
(1990) 05 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petns. No's. 20870, 20871, 21141 and 20869 of 1998

Naresh Chandra and others

APPELLANT

Vs

District Magistrate, Nainital and others

RESPONDENT

Date of Decision : 25-05-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, 151
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 191, 193, 196, 197, 198
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 10(2), 13, 14(2), 6, 6(1)

Citation : AIR 1990 All 188 : (1990) 2 UPLBEC 1110

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; Standing Council, for the Respondent

Final Decision : Dismissed

Judgement

(1) These four petitions relate to the composition of the Kshettra Samiti and the elections of the Pramukh and Up-Pramukh of the Kshettra Samiti under the U. P. Kshettra Samitis and Zila Parishads Adhiniyam 1961, henceforth referred to as the Act.

(2) The matter concerns the constitution of the Kshettra Samiti of Block Bazpur District Nainital. The entire issue rests on the controversy of one Rachpal Singh being the representative, ex officio of a co-operative society known as Sahkari Ganna Vikas Samiti, Ltd., having its registered office at Bazpur. Rachpal Singh was elected as Chairman of the Sahkari Ganna Vikas Samiti, Bazpur by virtue of the fact that he was on its general body. So far the facts are not in issue.

(3) To become a representative to a Kshettra Samiti the essential requirement is representation from a co-operative society, which has its registered office within the khand, in reference to a Kshettra Samiti. One must also be an elector on the

assembly rolls from the area, in the khand; the co-operative society having its registered office within the khand. The reference is to Section 6 of the Act. This section provides for the composition of the Kshettra Samiti. The reference to a representation from the co-operative societies is in sub-clause (iii) of Section 6(1) of the Act. The first proviso to Section 6, refers to disqualifications. It says that no person whose name is not registered as an elector in the Assembly rolls from the area of the khand, or is otherwise disqualified on grounds mentioned in Section 13 shall be chosen a member nor co-opted to a Kshettra Samiti. The other disqualification is in reference to Section 13 which refers to disabilities whether general or for a proven misdemeanour. This disqualification is in specific reference to representation from co-operative societies u/s 6(1)(iii) and co-opted members u/s 6(2) of the Act. The disability clause, that is, Section 13 refers to conviction, insolvency, holding an office of profit with specified local bodies, having held an office with Government or a local body, having been dismissed for moral turpitude when in service, being debarred from practice as a legal practitioner by a competent authority suffering from leprosy or having been declared to have committed corrupt practice within the meaning of this Act.

(4) As even on facts of this case much will turn on what the composition of the Kshettra Samiti is, the section which deals with it, Section 6 of the Act is relevant.

"6. Composition of Kshettra Samiti--(1) A Kshettra Samiti shall have as its members:--

(i) all Pradhans of constituent Gaon Sabhas;

(ii) Chairman of the Committee for a town area and President of the Committee for a notified area, contiguous to the khand and declared as such by order in writing by the District Magistrate of the district in which the khand lies;

(iii) so many representatives, being neither less than two nor more than five, as the State Government may by notification in the Gazette fix of such co-operative societies or groups thereof as have their registered offices within the khand and fulfill the requirements which the State Government may by order specify to be chosen in the manner prescribed;

(iv) all members of the House of the people and the State Legislative Assembly whose constituencies include any part of the khand and every such member, if any, whose constituency includes no rural area but whose place of residence is in the district in which the khand is situated and who on being required by the State Government in the prescribed manner to choose any khand in all district has chosen the khand; and

(v) all members of the Council of State and the State Legislative Council who have their residence in the khand and every such member whose place of residence is in the district in which the khand is situated but not in the rural area and who on being required by State Government in the prescribed manner to choose any khand of the district has chosen the khand.

(2) Subject to the provisions of sub-section (2) of Section 10, the members mentioned in sub-section (1) shall, subject to the conditions and in the manner prescribed, co-opt the following as members of the Kshettra Samiti, namely:--

(i) persons not exceeding two in number who may appear to the co-opting members to be interested in planning and development;

(ii) if the number of women amongst the members mentioned in sub-section (1) (***) is less than five, so many women as will make their number five in all, and

(iii) if amongst the members mentioned in sub-section (1) the number of members belonging to Scheduled Caste, if any, is less than eight so persons, belonging to Scheduled Castes as will make their number eight in all."

(5) Then, there are certain persons who cannot be members of Kshettra Samiti nor co-opted as members. This means that the very entry is barred should certain conditions exist. For instance to be a representative or a delegate from a co-operative society one must be a registered elector on the Assembly rolls from the area of the khand and not come under the disability clause, Section 13 of the Act. The reference is to the first proviso to Section 6 of the Act, immediately following the extract of the section quoted above. This proviso reads:

"Provided-

firstly, that no person whose name is not registered as an elector in the Assembly rolls from the area of the khand, or who is disqualified u/s 13 shall be chosen a member under clause (iii) of sub-section (1) or co-opted a member under sub-section (2); secondly, that during the period of vacancy in the office of Pradhan, Chairman of town area committee or President of notified area committee, the person (if any), holding the office of Up-Pradhan, Vice-Chairman or Vice-President as the case may be, shall be entitled (with a right to vote) to attend the meetings of the Kshettra Samiti or Committees thereof in place of the Pradhan, Chairman or President;

(thirdly, that no co-option shall be made under clause (iii) after the date on which the provision for reservation of seats for Scheduled Castes ceases to have effect under Article 334 of the Constitution of India; and)

Lastly, that the co-options under clauses (ii) and (iii) may be made as often as it may become necessary to bring the total number of women or Scheduled Castes member to five or eight as the case may be."

