

(1959) 04 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2 of 1959

Hariprasad Khadak Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 22-04-1959

Acts Referred:

Central Provinces and Berar Local Government Act, 1948 — Section 182(2), 22
Central Provinces and Berar Local Self Government Rules — Rule 2
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1959 MP 343 : (1959) ILR (MP) 154 : (1959) JLJ 414 : (1959) 4 MPLJ 669

Hon'ble Judges : G.P. Bhutt, C.J;T.C. Shrivastava, J;P.K. Tare, J

Bench : Full Bench

Advocate : R.K. Pandey and G.C. Koshal, for the Appellant; S.B. Sen, Government Advocate (for Nos. 1 to 3), Public Prosecutor Sen, (for No. 4), P.R. Padhye and P.S. Khanwadkar, (for No. 5), for the Respondent

Final Decision : Dismissed

Judgement

Bhutt, C.J.

This petition under Articles 226 and 227 of the Constitution of India is directed against the election of the fifth respondent, Pritamchand, as Deputy Chairman of Seoni Janpada Sabha.

In the casual vacancy caused in the office of Deputy Chairman of Seoni Janapada Sabha, the petitioner Hariprasad, the fifth respondent Pritamchand and the sixth respondent Gourishankar were candidates for election. The meeting of the councillors convened for the purpose was held on 26-12-1958 and was presided over by the Chairman of the Sabha, respondent No. 4. One of (he 13 votes cast in favour of the petitioner was rejected by the Chairman, with the result that the fifth respondent, who had 13 votes, was declared to be elected.

The ballot paper in question was rejected as it had an imprint of the cross put by the voter against the name pf the petitioner. It does not appear to be disputed

that the imprint was caused by the folding of the ballot paper while the ink was wet. The case of the petitioner is that the rejection of the vote on this ground was improper. Other points raised in the petition were not pressed.

Rule 3 made u/s 182(2)(ix) of the C. P. and Berar Local Government Act. 1948, herein after called the Act is as below:

".....The ballot paper shall be signed by the Chairman and one paper handed over to each councillor who shall put a cross against the name of the candidate for whom he wishes to vote. The ballot paper shall not be signed by the voter, nor be marked by him in any other way that would reveal his identity. If the paper is so signed or marked the vote shall be void. The Chairman shall declare the person at the head of the poll to be duly elected.

Explanation: The essence of the ballot is secrecy. The use of different forms of voting paper or any indication on a voting paper or other device, by which the name of the voter can be ascertained, shall amount to a violation of the secrecy of the ballot."

It was contended that what this rule contemplates is that the questioned mark should be made by the voter by his own hand and, therefore, the one that is made solely by the folding of the ballot paper is not interdicted. However, if the voter intentionally keeps the ink wet with the idea that the ballot paper should get an imprint, I see no reason why the mark thus imprinted should not be held to be made by the voter within the meaning of the rule. This question, therefore, depends upon the intention of the voter and cannot be determined without an enquiry into the surrounding circumstances.

What rule 3 prohibits is a mark other than a cross, or a different form of voting paper, or any indication or other device on a voting paper, by which the name of the voter can be ascertained. It may be noted that the words "indication" or "device" are not qualified. The indication or device, therefore, may consist in making the cross in thick or double lines, or setting an imprint thereof on the ballot paper by folding, or even folding the ballot paper in a peculiar manner. Accordingly if a voter makes an imprint of a cross on a voting paper by folding it and this is done intentionally in concert with a candidate there appears little doubt that the secrecy of the ballot would be violated,

This question, in another connection, came up for consideration before a Special Bench of this Court in *Bhawaniprasad Tiwari v. Vishnu Sitaram*, Misc. Petn. No. 16 of 1955, D/- 15-12-1955 to which I was a party. The present petition was directed to be heard "by a Full Bench to understand whether it falls within the scope of the decision of the Special Bench. In that case I had made the following observations:

"*Woodward v. Sarsons* (1875) 44 LJCP 293, on which, and other election cases which follow it, reliance was placed by the petitioner are all cases in which there were special fact-finding tribunals. All that these cases lay down is that a mere

imprint caused by folding the ballot paper, or even an additional mark made thereon, cannot be a ground for rejecting of the vote, if there was no arrangement indicative of the elector's identity. Whether or not there was such an arrangement would depend upon the facts of each case, including the nature of the mark made on the ballot paper. In the instant case, one of the questions is if the second mark on one of the voting papers was exclusively due to the folding, or the line thereon was purposely drawn. The next question is whether the double line on the other ballot paper was intentional or accidental. These issues are also linked with the question whether peculiar marks were made in pursuance of a design so as to disclose the identity of the electors. These questions do not depend merely on a naked visual examination of the ballot papers, which may be deceptive, and cannot be determined without an enquiry."

