

(1975) 09 AHC CK 0053
In the Allahabad High Court
Case No : Writ Petition No. 8176 of 1973

Dhan Sahai

APPELLANT

Vs

Zila Panchayat Raj Adhikari and Others

RESPONDENT

Date of Decision : 01-09-1975

Acts Referred:

Citation : (1975) AWC 582

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : N.C. Rajvanshi, for the Appellant;

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The Petitioner in this case has challenged a declaration by the Returning Officer to the effect that the non-confidence motion against the Pradhan of Gaon Sabha Badarpur has been defeated. In the meeting held for that purpose, 735 votes were cast. 16 votes were rejected by the Presiding Officer. 487 votes were cast in favour of the resolution and 232 against it. Rule 33-B(8) of the Panchayat Raj Rules lays down that the requisite majority required for passing of the resolution is 2/3rd of the members present and voting. 735 members have voted, and as such 490 votes were required for the resolution to be carried. The Presiding Officer found that only 437 votes were cast and as such the impugned declaration was made.

2. Counsel contended that five of the sixteen ballot papers had been wrongly rejected, as they bore the requisite marks at the back, and should have been counted in favour of the resolution. The ballot papers were summoned and were produced by the Standing Counsel in sealed cover. Only two ballot papers bear stamped marks at the back. Even if these two ballot papers are counted the total of votes cast in favour of the resolution would be only 489 i.e. one short of 490 and therefore the resolution would still fail. Counsel then urged that the fourteen remaining ballot papers which bore thumb impression marks should be counted

as valid votes inasmuch as the identity of the voters cannot be found out from thumb impression alone, and expert's evidence would be required to fix the identity of the voters. Rule 33-B(7) permits rejection of ballot papers if they bear any mark by which the voter can be identified. A thumb impression is undoubtedly a mark, and it cannot be said that on proper enquiry the voter who had put his thumb impression on the ballot paper cannot be identified. This rule does not require that the mark must be such as to disclose the identity of a voter as soon as it is scrutinised by the Presiding Officer. The use of the word "can" in the sub-rule points to the possibility of such identification, in case a proper enquiry is held later on. No authority has been cited by the learned Counsel for the Petitioner in support of this contention. Considering the fact that the ballot papers bore thumb impression marks, and also were serially marked, the name of the voters who had put their thumb impression could be easily traced from the list of the ballot papers issued to the various voters. In these circumstances the thumb impression mark on the ballot papers could lead to the identification of the voters, and these ballot papers as such were rightly rejected by the Presiding Officer. It was then contended that the requisite two third majority contemplated by Rule 33-B(8) meant valid votes, and had to be reckoned only with reference to valid votes and in calculating the requisite number invalid votes had to be ignored. This contention is not borne out from the rules for by the words "two-third of the members present and voting", the emphasis is on the number of members who have voted and not as to whether the votes cast by them were valid or invalid. All the contentions raised in support of the petition fail, and the petition is accordingly dismissed with costs. The ballot papers filed in the court shall be brought on the record, and kept in a sealed cover.