
(1998) 09 AHC CK 0094
In the Allahabad High Court
Case No : C.M.W.P. No 23597 of 1998

Smt. Kalawati Devi

APPELLANT

Vs

District Panchayat Raj Adhikari, Mirzapur and others

RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 — Rule 16
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 33B, 33B(1), 33B(2), 33B(3), 33B(5)

Citation : (1999) 1 AWC 114 : (1999) RD 14 : (1998) 3 UPLBEC 2048

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : R.K. Asthana and A.S. Diwakar, for the Appellant; C.B. Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—The petitioner has been removed from the post of Pradhan by non-confidence motion carried out against her in a meeting held on 30.7.1998. Mr. A. S. Diwakar learned counsel for the petitioner submits that the said motion was carried on after the writ petition was filed challenging the issue of the notice. Since in view of the decision of this Court that after the motion is carried on, the question of notice may not be gone into, Shri. Diwakar confined his submission on the merits of the motion that has been carried out. This fact has been brought by way of supplementary affidavit filed subsequently annexing the minutes of the "No-Confidence Motion" itself.

2. Mr. Diwakar contends that Rule 33B of the U. P. Panchayat Rules, 1947 (hereinafter called as the Rules) in sub-rule (3) provides that after the discussion is over the motion shall be put to vote and the voting shall be by secret ballot. Sub-rule (5) prescribes the detail procedure as to how the voting is to be conducted and the ballots are to be counted. According to him, in this case, this procedure has not been followed. On the other hand, on the alleged ground that

9 out of 10 members of the Panchayat who had participated in the meeting and or discussion had unanimously agreed that the petitioner should be removed and, therefore, there was no necessity of voting and accordingly, the motion was alleged to have been carried on. He contends further that by reason of such decision and the motion having not been put to vote by ballots, the entire democratic process has been flouted. He further contends that there has been an infraction of the sub-rules (3) and (5) of Rule 33B of the said Rules which are mandatory in nature and therefore has to be followed. Any infraction thereof would render the motion invalid.

3. Mr. C. B, Yadav, learned counsel for respondents on the other hand contends relying on various decisions that the procedure is only a procedure for determining the carriage of the no-confidence motion. Any infraction thereof would be an irregularity and will not invalidate the motion. So far as the sub-rule (2) of Rule 33B is concerned, according to him, it has been held by the Full Bench of this Court to be directory and not mandatory. Relying on the same analogy, he contends that the provisions contained in sub-rules (3] and (5) of Rule 33B of the said Rules are also directory and not mandatory and any infraction in respect thereof would only be an irregularity and not illegality resulting into invalidity. He next contends that the procedures are handmaids of Justice and it has to be seen whether there has been any substantial compliance of the procedure of the rules or whether the petitioner has suffered any prejudice. In the present case since all the participants in the meeting had openly agreed that the Pradhan should be removed "and they having not asked for any ballot to keep their decision secret, the question of secrecy becomes irrelevant and immaterial. On all these grounds he submits that the writ petition should be dismissed.

4. I have heard learned counsel for the parties at length.

5. It appears that sub-rule (3) of Rule 33B prescribes that the voting shall be by secret ballot. After the motion is put to vote an elaborate procedure has been laid down in the subsequent sub-rules as to how the ballot boxes are to be used, in what manner it should be sealed and how the ballot boxes should be opened and ballots are to be counted. This procedure has made elaborate provisions in detail in respect of the procedure to be followed on.