These observations were not expressly dissented from by the majority of Judges, although, for other reasons, they did not follow my opinion.

Our attention was, however, drawn to pages 258-259 of Local Government Elections by Schofield, 3rd Edition, in which illustrations are given, where ballot papers containing marks other than a cross or more than one mark were not held to be invalid. Those cases are based on Rule 43(3)" of the English Local Elections Rules which provides that a ballot paper on which the vote is marked:

(a) elsewhere than in the proper place, or

(b) otherwise than by means of a cross, or

(c) by more than one mark, shall not by reason thereof be deemed to be void (either wholly as respects that vote), if an intention that the vote shall be for one or other of the candidates clearly appears and the way the paper is marked does not of itself identify the voter and it is not known that he can be identified thereby. It will thus appear the returning officer will not be justified in rejecting a vote unless one or more of the enumerated conditions are apparent, The decisions under that rule are not apposite in cases; which arise under Rule 3 made u/s 182 (2)(ix) of. the C. P. and Berar Local Government Act, which interdicts, as already observed, any other manner of marking a voting paper than the one that is prescribed, " "by which means" name of the voter "can be ascertained"" (underlining (here in ") is mine). In such cases, the burden of showing that the name of the voter cannot be ascertained by the manner in which he has marked the ballot paper would lie upon the person who asserts it This would necessarily require an enquiry, and, as there is no provision under the C. P. and Berar Local Government Act, or the rules made there under, for the Chairman of the meeting to hold such an enquiry, his action in rejecting the vote cannot be said to be lacking in jurisdiction or propriety.

There is another aspect of the case, viz., one of an alternative remedy. Section 22 of the C. P. and Berar Local Government Act provides a remedy by way of an election petition to a special-forum against an election or selection notified u/s 20. Rule 15 made u/s 182 (2) (xi) of the Act enumerates the conditions which

render an election or selection void. Clause (c) of Rule 15 is pertinent in this connection and is reproduced below:

"15. Save as hereinafter provided in the rule if in the opinion of the Judge;--

x x x x x (c) the result of the election or selection has been materially affected by any irregularity in respect of a nomination or by the improper reception-or refusal of a vote, or by any non-compliance with the provisions of any of the rules framed u/s 182 (2) (ii), (iii) and (ix);

the election or selection of the candidate shall be void."

This clause permits an election petition to be filed when there has been an improper reception or refusal of a vote. It was, however, contended in this connection that the improper reception or refusal of a vote, unless it involves non-compliance with the provisions of any of the rules framed u/s 182(2) (ii), (iii) and (ix) of the Act, would not attract this rule. This contention, in my opinion, is not correct, as non-compliance with the provisions of any of the said rules is evidently a distinct and independent condition and is unrelated to the improper reception or refusal of a vote. It was, therefore, open to the petitioner to file an election petition in the manner laid down in Section 22 the Act, where the question could be enquired into whether the imprint was caused on the ballot paper accidentally or was made with a design from which the identity of the voter could be ascertained.

Articles 226 and 227 of the constitution are not to be invoked for adjudication of controverted question of fact, particularly when a remedy is provided by statute, breach of which is complained of. This is not, therefore, a fit case for the exercise of the Writ jurisdiction of this court. I Would accordingly dismiss the petition, but, in order as to costs. The outstanding amount of the security shall be refunded to the petitioner.

Shrivastava, J.

The order recorded by my Lord the Chief Justice has my respectful concurrence. I would, however, like to add a few words,

Rule 3 made u/s 182 (2) (ix) of the C. P. and Berar Local Government Act, 1948, has already been quoted. I would particularly refer to the second sentence in the Explanation which is:

"The use of different forms of voting paper or any indication on a voting paper or other device, by which the name of the voter can be ascertained shall amount to a violation of the secrecy of the ballot."

The main rule provides that the ballot paper shall not be "marked by him in any other way that would reveal his identity." The Explanation makes it clear that any "device" or "indication" on the voting paper which can lead to the disclosure of the identity of the voter is such a mark or device and the ballot paper has, therefore, to be rejected as void. The question is as to who is to decide whether

the mark or device appearing on the ballot paper violates secrecy.