(6) All other factors granted, for a representation on the Kshettra Samiti as a delegate u/s 6(1)(iii) or as a co-opted member u/s 6(2), the key or a passport, is being clear of the conditions or the hurdles mentioned in the first proviso. If these conditions are violated, then the person who does so is an imposter and his representation on the Kshettra Samiti is void or illegal ab initio. In such circumstances the question is not that he is not to be treated as a member, but simply a fact that he never was a member.

(7) The aspect that a person was not even qualified to be a member of Kshettra Samiti will become a matter in issue in these four writ petitions giving rise to a consequential question on how the constitution of a Kshettra Samiti as an electoral college may have affected subsequent in-built elections which were not part of indirect representation on Kshettra Samiti. The Kshettra Samiti, it must not be forgotten is itself constituted as a consequence of ex officio indirect representation, The Kshettra Samiti, as is composed u/s 6(1) consists of Pradhan of constituent Gaon Sabhas, the Chairman of the Committee for a town area and President of the Committee for a notified area contiguous to the khand appropriately declared, representatives from co-operative societies as prescribed, members of the House of the People and the State Legislature Assembly correlated with the khand as prescribed; members of the council of State and the State Legislature Council also correlated with the khand as prescribed. Then the aforesaid members co-opt three sets of members being those interested in planning and development, women and Scheduled Castes. This, then, is the collegium of the Kshettra Samiti, with its inbuilt inhibitions in qualifying candidates and not permitting them an entry into the collegium if certain prescribed factors and circumstances are against them.

(8) The presence of Rachpal Singh on the Kshettra Samiti has become an issue. Obviously his presence is being resented on the ground that he is an imposter and his representation on the Kshettra Samiti is an act which is a continuing fraud. Is it so? This is the issue in those writ petitions.

(9) A dispute was raised in an election petition u/s 14(2) of the Act that Rachpal Singh was not even eligible to be a member of the Kshettra Samiti, Bazpur Vikas Khand, district Nainital. The election petition was at the instance of one Gur Narayan Singh Bhatti. It was before the Court of the IVth Additional District Judge, Nainital, hereinafter referred to as the District Judge, as Election Petition No. 45 of 1988: Gur Narayan Singh Bhatti v. Rachpal Singh and others. The District Judge, aforesaid, granted an injunction restraining Rachpal Singh and 15 co-opted members under S. 6(2) of the Act from participating in the election of the Pramukh, Senior and Junior Pramukh u/s 7 of the Act. The election to these posts was not withheld but certain category of persons was restrained from participating in the election of Pramukhs. These writ petitions are at their instance, Rachpal Singh included.

(10) Arguments on behalf of the petitioners are basically three: First, the District Judge, aforesaid, had no jurisdiction to pass an ad interim order. Secondly, to pass an ex parte order, and thirdly, Rachpal Singh participated as a member of the Kshettra Samiti, in choosing members who were to be co-opted, but no one raised an objection at the time and now the respondents are precluded from objecting to the ineligibility of Rachpal Singh. On these legal propositions cases were cited. The facts as noticed by the District Judge, aforesaid, in the order which has been impugned and on which the respondents strongly rely were evaded by the petitioners.

(11) The facts which have not been disputed at the time of hearing and as on record; are:

There is one Cane Co-operative Society known as Sahkari Ganna Vikas Samiti Limited, Bazpur (referred to from now as the Samiti) having its registered office at Bazpur and its area of operation extends not only within the Vikas Khand, Bazpur but also to some villages falling in the Vikas Khand and Tahsil Suar, District Rampur. Rachpal Singh was chairman of the Samiti, aforesaid. As the Samiti, was the only Cane Co-operative Society in the Khand, Rachpal Singh engineered the record so as to show a valid representation on the Kshettra Samiti Block, Bazpur district Nainital. This is the broad argument but it has been enlarged further by placing the record before this Court that Rachpal Singh has committed fraud by seeking representation on the Kshetra Samiti by fabricating documents to show his eligibility that he is in the voters' list on the Assembly rolls from the area Khand Bazpur which he is not. The contention is that the record has been fabricated for the purposes of this writ petition to show an eligibility which is otherwise non-existent. It is submitted that Rachpal Singh as a petitioner, and anyone who abets the situation with him, cannot invoke this Court's extraordinary jurisdiction under Article 226 of the Constitution of India.

(12) In rejoinder, there is reiteration on legal issues, but no arguments were placed in reference to the ineligibility of Rachpal Singh as is contended by the respondents, that the case of eligibility as submitted by the petitioners may be otherwise than it exists on record. In short, in reference to the eligibility of Rachpal Singh, respondents have also placed before the Court a circumstance on how participation of Rachpal Singh may have affected the entire co-option of the members or the election of the Pradhans and Up-Pradhans. Summed up the arguments of the petitioners are confined strictly on law. The case of the respondents is that there is a fraud on the record and this is not a matter in which this Court ought to interfere. The contention of the respondents is that this Court will have to consider whether the facts on record are such, regard being had to the circumstances that a writ of certiorari has been invoked, there is no error manifest or otherwise to occasion interference with the order of the District Judge dated 16, October, 1988.

(13) Now comes the question of how Rachpal Singh's election may have affected the elections of such persons who may have received Rachpal Singh's vote. These are the elections of Pramukhs and Up-pramukhs of the Kshettra Samiti; the offices referred in Section? of the Act. The disqualifications have descended on Rachpal Singh as from the record it is clear beyond a reasonable doubt that his name is not registered as an elector on the assembly rolls of Kashipur, Nainital, corresponding to polling station 117 Primary Pathshala Kela Khera. Rachpal Singh insisted that he is recorded on the aforesaid assembly rolls.