6. Now whether non-compliance thereof will amount to irregularity is the question which is to be decided. The decision in the case of Gopal Tewari u. District Panchayat Raj Officer. Deoria and others 1991 (2) UPLBEC 904, rendered by the Full Bench in paragraph 7 had held that the procedure contained in Rule 33B (2) is directory. The reason that has been given in the said judgment contains in para 7, where it was held that the duty that has been cast upon the public officer was for performance of certain duty in aid of the meeting of Gaon Sabha u/s 14 of the Act. The Officer in effect was not discharging any of his duty as an official but his service is being requisitioned for (he performance of duty in aid of the procedure to be followed in the said meeting by virtue of

provisions contained in the said Act and therefore since the directions were addressed to the public official for performance of certain duty, the provision cannot be said to be mandatory and is directory only. The Act provides for Local Self Government where the people of Gaon Sabha have been given the right to manage their own affairs and perform governmental function through a democratic process under which they have been given the right to elect a Pradhan and remove him by passing motion of no-confidence. Election and removal by motion of no-confidence are two important aspects in democratic set up for which the Act has made ample provisions. But if Rule 33B (2) is held to be imperative, substantive right of members of Gaon Sabha to remove the Pradhan by passing the motion of no-confidence will be adversely affected.

7. But the said question was dealt with only in respect of sub-rule (2) of Rule 33B of the Rules without any reflection to sub-rule (3) and sub-rule (5). It is very difficult to draw an analogy on the basis of the said Full Bench decision that the provisions contained in sub-rules (3) and (5) are also directory and not mandatory. This question requires to be dealt with in appropriate manner.

8. Mr. Yadav, learned counsel for respondents relied upon a decision in the case of Shambhoo Singh v. District Panchayat Raj Officer. Azamgarh and others. 1984 UPLBEC 604. where sub-rule (51 of Rule 33B of the Rules was under consideration. In the said case two ballot boxes were used while sub-rule (5) speaks of only one ballot box. In the said case it was held that infraction of the said rule for using two ballot boxes cannot be treated to be an illegality but was merely an irregularity and cannot have any bearing on the result of the voting. This decision also does not throw any direct light on the proposition now raised by Mr. Diwakar. The said question was in relation to infraction in respect of only sub-para (b) of clause (i) of sub-rule (5).

9. When sub-rule(3) prescribes that the voting shall be by secret ballot, whether the motion being alleged to be carried without any ballot would be said to be an infraction resulting into merely an irregularity or an illegality : is a question to be decided having regard to the provisions contained in the said Rules. The question of secrecy of the ballot box will also one of the consideration which requires to be taken into account. Sub-rule (3) requires that the motion shall be put to vote and such voting shall be by secret ballots.

10. Admittedly in the present case, the motion was not put to vote and. therefore, there was no voting by secret ballot. On the other hand, the motion was alleged to have been carried out because 9 members present in the meeting have had decided to remove the Pradhan unanimously and therefore there was no necessity of voting.

11. Whether such procedure would be accepted to be substantial compliance of Rule 33B of the Rules for carriage of the no-confidence motion, as contended by Mr. C. B. Yadav is a question to be gone into.

12. The two decisions cited above does not deal with sub-rule (3) of Rule 33B of

the said Rules. The first decision had dealt with sub-rule (2) holding the same directory while the second decision deals with sub-rule (5) (1) (b) and had held that use of two ballot boxes instead of one, was merely an irregularity and not an illegality. As I have observed that those two decisions do not throw any direct light on the question raised" by Mr. Diwakar in the present case. now, therefore, let us examine the scope and ambit of Rule 33B as to how far and in which part it would be directory or mandatory for our present purpose.

13. Rule 33B has laid down the procedure for removal of Pradhan or Up-Pradhan. It has provided detailed and elaborate procedure. This procedure has been divided in separate sub-rules. Some of the rules are also divided in different clauses and sub-clauses. Each sub-rule deals with the different stages of the same procedure. The carriage of no-confidence motion is an action which is in consonance with the democratic process. The Pradhan or Up-Pradhan is entitled to continue so long he commands the majority support. As soon he loses majority support, he has no right to continue. But whether the Pradhan or Up-Pradhan commands support of the majority, is to be decided through a democratic process. Since this process is being carried out by a group of persons, it might, as experience has shown, create difficulties resulting into long drawn litigation. In order to obviate such a situation, the statute had incorporated Rule 33B in order to lay down elaborate procedure so as to minimise the scope of dispute and thereby minimising the sphere of litigation and thus limiting disputes being dragged to the Court.