I have no hesitation in saying that this is the duty of the Chairman of the meeting who has to count the votes. It is obvious that the Chairman cannot enter into an elaborate enquiry on the question whether the mark was made deliberately to violate the secrecy or was the result of an accident. The ballot paper itself may contain intrinsic evidence one way or the other, and it is the duty of the Chairman to scrutinize it summarily and come to some conclusion.

He has to give a decision on the spot and his opinion on the matter is final so far as the declaration of results immediately is concerned. It is another matter that the Rules framed under the C. P. and Berar Local Government Act, 1948, provide for an election petition in which the matter can be later challenged. The Election Tribunal decides after considering all the evidence adduced by the parties whether the ballot paper was rightly accepted or rejected by the Chairman, Until this is done, the decision of the Chairman of the Sabha is valid.

The case of (1875) 44 LJCP 293, which lays down that the Returning Officer shall not reject a ballot paper unless the mark on the paper itself is sufficient to identify the voter, is based on the special provisions in Ruler 43(3) of the English Local Elections Rules. The wordings of that rule are quite different from Ruler 3 made under! Section 182(2) (ix) of the Local Government Act. In the English rule it is provided that the voting paper is not void if "the way the paper is marked does not of itself identify the voter or it is not known that he can be identified thereby."

Under this rule, the mark on the paper itself should be of such a nature as to lead to the identification of the voter. In the alternative, the Returning Officer should have knowledge that the voter can be identified by the mark. Thus it would not be possible for the Returning Officer to reject the voting paper except under very exceptional circumstances. The rule laid down in (1875) 44 LJ CP 293 (supra) is not helpful in interpreting. the provision of Rule 3 which we are considering. Under that rule, the test is whether there is reasonable possibility of the voter being discovered from the mark or the other device. If the Chairman is of the opinion that the mark is of such a nature, he has full jurisdiction to reject the ballot paper.

The question had arisen for consideration in Misc. Petn. No. 16 of 1955, D/-15-12-1955 (SB) (MP). Hidayatullah, C. J. (as he then was) recorded his opinion on a difference of opinion between two Judges of this Court who had originally heard the case. The right of the President to decide the fact whether the paper was designedly marked in such a way as to disclose the identity of a voter was fully recognised as would appear from the. following observations in para 5:

"Now, the gist of the matter is that the Chairman of the meeting was required under the rules framed for such elections to reject a paper which was designedly marked in such a way as to disclose the identity of the voter. The rules do give

the President a certain amount of discretion, and I should be loath to interfere with a matter in which the law gives a discretion to him."

It was, however, held that the decision of the President was a result of bias in favour of one of the candidates. It was found that he had rejected two ballot papers of the petitioner, whereas similar ballot papers of the opposing candidate had not been rejected. The decision, therefore, proceeded on different grounds. In the case before us, it is not alleged that the Chairman of the meeting was partial in rejecting the ballot paper.

I may point out that in Bhawaniprasad Tiwari's case, Misc. Petn. No. 16 of 1955, D/- 15-12-1955 (MP) (supra) the election was declared invalid on the consideration that the City of Jabalpur Corporation Act, 1948, did not provide any remedy by way of election petition. When there was no forum by which the petitioner could get redress against the partial and improper act of the President in that case, it was necessary to quash the election of the opposite party. This is not the position in the instant case. The petitioner has a remedy by way of an election petition under the rules and the matter can be fully thrashed before the Election Tribunal. We will, therefore, not be justified in interfering with the discretion of the Chairman in rejecting the vote.

There is another reason why there could be no interference in this case. In Bhawaniprasad Tiwari's case, Misc. Petn. No. 16 of 1955, D/- 15-12-1955 (MP) (supra) a writ of quo warranto was issued to prevent Shri Pandit from filling the office of the Mayor of Jabalpur Corporation. If we set aside the ruling of the Chairman, in the instant case, we would be required to issue a direction that the Chairman should count the rejected vote and decide the case in accordance with election rules. In that case, there would be an equality of votes in favour of the contesting candidate. This would necessitate the drawing of lots to determine the winning candidate who will then be notified as duly elected. An election petition as provided in the rules can be filed and the question whether the vote was rightly rejected would arise again before the Election Tribunal. Our decision is thus liable to be reconsidered by the Tribunal.

Accordingly, I agree that the petition should be dismissed, I also agree that there shall be no order as to costs.

