
(2009) 08 AHC CK 0270
In the Allahabad High Court

Reeta Yadav

APPELLANT

Vs

Election Officer/District Magistrate, Smt. Anita Meshram and
Others

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2010) 2 AWC 1569

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri Mohd. Altaf Mansoor and Sri K.P.S. Yadav, learned Counsel for the appellant, Sri Ravi Kant, senior advocate assisted by Sri Birendra Singh, counsel for respondent No. 3 and Sri Bhagwati Prasad, counsel for respondent No. 4.

2. The present first appeal has been filed Under Rule 49 of U.P. Kshettra Panchayats (Election of Pramukhs and Up Pramukhs and Settlement of Election Disputes) Rules, 1994 (hereinafter referred to as "Rules of 1994") by Smt. Reeta Yadav, a defeated candidate assailing the judgment and order dated 17.6.2008, passed by the Additional District Judge/Special Judge (S.C. and S.T.Act), Ghazipur exercising the powers of the Judge under the Rules of 1994. The said learned Judge has concluded the election dispute, that is, Election Petition No. 1 of 2006, Smt. Geeta Yadav v. Smt. Reeta Yadav and Ors. The learned Judge has allowed the election petition filed by Smt. Geeta Yadav declaring her as elected Pramukh of Kshettra Panchayat Sadaat, District Ghazipur.

3. The brief facts of the case are as follows:

On 1.3.2006, an election was held for the post of Block Pramukh of Kshettra Panchayat, Sadaat, district Ghazipur. Three contestants, namely, Smt. Reeta Yadav, appellant herein, Smt. Kiran Singh, respondent No. 4 and Smt. Geeta

Yadav, respondent No. 3 were in the field seeking their election to the said post of Block Pramukh. The election result was declared. Total 92 votes were polled. The result is given in the following table :

					1	2	3	4
					Reeta		Yadav	
Geeta	Yadav	Kiran	Singh	Invalid			Votes	
					35		Votes	
(First 28 Votes (First 12 Votes (First 17 Preference) + 1 Preference) Preference)								
vote transferred + 3 Votes (Second from Kiran Singh Preference) (Second Preference)								
Total = 31					Total =		36	

In view of the above Smt. Reeta Yadav who had secured the highest number of votes, i.e., 36 was declared elected by the Returning Officer on 1.3.2006. Smt. Geeta Yadav got 31 votes. According to Election Officer Smt. Geeta Yadav had secured 31 votes.

4. Being aggrieved by the election result, Smt. Geeta Yadav had challenged the election process, its result by filing the Election Petition No. 1 of 2006 before the appropriate Tribunal, Judge in the judgeship of Ghazipur. This election petition was presented Under Rule 35 of the aforementioned Rules of 1994.

5. The Election Tribunal had set aside the election of the appellant Smt. Reeta Yadav. It has held that 14 out of 17 valid votes were valid. Out of these 14 votes 10 were counted in favour of Smt. Geeta Yadav whereas 2 were counted in favour of the appellant (Smt. Reeta Yadav). The other two votes were counted in favour of Smt. Kiran Singh, respondent No. 4 herein. As per Election Tribunal decision, the total votes of Smt. Geeta Yadav came to be 41 and that of the appellant Reeta Yadav's as 38.

6. As per Sri Altaf Mansoor, learned Counsel for the appellant, the Election Tribunal while holding 14 invalid votes as valid has committed manifest error in law. The Election" Tribunal has ignored the statutory provisions as contained in Rule 25 and Schedule II of Rule 27. Apart from Rule 26(3), the Tribunal has also failed to see that even if the first preference votes can be seen as valid, the other markings in numerical other than English would otherwise be hit by the provision of Rule 26(3)(d) as it would amount to an identifiable mark on the votes. He has also cited Rules 25 and 26 contained in the aforementioned Rules of 1994 which is quoted below:

25. Maintenance of secrecy of voting by election within polling station and voting procedure:

....

(3) The member on receiving the ballot paper shall forthwith--

(b) place on the ballot paper the No. 1 in the space opposite the name of the

candidate whom he chooses for his first preference ;

(c) make as many subsequent preferences as he wishes by placing on the ballot paper the Nos. 2, 3, 4 and so on, in the space opposite the names of the other candidates in order of preference ;

According to Sri Mohd. Altaf Mansoor, the bare perusal of the aforesaid provisions and the Election Commissioner, U.P.'s circulars D.Os. dated 15.2.2002 and 21.2.2006 provide that the markings have to be necessarily in English numerical and as given in the rules.