14. Therefore, the process with which we are now concerned has to be viewed from an angle of democratic functioning having regard to the democratic principles and norms. There are some sacred norms and principles which are the pillars of democracy. Democracy is based on the principle of equality and independent individual freedom in the matter of taking one's own decision, expressing one's own feeling and exercising one's own freedom. At the same time it is also conscious about the norm of secrecy in the matter of taking of such decision which is the pivot of the democratic principle. In other words, secrecy is the secret of the health of democracy. These are well-established principles which cannot be overlooked.

15. Sub-rule (1) of Rule 33B deals with the stage of issuing notice which must be in writing expressing the intention to move a motion of no-confidence. Sub-rule (2) prescribes as to how the meeting would be convened on the basis of such notice and by whom and in which manner. Admittedly, notice is issued by the members themselves but by reason of sub-rule (2) the convening of the meeting is not in the hands of the members themselves. The authority prescribed has been authorised to convene the meeting. On the analogy the authority who is unconcerned with the exercise of democratic rights of the members cannot work prejudice against the members--it was so held in the decision in the case of Gopal Tewari (supra) to hold that the time-limit prescribed in sub-rule (2) is directory and not mandatory. Such a view was taken in order to avoid destruction

of the democratic principle at the hands of the executive who may commit infraction for one or other reason even without any intention. But the said analogy does not go to the extent that some of other ingredients contained in sub-rule (2) can be ignored or infringed. On the other hand, so far as the holding of the meeting is concerned and the same being presided over by the prescribed authority or the person authorised by him in writing in this behalf, cannot be said to be infringed or overlooked. Thus even in sub-rule (2) there are some portions which can be said to be directory but there are other parts which are mandatory. Inasmuch as the holding of the meeting and its being presided over by the prescribed authority are mandatory. If the meeting is presided over by any other officer authorised by the prescribed authority in that event such authority must be in writing. These provisions cannot be ignored or overlooked.

16. In the case of Shamboo Nath Singh (*supra*), the use of two ballot boxes have held to be merely an irregularity and not an illegality. The use of two ballot boxes does not work against the principle of voting. Therefore, the same may be an irregularity but not an illegality since it does not affect the democratic principle. But that ballot boxes are to be sealed and that ballot boxes are to be used are matters which does not permit infraction. Non-sealing of the ballot boxes or non-use of ballot boxes cannot be overlooked or avoided. Thus some part of sub-rule (5) may not prejudice but some part would prejudice the democratic norms and principles.

17. Now in order to appreciate the situation, it would be necessary to quote Rule 33B.

"33B. Procedure for removal of Pradhan or Up-Pradhan,--(1) A written notice of the intention to move a motion for removal of the Pradhan or Up-Pradhan u/s 14 of the Act shall be necessary. It shall be signed by not less than one-half of the total number of members of the Gaon Sabha and shall state the reasons for moving the motion and it shall be delivered in person by at least five members signing the notice to the prescribed authority.

(2) The prescribed authority shall convene a meeting of the Gaon Sabha, u/s 14 of the Act, 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. The meeting so convened shall be presided over by the prescribed authority or the person authorised by him in writing in this behalf. The Presiding Officer may take such clerical assistance for conducting the proceedings of the meeting for the consideration of the motion as he may deem necessary.

(3) The Presiding Officer shall read to Gaon Sabha the notice received by him. He shall then allow the motion to be moved and discussed. Such discussion shall terminate on the expiry of two hours appointed for the commencement of the meeting unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of said period of two hours, as the case may be, the motion shall be put to vote. Voting shall be by secret ballot.

(4) The Presiding Officer" shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(5) (i) (a) The ballot paper to be used at the voting shall be in such form as may be specified by the Director of Panchayat. The ballot paper may be handwritten, type-written, cyclostyled or printed.

(b) The ballot box to be used at the voting shall be of any of the types of boxes approved by the Election Commission under Rule 16 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956, for the purposes of Parliamentary and Assembly elections.