Tare, J.

I have had the advantage of perusing the order, proposed by my Lord the Chief Justice, with which my brother Shrivastava J., has concurred. However, I am unable to agree with all that is said in the said order. The reasons which lead me to take a contrary view are thus.

As regards facts, they are succinctly stated with precision in the order of my Lord the Chief Justice. The fact that the imprint on the disputed ballot paper was caused by the folding of the ballot paper, while the ink was wet, is not at all in dispute, as observed. The only questions for consideration are whether this Court

can go into the question whether the rejection of the ballot paper by the Chairman of the meeting was legal and, whether this Court should exercise its prerogative powers under Article 226" of the Constitution of India, where another remedy is available to the party aggrieved.

The relevant rule framed u/s 182, Sub-section (2), Clause (ix) of the C. P. and Berar Local Self Government Act, 1948 is as follows: (See Para (4) above.)

My learned brothers seem to be of the view that what Rule 3 prohibits is a mark other than a cross, or a different form of voting paper, or any indication or other device on a voting paper, by which the name of the voter can be ascertained. By the words "indication" or "device" are not qualified, the indication or device, in the opinion of my learned brothers, may consist in making the cross in thick or double lines, or getting an imprint thereof on the ballot paper by folding, or even folding the ballot paper in a peculiar manner. With due receipt and in all humility, I would say that the explanation cannot govern the main rule.

The purpose of an explanation is only to clarify the scope of the rule. Therefore, in order to decide whether the conditions for rejection of a ballot paper as void are present, the relevant considerations would be those indicated in the main clause. They are to the effect that the ballot paper shall not be signed by the voter, nor be marked by him in any other way that would reveal his identity. If the paper is so signed or marked, then alone the vote shall be void. The explanation merely amplifies the various ways in which the ballot paper may be marked so as to reveal the identity of the voter. But, if the essential conditions laid down in the main clause are absent, no ballot box paper can be rejected as void, merely if the conditions mentioned in the explanation are present.

It is either the signing of the ballot paper by the voter, or marking of the ballot paper by him that will render the vote void. The phrase "mark" in my opinion, indicates something positively done by the voter concerned. It will not include cases of negligence, such as the failure of the voter to blot the ink before folding. As it is not disputed in the present case that the so called mark was by way of an imprint of the cross marked due to folding on account of the ink, being a little wet the voter cannot be said to have marked it, much less, can it be said that he marked in a way so as to reveal his identity.

If the interpretation put by my learned brothers were to be accepted, that would bring within the mischief of the rule even such innocent acts as folding the paper once, twice or four times or even the slightest imprints caused on account of the ink being wet due to folding. I am sure that the wording of the said rule does not warrant that interpretation and the present rule is not in any way different from rule 43(3) of the English Local Elections Rules. As such, I am unable to draw a distinction between the present case and that of (1875) 44 LJ CP 293 which is the leading case on the law of election relating to rejection of ballot papers.

My Lord the Chief Justice, as one of the Judges of the Special Bench deciding the case of Misc. Petn. No. 16 of 1955, D/-15-12-1955 (MP), had propounded the

same view, as in the present proposed order. It is also true that, that aspect was not specifically considered by the other two Judges of the Special Bench, namely, Hidayatullah C. J. (as he then was), and Choudhuri J. Their orders were based on the premises that any imprint caused on account of the ink being wet due to the folding, could not be a mark made by the voter, which would reveal his identity. Although the learned Judges did not specifically deal with that aspect the ratio decidendi of their opinion was, as has been indicated by me. I am, therefore, unable to endorse the suggestion in the proposed order of my Lord the Chief Justice that the other members of the Special Bench did not dissent from his view. They may not have done it expressly, but they did it by necessary implication.

However, even assuming for the sake of arguments, that the proposition indicated by my Lord the Chief Justice in the proposed order is correct. I find it difficult to agree with his dictum that the burden of showing that the name of the voter cannot be ascertained by the manner in which he had marked the ballot paper, would lie upon the person, who asserts it. This, in my opinion, would not be the question that would arise in such a case. Presently I shall indicate as to how and in what way the question arises generally.

If it is not questioned that the disputed mark is on account of the ink being wet due to folding of the ballot paper, an objection would be raised against the validity of the ballot paper to the effect that the ballot paper had been marked by the voter, which would reveal his identity. This objection would require an elaborate inquiry. The very fact that the mark is an imprint due to folding on account of the ink being wet, would indicate it to be a sort of inadvertent negligence and nothing more. Prima facie there is no deliberateness about it.