(14) This Court has to see whether the learned District Judge has gone wrong in passing the injunction which he has granted.

(15) Rachpal Singh participated in the co-option of three sets of members who constitute the Kshettra Samiti. These co-opted members are referred to in Section 6(2) sub-clauses (i), (ii) and (iii) of the Act. The classifications are : two members from the category of Planning and Development, five members from amongst the women, and eight belonging to the Scheduled Castes.

(16) From the first category, that is, those interested in planning and development, two members were to be co-opted, and four persons were under consideration. The votes cast from amongst the members of the Kshettra Samiti were almost neck to neck with a tie amongst two members. The names of the candidates and the votes received by them is as below:--

Reference Section 6(2)

Category : Sub-clause (i) Planning and Development Votes received

1. Naresh Chandra 28
2. Gurmukh Singh 30
3. Udyan Kapoor 27
4. Gurmit Singh 27

(three invalid votes)

17. The petitioner Rachpal Singh may have cast his vote in the pattern of the voting as it is. He could have broken a tie or created another tie if his vote was not to be counted. No one knows whether Rachpal Singh's vote is amongst the invalid votes.

18. The other set relates to category of women as co-opted members. The voting pattern is as below:--

Reference Section 6(2)

Category: Sub-clause (ii) Women

Votes received

1. Smt. Paramjit Kaur
28
2. Smt. Sukhvinder Kaur
28
3. Smt. Ganga Devi
28
4. Smt. Asha Rani
28

5. Smt. Prabha Kaur

28

(three invalid votes)

19. In this category 10 candidates were vying for five positions. Nine received 28 votes each. The tenth candidate received less than 28 i.e. 27 votes. Consequently, five candidates were selected by lottery.

20. If Rachpal Singh's vote is to be taken out then he may upset the tie between 9 candidates and the entire pattern of selection by lottery may change and no one knows whether Rachpal's vote was amongst the three invalid votes.

21. The third is the category of co-opted members from amongst a reservation for Scheduled Castes. There were eighteen candidates. Eleven received 28 votes each. Eight candidates were declared co-opted by a lottery. The candidates who were elected by lottery were:--

Reference Section 6(2)

Category:Sub-clause (iii) Scheduled Caste

Votes received

1. MathuraLal

28

2. Jagdish

28

3. Khacheru

28

4. Guj Raj

28

5. Jaipal Singh

28

6. Badan Singh

28

7. Harbhajan Singh

28

8. Shyam Veer

28

(three invalid votes)

22. If Rachpal Singh's vote is to be taken out it will affect the tie amongst the eleven candidates and consequently affect the declaration of candidates by lottery.

23. Should Rachpal Singh's vote be amongst the three invalid votes then the three sets of co-opted members may not be affected and Rachpal Singh's disqualification to participate as a member of Kshettra Samiti, with all its consequential effects will be an independent matter. But one would not know where Rachpal Singh's vote has had its effect.

24. In the circumstances this Court does not consider it appropriate, expedient, equitable or otherwise in the interest of justice to invoke a writ of certiorari to certify that the learned District Judge has gone awry and has taken an incorrect view. The District Judge is correct in keeping an imposter in abeyance and prevent perpetuation of fraud in a public election as fraud vitiates all proceedings.

25. There is another factor to this tardy aspect to elections to a local body. On facts there is no issue that the presence of Rachpal Singh has polluted the sanctity of the elections. u/s 7(1-A) of the Act the elections to the office of Pramukh and Up Pramukh of Kshettra Samiti may continue without a member of the Kshettra Samiti representing the Co-operative Societies in reference to sub-clause (iii) of sub-section (1) and the co-opted members, in reference to subsection (2) of Section 6 of the Act. Section 7(1-A) is as below:

"7. Pramukh and Up-Pramukh of Kshettra Samiti and their election-- (1) Every Kshettra Samiti shall have-

(a) to (b).....

(1-A)Notwithstanding anything in subsection (1), the elections to the offices of Pramukh and Up-Pramukh may be held notwithstanding any vacancy in the membership of Kshettra Samiti or the failure to choose any representative under clause (iii) of sub-section (I) of Section 6 or the failure to co-opt any member under sub-section (2) of that section.)"

26. As Rachpal Singh has no locus standi and his representation on the Kshettra Samiti is by misrepresentation and he may have upset the entire elections of the co-opted members the situation virtually amounts to Rachpal Singh not being there and the co-opted members not being available. It is not for this Court at this stage to find out which of the co-opted members would or would not be there. This is the function of the Tribunal which is seized of the election petition. Rachpal Singh is definitely disqualified. On the other hand it has to be ascertained prima facie whether the co-opted members are to be as have been declared and this will depend if Rachpal Singh's vote was amongst the invalid votes or else the co-option of the members, declared is in jeopardy. Impliedly, this would mean that there has been a failure to choose a representative of the Kshettra Samiti from the co-operative society and failure to co-opt any members

within the meaning of Section 7(1A) of the Act. The latter aspect will depend upon a scrutiny by the election tribunal. In these circumstances, the District Judge rightly closed the gates upon Rachpal Singh and the co-opted members and permit others to enter the area to choose Pramukhs and Up-Pramukhs of the Kshettra Samiti without holding up the entire elections. This power was available to the District Judge and was compatible with the intention of Section 7(1-A) of the Act. Impliedly the learned District Judge kept the fish which smelt away from the shoal and permitted the rest of the elections without them.