(ii) (a) The Presiding Officer shall, immediately before the commencement of the voting, allow inspection of the ballot box to the members of the Gaon Sabhas who may be present in the meeting.

(b) The Presiding Officer shall then secure and seal the box in such manner that the slit for insertion of ballot papers remains open.

(iii) (a) The Presiding Officer shall be supplied by the Assistant District Panchayat Officer, a copy of the Adult register of the Gaon Sabha concerned.

(b) Before delivering the ballot paper to a person entitled to vote, the Presiding Officer shall satisfy himself about his identity and for that purpose he may take the assistance of such persons as he may think fit.

(c) If the Presiding Officer is not satisfied about the identity of any person, he may refuse to deliver a ballot paper to him after recording a brief note about the circumstances justifying such, refusal.

(iv) If any member after obtaining a ballot paper for the purpose of recording his vote decides not to use the same, he shall return the ballot paper to the Presiding Officer, who shall make it "returned and cancelled" and kept it in an envelop.

(v) The polling compartment to be provided at the place of polling will be screened from observation. The member shall enter the same and if he wishes to vote for the motion for the 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. He shall then fold the ballot paper and put it into the ballot box through the slit provided for the purpose. The ballot box shall be kept in view of the Presiding Officer.

(vi) If owing to physical incapacity a person is unable to make a mark on the ballot paper, the Presiding Officer shall, on being so requested by the person concerned record the vote on the ballot paper according to his direction. The person concerned shall then himself or with the assistance of the Presiding Officer fold it so as to conceal the vote and insert it in the ballot box. The Presiding Officer shall have this done with as such secrecy as is feasible and shall keep a brief record of each instance without indicating whether the vote has

been cast in favour of the motion or against it.

(vii) As soon as the poll is closed, the Presiding Officer shall proceed to count in the following manners the votes cast in favour of or against the motion in the presence of the Pradhan or Up-Pradhan concerned and the members presenting the notice who may be present on the spot :

(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 vote 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.

(vii) The Presiding Officer shall then declare the result of the voting. The motion shall 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.

(ix) If the Presiding Officer apprehends breach of peace in counting of votes, he shall seal up the slit of the ballot box and also allow the Pradhan or Up-Pradhan concerned and the members presenting the notice who may be present, to seal the same. The Presiding Officer shall announce the date, time and place for the counting of votes and shall forthwith inform the prescribed authority. He shall also make necessary arrangement for the safe custody of the ballot box.

(6) (a) After the counting of all ballot papers contained in the ballot box has been completed, the Presiding Officer shall cause all such ballot papers to be kept in a separate packet on which shall be indicated such particulars as will identify the name of Gaon Sabha to which the ballot papers relate.

(b) An account of the ballot papers found in the box shall be recorded in a statement.

(c) The proceedings of the meeting shall be recorded by the Presiding Officer, who shall, unless he is himself the prescribed authority also, forward a copy thereof together with a copy of the motion, result of the voting thereon, marked copy of the electoral roll and other connected papers to the prescribed authority immediately after the declaration of the result of voting.

(7) If the motion has been carried, the prescribed authority shall fix a date on which charge shall be handed over in the presence of the official appointed in this behalf by the prescribed authority.

(8) In the case of removal of the Pradhan, charge shall be handed over to the Up-

Pradhan, and in the case of removal of the Up-Pradhan charge shall be handed over to the Pradhan. If the Pradhan or the Up-Pradhan falls to handover charge, the transfer of charge shall be effected through the police."

18. A perusal of the scheme laying down the procedure in Rule 33B indicates that the same is based on democratic process and norms in order to carry on the no-confidence motion. Sub-rule (3) with which we are primarily concerned specifically provides that after the debate or discussion is over or after expiry of two hours "the motion shall be put to vote." The expression "shall be" makes it mandatory that the motion has to be put to vote. Such conclusion is supported by the sentence following viz. "Voting shall be by secret ballot."