Of course under the statute, it is for the Chairman of the meeting to hold whether it is an inadvertent imprint or it is a mark made by the voter, which would reveal his identity. For that he has no power of inquiry. His decision is to be summary upon a mere perusal of the ballot papers. The fact that it is an imprint due to folding, being in favour of the voter concerned, it would be contrary to the general rules of evidence to cast the burden on him to show that his vote is valid. In my opinion, the proper thing to do would be to cast the burden on those, who assert that the imprint is a mark made by the voter so as to reveal his identity, which assertion cannot be proved without holding an elaborate inquiry, which only the election tribunal would be competent to hold. As such, I think, it would be beyond the powers of the Chairman of the meeting to hold without any inquiry, whatsoever, that the imprint is a mark made by the voter, which would reveal his identity. Of course, the same thing cannot be said in respect of a signature or another mark made by the voter, which is not an imprint on account of folding of a ballot paper.

In those cases prima facie presumption would be in favour of the objector, while the burden. Would be on the voter to prove that his vote is valid and that the mark made by him does not reveal his identity. This, in my opinion, is the proper

approach to be made to the questions that may arise before the Chairman of the meeting, who has to decide summarily the validity or otherwise of the vote. The Chairman would be empowered to reject the vote only, if the premises indicated by my learned brothers were presumed to be correct regarding burden of proof.

But if the premises indicated by me were presumed to be correct, then the Chairman would have no power or jurisdiction to reject a ballot paper bearing an imprint due to folding on account of the ink being wet. I feel that the Chairman of the meeting had no power to reject that ballot paper, as without an elaborate inquiry, it cannot be said that the imprint is a mark made by the voter so as to reveal his identity. With due respect, therefore, I am of opinion that the premises taken for granted by the majority Judges of the Special Bench in Misc. Petn. No. 16 of 1955, D/-15-12-1955 (MP) (supra), although not specifically adjudicated upon, are the correct premises to be adopted in such a case.

The other question for consideration would be whether this Court should exercise its prerogative powers under Article 226 of the Constitution, when another remedy is available to the aggrieved party. In Misc. Petn. No. 16 of 1955, D/-15-12-1955 (MP) (supra), Bhutt J. (as he then was) was of opinion that it would be a matter for issuing a writ of certiorari. But, as pointed out by Hidayatullah C. J. (as he then was), there is no question of issuing a writ of certiorari against the decision of the Chairman of the meeting.

But, if the Chairman of the meeting be found to have acted without jurisdiction or in excess of jurisdiction or be found to have acted with partiality towards one of the candidates, it would be a matter for issuing of a writ of quo warranto against the successful candidate, who has been declared elected on account of the wrong action of the election officer in declaring him elected, and issuing a writ of mandamus against the election authority to act in accordance with law. I need not quote all those cases drawing a distinction between writs of certiorari and writs of quo warranto. But the considerations of an alternate remedy would not be so material in a case of a writ of quo warranto.

If it appears to the Court that an office has been usurped by a person without due authority of law, the Court would be inclined to exercise the prerogative powers, although another remedy may be available to the aggrieved party: See *Miss Avi J. Cama v. Banwarilal* ILR (1953) Nag 267: (AIR 1953 Nag 81). It was for this reason that Hidayatullah C. J. (as he then was) in the Special Bench case of Misc. Petn. No. 16 of 1955, D/-15-12-1955 (MP) (supra), held that a writ of quo warranto be issued against the person, who is illegally declared elected. There is no question of sitting in judgment over the correctness or otherwise of the decision of the election officer as such, As Bhutt J. (as he then was) thought that no writ of certiorari could issue against the decision of the election officer, he concluded that no writ could at all issue in spite of the fact that there was no alternative remedy in that case.

In the present case the petitioner got 13 votes, while the fifth respondent got 13

votes. As one vote cast in favour of the petitioner was rejected by the Chairman of the meeting who had no power to do it. his action in declaring the fifth respondent was in excess of jurisdiction. As such on account of the said wrongful action of the Chairman, the fifth respondent has usurped the office, which, he is not entitled to hold, because he does not hold it by due authority of law.