Rule 25(7) provides that in case an elector is unable to read or to record his vote by reason of illiteracy, blindness or other infirmity, Returning Officer is entitled to permit such elector to take with him a companion who can read the ballot paper and record the vote on his behalf.

Rule 26 provides for the procedure of counting and reasoning for which a ballot paper can be declared as invalid.

Rule 26(3) provides for as follow:

26. Procedure at the counting:

....

(3) A ballot paper shall be rejected as invalid on which--

(a) the number 1 is not marked ; or

(b) the number 1 is marked opposite the name of more than one candidate or is so marked as to render it doubtful to which candidate it is intended to apply ; or

(c) the number 1 and some other numbers are marked opposite the name of the same candidate ; or

(d) any mark is made by which the voter may afterwards be identified.

7. As per learned Counsel for the appellant, a bare perusal of Rule 26(3) would clearly reveal that a ballot paper is to be declared invalid in case the aforementioned provisions are not followed. Rule 26 accordingly has to be read not only in consonance with the provisions of Rule 25(3)(b) and (c) but also in relation to Schedule II of the Rules of 1994, which are framed Under Rule 27 and the relevant portion of which is as follow:

Schedule II (Rule 27)

Instructions for the determination of result

1. In this Schedule--

(1) the expression "continuing candidate" means any candidate not elected and not executed from the poll at any given time ;

(2) the expression "first preferences" means the No. 1 set opposite the name of any candidate, the expression "second preference" similarly means the No. 2, the expression "third preference" the No. 3, and so on.

8. He has further submitted that it is in reference to the aforesaid statutory provisions under the Rules of 1994 that the State Election Commission has formulated the guidelines on 21.2.2006 for holding of the election and declaration of the results. The said guidelines have been enclosed as Annexure-12 at page 153 of the paper book, relevant portion of which is in Clause 21 of the guidelines, which specifically provides for making preferences only in English.

9. He submitted that it was in this reference that the State Election Commissioner on 15.2.2006 had issued facts to all the Returning Officers to ensure the provisions of Rule 25(3) while counting the votes, i.e., to ensure that the votes cast other than in English numerical would be held as invalid. Attention of the Court was drawn to the copy of fax, dated 15.2.2006 which is annexed as Annexure-11 to the appeal.

10. Sri Mohd. A. Mansoor has contended that the court below after opening ballot papers had prepared a memorandum mentioning the details of votes cast. He has shown pages 143 and 144 which is the list of votes held invalid by the Returning Officer which shows that the second preferential votes were either in Hindi or in Roman numerical, which is barred under the statutory provisions already mentioned hereinabove and, therefore, were rightly held as invalid. Such markings in manner other than what is provided for under the Rules, would also make a vote invalid since such a vote may also make it identifiable and, as such, is hit by Rule 26(3)(d).

11. He has submitted that the court below even otherwise while going through the process of counting of votes afresh has in fact based itself or confined itself only in respect to the 17 invalid votes though reference of having counted all the votes has been given. He has shown votes cast in favour of Geeta Yadav vide page 136 wherein Serial Nos. 1, 4, 7, 8 and 28 clearly show markings other than the English numerical in favour of Geeta Yadav, which would, therefore, automatically shows that these votes were invalid. Apart from these votes the vote at Serial No. 13 at page 137 clearly shows that remark of the court below that the vote has a forehead "bindi of yellow colour" on the ballot paper, which clearly makes the vote was identifiable and, therefore, again hit by provisions of Rule 26(d) of the Rules of 1994.

12. As per learned Counsel for the appellant, the court below despite the fact of having seen the said discrepancies in the ballot paper has ignored the same and has dealt with the same in cursory manner as if the discrepancies do not have much of relevance. He has summed up his submissions as follows:

1. The court below, therefore, failed to see the improper acceptance of votes in so far as the valid votes of Geeta Yadav were concerned and have been held to

be as valid even by the Returning Officer.

2. The court below has also failed to see the identifiable nature of markings like bindi of yellow colour.

3. The court below has been misled by the orders of the Hon"ble High Court in a previous writ petition where the provisions of Rule 25 and the Schedule framed under Rule 27, was never looked into and the judgment has confined itself merely in respect to Rule 26(3) and is, therefore, per incuriam.