27. A vacancy on the representation on the Kshettra Samiti in Rachpal Singh's place exists within the meaning of sub-section 7(1A), aforesaid. In so far as the co-opted members are concerned, they have not been elected as such, but have been declared to be so by lottery. The respondents and petitioners before the election tribunal, i.e. the District Judge, have discharged their burden even to this extent that a solitary vote being there in favour of those not elected could shake the confidence in declaration of lottery, as such the lottery is resting on a base of a tie between several candidates.

28. In the event of the tie being broken, the basis of election by lottery would be shaken. The District Judge has to take recourse to declaring (a) a casual vacancy or (b) another candidate under the U. P. Kshettra Samiti (Settlement of Disputes Relating to Membership) Rules, 1962. This declaration of a casual vacancy or another candidate is in reference to a member chosen under clause (iii) of sub-section (1) of Section 6 as well as co-opted members referred to in sub-section (2).

29. Now, referring back to sub-section (1 A) of Section 7 of the Act, it is clear that the Kshettra Samiti may be functioning, what-ever may be the reason, without a member representing co-operative societies as under sub-clause (iii) of Section 6(i) or even without co-opted members referred to under subsection (2). The election to the offices of Pramukh and Up-Pramukh may proceed without a member from co-operative societies or co-opted members. The conduct of an election, in the contest, has thus not been interfered with but aided.

30. Further, sub-section (1A) of Section 7 aforesaid, postulates a situation when there may be a failure to choose a member (Cooperative Societies) for a failure to co-opt any member under that section. The reference is to Section 6. The context is upon a failure to choose or co-opt a member in accordance with law. The meaning of failure will be twofold in the present context. One will be occasioned when a representative or a member has simply not been chosen or co-opted. The other situation will arise when a failure is occasioned when a representative or a member is inducted or co-opted otherwise than in accordance with law. Else, there was no purpose in amending Section 7 by carrying the amendment incorporated as sub-section (1 A). The idea is that representative or co-opted members through indirect representation but without electoral mandate, even if not available will not hold up an election to the office of Pramukh or Up-Pramukh. The legislature intended that given a situation, an

election u/s 7 (Pramukh /UP-Pramukh) may proceed without a representative from a co-operative society, Section 6 (1)(iii), or co-opted members, Section 6(2), by putting this class of representation on the Kshettra Samitis on a different plane than other members mentioned in sub-section (1) of Section 6. This classification is not unreasonable. The other members represent either the federal legislature, State legislature or local self-Government. A representative of co-operative societies or co-opted members cannot claim the same representation. Without the first set, Pramukh and Up-Pramukh cannot be elected, but can without the second set. The Pramukh and Up-Pramukhs are offices by indirect election. The underlying idea is that self-Government generates local Government. This pattern exists in the Constitution of Zila Parishads also. In the election of an Adhyaksha and an Up-Adhyaksha, a similar amendment by sub-section (1-A) to Section 18, permitted the election to these offices to continue without proportionate representation from Kshettra Samitis, Co-operative Banks, co-opted by the State Government, and co-opted members.

31. Rachpal Singh, under the circumstances, cannot insist that he will participate in election of Pramukhs and Up-Pramukhs when the District Election Office has certified him as an impersonator with a fraudulent representation. Nor can Rachpal Singh or any of the petitioners before this Court or for that matter any of the co-opted members now say with confidence that Rachpal Singh may not have affected their election by lottery and by the same analogy inferring that co-opted members may be others than those elected, The District Judge was right in passing the restraint order in prohibiting such members from participating in the consequential elections of Pramukhs and Up-Pramukhs. The election was not stalled.

32. The petitioners have even gone to the extent of submitting that there was no occasion for the District Judge to pass an interim order, which he legally could not and the entire election must be permitted to be completed notwithstanding whether Rachpal Singh is eligible or not. Let the petitioners' arguments be tested on the hypothesis that a certiorari has been sought and let the facts on record blend with the law.

33. The very locus standi of Rachpal Singh to be on the Kshettra Samiti, reference Section 6 of the Act, is that he must be an elector on the Assembly Rolls of the area of the Khand within the sphere of which the Kshettra Samiti is to operate. There was an issue before the District Judge that Rachpal Singh could not be a member of the Kshettra Samiti as he is not registered and his name is not to be found in the voters list of the relevant area of the Assembly Rolls, that is, his name was not registered as an elector on the Assembly Rolls from the area of Vikas Khand, Bazpur. It is specifically stated before this Court that Rachpal Singh's name is not registered in the assembly electoral roll from the area of Vikas Khand, Bazpur, but being resident of district Rampur, tehsil Saur, village Aarsal Parsal, he is on record and registered as a voter on the assembly roll of village Aarsal Parsal, tehsil Suar, District Rampur. He is not even resident in

the district of Nainital.

34. Rachpal Singh and those supporting him placed the record of the assembly rolls thus:

{ks= lfevr fuokZpu 1988 izeq[k ,oa mi izeq[kksa dk fuokZpu &&

m-iz {ks= lfevr rFkk ftyk ifj"kn dh /kkjk&6 dh mi /kkjk ?1? vkSj ?2? ds vUrxZr dh lwph A

tuin uSuhrky fodkl [k.M&ctiqj

?e la- lnL; dk uke lnL; dk iwjk irk

57& Jh f=yksd flag csnh i= Kku la- {ks- l- xzke Vk.Mk egen iks- cktiqj

58& Jh j{kiky flag l- {ks- l- xzzke vkjlyik jly iks- Lokj jkeiqj

59& Jh xqj ukjk;u flag iV~Vh l- {ks l- xzke xqyfM+;k iks- QkSth dkyksuh

fuokZpu vf/kdkjh

(extract from Writ Petition No- 20870 of 1988 annexure "1")