The only other alternative before the Chairman of the meeting was to complete the process of election according to law. In the election, of a councillor, there is a provision for drawing of lots in the event of equality of votes as provided by Rule 201 of the Rules framed u/s 182(2)(iii) of the Local Government Act. 1948. Similarly there is a provision in the election of the Chairman of the meeting, who is authorised to conduct the election, as provided by Rule 2 of the Rules framed u/s 182 (2)(ix) of the Act. But no such provision appears to have been made regarding elections of Chairman and Deputy Chairman. However, it would be a matter for the election authority to adopt a procedure permissible under the law.

The Chairman of the meeting, that is, the fourth respondent, in his return, has explained as to why he rejected the one vote in favour of the petitioner. His explanation was that there should be no other mark on the ballot paper and that if there were imprints, the voters were directed to return the ballot paper and have another one. It may be that certain officers may be good. enough to think of giving another ballot paper, if one ballot paper is spoiled on account of the negligence of the voter. But the same thing cannot be said of all election officers, who are required to act only according to the rules prescribed.

The procedure followed by the Chairman of the meeting in the matter of issuing of another ballot paper, is not warranted by the rules. At the most, it may be an act of extra generosity on the part of the election officer. But, in my opinion, that would be imposing an exacting standard on the voters, not warranted by the statute. That would also be the position, if the proposition laid down by my learned brothers were to be accepted as correct, namely, that the explanation would govern the considerations for rejection of ballot paper, although the conditions in the main clause may be found absent. In my opinion, that would be stretching imagination too much not warranted by the provisions of the statute.

There is one more reason why I am unable to accept the view of my learned brothers. If the Chairman of the meeting (who has no power to hold an enquiry) were permitted to reject a ballot paper, which has the imprint of a mark due to folding on account of the ink being wet, that would leave scope for perpetration of a fraud with unabashed partiality, where the rival groups are equally, or almost equally matched, as was the situation in Misc. Petn. No. 16 of 1955, D/- 15-12-1955 (MP) (supra). In the present case, the rival groups are equally matched, though no allegations of fraud or partiality have been made. I would, in all humility, suggest that it makes a world of difference between a mark and an imprint, and, what the rule prohibits, is a signature or a mark, which, of necessity, excludes an imprint of a mark.

If this Court issues a writ of quo warranto, there is no question of correcting any error of the election officer, namely, the Chairman of the meeting. The misconception arises, only if, it is imagined that the situation warrants the issuance of a writ of certiorari. As such, there is no question of this court substituting its decision or discretion for that of the election officer, which would be open to a scrutiny before the election tribunal. It is true that Hidayatullah C. J. (as he then was) remarked in Misc. Petn. No. 16 of 1955, D/-15-12-1915 (MP) (supra) that it would be the discretion of the Chairman of the meeting either to accept or reject a vote and that this court would be loath to substitute its discretion for that of the Chairman.

I respectfully agree with the proposition that where it be a matter of discretion, this Court would, undoubtedly, refuse to interfere with the same. But, if the premises adopted by me were found to be correct, the question of discretion would arise only in cases, where the ballot paper bears a signature or a mark, and the extent of the discretion would be in the matter of deciding whether the signature or the mark discloses the identity of the voter. But, as I have indicated earlier, the matter is beyond the purview of discretion regarding a ballot paper, which bears an inadvertent imprint.

I may reiterate at the risk of repetition that the Chairman ought to reject a ballot paper, which is signed or marked which in his opinion, discloses the identity of the voter and ought to accept a ballot paper which has only an imprint. He, having no power to hold an enquiry and his decision being summary, this is the only rational course he can follow, which is warranted by the provisions of the law. His discretion lies in ascertaining, upon a mere perusal of the ballot paper, whether the signature or mark is such as would reveal the identity of the voter.

The rest has necessarily to be left over for decision by the election tribunal. This procedure, in my opinion, would avoid any complications. It is also warranted by the provisions of the law. Any other course, if permitted to be adopted by the election officer, would not only be undesirable, but also unwarranted by law. It is for this reason that I am of opinion, that writs of quo warranto and mandamus ought to be issued in the present case. This is all that I can say in the matter.

As it would be a matter for issuing a writ of quo warranto, I feel that it is necessary to issue a writ against the fifth respondent forbidding him from usurping the office, till duly elected; and a writ of mandamus against respondents 1 to 4 to complete the process of election in accordance with law on the basis that the petitioner and fifth respondent each got 13 valid votes. Therefore, I would allow the petition with the said directions. Under the circumstances of the case, I would direct the costs to be borne as incurred. The security be refunded to the petitioner.