4. The writ petition filed previously by Smt, Reeta Yadav was against the order of Election Tribunal dated 14.5.2007 for opening of ballot papers and preparing of memorandum accordingly and, therefore, this Hon"ble Court while dismissing the said writ petition on 23.7.2007 cannot be said to have decided the issue, which was to be finally adjudicated before the Election Tribunal and, therefore, the judgment dated 23.7.2007 can be safely said to be confined only to the challenge of the order dated 14.5.2007 of the Election Tribunal and the markings of the votes were never before the Court and, therefore, the judgment was only confined to the provisions of Rule 26 and the challenge to the order of the Election Tribunal for opening up the votes polled and preparing of the memorandum. The Election Tribunal was, therefore, entitled to and liable to apply its mind afresh on the facts and circumstances, which were before it.

13. Learned Counsel for the appellant has placed reliance on following judgments in support of his submissions that this appeal is not barred by the principles of res judicata vide ICICI Bank Ltd. and Another Vs. Municipal Corporation of Greater Bombay and Others, and Era Sezhiyan Vs. T.R. Balu and others, The Election Tribunal has not acted in accordance with the procedure prescribed in the Rules of 1994. [Vide Ram Kishun Vs. State Election Commissioner and Others,

14. At the instance of the appellant, this Court had also summoned the complete record of the Tribunal and called for the counter-affidavit of the concerned Election Officer, Ghazipur. The counter-affidavit is on record. The ballot papers and other documents relating to election and the election petition etc. are available on record. These have been perused and considered by this Court.

15. Sri Ravi Kant, learned senior counsel appearing for the respondent No. 3 has submitted that the judgment and order passed by the Judge dealing with the election petition is just, legal and valid order. It is a well considered judgment in which the detailed reasons, findings have been recorded by the Court. The opinion has been formed on the basis of relevant cogent evidence and other materials. At the outset, he has laid emphasis that the present appeal is barred by the principles of res judicata. The two issues, points raised by the learned Counsel for the appellant have already been dealt with and considered by this Court (Hon"ble Mr. Justice Arun Tandon) and the judgment has been rendered on 23.7.2007 in W.P. No. 23409 of 2007, Reeta Yadav v. State of U.P. and Ors. This Court has approved most of the actions taken by the election court and the procedure adopted in dealing with the election petition. The judgment rendered

by this Court is inter partes. It is binding on the parties. The aforesaid judgment very precisely and clearly delineates and demarcates the scheme of recounting of votes. The said writ petition was filed by Smt. Reeta Yadav herself. In the above said judgment, this Court has taken note that there was no allegation that the ballot papers contained any mark which may result in the identity of the voter being disclosed. In view of this there was no hesitation to record that there was absolutely no material on record which could establish that any of the objections mentioned in Rule 26(3) of the Rules of 1994 have been attracted so as to declare that 10 ballot papers were invalid. The Election Tribunal had by its order dated 14.5.2007 specifically recorded that there is absolutely no dispute regarding other votes. The dispute was confined only to 17 votes.

16. Sri Ravi Kant, learned senior counsel has further submitted that the judgment rendered by this Court on 23.7.2007 was challenged by the appellant in the Hon'ble Apex Court. The SLP was dismissed. Thus, the aforesaid controversy has attained finality and conclusiveness. The hands of the clock cannot be reversed so as to reopen a controversy which has already been concluded by a binding judgment rendered on 23.7.2007. The res judicata applies even to different stage of a proceeding. The judgment rendered by Hon'ble Apex Court as well as by the Election Tribunal cannot now be challenged. The aforesaid judgment operates as res judicata on the contesting parties. He has placed reliance on the following judgments in support of this submission:

- (1) Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another,
- (2) Phool Chand Sharma and Others Vs. Chandra Shanker Pathak and Others,
- (3) Dewaji Vs. Ganpatlal,
- (4) L.R. Ganapathi Thevar (dead) by his legal representatives Vs. Sri Navaneethaswaraswami Devasthanam,
- (5) The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen,
- (6) AIR 1977 SC 392.

17. The submissions of the appellant's counsel are wholly misconceived that the principles of res judicata would not be applicable in this case. He has placed reliance on the case of I.C.I.C.I. Bank v. Municipal Corporation, Greater Bombay and Ors., The aforesaid case deals with the law of precedent. It did not at all concerned itself with the principles of res judicata. The law of precedent is non-statutory. The principle of res judicata is statutory. The aforesaid case cannot, therefore, be passed to distinguish the judgment rendered by this Court on 23.7.2007.