This is supposed to be the record as may have been given by the Kshettra Samiti to Rachpal Singh and his compades. The fortification of this plea of a qualification by residence and being on the relevant assembly rolls continues. The petitioners then produce, the record, according to them, of the assembly rolls. It is of the 16 Kashipur Vidhan Sabha Assembly region 1983. The record is produced as:

16 dk"khij fo/kku lHkk fuokZpu {ks= dh fuokZpu ukekoyh 1983

ftyk& uSuhrky 130 rglhy & cktiqj

erns; LFky dh la[;k o uke & 177 izk- ik- dsyk[ksM+k d{k &3 lfeefyr eqgYyks dk uke A xzkeksa dk uke lhVuxat & fopiqjh & xus"kiqj eMs;kjruk & ljdM+h

?e la- edku ua- fuokZpd firk@ifr dk uke ekrk dk uke iq:"k ;k L=h

1015 73 j{kiky flag & Hktu flag i 40

1016 tloUr dkSj&j{kiky flag l 38

fuokZpu jftLV?hdj.k vf/kdkjh

35. In the counter-affidavit the respondents have filed the same assembly roll of the voters. At serial numbers 1015 and 1016 the names are different. They are :

Daljogender Singh -- Sardal Singh Kulwant Kaur -- Daljogender 36. The District Election Office has given a certificate to the respondents that the assembly roll records the name of Daljogendra Singh and Kulwant Kaur against serial numbers 1015 and 1016. The certificate is dated 25th November, 1988 at Annex. "II" to the counter-affidavit.

37. Then an extract from the assembly roll of 36--Swar Tanda, District Rampur,

209 Aarsal Parsal Polling Station 115, Naya Basic Aarsal Parsal School, has been produced by the respondents. It is a certificate by the District Election Office, Rampur. It is dated 17th November, 1989 and Annexure "IV" to the counter-affidavit. This certifies that Rachpal Singh and his wife are recorded at Serial Nos. 38 and 39. Rachpal Singh's brothers (both sons of Bhajan Singh) are recorded at Serial Nos. 36 and 40. All these entries are against house number 4. Could Rachpal Singh be recorded for two polling stations in two districts?

38. Not once but twice, the respondents sought and received a certified information that against Serial Nos. 1015 and 1016, House No. 73, in reference to Polling Station 130 at Kherakura Sector 2, Tehsil Kashipur, District Nainital, the names of Daljogendra Singh and Kulwant Kaur are recorded. These two certificates are dated 16-11-1988 and 25-11-1988 from the District Election Officer. As the petitioners were also managing to place on record of judicial proceedings contrary information for their pleadings either before this Court or the District Judge, clearly one information was correct and the other fabricated or false evidence. The only authority to certify on the veracity of this information is the District Magistrate. Appropriately, the respondent Din Dayal Singh, as Block Pramukh applied to the District Magistrate, Nainital by narrating the entire facts and alleging that Rachpal Singh and others are attempting a locus standi at the Kshettra Samiti representing themselves from a certain polling station in Nainital when they are resident in District Rampur. The respondent Din Dayal alleged fraud and false evidence. He sought a correct position from the District Magistrate. There was a request to the District Magistrate to inquire into this matter of more than one certificate being issued by the office of the District Election Officer, certifying, in effect, two contrary circumstances by placing Rachpal Singh in the voters list of two districts. The respondent, Din Dayal Singh's application dt. 8th Dec., 1988 is Annexure "1C" to the supplementary counter-affidavit. The District Magistrate caused an enquiry to be made and personally replied to Din Dayal Singh's application. The District Magistrate's communication No. 29-2(1) dated 12 December, 1988 is important and says;

egksn;

mijksDr fo"k;d vkids i=kad "kwU; fnukad 8&12&88 ds lUnHkZ esa vkidks lwfpr djuk gS fd 16& dk"khij fi/kku lHkk fuokZpu {ks= dh fuokZfpr ukekoyh 1983 ds vurnZr xzke ljdM+h ds ?ekad 1015 ij nytkxsUnj flag& ljoy flag rFkk ?ekad 1016 ij dqyoUr dkSj & nytkxsUnj uke vafdr gS mijksDr ukekoyh ds bl ?ekad ij vafdr dksbZ vU; uke ugh gS A rFkk ;fn mijksDr ukekoyh ds bl ?ekad ij bls fHkUu fdlh vU; uke dh izekf.kr izfr dk;kZy; ls tkjh dh xbz gS rks og QthZ gS rFkk /kkslk/kM+h djds tkjh djokbZ xbZ gS A

Hkonh;

g- vLi"V

ftyk fuokZpu vf/kdkjh A ftyk eftLVs?V

uSuhrrky

(an extract from Annexure S.C.A. "2" to the supplementary counter-affidavit)

39. The District Magistrate, upon perusing the records of the voters list of the Election Commission of India, has in no uncertain terms certified forgery. In reference to the voters list of 16 Kashipur Vidhan Sabha, Village Sarkari against Serial Nos. 1015 and 1016 the names of Daljogendra Singh Sardari Singh and Kulwant Kaur Daljogendra Singh are recorded. The District Magistrate declares that should any information have been taken out from the District Election Office showing the names of any other person against these serial numbers, then it is a forgery and has been taken out as a consequence of deceit and fraud.

40. This declaration by the District Magistrate, is uncontroverted. The petitioners all of them "presented a dubious record. The District Magistrate, as the District Election Officer, helped matters by clearly pointing out which record was correct and others varying with the correct record were either fabricated or forged.

