
(1973) 11 AHC CK 0019

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 1645 and 1811 of 1973

Babu Singh and Another

APPELLANT

Vs

The Returning Officer for Elections and Others

RESPONDENT

Date of Decision : 27-11-1973

Acts Referred:

Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 7, 7(1)

Citation : AIR 1974 All 188

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : D.P. Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Singh, J.—In these two writ petitions validity of U.P. Kshetra Samities (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) (Second Amendment) Rules, 1973, as published in the Gazette dated 17th February, 1973 has been challenged.

2. Babu Singh and Baboo Khan, petitioners in the two writ petitions contested elections for the office of Pramukhs of the Kshetra Samities, during the elections held in March, 1973 for the constitution of Kshetra Samitties u/s 7 of the U.P. Kshetra Samities and Zila Parishad Adhiniyam, 1961 (hereinafter referred to as the Adhiniyam). Votes were recorded by the members of the Kshetra Samities to the manner laid down in Rule 24 of the U.P. Kshetra Samities (Election of Pramukhs and Up Pramukhs and Settlement of Election Disputes) Rules, 1973. Several members obtained help of companions for recording their votes. Both the petitioners lost their elections and their rival candidates were declared elected, thereafter, they filed these two writ petitions challenging the validity of clause 7 of Rule 24 as amended by the Second amendment in 1973.

3. Section 7 of the Adhiniyam lays down that a Pramukh shall be elected by the

members of the Kshettra Samiti by secret ballot and in the manner provided by Rules which shall also provide for resolution of doubts and disputes relating to the election of Pramukhs and Up-Pramukhs. Section 237 of the Adhiniyam lays down that the State Government may make rules consistent with the Adhiniyam, in respect of any matter or matters for which power of making rules is expressly or by implication conferred by the Adhiniyam and may also make rules which are otherwise requisite for carrying out the purpose of the Adhiniyam. The Rules so framed are required to be published and laid before the two Houses of the State Legislature. In pursuance of the powers conferred on it by Section 7 read with Section 237 of the Adhiniyam, the State Government framed the U.P. Kshettra Samiti (Election of Pramukhs, Up-Pramukhs and Settlement of Election Disputes) Rules, 1962. These Rules contain detailed provisions for the conduct of elections of Pramukh, Up-Pramukh and also for the filing of election petition, its trial and disposal by the Election Tribunal. Rules 3 and 4 of the said Rules define Returning Officer and Assistant Returning Officer and prescribe their duties and functions. Chapter II of the Rules lays down detailed procedure for the conduct of the election of Pramukh. Rules 16 to 24 regulate polling for the election of Pramukhs. Rule 24 lays down the manner of recording of votes. These rules were amended, from time to time the latest amendment being Uttar Pradesh Kshettra Samities (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) (Second Amendment) Rules, 1973, vide Notification published in the Gazette dated 17th February, 1973. The amending Rules of 1973 amended several rules but for the purposes of the present petitions, only the amendments made in Rules 4 and 24 are necessary to be considered. Rule 2 of the Second Amendment of 1973 amended Rules 4 and 24 of 1962 Rules. The relevant amendments necessary for the purposes of the present writ petitions are reproduced below:--

"2. In the Uttar Pradesh Kshettra Samities (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rules, 1962, (hereinafter referred to as the said Rules).

(i) for the sub-rule mentioned in column 1, the sub-rule as mentioned in column 2 shall be substituted.

Column 1

Column 2

Existing sub-rule

Sub-rule as hereby substituted

A (4a) - The Returning Officer and the Asstt. Returning Officer shall perform their functions and duties under the General Superintendence of Director of Elections Local Bodies. U. P.

(4) (4) The ReturnIns Officer and the Asst. Returning Officer shall perform their functions and duties under the general superintendence, direction and control of the Nirvachan Nideshak (Sthaniya Nikaya) Uttar Pradesh.

24. (7) The Presiding Officer shall, if requested by a member, explain to him the instructions contained in the ballot papers for the recording of votes.

24 (6). The Returning Officer shall, if requested by a member, explain to him the instructions contained in the ballot paper for the recording of votes.

(7) If owing to the physical incapacity or illiteracy his preferences on the ballot paper or to read it, the Presiding Officer shall, on being so requested by member, record the vote in the ballot paper according to the direction of the member. The member shall then either himself or with the assistance of the Presiding Officer, put the ballot paper folded up into the ballot box.

(7) If an elector is unable to read the ballot paper or to record his vote thereon by reason of illiteracy, blindness or other infirmity, the returning officer shall, on being satisfied about such illiteracy, blindness or infirmity, permit the elector to have with him a companion of not less than 21 years of age who is able to read ballot paper and record the vote thereon on behalf of and in accordance with the wishes of the elector and if necessary, fold the ballot papers so as to conceal the vote and insert it into the ballot box.

