Lunthi and Smt. Deepika Bora. Total number of voters were 40, who had to display their favour by way of secret ballot. In front of the candidate favoured, the voter had to make no. 1. The votes were counted as per the procedure envisaged under Rule 26 of U.P. Kshetra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1994 (hereinafter referred to as "the Rules"). Sub-rule (3) of Rule 26 contemplates as under:

"(3) A ballot paper shall be rejected as invalid on which-

- (a) the number 1 is not marked; or
- (b) the number 1 is marked opposite the name of more than one candidate or is so marked as to render it doubtful to which candidate it is intended to apply; or
- (c) the number 1 and some other numbers are marked opposite the name of the same candidate; or
- (d) any mark is made by which the voter may afterwards be identified."

3. All the 40 voters exercised their right to franchise, but unfortunately one of them expressed his/her choice of candidate by putting the tick mark (?) right while another one wrote the roman I in place of numeric 1. So, the Returning Officer rejected both these votes. Both these rejected votes were cast in favour of Smt. Anju Lunthi. Thus, out of 40, only 38 votes were counted for deciding the result of election. The result was inconclusive as both the candidates secured equal number of votes i.e. 19 votes each. So, their fate was tested by tossing a coin and on flipping the coin, the luck favoured Smt. Deepika Bora and thus she was declared elected as Block Pramukh and she is adorning such post since July 2014.

4. Feeling aggrieved, Smt. Anju Lunthi presented an Election Petition No. 71/2014 under Rule 35 of the said Rules. This petition was also not accepted by the Court below. So, this appeal.

5. I have heard the rival contentions and have perused the papers on record including the ballots papers.

6. Learned Counsel of the appellant has heavily relied on a Constitutional Bench judgment of Hon"ble Apex Court rendered in Lalit Mohan Pandey v. Pooran Singh & Ors., 2004 (1) UD 518. It also pertained to the similar controversy, wherein while highlighting the principles of interpretation, the Hon"ble Supreme Court has held that it is now well-settled that object of the Act must be given effect to. The object of the Act being to elect an Adhyaksha, constructions of the rules should be made in such a manner which would not negate the same. An interpretation of the rules which would lead to election of one of the candidates should be adhered to and for that purpose, if necessary, the doctrine of purposive construction may be taken recourse to.

7. It was further observed that it is trite that for the purpose of interpretation a statute is to be read in its entirety and all efforts must be made to give effect to the statutory scheme. The object underlying the statute is required to be given effect to by applying the principles of purposive construction.

8. If the above interpretation is applied in the present controversy, then I am of the view that revelation of the intention of the voter by way of making the tick mark ?, though in favour of Smt. Anju Lunthi, but since it was altogether against the notion which has not been thought of under Rule 26, therefore, it has rightly been rejected by the Returning Officer. Such rejection has also not been disputed

by the learned Counsel of the appellant.

9. However, as regards the rejection of another ballot cast in favour of Smt. Anju Lunthi by putting the roman I in place of numeric 1, I think that the same is against the spirit of the Act. The reason to support my view is that the level of literacy, background and the surrounding circumstances of the voters should always be kept in mind while counting the votes of such nature. The region to which such voters hail is altogether a boarder area of a remote hill district, where all persons are not supposed to be so consciously vigilant and alert as to scrupulously abide by what has been instructed to them by the Election Officer or adumbrated under the Act or Rules.

10. As regards the font/structure of number 1 is concerned, it may vary from person to person just by putting a knot on the top of such structure and making a very little horizontal mark at the bottom of such number. The matter would have been quite different if the evaluation of the digit 3, 6 or 8 might have been before the Court because it is difficult to make the variations in the structure of such digits, but as regards the structure of other digits are concerned, there can always be possibilities of little variations in such structure which will depend upon the level of literacy, background and surrounding circumstances of the voters.

11. So, in my view, the vote which has been cast in favour of Smt. Anju Lunthi by putting the sign I must have been counted in her favour. Had it been done so, then the total number of votes which would have been counted in her favour were 20 as against 19 cast in favour of Smt. Deepika Bora.

12. Learned Senior Counsel on behalf of the respondent no. 1 relied upon a judgment rendered by a Division Bench of Allahabad High Court in Ram Kishun, Gorakhpur v. State Election Commissioner & Others, 2003 (3) AWC 2271, wherein it was held that where a statute provides to do certain thing in a certain manner, it has to be and must be done in that manner and if any other method is adopted, the object and purpose of the provision is defeated and failure to comply with those provisions vitiates the order. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.

13. I feel that this precedent of Hon''ble Allahabad High Court was in a quite different context because in that case although the controversy was similar, but to solve the same the loosing candidate directly filed the writ petition, which was barred by Article 243-O of Indian Constitution. In that eventuality, Allahabad High Court observed that the controversy could have been challenged by way of filing the election petition, as provided under Rule 35 and it was the proper remedy, and not the writ petition.

14. Learned Senior Counsel on behalf of respondent no. 1 has also heavily relied on a precedent rendered by a Constitution Bench of the Hon''ble Apex Court in Ramchandra Keshav Adke (dead) by LRs v. Govind Joti Chavare & Others, AIR 1975 SC 915. In that case also, the Hon''ble Supreme Court held that where a

power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other.

15. I think that the above view of the Hon''ble Apex Court should be read jointly with another paragraph, which reads as under:

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope."

16. So, I feel that the duty of the Court of Justice is to discern the real intention of the legislature and such intention has already been indicated by this Court that in the democratic set up, there should be every endeavour of the authorities not to permit any vote go waste.

17. In view of what has been set forth above, I allow this appeal and overturn the impugned judgment with the result the petition of Smt. Anju Lunthi is also accepted. Consequently, Smt. Anju Lunthi is declared elected in the said election. Authority concerned shall call her for taking oath of her office at the earliest possible, but not later than a week. Smt. Deepika Bora is directed to hand over all the relevant charges to Smt. Anju Lunthi immediately after her taking oath of office.