41. The position which emerges on the status of Rachpal Singh is thus: He was not a voter on the assembly voters list of District Nainital, village Kherkura, Tahsil Kashipur as at Serial Nos. 1015 and 1016. Contrary to his assertion it was not his and his wife's names which were recorded but of another man and his wife. Rachpal Singh made a false declaration and statement both. He did not have the basic locus standi to represent the Kshetra Samiti, Bazpur, District Nainital for the simple reason that he was registered as a voter on the assembly rolls of District Rampur, Tahsil Suar, Village Aarsal Parsal. His representation from a co-operative society to the Kshetra Samiti, aforesaid, u/s 6(iii), could not hold as his name is not registered as an elector on the Assembly Rolls from the village Kherkura, District Nainital, Rachpal Singh has presented records before this Court at variance with the original to justify a claim to a public office which does not inspire public confidence.

42. Rachpal Singh was legally bound by an oath, and under the law to state the truth, but he chose to make a statement on his status as an elector which he knew was not true and, false. He has given false evidence within the meaning of Sec. 191 of the Indian Penal Code. Rachpal Singh has fabricated the records of the election, and has, thus, fabricated false evidence within the meaning of S. 192 of the Code, aforesaid. Rachpal Singh has given false evidence by record, and also fabricated it and used this in a judicial proceeding and has thus violated Sec. 193 of the Code.

43. Then, there is another aspect. During the course of hearing, the brief of Rachpal Singh was virtually abandoned. This was in reference to an inquiry from the Court when the attention of Rachpal Singh's counsel was drawn to the certificate issued by the District Magistrate, Nainital. Learned Senior Advocate, appearing on behalf of this petitioner fairly submitted that he would confine his arguments on legal submissions only. Whether an injunction could be issued by the District Judge in the manner in which it operates and more so under O. 39,

R. 2 of the Civil Procedure Code.

44. Some cases have been cited on behalf of the petitioners. The cited cases do not apply in the circumstances and the context of the four writ petitions being considered by this Court. This Court is faced with a situation of fraud and false affidavits as a defence to save an otherwise deceitful situation. This Court will come to this aspect later.

45. The first case cited was the matter of Vashit Narain Sharma Vs. Dev Chandra and Others, . The proposition which would have been relevant was not considered. The issue that the election of the returned candidate be declared as void was left without a decision. The Supreme Court took up the issue of the election being materially affected in the facts and circumstances of that case. Nor would this case aid the petitioners, as Rachpal Singh's election on the Kshetra Samiti is fraudulent. This onus has been discharged by the respondents. On the computation of wasted votes, an aspect considered by the Supreme Court, in the present case one vote alone will break the tie and affect the declaration of candidates by lottery. The District Judge has, thus, rightly kept away the candidates catapulted into offices by co-option by draw of lots.

46. The case of Satyajit Singh v. Alak-shendra Nath, reported in 1978 All LJ 441 is a misplaced citation, in reference to the context. Then it is a case regarding an election under the U.P. Kshetra Samiti and Zila Parishad Adhiniyam, but here the similarity ceases. That was a case where there was an issue whether certain voters otherwise literate had misrepresented as being illiterate and secured the facility of obtaining helpers in casting their votes, which modality was adopted, it was alleged by the successful candidate. The allegation was of undue influence. The findings of the High Court, in appeal was that there was no corrupt practice involved in seeking the aid of helpers and the returned candidate was held, not to be disqualified. In the present case, Rachpal Singh's entry into the Kshetra Samiti, is an act of fraud, not even resisted before this Court. The District Judge was not wrong in not permitting those co-opted members whose election was by lottery as a consequence of tiebreakers by a voting in which Rachpal Singh had participated.

47. The case of Shiv Charan Singh Vs. Chandra Bhan Singh and Ors, was on the issue improper acceptance of the nomination paper of a candidate materially affecting the result of the returned candidate. The proposition was that the result of an election can be effected only on the proof that the votes polled by the candidate whose nomination paper had been wrongly accepted would have been distributed in such a manner amongst the remaining candidates that some other candidate (other than the returned candidate) would have polled the highest number of votes. This case does not aid the petitioners at all. Firstly, the fraud played by Rachpal Singh has been certified by the District Election Office and the improper acceptance is not an issue; fraud is by impersonation. The burden of proving that Rachpal Singh's participation may have affected the election of co-opted member has been discharged, in the face of elected co-opted members

holding offices by lottery by breaking the tie. Even the Supreme Court uses the expression "would have polled the majority of valid votes". Can there be a better situation to apprehend this proposition when the tie, and consequential luck of candidates can be toppled, by just one vote being there or not being there?

48. The last case cited was in the matter of Rameshwar Dayal Vs. Sub-Divisional Officer Ghatampur and Others, . This case was on the proposition that an election petition is not a petition for an injunction. The proposition for which the case has been cited ceases with the proposition itself and cannot be seen in isolation. This aspect has been dealt in this case itself. The Bench held, in effect, that O. 39, R. 2 notwithstanding a reference to which was made by the party citing it in vain, there were powers inherent in every Court. The Bench held while referring to Sec. 151 of the Code in terms that it is well known that under this section no power is conferred upon a Court but the law recognises the existence in every Court of the power to make such orders as may be necessary in the ends of justice or to prevent abuse of the process of the Court. This case far from aiding any proposition upon which the respondents may be relying, in effect, specifically recognises the principle that an Election Tribunal can make orders as may be deemed necessary in the circumstances because it has the power, just as any Court has, inherent in it to prevent abuse.

49. The learned District Judge was not taking the aid of O.39, R. 2 to issue an injunction, as he was conscious that in the Code as is applicable in the State of Uttar Pradesh he may not have the power. But, he took recourse to passing a restraint order under sub-section (1-A) of S. 7 of the Act. The discussion on the interpretation of this section in the circumstances of this case has already been made above.

