
(2008) 04 AHC CK 0069
In the Allahabad High Court

Smt. Ram Lali Mishra and Others

APPELLANT

Vs

State of U.P., State Election Commission, District Election Officer, District Magistrate and Assistant District Election Officer, Panchayat Raj and Sthaniya Nikay

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Citation : AIR 2009 All 1 : (2008) 3 AWC 3077 : (2008) 105 RD 315 : (2008) 2 UPLBEC 1967

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Heard learned Counsel for the petitioners and learned Standing Counsel and Sri Satendra Kumar Singh, Advocate for the respondents.

2. The grievance of the petitioners is that despite of their request for providing a helper of their own choice for casting their vote, the Assistant District Election Officer, respondent No. 4 has said that the petitioners may cast their vote by giving necessary instruction to the returning officer as provided under Rule 24(7) of U.P. Zila Yojna Samiti Niyamawali, 2008 (hereinafter referred to as the "Rules, 2008"). Learned Counsel for the petitioners contended that Rule 16 provides that the election shall be held on secret ballot basis but by permitting the petitioners to cast their vote through Returning Officer, secrecy of their vote would be lost and, therefore, the impugned order passed by the respondent No. 4 is illegal. He further contended that Rule 24(7) is ultra vires of Rule 16 of Rules, 2008.

3. We do not find any substance in the submission. The petitioners claim to be illiterate voters and, therefore, it appears that they requested the respondent No. 4 to provide helpers of their own confidence to cast their vote in the election of President, Zila Panchayat which is going to be held on 11.04.2008. The said request of petitioners was not consistent with Rule 24(7) of Rules, 2008 and,

therefore, the respondent No. 4 has not accepted the same in the manner it was requested by the petitioners but they have been permitted to cast their vote in the manner it is provided in Rule 24(7), which reads as under:

24(7) ;fn dksbZ ernkrk fuj{krk vFkok "kkfjjhd vIDrrk ds dkj.k e=i= dks ius ;k ml ij viuk er vfHkfyf[kr djus es vleFkZ gks rks ernku vf/kdkjh] ernkrk }kjk vuqjks/k djus ij ernkrk ds funsZ"kkuqlkj er vafdr djsxk A rRi"pkr ernkrk Loa; vFkok ernku vf/kdkjh dh lgk;rk ls eqM+s gq, er i= dks erisVh es Mkysxk A

4. The right to cast vote or to contest election is neither a common law right nor a fundamental right but is a legal right and is governed by the statute. A person may exercise the right to vote only in accordance with the rules and not otherwise. In *Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and others*, the Apex Court held:

In view of the settled law on the point, it must be held that the right to vote is subject to the limitations imposed by the statute which can be exercised only in the manner provided by the statute; and that the challenge to any provision in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the Constitution....

5. In *Kuldip Nayar Vs. Union of India (UOI) and Others*, the Apex Court after referring to earlier judgements, in para 130, observed as under:

The points which emerge from this decision may be stated as follows:

(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

6. It is evident from a bare perusal of Rule 24(7) that any voter who is illiterate or is physically incapacitated to cast his vote on his own, may request the Returning Officer to mark his vote and thereupon the Returning Officer shall act accordingly and shall put the ballot in folded manner in the ballot box. The aforesaid rule is not shown to be inconsistent or contrary to any provision of the Act or the Constitution but what is being challenged by learned Counsel for the petitioner is that the said Rule is inconsistent to another Rule 16 of the same set of rule i.e. Rules, 2008. The argument is wholly misconceived, inasmuch as, one Rule cannot be challenged on the ground that it is ultra vires of another Rule of the same set of Rules. All the provision in one set of Rules stand on equal footing and where there is any inconsistency, rules have to be read harmoniously but one rule cannot be said to be ultra vires being inconsistent to another. Even otherwise we do not find that Rule 24(7) as inconsistent to Rule 16 of Rules, 2008.

7. In view of the above discussion, we do not find any merit in the writ petition. It is accordingly dismissed.