19. Sub-rule (3) of Rule 33B. as originally enacted was as follows :

"33B. Procedure for removal, of Pradhan or Up-Pradhan.-

(1).....

(2)

(3) The Presiding Officer shall read to the Gaon Sabha the notice received by him. He shall then allow the motion to be moved and discussed. Such discussion shall terminate on the expiry of two hours appointed for the commencement of the meeting unless it is concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of two hours, as the case may be. the motion shall be put to vote."

20. Thus, it appears that originally, it was provided that the motion shall be put to vote. If this provision remained unamended, in that event, a doubt may arise about the interpretation as mentioned above.

21. Rule 33B as originally stood did not contain the procedure laid down in sub-rule (5), clauses (i) to (vi).

22. Sub-rule (5) of Rule 33B as originally enacted was as follows :

"The Presiding Officer shall declare the results 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."

23. The sub-rule (3) was amended by a notification dated 10.9.1957 published in the Official Gazette by adding the sentence "voting shall be by show of hands" at the end of sub-rule (3). Thus, the manner of vote was clarified to that extent. This amendment also may not still remove the doubt. Thereafter sub-rule (3) was further amended by a notification dated 26.7.1962 through which the phrase "show of hands" at the end of sub-rule (3) was substituted by the phrase "secret ballot". Thereafter sub-rule (5), as quoted above, was substituted with the sub-rule (5) in the present form which incorporates the detail procedure for conducting the vote by secret ballot. After this specific amendment there cannot be any scope of doubt about the intention of the Legislature that after the end of

discussion/debate, the motion has to be put to vote and such vote is to be conducted through secret ballot and in the manner provided in various clauses of sub-rule (5). The replacement of the phrase "by show of hands" by the phrase "by secret ballot" is an express intention of the Legislature expressed through conscious and deliberate legislative intent.

24. While interpreting the provision of statute, the Court is supposed to give a natural meaning as the Legislature had intended to give. If the expression used are capable of giving simple and plain meaning then the same has to be accepted. The expression used in sub-rule (3) does not conceive of any ambiguity. The meaning is clear, simple and unambiguous. It does not create any confusion. When the Legislature specifically provides that after the debate is over the motion shall be put to vote and that such voting shall be by secret ballot then there is no scope of concluding that there would be no necessity of voting, if, in the debate all the members agreed unanimously to carry the no-confidence motion. If it was so. in that event, the Legislature would not have wasted words. The Legislature never waste words. Each of the words used in the legislation has to be given its due meaning. When the Legislature used the expression, viz., "upon the conclusion of the debate..... the motion shall be put to vote", then even in the debate if the members conclusively conclude to carry the motion and thereby conclude the debate with such a view, still then, even if unanimously, the motion has to be put to vote. Unless it is so put to vote, there is no scope for voting by secret ballot.

25. The very insertion of the expressed provision of voting by secret ballot clearly indicates the legislative intent for maintaining secrecy which is apparent from the procedure provided in sub-rule (5) at every stage.

26. When the Legislature has intended particular manner in which the procedure has to be carried and it had specifically specified specific procedure it is not open to interpret the said procedure- ignoring the intention of the Legislature by omitting a part of it and giving a different meaning, in fact by reading something more in the legislation which is altogether absent. Inasmuch as in order to arrive at such a conclusion which Mr. C. B. Yadav wants to support, would mean to introduce a clause that where the debate is concluded unanimously by the members to carry or defeat the motion then the motion need not be put to vote. Without such a clause. the meaning cannot be acceded to. On the other hand, the very expression used in sub-rule (3) supports the submission as has been raised by Mr. Diwakar.