18. Learned senior counsel for respondent No. 3 has further submitted that if the misconceived contention of the learned Counsel for the appellant that all the votes cast had to be recounted and that the provisions of Rules 25 and 26 are to be scrupulously followed, the same would result in disastrous consequences. In

such a situation, the entire election will have to be declared void and the appellant Smt. Rita Yadav will have to go, not gaining anything. He has drawn attention of the Court to ballot papers, list and details of votes to show that there was not a single vote which bears the English numerical. The voters had put their choice for the candidate in whose favour they wanted to vote.

19. Refuting the submissions of learned Counsel for the appellant and meeting the points put forth by the appellant's counsel, Sri Ravi Kant has submitted that the election law is predominantly procedural and technical in nature nonetheless the intention of the voter in casting his vote in favour of a candidate retains primacy. In fact, the argument raised by the learned Counsel for the appellant is based on hyper technically. The Courts in India have always laid stress on the intention of the voter going to polling booth. Even if a vote does not strictly comply with the letters of law, the same would still be treated as valid if the intention of the voter is ascertainable. He has placed reliance in this regard on the following judgments of Hon''ble Apex Court:

(1) P.H. Pujar Vs. Dr. Kanthi Rajashekhar Kidiyappa and Others,

(2) Era Sezhiyan Vs. T.R. Balu and others,

20. A conspectus of Rules 25 of the Rules of 1994 reveals that Rule 25 prescribed the procedure of voting as to how preference has to be marked on a ballot paper. Rule 25(3)(b) provides that a member shall place No. 1 in the space opposite the name of the candidate whom he chooses for his first preference. Needless to point out, the aforesaid provision is merely instructive. It is neither prohibitory nor obligatory. On the other than, Section 26(3) provides exigencies in which a ballot paper has to be rejected as invalid, they are enumerated in Clauses (a) to (d) of Sub-rule (3) of Rule 26. Likewise, Schedule II, Clause 1(2) define the term "first preference", "second preference" and "third preference" and so on. By its very nature, the aforesaid provision is descriptive. It also does not provide consequences for non-observance thereof. Therefore, it cannot by any stretch of imagination, be said to be mandatory.

21. As per learned Counsel for the respondents, reliance on the circular issued by the State Election Commission (page 159 of the paper book) to say the least, is totally misplaced. The aforesaid provision has no statutory sanction. The power which has been conferred on a State Election Commission is not enumerated under the rule. The only provision where the Election Commission has taken cognizance of are Rules 3 and 5(4) of the Rules. According to the aforesaid provision the Mukhya Nirvachan Adhikari (Panchayat) as well as the Returning Officers and Assistant Returning Officers have to perform their functions and duties under superintendence, direction and control of the Commission. The aforesaid power is, therefore, merely administrative. It is not legislative. Therefore, at best, the circular issued by the State Election Commission can be branded as mere executive fiat. It cannot supplant the statutory provisions as enshrined in Rules 25 and 26 of the Rules, besides it has already been pointed

out in the foregoing provisions that central theme is the intention of the voter. If the same is ascertainable regardless of non-observance of procedure, the vote will have to be counted. It cannot be rejected as invalid.

22. He further submitted that in view of Articles 141 and 142 of the Constitution of India, the law declared by the Apex Court binds on all authorities, be the executive, civil or Judicial. It is equally well-settled that even a Legislature cannot overrule a judgment of a court of law. Such enactment would be ultra vires Article 245 of the Constitution. The State Legislature will have no competence to frame such a law. In this regard if a close glance is had to the circular issued by the State Election Commission (page 159, part 21). It mandates that the preference will have to be marked in international numerals (English). It further commands that any dereliction will be visited by rejection of such vote as invalid.

23. Sri Ravi Kant has further submitted that it is clear that the aforesaid command in the circular is inexorable in nature. It is in flagrant disregard of the law declared by the Apex Court. Therefore, no sanctity can be attached to such a circular. Indeed, it is non est.

24. I have heard learned Counsel for the parties and perused the record. I have also gone through the record of the lower court, ballot papers, charts prepared by the Election Officer and other details and the judgments rendered by the Election Tribunal on 17.6.2008.