The Presiding Officer shall have this done with as much secrecy as reasonable and shall keep a brief record of each such instance without indicating the manner in which the vote has been cast"

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day.

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule, the person shall be required to declare that he will keep secret the vote recorded by him on behalf of the elector and that he has not already acted as the companion of any other elector at any polling station on that day

The Returning Officer shall keep a record in form 7-A of all the cases under this sub-rules."

4. After the second amendment of Rule 4 (4) Returning Officer and Assistant Returning Officers are required to perform their functions and duties under the general superintendence and direction and control of Nirvachan Nideshak (Sthaniya Nikay) U.P. The Director of Elections of the Local bodies is the Nirvachan Nideshak (Sthaniya Nikay). He is empowered to supervise and regulate the conduct of elections and for that purpose he is invested with powers to issue directions to the Returning Officer and Assistant Returning Officer and the latter are required to follow any direction issued by the Director of Elections. Rule 24 which laid down the manner of recording of votes prior to its amendment provided that if due to physical incapacity or illiteracy a voter was not able to record his vote or preferences on the ballot paper at the election of Pramuks, the Presiding Officer was empowered to record the vote of that member according to his direction and request. The presiding officer was required to

record vote on behalf of that member with as much secrecy as possible and he was, further required to keep a brief record of each such instance, without indicating the manner in which vote was recorded by him. After the amendment of Clause (7) of Rule 24 by the Second Amendment of 1973 instead of the Presiding Officer recording the vote of a member who may be physically incapacitated, the voter is entitled to take a companion with him who may record his vote on his behalf and in accordance with his wishes. The proviso to the amended rule lays down that no single person shall be permitted at any polling station to act as companion, for more than one elector on the same day. The amended Clause (7) of Rule 24 further provides that such companion should not be less than 21 years of age and he must be able to read ballot paper and record the vote thereon. Before any companion is allowed the Presiding Officer is required to satisfy himself about the illiteracy, blindness or infirmity of the elector making request for the facility of a companion for recording of his vote. Clause (7) of Rule 24, as it stands after its amendment by the second amendment of 1973, is under challenge in the present writ petitions.

5. Learned counsel for the petitioners contended that Clause (7) of Rule 24, as amended by the second amendment of 1973, is inconsistent with the provisions of Section 7 of the Adhiniyam. Section 7 of the Adhiniyam enjoins that the election of Pramukh shall be held by secret ballot but Clause (7) of Rule 24 of the second amendment violates the secrecy, thus the rule is void. By enacting Section 7 the legislature declared its policy that the election of Pramukh shall be held by secret ballot, but the manner in which the polling shall take place or the votes shall be recorded was left to the rule framing authority. Section 7 read with Section 237 confers power on the State Government to frame rule prescribing the manner in which the election shall be held. While framing the rules the State Government is no doubt required to follow the essential legislative policy laid down in Section 7, namely, that the election should be held by secret ballot. The Rules undisputably provide that voting shall be held by secret ballot.

6. The question then arises whether Rule 24 (7) is inconsistent with the provisions of the Adhiniyam. The validity of the rule cannot be upheld once it is found that it is inconsistent with the provisions of the Adhiniyam. In my opinion, Rule 24 (7) is not inconsistent with any of the provisions of the Adhiniyam. Under the democratic set up established by the Constitution and the laws of our country, an elector who is given a right of franchise, is entitled to vote at the election. The Constitution itself confers right of franchise on all the adults irrespective of their physical infirmity. Similarly, Section 7 (1)(a) of the Adhiniyam confers a valuable right on each and every member of the Kshettra Samiti to exercise his right of vote for electing a Pramukh. There is no provision under the Adhiniyam taking away that valuable right on the ground of blindness, illiteracy or other kind of physical infirmity. The legislature must be aware of the situation that some of the members of the Kshettra Samiti may be suffering from blindness or other infirmity and due to that physical infirmity they may not be able to record their vote but even then, no provision was made in the Adhiniyam

that such persons shall not be permitted to record their votes with the assistance of others. The legislative policy is clear that a blind, illiterate and physically infirm member has a right to vote at the election of Pramukh. The State Government framed the impugned Rule 24 (7) to carry out that legislative intent and Policy. Some procedure or method was required to be laid down to enable the exercise of right of vote by blind, illiterate and physically infirm members, and it was for that purpose the Rule in question has been framed.

