

(1989) 01 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No's. 4446 and 4447 of 1988

Bhagwat Anantrao Deshmukh

APPELLANT

Vs

Suresh Balbhim Lale and Others

RESPONDENT

Date of Decision : 11-01-1989

Acts Referred:

Bombay Village Panchayats Election Rules, 1959 — Rule 23, 23, 33(1), 33(1)

Citation : (1989) 1 BomCR 569 : (1989) 91 BOMLR 705 : (1989) MhLj 747

Hon'ble Judges : Sharad Manohar, J

Bench : Division Bench

Advocate : P.S. Patankar, for the Appellant; M.R. Katikar and Suresh B. Kumbhar, for the Respondent

Judgement

Sharad Manohar, J.—The question in this petition relates to the validity of 5 ballot papers recording or, rather, purporting to record votes in favour of the present petitioner, who was contesting the election of the village Ghatane Gram Panchayat. The respondent was the other candidate. Including the impugned 5 ballot paper, the petitioner received 54 votes, whereas the respondent undisputedly, received 52 votes. This evidently means that even if 3 out of the 5 impugned ballot papers are held to be invalid, the result emanating from the judgment of the lower Court shall have to be upheld. If only two of them are rejected, then it shall be equality of votes and hence the election will have to be held by the spin of the coin. It is only if the present petitioner succeeds in establishing that at least 4 out of the 5 impugned ballot papers cannot be invalidated that he can succeed in this petition and can be declared as elected.

2. Let me straightaway go to the question of the nature of the mark put on the 5 ballot papers.

I will firstly consider the case of the petition of Bhagwat Anantrao Deshmukh (Writ Petition No. 4446 of 1988).

3. All the 5 ballot papers in his favour have been held by the learned Judge to be

invalid.

(a) A mere glance at the Ballot Paper No. 057 would show that there is not the slightest doubt about the validity of that ballot paper vis-a-vis this candidate Deshmukh. The stamp is neatly put upon the symbol "Tiger" and there is no blurring or indistinctness upon the mark. The learned Judge has held it to be invalid. Clearly wrong view.

(b) Similar is the position of Ballot Paper No. 056. There is nothing indistinct about the mark made upon the symbol "Tiger", which is the symbol of this candidate Deshmukh. It therefore follows that these ballot papers are wrongly rejected so far as the candidate Deshmukh is concerned.

(c) The 3rd ballot paper is of the number 010. It does appear that there is some blurring or over stamping on the symbol "Tiger". But the mark is made in such a manner that not a ghost of doubt can arise about the intention of the voter to vote for this candidate Deshmukh. Manifest position is that after making the mark in the first instance, the voter has put the mark again on the same mark with the result that you find something like blurring. But it has not invalidated the mark as such. That is not the case of double voting. In my opinion, if one mark is put with the stamp and at some distance another mark is put, this may amount to giving two votes to the same candidate, which is spurned down by the rule. But that is not the case here.

The three ballot papers in favour of the petitioner Deshmukh must therefore, be held to be valid.

(d) Then comes the crucial question of Ballot Paper No. 055. In this case the mark is firstly put on the symbol "Tiger" (symbol of the candidate Deshmukh). But evidently that mark is indistinct and quite a big blur. The 2nd mark is made touching the 1st mark below the 1st mark. But while doing so, the mark has slightly transferred the line and the result has been that a very small portion of that mark appears on the space allotted to candidate Suresh Balbhim Lale (symbol "Umbrella"). Question is whether this particular way of stamping and marking invalidates the stamp.

4. Mr. Katikar, appearing for respondent No. 1, had a two-fold objection to the validity of this stamp.

(a) Firstly, he contended that this is a case of giving two votes by making two marks.

If this was the case of two distinct marks, then I would have been inclined to hold that this is a case of giving two votes to the same candidate. I need not state at this stage the reason why I would have come to the conclusion. I may only mention that Mr. Patankar, appearing for the petitioner, invited my attention to the two judgments of this Court AIR 1987 Bombay, Page 206 Malikshingh Sitaram Mainawale and etc., v. Jagatsingh Thakursingh and others etc.. And Dajiba Gurunath Gavane and Others Vs. Sangappa Sharanappa Patil and

Others, , which, according to him, take the view that even if two distinct marks are made still it does not amount to giving two votes to the same candidate when only one vote can be given.

I have gone through the judgments and I do not think that was the ratio of those judgments. Moreover, if such a view is taken viz. that even if two distinct mark are made it should not be held that two votes are given, then it would mean that by this judicial interpretation of Rule 33 of the Village Panchayat Election Rules, Clause (d) of sub-rule (1) of said Rule 33 is veritably deleted and repealed by the Court by judicial process. I, for one, cannot subscribe to such a view setting at naught the legislative intent reflected in the express terminology employed by Clause (d) of sub-rule (1) of Rule 33.

If a voter wants to give two votes to one and the same candidate, (though disallowed by the rules) the only way in which he can do so is to put two distinct marks against the name of the same candidate and if he does so, then the voting paper will have to be held to be valid. In my opinion, both the decisions mentioned above do not lay down such a principle of law, which will be violative of the legislative dictate. But I may add that the present case is not the case of two distinct marks at all. In the present case, so far as Ballot Paper No. 055 is concerned, one may see as one runs that the reason for making the 2nd mark is that the 1st mark, which is just upon the symbol "Tiger" extremely blurred & indistinct is. A reasonable & legitimate inference must follow that it was on this account that the voter has put the 2nd mark to emphasize his intent to give vote to candidate Deshmukh. This is not the case of two votes to one candidate but is the case where one vote is given to one and the same candidate but with the emphasis added to the same.