25. There is sufficient force in the submissions of learned Counsel for respondent No. 3. In the present case under challenge is a detail well considered judgment rendered by the Election Tribunal, that is, learned Additional District Judge/ Special Judge (S.C. and S.T. Act), Ghazipur on 17.6.2008. The learned Judge has personally seen the documents relating to election. The sealed envelops/packets containing valid as well as invalid votes were brought before the Court. It had passed the specific order on 14.5.2007 for opening these sealed envelops and packets to find out valid and invalid votes and scrutinised the election proceedings. It has perused the ballot papers on 29/30.4.2008. The names of voters, their preference, style of voting, putting marks on the ballot papers etc. was carefully seen by the Court. The due procedure has been followed by the Court. As far as the initial procedure adopted by the Election Tribunal, the opening of packets containing valid as well as invalid votes, screening the same, declaring some of the ballot papers as invalid or valid, such action was challenged by Smt. Reeta Yadav appellant herein in W.P. No. 23409 of 2007, Smt. Reeta Yadav v. State of U. P. and Ors. This Court while rendering the judgment on 23.7.2007 in the said petition after taking into account the Full Bench decision of this Court in the case of Ramadhar v. District Judge 1985 LDC 317, has held that in the present case direction for inspection of the ballot papers and recounting could be done. The conditions laid down in para 19 of the said judgment existed in the present case.

26. This Court in the said judgment had already carefully examined as to whether there were specific allegations which had been substantiated for the purpose of justifying the order of examination and recounting of ballot papers. This Court had judicially scrutinised the whole matter in the light of the provisions contained in Rule 26 (3) of the Rules of 1994. The Court considering the facts and circumstances of the case was of the view that exclusion of the 10 ballot papers was justified. It would be necessary to quote the following conclusions and opinion recorded by this Court in the said judgment rendered on 23.7.2007. This Court has already upheld the order passed by the Election Tribunal on 14.5.2007 and the whole exercise of opening the packets, counting and recounting of the ballot papers:

From the aforesaid provision it is apparently clear that ballot paper can be rejected if No. 1 is not marked or if No. 1 is marked opposite more than one person or so marked as to make it doubtful as to which candidate it is intended to apply or besides No. 1 other numbers have also been recorded against the name of the some other candidate and lastly any other mark has been made which may disclose the identity of the voter.

From the aforesaid provision it is apparently clear that at least one of the conditions mentioned in Rule 26(3) therein has to be satisfied for declaring the ballot paper as invalid. If none of the conditions mentioned in the clause are attracted, the ballot paper cannot be declared invalid.

From the pleading of the parties as are on record it is apparently clear that orders marking of No. 1 is concerned, there is absolutely no dispute. It has been stated to be marked in favour of one person only and that it is not doubtful to decipher as to against which candidate it has been so marked. Lastly, there is no allegation that the ballot paper contains any mark which may result the identity of the voter being disclosed. In the aforesaid circumstances, this Court has no hesitation to record that there is absolutely no material on record which could establish that any of the conditions mentioned in Rule 26(3) of the aforesaid rules have been attracted so as to declare that 10 ballot papers invalid. Any discrepancy qua marking of 2nd and 3rd preference has not been made a ground for rejection of the ballot paper as invalid under the same rule. The Hon'ble Supreme Court in the case of Vadivelu v. Sunderam and Ors. (supra) had specifically recorded that unless the conditions mentioned in the rule are satisfied, a ballot paper cannot be declared as invalid. Reference paragraphs 24 and 25 of the judgment.

This Court may record that any error with regards to recording of 2nd preference and 3rd preference in the ballot papers has not been provided as a ground for declaring the ballot papers as invalid.

In the facts of the case there is no dispute with regards to marking of No. 1 on the 10 ballot papers declared invalid. Accordingly there is little or no justification for such ballot paper being declared invalid.

Further from the pleadings of the parties as well as from the statement of the husband of the election petitioner it is apparently clear that not only material facts have been pleaded, the same have been established by cogent evidence on the basis whereof Election Tribunal has proceeded to direct inspection of ballot papers.

In the totality of circumstances as noticed hereinabove, this Court is satisfied that there is no illegality or infirmity in the order passed by the Election Tribunal so as to warrant interference under Article 226 of the Constitution of India.

Writ petition lacks merit and is accordingly dismissed.

27. It is noteworthy that this judgment dated 23.7.2007 was admittedly challenged by the appellant in the Hon''ble Supreme Court of India by filing special leave petition. This SLP was rejected by the Supreme Court and the said judgment has now become final and binding on the contesting parties. The judgment rendered by this Court (Hon''ble Mr. Justice Arun Tandon) is inter partes. The petition was filed by the appellant Smt. Reeta Yadav and the judgment was rendered on the own invitation of the appellant. Through this judgment, this Court has precisely and clearly discussed the issue of scope of recounting of the votes. It was only with regard to 10 ballot papers which have been declared illegal by the returning officer. The Court had taken note that there was no allegation that the ballot papers contained any mark which may result in identity of the voter being disclosed. Even in the present case there is absolutely no material or fresh material brought on record which could establish that any of the objections mentioned in Rule 26(3) of the aforementioned Rules of 1994 have been attracted so as to declare that 10 ballot papers were invalid. The order of the Election Tribunal dated 14.5.2007 contains a finding that there was absolutely no dispute regarding other votes. The dispute was confined only to 17 votes which have now been affirmed by this Court.