50. In the case of falsehood and fraud by a party to a litigation, any Court has a power inherent to protect itself and further stall the perpetuation of fraud. Nicety of Law and the Courts reception to it are for those who come clean. Such parties may seek redressal of actionable claims and the academics of legal or statutory interpretations. Parties harbouring falsehoods and deceit are to be shown the door out of Court. This is for the protection of the Court, otherwise the people will lose faith in a public justice system when in the face of fraud the Courts will listen to judicial polemics. Thus, notwithstanding anything contained in O. 39, R. 2 of the Code is applicable in Uttar Pradesh, let no person indulge in falsehood and fraud and then say that a Court will not protect itself under its inherent powers, by passing such orders as may be deemed necessary. For this reason also it was correct, appropriate and legal for the District Judge to probe every nook and corner of the issues before him to see that Rachpal Singh's fraud has not tampered the result of the election and if it has, remedy the situation under the Act and the Rules, and in accordance with law. This is not a fit case to invoke certiorari or like writ.

51. At this stage, this Court is constrained to reflect in the amendment which has been brought about in the CPC in reference to O.39, R.2, as it applies in the

State of Uttar Pradesh. The present case is a fit case for this Court to observe on the disastrous effect this amendment has on the confidence and integrity of the subordinate judiciary. This amendment reflects on the faith and confidence of the subordinate judiciary by implication suggests that the subordinate judiciary is not to be trusted with the power to consider the grant of injunction in certain matters and subjects. Why? If the purpose was that too many indiscriminate injunctions granted interfered with the policy, administration or the management of the State departments, institutions or local bodies, then the remedy lay in the appellate structure or the judicial process of revision inherent and prescribed by the Civil Procedure Code, and not by certifying that as a class the subordinate judiciary is not to be trusted with the powers to issue such injunctions, which at present they are prohibited to grant. The irrationality is irreconcilable in judicial interpretation. Where does this approach to distrust or lack of confidence in the subordinate judiciary end? A District Judge can judge and indict and award a capital punishment, in other words a District Judge can deprive life and liberty according to law, but cannot grant an injunction in certain matters, likewise a Magistrate may commit a person to sessions but cannot consider the grant of an injunction. It is difficult to rationalise the arbitrariness that on one day a District Judge is not to have the power to issue injunctions in certain related matters, and the next day the same District Judge as a High Court may.

52. An injunction the grant or the denial of it is a necessary corollary or an appendage to an actionable claim or a suit. The quality of an injunction is after all subject to judicial scrutiny in a higher tier by appeal or otherwise.

53. The legislation in any case has turned out to be a counter-productive exercise by flooding the High Court with writ proceedings. Whenever an injunction may have been denied in a suit, but for the amendment to O. XXXIX, R. 2 of the Code, the pressure has come on the writ jurisdiction of this High Court.

54. Only in two States of the nation such a restraint is operating upon the subordinate Courts. In Uttar Pradesh since 1977* and in Madhya Pradesh since 1984**. The question is not on the constitutionality of the matter but the ultimate effect such legislation has on the confidence of the subordinate judiciary. Is their discretion or quality of justice in question? Then, over the course of years the amendment in certain matter is redundant. An injunction in the matter of services under the State is only one of academic discussion. The establishment of the U.P. State Administrative Tribunals and the Central Administrative Tribunals have rendered the institution of a suit in matters of services difficult. Insofar as the Central Administrative Tribunals are concerned even matters pending at the High Court have been transferred to those tribunals as a whole. Again, in reference to Universities or educational institutions affiliated to it a suit itself against the State Government or certain officers of the State, or the University, its officers or authority, is in any case barred under the U.P. State Universities Act, 1973. All this clearly shows that the restriction to consider and

grant an injunction under O.39, R. 2 as applies in this State lies on the Code, only to cast an aspersion on our subordinate judiciary that it is either not competent to consider such injunctions or, not to be trusted in granting them. The rejection of it seems to suit the spirit of this legislation. The sooner this amendment as is applicable in this State is recalled, the faith in our subordinate Court will be restored.

55. Rachpal Singh has not spoken the truth before this Court, and has indulged in falsehoods only to save the worst out of a bad situation. He declared himself as an elector from a particular constituency when he was not. Then, he indulged in conjuring up the records of the Election Commission of India in such a way so as to stipulate his candidature on the electoral roll by removing the name of another registered voter and his wife. This petitioner has committed perjury, a crime against public justice. All this was done to gain a public office. The streams of justice are to be kept pure and the playground of politics strictly according to the rules of the game. Rachpal Singh has violated both the principles. This Court considers it appropriate, under the circumstances, in the interest of justice and for the protection of Courts whose function is to impart public justice, and for cleaner politics to declare Rachpal Singh's representation on the Kshettra Samiti, aforesaid, as illegal and his seat and representation as vacant. This Court hereby directs the District Judge, aforesaid, before whom the election petition is pending to draw up charges against Rachpal Singh for having committed a crime against public justice under Chapter XI of the Indian Penal Code. The record of all the aforesaid writ petition will be available to the District Judge as certified copies, in the nature of photocopies. Should the District Judge find any further false statement on the record before him, it shall form part of a composite charge. The charge-sheet shall be drawn up as far as possible within six weeks but not later than eight weeks, and referred to the Chief Judicial Magistrate concerned. The first date of appearance before the Chief Judicial Magistrate shall be indicated by the District Judge, aforesaid, to Rachpal Singh. In addition, the learned District Judge, in accordance with Sec. 340 of the Criminal Procedure Code, 1973, shall take sufficient security for the appearance of Rachpal Singh before the Chief Judicial Magistrate.

