
(1987) 02 AHC CK 0072
In the Allahabad High Court
Case No : Writ Petition No. 12370 of 1983

Mange Ram

APPELLANT

Vs

District Panchayat Raj Officer/Prescribed Authority and
Others

RESPONDENT

Date of Decision : 05-02-1987

Acts Referred:

Constitution of India, 1950 — Article 207, 226
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B

Citation : (1987) 1 AWC 510 : (1988) RD 17

Hon'ble Judges : K.J. Shetty, C.J.; B.N. Sapru, J.; A.N. Varma, J

Bench : Full Bench

Advocate : Ashok Bhushan and C.P. Srivastava, for the Appellant; L.P. Singh, K.S. Tewari, K.S. Tewari and Subhashish Banerji and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.J. Shetty, C.J.—A short but an interesting question arises in this writ petition. The question relates to the meaning and scope of Clause (5)(viii) of Rule 33-B of the U.P. Panchayat Raj Rules, 1947 ("Rules"). The Rule 33-B provides for removal of the elected Pradhan, Clause 5(viii) thereunder provides that the non-confidence motion shall be deemed to have been carried only when it has been passed by a majority of two thirds of the members "present and voting". The question is whether "present and voting" mean only "present and casting valid votes and not invalid votes". The decision of this Court in Roop Narain Pandey v. State of U.P. 1984 AWC 183 has taken the view that it is only the valid votes that should count. The correctness of this decision has been doubted by a Division Bench which has referred this case to a larger Bench. That is how the matter is now before us.

2. The facts are these:

Petitioner was an elected Pradhan of Gaon Sabha, Mirpur Stiapur of district Saharanpur. On September 27, 1983, a meeting was convened for considering a

"no confidence" motion, against him. There were, in all, 314 members of the Gaon Sabha present in the meeting. Out of them, 207 voted in favour of the motion while 100 voted against the motion. Seven of the votes were found invalid and so rejected. The Presiding Officer declared the motion as having been passed by a majority of two-thirds of the members present and voting. Pradhan challenging the decision of the Presiding Officer has moved this Court for relief under Article 226 of the Constitution.

3. If the rejected votes had been taken into consideration for the purpose of counting the required two-thirds majority, then, the decision of the Presiding Officer would have gone in favour of the Pradhan.

The question urged before us is that the Presiding Officer was not justified in excluding the invalid votes for the purpose of considering the majority of two-thirds of the members present and voting.

4. In order to appreciate the contention, we may now refer to the relevant Rules. Rule 33-B provides procedure for removal of Pradhan or Up-Pradhan. Clause (1) of Rule 33-B provides for giving written notice of the intention to move a motion for removal of the Pradhan. It is to be signed by not less than one-half of the total number of members of the Gaon Sabha. Clause (2) of Rule 33-B provides that the Prescribed Authority shall convene a meeting of the Gaon Sabha on a date to be fixed by him which shall not be later than thirty days from the date of the receipt of the notice. Clause (3) deals with the procedure to be followed in such a meeting. The Presiding Officer has to allow the motion to be moved and discussed. Upon the conclusion of the debate, the motion has to be put to vote by secret ballot. The ballot paper may be hand-written, type-written, cyclostyled or printed. The Presiding Officer has to satisfy himself about the identity of the persons entitled to vote. Sub-Clause (iv) of Clause (5) provides that if any member after obtaining a ballot paper for the purpose of recording his vote decides not to use the same, he has to return the ballot paper to the Presiding Officer who has to mark it "Returned and cancelled" and keep it in an envelope.

Sub-clause (v) of Clause (5) deals with voting. Each member has to enter the polling compartment, and if he wishes to vote for the motion for the removal, he has to make a mark on the ballot paper, and if he wishes to vote against the motion, he has to make no mark on the ballot paper. Thereafter he has to fold the ballot paper and put it into the ballot box through the slit provided for the purpose. Sub-Clause (vii) of Clause (5) deals with the duties of the Presiding Officer after voting is closed. It reads:

(a) The Presiding Officer shall open the ballot box and take out therefrom the ballot papers and examine them;

(b) the Presiding Officer shall reject a ballot paper, if it bears any mark or writing by which the voter can be identified or if it is a spurious ballot paper, or if it has been so damaged or mutilated that its identity as genuine ballot paper cannot be established;

(c) the Presiding Officer shall ascertain the number of valid votes cast in favour of and against the motion.

Then follows Sub-clause (viii) of Clause (5) which is crucial to the decision in this case. It provides:

(viii) The Presiding Officer shall then declare the result of the voting. The motion shall be deemed to have been carried only when it has been passed by a majority of two-thirds of the members present and voting. If the Presiding Officer declares the motion as carried, the Pradhan or Up-Pradhan, as the case may be, shall cease to function forthwith.