28. This Court in the light of the above arguments and discussions is of the view that the controversy has already attained finality and conclusiveness. The principles of res judicata apply even to a different stage of a proceeding. The judgment rendered by this Court on 23.7.2007 does operate as res judicata. This Court derives strength from the judgments cited by the learned Counsel for respondent No. 3 in the cases in P.H. Pujar Vs. Dr. Kanthi Rajashekhar Kidiyappa and Others, and Era Sezhiyan Vs. T.R. Balu and others, Similar views have been taken by Hon''ble Supreme Court of India in some recent judgments.

29. As far as the case cited by Sri Mohd. Altaf Mansoor, learned Counsel for the appellant in I.C.I.C.I. Bank and Anr. v. Municipal Corporation of Greater Bombay and Ors. (supra) is concerned, the said case deals with law of precedent. It is not concerned with the principles of res judicata. It is true that law of precedent is nonstatutory. The principles of res judicata is statutory being embedded in Section 11 of Code of Civil Procedure. In the present case, this Court's judgment rendered on 23.7.2007 (Hon''ble Mr. Justice Arun Tandon) has attained finality as

the SLP has already been dismissed by Hon''ble Apex Court. Learned Counsel for the appellant has failed to persuade the Court to take any other view of the matter on the basis of same materials, evidence, pleadings on record. The settled issues cannot be reopened again through this appeal.

30. This Court is also of the view that all the votes cast cannot be recounted. The dispute was limited to some of the votes out of 92 votes polled in the election. In the present facts and circumstances, it is wholly misconceived to say that the entire election may be declared void. The voters have indicated their preference and the Election Tribunal has dealt with each and every fact carefully. The judgment of the Election Tribunal runs in 31 pages. After taking into account the pleadings of parties, 11 issues were framed by the Election Tribunal covering the dispute. The Election Tribunal had taken into account 21 cases cited by Smt. Reeta Yadav and about 3 cases put forth by the respondent. These judgments were rendered by Hon''ble Apex Court and this Court. Several witnesses were examined. Cross-examination was allowed and their deposition was carefully considered and dealt with. Most of the issues were answered against the appellant Smt. Reeta Yadav. The Election Tribunal had held that Smt. Geeta Yadav got 41 votes (28 + 3 + 10) and 38 votes (35 + 1 + 2) were cast in favour of the appellant. In view of this, the election of appellant was held to be illegal and void and Smt. Geeta Yadav was rightly declared to be elected.

31. The Tribunal has properly discussed each and every point factual and legal brought before it in detail. It has carefully considered and dealt with all the issues. The election law is well-settled that the intention of the voter in casting his vote in favour of a candidate retains primacy. The Courts in India have always stressed and have always given weightage on the intention of the voter. It has also been held in some of the judgments that even if a vote does not strictly comply with the letters of law, the same would still be treated as valid if the intention of the voter is ascertainable. This view finds support from the judgments in P.H. Pujar Vs. Dr. Kanthi Rajashekhar Kidiyappa and Others, and AIR 1990 SC 838. The appellant has certainly taken a hyper technical view of the matter. As far as administrative instructions and administrative directions issued by the State Election Commission are concerned, these provisions have no statutory sanction. In fact the circular issued by the State Election Commission mandates that the preference will have to be marked in international numerals. Certainly, election has to be conducted as per procedure prescribed in Rules 25, 25 (3)(b) and 26(3) contained in the relevant Rules of 1994. The aforesaid provisions are detailed and descriptive. These do not provide consequences for non-observance thereof. Further, the Election Tribunal has judicially scrutinised each and every vote, intention of the voter and other factors. It has tested the election procedure in the light of the aforementioned rules and had recorded its conclusion and opinions properly and in detail. The learned Judge has taken into account the ratio contained in the various judgments of Hon''ble Apex Court and this Court while dealing with the issues brought before it for adjudication.

32. In view of the above discussion, I find no illegality or legal infirmity in the impugned order. The appeal is also barred by the principles of res Judicata. Accordingly, the appeal is dismissed with cost.