In an election where votes are recorded on symbols, even an illiterate person may record his vote but in that case also a blind or a physically infirm person may require assistance for purposes of recording his vote. The election of Pramukh is held on the basis of single transferable vote, which requires giving of preference by the voters. The system contemplates that the voter shall mark his choice by indicating its preferences on the ballot papers against the name of the candidates. Thus, if a voter is illiterate or blind, he will not be able to read the names of the candidates nor record his preferences, and it will not be possible for him to record his vote at the election. Under the Adhiniyam there is no provision taking away the right of vote of a blind, illiterate or otherwise physically infirm elector. The Rule making authority, therefore, considered it necessary to make provision for recording of votes by the illiterate, blind and otherwise physically infirm electors and for that purpose Clause 7 of Rule 24 was framed. In the absence of any such provision all those electors who may be blind, illiterate or otherwise physically infirm could not exercise their vote for the election of Pramukh. Consequently they would have stood disfranchised. That would have been inconsistent with the legislative intent and policy. Their right was required to be protected and some procedure was necessary to be laid down for enabling them to exercise their right of vote. The State Government therefore framed the impugned rules to enable such persons to record their votes. Such a provision, in my opinion, is consistent with the provisions of Section 7 of the Adhimyam.

7. Generally there are two modes of voting which are followed by all democratic countries, one by ballot and the other by viva voce voting. The former implies secrecy while the latter involves publicity. The system of voting by ballot has been generally adopted in the United States and in England. In our country we have also adopted voting by ballot. This system implies secrecy of voting which is different from the viva voce voting namely voting by show of hands. To safeguard purity of elections and expression of free will by an elector without fear or influence the system of secrecy of voting has been adopted universally. In case of secret voting the elector is not required to disclose the manner in which he may have voted under that system every possible effort is made to ensure secrecy of voting. In the instant case, Rules 16 to 24 provide procedure for voting which require that the elector shall record his vote secretly. Under Rule 30 even an inspection of ballot papers used by electors is not allowed. Inspection of ballot papers is no doubt permissible under the orders of a competent Tribunal during the trial of election petition. These provisions ensure secrecy of voting at the election of Pramukh.

8. The question then arises whether Clause (7) of Rule 24, as amended, which permits a blind illiterate and physically infirm elector to record his vote with the assistance of his companion violates secrecy of voting as enjoined by Section 7 of the Adhiniyam, as already discussed, an illiterate, blind or physically infirm member of Kshettra Samiti has a valuable right to record his vote at the election of pramukh. Clause (7) of Rule 24 has been framed with a view to enable such physically infirm and blind persons to record their votes at the election of Pramukh. The problem of voting by blind and physically infirm persons at an election held by secret ballot is not new to the election of Pramukh only. This problem is an universal one which has been faced by our country and other countries also. Although great importance is attached to the preservation of secrecy of ballot papers, but generally various statutes regulating elections make provision for rendering assistance to incapable blind and physically infirm voters to ensure that they are able to exercise their right of voting. Permitting assistance to blind and illiterate voters for recording of their vote has been accepted in practice throughout the known democracies in the world and such a provision is not considered violative of secrecy of voting.

9. In American Jurisprudence, Vol. 26. II Edition (Article 238 at page 68) while discussing the question of assistance to voters at an election by secret ballot the following observations have been made:--

"Although great importance is attached to the preservation of the secrecy of the ballot, it is usually provided by statute that persons who are laboring under certain disabilities which do not disqualify them to vote, but which render them incapable of making their ballots, may have assistance in voting. In fact if the governing statute contains no exception, right to assistance will be assumed unless other possible means of securing it is expressly prohibited. The forms of disability warranting assistance are generally prescribed by statute. The right is customarily extended to persons who, by reason of physical infirmity, are unable to mark their own ballots"

10. In Halsbury's Laws of England Volume XIV, page 133, while dealing with the problem of voting by a blind or physically infirm voter, the following principles of law have been laid down:--

"If a voter makes application to the Presiding Officer to be allowed on the ground of blindness to vote with the assistance of another person by whom he is accompanied (called "the companion") the Presiding Officer must require the voter to declare orally whether he is so incapacitated by his blindness as to be unable to vote without assistance. A person is qualified to assist a blind voter to vote if that person is either a person who is entitled to vote as elector or the father, mother, brother, sister, husband, wife, son or daughter of the blind voter and has attained the age of 21 years.

If the Presiding Officer is satisfied that the voter is so incapacitated and is also satisfied by a written declaration made by the companion (called the declaration

made by the companion of a blind voter) that the companion is a qualified man, has not previously assisted more than one blind person to vote at the election he must grant the application and thereupon anything required to be done to or by the voter in connexion with the giving of his vote may be done to or with the assistance of the companion."

The proposition which emerges from the above elucidation of law is that the concept of secret ballot does not exclude assistance to blind and infirm voters for recording their votes. The practice of rendering assistance to blind, illiterate and infirm electors for recording their votes is accepted a part and parcel of the concept of secret ballot. In fact if the governing statute does not disqualify a blind, illiterate or infirm elector, it shall be assumed that facility shall be provided to that elector to enable him to record his vote. Providing assistance to infirm and incapacitated voters has never been held violative of secret voting.