27. The above view also finds support from sub-rules (5) and (6) respectively. Sub-rule (5) prescribes the detail procedure of the voting process which prescribes in clause (i) (a) as to what kind of ballot papers are to be used. While sub-clause (b) prescribes type of ballot boxes to be used for the purpose. Clause (ii) in sub-clause 1a) of sub-rule (5) prescribes procedure for inspection of the ballot boxes by the members. While sub-clause (b) thereof prescribes for sealing of the ballot boxes. Sub-clause (a) of clause (iii) requires supply of adult register

of the Gaon Sabha to the Presiding Officer by the Assistant District Panchayat Officer. While sub-clause (b) prescribes that before delivering the ballot paper, the Presiding Officer shall satisfy himself about the identity of the members by taking assistance of such persons as he may think fit and by reason of sub-clause (c) only when he is satisfied about the identity of the person he should issue ballot papers to the members and he has every right to refuse issue of ballot papers but then he had to record a brief note justifying such refusal. Clause (iv) prescribes about the return or cancellation of the ballot paper. Clause (v) makes a provision as to how the polling booth is to be screened and how the vote is to be cast and how the ballot papers are to be marked and in what manner it is to be folded and put into the ballot boxes. The ballot box is to be kept in view of the Presiding Officer. In case of suffering from physical incapacity, a person may seek assistance of the Presiding Officer who may render assistance with as much secrecy as is feasible keeping a brief record without indicating whether the vote has been cast in favour of the motion or against it. Clause (vii) prescribes a procedure as to how the ballot boxes are to be opened and the ballot papers are to be examined. Clause (ix) prescribes that in case of apprehension of breach of peace, the Presiding Officer may seal the slit of ballot box and also allow the Pradhan or the Up-Pradhan concerned and the members presenting the notice who may be present, to seal the same and then announce the date, time and place for the counting of votes with the information to the prescribed authority and would make arrangement for safe custody of the ballot box. Sub-rule (6) in clause (a) prescribes that after counting of the ballot papers, all such ballot papers are to be kept in separate packet with such particulars as to identify the name of the Gaon Sabha to which the ballot papers relate requiring submission of account of ballot papers found in the box in a statement by reason of clause (b). Clause (c) requires recording of the proceeding by the Presiding Officer and unless he is himself the prescribed authorised, forward a copy thereof together with a copy of motion, result of the voting thereon, marked copy of the electoral roll and other connected papers, to the prescribed authority immediately after the declaration of the result of voting.

28. The above provisions clearly indicate that the Legislature was concerned with the democratic functioning and observance of the democratic norms and principles through exercise of franchise" which can only be done through voting. The Legislature was predominantly concerned with this process only to maintain the secrecy-one of the cardinal principle for healthy democracy which is apparent from the various provisions provided in the said rule. The primary object for incorporation of these procedure was to maintain secrecy of the exercise of the franchise so that the members may exercise their rights without fear or favour. The entire scheme reveals the legislative intention of carriage of the motion through vote by secret ballot. The primary concern of the scheme was to maintain secrecy of the process.

29. Thus, from the above discussion, in my opinion, putting of the motion into vote through secret ballot is mandatory and infraction thereof is an illegality

rendering the entire process invalid and not an irregularity which can be overlooked.

30. Thus, in the present case the procedure prescribed in sub-rule (3) namely, putting the motion into vote through secret ballot having been infracted, it cannot be said that the motion has been carried out, inasmuch as unless the procedure provided in sub-rule (6) is followed, there would be no record available in the office of the prescribed authority and there would be nothing for the prescribed authority to fall back on, if the motion is challenged in Court. Unless the ballot are counted, the result cannot be declared.

31. Therefore, in view of the above observation, in the facts and circumstances of the case, carriage of motion without the same being put to vote is wholly invalid, and. therefore, the result declared cannot be sustained. Thus, the carriage of the motion in the present case, since been impugned, is wholly illegal, invalid and void.

32. In the result, the writ petition succeeds and is hereby allowed. The alleged declaration of the no-confidence motion is hereby quashed and it is declared that the no-confidence motion has failed and has not been carried out. Let a writ of certiorari do issue accordingly. Let a writ of mandamus do issue commanding the prescribed authority to allow the petitioner to remain as Pradhan and to give charge thereof with regard to the post of Pradhan immediately.

33. However, there will be no order as to cost.