56. A copy of this judgment will be sent to the Collector and the District Magistrate, Nainital. The Collector will see the certificate which he had issued by a letter No. Memo/ 29-2(1) dated December 2, 1988 in reference to a complaint made before him by Deen Dayal Singh, Block Pramukh, by a representation dated 8 December, 1988. The representation is Annexure SCA-1, and the Collector's, aforesaid, certificate is SCA-2, to the supplementary counter-affidavit. The Collector had certified that the certified information utilised by Rachpal Singh upon its electoral status was fabricated. Rachpal Singh has utilised false evidence. The Collector shall cause an enquiry to be made whether the false certificate was issued at the office of the District Election Officer/ District Magistrate, Nainital. Consequently upon an enquiry and upon prima facie being satisfied, the Collector shall file his report and complaint whether anyone was

responsible in the office of the District Election Officer for causing a false certificate to be delivered for being utilised by Rachpat Singh and those claiming an advantage with him. This will be a report by the Collector within the meaning of Ss. 196: 197: 198 and 200 of the Indian Penal Code. The report of the Collector then shall be forwarded by the District Judge, Nainital as a composite complaint before the Chief Judicial Magistrate for taking action against Rachpal Singh and all such persons who have abetted the situation to gain an advantage by making false statements as above. The inquiry shall be made by the District Magistrate, aforesaid, personally, and shall be completed as far as possible within three weeks of a certified copy of the judgment being placed before him.

57. If upon the report of the District Election Officer/District Magistrate, Nainital, the District Judge comes to the conclusion that Rachpal Singh or any other person in the proceedings before him has also violated those provisions of the Code upon which the Collector will submit a report, then every such person shall also form part of the complaint which the District Judge shall draw up.

58. All these writ petitions are not worthy of receiving the reliefs sought. A writ of this Court issued as an extraordinary remedy under the Constitution of India is a very solemn redressal and remediable procedure. It is available to those who deserve it. All the principles laid down by a Full Bench of this Court in the matter of Asiatic Engineering Co. v. Achhru Ram, AIR 1951 All 746 (FB); apply in the present case before this Court. Uncleaned as the conduct of the petitioners" is, discretion to invoke any of the extraordinary writs is not being exercised. Even otherwise, there is no illegality in the order of the learned IVth Additional District Judge, Nainital, in Election Petition No. 45 of 1988, Guru Narain Singh Bhatti v. Rachpal Singh, dt. 15 Oct., 1988, impugned in the Writ Petitions Nos. 20871, 21141 and 20869 all of 1988 and the order of the in charge, District Judge in Civil Misc. Petition No. 53 of 1988, Guru Narain Singh v. Rachpal Singh, dated 4 November, 1988 impugned in the Writ Petition No. 21141 of 1988. Each one of the petitioners in the four writ petitions has totally relied upon the facts presented by Rachpal Singh. They are equally responsible to face a charge on the complaint which will be filed by the learned District Judge, aforesaid as indicated by this Court above. It is up to them to offer whatever defence they desire to present when the complaint will be filed in the Court of the Chief Judicial Magistrate concerned.

59. The time has come for the Court not to show vacillation and ignore abuse of the process of the Court. Perjury is one such abuse as it pollutes the pureness of the process of justice. It smells foul and is contempt. This game needs to see no compassion. Let each one of the petitioners in the four writ petitions, aforesaid, be issued notices by the Registrar of this Court to show cause why charges ought not to be brought against them for offering a defence, which was not true and thereby interfering with due course of judicial proceedings and obstructing the administration of justice. As all these petitioners are represented at the Bar of the District Judge, Nainital, in the proceedings pending before his Court, the

notices to show cause why a charge for committing contempt for incorrect statements made, be not drawn against them, be served on the petitioners in the four writ petitions through the Court of the District Judge, Nainital. The notices and summons shall be issued requiring the petitioners to personally appear before this Court, before which falsehoods have been submitted in the proceedings and the administration of justice was abused. The record of this Court was defiled, so as to exist otherwise than the original exists. The petitioners, the summons shall indicate, shall appear on 31st July, 1990, before this Court.

60. The writ petitions are decided on a solemn affirmation with record which is presented to the High Court as a replica of the record which exists. It is for this reason-that a petitioner seeking justice from, this Court under its extraordinary jurisdiction must come clean. The intention of this Court is not to punish but to keep the streams of justice clear and pure. Thus any direction which this Court is giving whether to draw up a complaint against the petitioners at the hands of the learned District Judge, Nainital for being filed before the Chief Judicial Magistrate concerned, for falsehoods which have been brought on this record or on the record of the election petition which is pending, or notices to the petitioners that their action for representing the record at variance from its original has interfered with the course of justice can be considered from not proceeding further. But, this will depend if the petitioners return to this Court without delay and seek forgiveness if they are so inclined. Then this Court may reconsider the direction it has given in the matter relating to perjury and contempt. But, this Court cannot permit falsehood to be perpetuated. What the petitioners have done cannot be encouraged. If the petitioners seek forgiveness they must do so within six weeks from today. Their knowledge of today's order is their knowledge on the declaration of this judgment pronounced in open Court, of which parties and their counsel have knowledge. In that case, each one of the petitioners in four writ petitions will need to file a separate affidavit seeking forgiveness from this Court, if they desire to seek it. If the affidavits are filed they must be filed with the Registrar, High Court.

61. The four writ petitions are dismissed with costs, with directions as have already been given as above.

62. Petitions dismissed.