(b) The 2nd objection of Mr. Katikar is that the ballot paper is invalid because it crosses the line and a small portion of the mark occupies the space allotted to the other candidate Suresh Balbhim Lale with the symbol "Umbrella".

Mr. Katikar is right so far as the factual position is concerned. The mark does reach the space allotted to the other candidate, though very slightly. But the point is whether this can be the ground for rejection of the ballot paper.

5. Now, the question as to how the votes are to be given is delineated by Rule 23 of the Election Rules and Sub-Rule (v) of the same no doubt demands that ---

"the voter shall make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote so however that no part of the mark so made shall appear in the space provided for other candidate".

But this rule provides for the manner in which voting should be done. The question of rejection of ballot paper is entirely an independent question. The grounds on which the ballot paper can be rejected are set out exclusively in Rule 33 and said Rule 33, though it purports to be quite exhaustive, does not lay

down this overlapping of the mark as a ground for rejection of the ballot paper.

This being the position, in my opinion, Ballot Paper No. 055 was wrongly rejected by the learned Judge.

6. As stated above, if 4 ballot papers are held to be valid, the judgment given by the lower Court cannot be sustained at all and hence, it is unnecessary for me to examine whether the 5th ballot paper No. 056 is valid or not. But lest my above view regarding the fourth ballot paper is not upheld by a larger bench or by the Supreme Court, it is worthwhile giving brief indication about my view of this ballot paper.

7. The factual position of this ballot paper is that after making a correct mark upon the symbol "Tiger" (allotted to candidate Deshmukh) another stamp mark is made by the voter on the reverse side of the ballot paper, behind the space allotted to Suresh Balbhim Lale.

Mr. Katikar rightly contended that this is an ingenious way of indicating the identity of the voter. Mr. Patankar invited my attention to the judgment of the Division Bench of this Court reported in AIR 1987 Bombay, page 206 at page 212 wherein a judgment of the Supreme Court is relied upon to hold that the position that the two marks are made may not be indicative of attempt to indicate the identity of the voter.

8. In my opinion, this question will depend upon the facts of each case. In the General Election where the votaries consist of millions of voters, making one mark on the reverse will obviously be not enough to indicate the identity of the voter. But in the election of the institution such as Grampanchayat the votary extends to just a few thousands or just a few hundreds. In such a case it will be easily possible for the voter to enter into some kind of understanding with the particular candidate with a view to get some reward for voting in his favour. To ensure such voting and to justify such reward, the candidate may require the voter to put a mark on the reverse side of the ballot paper. In this connection, it is significant that the mark made by the voter concerned on the reverse side of the side fifth ballot paper is not even on the reverse side of the space allotted to this candidate Deshmukh. It is on the reverse side of the space allotted to Lale. An intention to disclose his identity can, therefore, be legitimately imputed to this particular voter. This is precisely the thing spurned by the rules.

9. Mr. Patankar argued that there is no evidence of any such under standing between the voter and the candidate Deshmukh.

The simple answer is that not only that such evidence is just not possible, but that it is not even necessary because the courts are entitled to put two & two together to come to the legitimate conclusion. In an election of such a small institution, consisting of modest number of voters, this is easily possible. What is contemplated by the rule is not that the identity is actually established; what is looked down upon is that the identity must be capable of being established. In

my opinion, therefore, the 5th ballot paper No. 056 must be held to be answering the description of a ballot paper, the mark or marks on which are likely to indicate the identity of the voter. As such, this ballot paper shall have to be rejected having regard to the provisions of Rule 33(1)(a) of the Elections Rules, which rule states that a ballot paper shall be rejected if it bears any mark or writing by which the voter can be identified. Clause (a) of sub-rule (1) of Rule 33 does not require that the voter should be proved to have been identified. Even if the mark of writing upon the ballot paper is such that the voter is capable of being identified the ballot paper must be held to be invalid, irrespective of the question whether he has in fact been identified or not.

10. However, even though in my opinion, the 5th ballot paper No. 056 is invalid, still the other 4 ballot paper cannot be held to be invalid at all. This means that the petitioner has received 53 instead of 54 votes; that is to say one vote more than those received by the respondent. The conclusion arrived at by the lower Court, therefore, cannot be sustained.

11. The case of the other petitioner (In Writ Petition No. 4447 of 1980) is even stronger still. In that case, none of the impugned ballot papers suffers from the fault of overlapping. The learned Judge has held that there has been a double marking. As I go through the ballot papers, I see that none of the 4 ballot papers bears double marking. It is a case of a 2nd mark on the same in each of the 4 ballot papers, the intention of the voter being to emphasize his desire to vote for candidate Yashodabai. The view taken by the learned Judge as regards the invalidity of the 4 ballot papers is, therefore, wholly unsustainable.

12. Significantly enough, identical Act of putting mark on the reverse side of the space reversed for another candidate (in addition to a mark on the symbol of candidate Yashodabai) is put by the voter concerned. This strongly reinforces the inference as regards the modus operandi resorted to by some voter or voters to indicate his or their identity. This fifth ballot paper in each of the petitioners must, therefore, be rejected. However, for the reasons stated above, this fact will have no impact upon the election of the petitioners.

13. The rule in both the petitions is, therefore, made absolute. The order of the lower Court holding the respondents to be elected to the Ghatane Village Grampanchayat is hereby set aside and the petitioners are declared as being duly elected in the relevant election.

However, in the circumstances of the case, there shall be no order as to costs.