11. Similar provisions have been made under the various statutes where election is held by secret ballot. u/s 59 of the Representation of the People Act, 1951, votes are required to be given by secret ballot in such manner as may be required by rules. The Conduct of Election Rules, 1961 framed under the Representation of the people Act ensure secrecy of voting, Rule 40 of the Conduct of Election Rules 1961, contains almost similar provisions as contained in Rule 24 (7) of the Kshettra Samiti (Election of Pramukh and Up-Pramukh and Settlement of Election Disputes) Rules. The U.P. Nagar Mahapalika (Sabhasadon Ka Nirvachan Ka Sanchalan) Agya, 1959, framed under the U.P. Nagar Mahapalika Adhiniyam, 1959, makes provision for conduct of election of Sabhasads of Nagar Mahapalikas. Rule 44 of the said Agya permits assistance of a companion to a blind and infirm voter for recording his vote at the election even though election is held by secret ballot. Similar provisions exist in the U.P. Municipalities Act and the U.P. Panchayat Raj Act for permitting assistance to blind and infirm voters, I do not consider it necessary to refer to similar rules framed under the various other statutes. Suffice, to say that in almost all the Act. Statutes and Rules regulating conduct of election by secret ballot a provision exists permitting assistance to a blind and infirm elector either with the aid of a companion of his choice or with the aid of Presiding Officer.

12. It was unread that voting with the assistance of a companion amounts to disclosure of the choice exercised by the elector. Therefore the impugned rules do not ensure secrecy of vote. As already discussed the Rules ensure secret voting by ballot. Normally the manner in which an elector exercises his right of voting is secret. It is only when the elector is blind, illiterate or physically infirm he may record his vote with the assistance of a companion of his own choice. A companion selected by the elector would naturally be a person of his confidence and in the normal course he is not expected to divulge the secrecy of voting of that elector. As regards the knowledge of the companion, it is always open to the elector to disclose voluntarily the name of the person for whom he voted or the manner in which he exercised his right of voting. There is no provision in the

Adhiniyam prohibiting such a voluntary disclosure by an elector. The secrecy of voting is primarily for the protection of voter so that he may exercise his right with a free will. He cannot be compelled to disclose that fact but if he voluntarily discloses his choice and the manner in which he voted there is no violation of secrecy of voting. In view of these circumstances a companion to a disabled or illiterate elector of Kshettra Samiti violates secrecy cannot be sustained.

13. The question whether rendering of assistance to an elector for recording his vote, violated secrecy of vote came up for consideration before a Division Bench of this Court in First Appeal No. 6 of 1961 (Bohrey Ram Gopal v. Dr. Ladli Prasad Tandon decided on 16th February, 1962). In that case the election of Nagar Pramukh of Nagar Mahapalika Agra, was challenged. It was alleged that nine of the voters had put marks on the ballot papers with the help of the Returning Officer which violated secrecy of votes enjoined by the Nagar Mahapalika Adhiniyam, and therefore their votes were invalid and liable to be rejected. Rule 23 (6) of the Nagar Pramukh on Aur Up Nagar. Pramukhonke Nirvachan Ka Sanchalan Agya, 1959 permitted the presiding Officer to record vote of a physically infirm blind or illiterate elector on the ballot paper according to the direction of the elector. There was difference of opinion between two learned Judges and certain questions were referred to a learned third Judge. But all the three learned Judges agreed that rendering of assistance to physically infirm, and blind voters did not render their votes invalid. The provision of Rule 23 (6) of the Agya is similar to Rule 24 (7) in the instant case. I am, therefore, of the opinion that Rule 24 (7) does not violate secrecy of vote and is not inconsistent with. Section 7 of the Adhiniyam.

14. Learned counsel for the petitioners urged that the rule in question was liable to be misused by unscrupulous electors and candidates. It is true that in certain cases unscrupulous elector or candidate may arrive at an understanding for recording of vote with the assistance of a companion to enable a candidate to ascertain whether the elector actually voted for him or not but this does not render the rule invalid. The Rules are framed on the assumption that the candidates, the members of the Kshettra Samiti, the companions as well as the Presiding Officer will act honestly. A mere possibility of misuse of the provision is not sufficient to declare the rule invalid. If and when a misuse is established the Rules confer power on the Election Tribunal to strike down such misuse on the trial of an election petition.

15. In view of the above discussion, the petitioners' contention that Rule 24 (7) violates secrecy of votes or that it is unreasonable must be rejected.

16. In the result the writ petitions are dismissed with costs.