(Italicising is ours)

5. Sri Ashok Bhushan, Learned Counsel for the Petitioner, analysing the provisions of the aforesaid Rule, passionately pleaded that there is no compulsion for the Court to take the view that the voting means only casting a valid vote. According to him, voting becomes complete if the person present in the meeting takes a ballot paper, puts it in the ballot box with mark or no mark on it. It is immaterial whether that vote is found to be valid or invalid. The validity of the vote has no relevance to determine the majority of two-thirds of the members present and voting. He also submitted that the Rule-making authority advisedly did not use the words "valid votes" for the purpose of determining the required majority for passing the motion of no confidence.

For the Respondents reliance was placed on the decision in Roop Narain Pandey's case (Supra) wherein it was observed that the words "present and voting" must exclude expressly one who purports to cast vote in a manner that his choice cannot be ascertained. It was also observed therein that invalid votes are mere waste papers and are not to be counted at all for any purpose whatsoever. K.N. Goyal, J. who spoke for the Bench in that case expressed his view in the following terms:

...In our opinion there is no practical difference between a person who overtly and expressly abstains from voting and one who purports to cast vote by using a ballot paper but does so, either deliberately or through inadvertence or ignorance, which cannot be speculated, in a manner in which his choice cannot be ascertained. It is clear that invalid votes are mere waste papers and are not to be counted at all for any purpose whatsoever, except that corrupt practice may conceivably be committed even in respect of an invalid vote, and it is only voters who have cast valid votes who can be said to be "present and voting". Those who either abstained or merely intended or purported to cast "votes" which were found void cannot be said to have "voted on the motion". They were merely "present", but cannot be included among persons "present and voting

6. The decision in Roop Narain Pandey's case is no doubt very attractive but we are afraid that it cannot be sustained. The decision solely rested on the effect of the invalid votes and not so much on the express provisions of Rule 33-B. First,

we must proceed on the basis that the Rule making authority was aware of the difference between "voting" and "invalid vote"". In fact, in the same Rule we find that two words have been used in different places and indeed in different contexts. Secondly, the scheme underlying the Rule should not be forgotten. The entire exercise contemplated thereunder was to make the persons present to receive the ballot paper and to vote. The voting does not mean only by putting a mark on the ballot paper. It also means not putting a mark on the ballot paper. Even a blank voting paper which put into the ballot box amounts to voting. The Rule specifically provides that at the time of the polling, the ballot papers shall be distributed to the members. Each member shall enter the polling compartment and if he wishes to vote for the motion for removal, he shall make a mark on the ballot paper, and if he wishes to vote against the motion, he shall make no mark on the ballot paper. After marking or not marking, the ballot paper must be folded and put into the ballot box. This makes the act of voting complete so far as that person is concerned. No more is needed from him. What follows thereafter is scrutiny and counting of ballot papers. That was the duty of the Presiding Officer, and not that of the persons present and voting.

7. In Halsbury's Laws of England, Fourth Edition, Vol. 15, para 501 (page 266) it is stated:

A person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

In Corpus Juris Secundum, Vol. 29, page 568, Article 207, it is stated thus:

Ordinarily a ballot cannot be counted as a vote until it has been deposited in the ballot box. Voting is done not merely by marking the ballot but by having it delivered to the election officials and deposited in the ballot box before the closing of the polls....

Therefore under the Rule t person who has taken the ballot paper and put it into the ballot box with a mark or no mark shall be deemed to have voted. The vote cast by him may be valid or invalid. That has to be determined upon scrutiny of the ballot papers. The validity of the vote has, however, nothing to do with the factum of voting. Sub-clause (viii) of Clause (5) deals with the factum of voting by persons present and not the validity of the votes cast.

8. The reasons for rejecting the ballot paper provided under Sub-clause (vii)(b) also confirms our view. The Presiding Officer shall reject a ballot paper if mark by which the voter can be identified, or if it is a spurious ballot paper, or if it has been so damaged or mutilated that its identity as genuine ballot paper cannot be established. These grounds indicate that the person has no doubt voted but his voting cannot be taken as valid for one reason or the other. The Presiding Officer might reject the ballot paper upon scrutiny and counting, but it is not the same thing to state that the person concerned has not voted. The counting of the ballot papers is necessary for the purpose of determining the valid votes cast in

favour of or against the "no confidence" motion. It has no relevance for the purpose of determining whether the persons present have voted. The Rule making authority has advisedly used simple words with no imprecise drafting. We should not put too much emphasis on one word and too little attention on the other. Rule 33-B as a whole should be construed. If so construed, there is revealed the intention of the Rule making authority that "voting" means not casting valid votes It only means the factum of voting.

9. We are, therefore, of the opinion that the decision in Roop Narain Pandey's case cannot be regarded as laying down the correct law, and is overruled.

10. In the result, the writ petition is allowed. The impugned declaration dated 27-9-1983 (Annexure-2 to the writ petition) is hereby quashed. In the circumstances of the case, however, we make no order as to costs.