

JAENENDRA KUMAR PHOOLCHAND DAFTARI

v.

RAJENDRA RAMSUKH MISHRA

DECEMBER 7, 1993

[A.M. AHMADI AND N. VENKATACHALA, JJ.]

Election Law—Bombay Village Panchayat Act, 1958—Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964—Rules 10(2), 13—Election of Sarpanch of Panchayat—Mode of conduct—Voting by secret ballot—Permissible when.

Election of appellant as Sarpanch of a Gram Panchayat was set aside on the ground of the election having been held by secret ballot without a demand therefor from any member. On appeal, the Commissioner not only upheld the order of the Collector, but also on the ground that the election by secret ballot could not be held by showing the names of the candidates without allotting them any symbol when there was an illiterate voter. Writ Petition filed in the High Court against the order of the Collector and also that of the Commissioner was also dismissed. Hence this appeal.

The following questions were raised.

(i) Whether an express demand by a member present in the meeting convened for holding election of the Sarpanch or Upa-Sarpanch under Rule 10, was necessary for the Presiding Officer to hold the election by secret ballot?

(ii) If a demand is made to the Presiding Officer to hold the election of the Sarpanch or Upa-Sarpanch by means of secret ballot, is the Presiding officer required to allot symbols to the contesting candidates and get the ballot papers to be used in such election printed with such symbols?

(iii) Was the High Court justified in refusing to interfere with the finding recorded by the Collector - the election disputes resolving authority, and affirmed by the appellant authority - the Commissioner, as to the manner in which the election was held?

Dismissing the Appeal, this Court

A **HELD : 1.1.** The provision in Rule 10(2) of the Bombay Village Panchayat (Sarpanch and Upa-Sarpanch) Election Rules, 1964 makes it incumbent on the Presiding Officer to proceed to select the Sarpanch or Upa-Sarpanch, by show of hands unless there is a demand any member present at the meeting to proceed with the election of the Sarpanch or Upa-Sarpanch, as the case may be, by having recourse to voting by secret ballot. Hence, Voting by show of hands is a general method contemplated in the Rules while the voting by secret ballot is contemplated as an exception in a special situation. Rule 13 supports the view that the Presiding Officer of the meeting cannot call upon the members present in such meeting to vote by secret ballot, unless a demand in that behalf is made by any member so present. [897-E, H, 898-A]

D **1.2.** If a situation arises where an illiterate member is required to vote, that fact may be borne in mind by the Presiding Officer and he may evolve a procedure which would enable the illiterate member to vote. It is not necessary for the Presiding Officer, presiding over the election meeting convened for electing Sarpanch or Upa-Sarpanch to allot election symbols to contesting candidates, even where there are illiterates among members who have to cast their votes by ballot. [898-D, E]

E **1.3.** In the instant case, when the recorded minutes of the meeting did not show that there was any demand made for voting by ballot, it cannot be inferred that there was such a demand merely because the election conducted by the Presiding Officer by resorting to secret ballot was done in the course of discharge of his official duty under the Rules. **F** When such a finding is affirmed by the appellate authority, the High Court was justified in refusing to interfere with the findings recorded by the presiding officer; particularly when the proceeding instituted before it was a writ proceeding. [899-A-B]

G **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 1303 of 1993.

From the Judgment and Order dated 24.11.92 of the Bombay High Court in W.P. No. 2036 of 1991.

H B.A. Masodkar, R.B. Masodkar and K.L. Taneja for the Appellant.

Awadh Behari, Z.A. Ahmad, A.K. Sanghi and S.M. Jadhav for the Respondents. A

The Judgment of the Court was delivered by

VENKATACHALA, J. This appeal by Special Leave is directed against the Judgment dated November 24, 1992 of the Bombay High Court, dismissing the appellant's Writ Petition in which he had impugned the orders of respondents 3 & 4 setting aside his election as Sarpanch of Seloo Gram Panchayat constituted under the Bombay Village Panchayat Act, 1958 (for short 'the Act'). F

2. The appellant and respondent-1 were among the fifteen elected members of Seloo Gram Panchayat in the District of Wardhna. They were the only contesting candidates in the election to be held for Sarpanch of that Panchayat on August 10, 1990 in the special meeting of the members convened for the purpose under the Bombay Village Panchayats (Sarpanch and Upa-Sarpanch) Election Rules, 1964 (for short 'the Rules'). That special meeting was presided over by respondent-2, Naib Tahsildar, who made the members to cast their votes in favour of either of the contesting candidates, by secret ballot. Respondent-2 declared the appellant as successful candidate for the Office of Sarpanch, as he had secured eight votes while respondent-1, the other contesting candidate had secured one vote less, that is, seven votes. Respondent-1, the defeated candidate, however, challenged the election of the appellant as Sarpanch of Seloo, by raising an election dispute under section 33(5) of the Act, before respondent-3, the Collector, Wardha. Two grounds of challenge raised by respondent-1 in that election dispute were - (i) that the holding of Sarpanch's election by the Presiding Officer, respondent-2, by resorting to secret ballot when none of the members had made a demand in that regard, was contrary to the requirement of Rule 10 of the Rules, and (ii) that one of the members, who illiterate had since cast her vote by ballot which did not contain symbols allotted to the contesting candidates, it had materially affected the result of the election in that there was only one vote which had made the difference. The petitioner, who filed his written objection statement to the election petition before the Collector, did not specifically deny thereunder the allegation in the petition that there was no demand made by any member of the Panchayat to the presiding officer to hold the election by secret ballot. On the other hand, in the written objection statement, the C
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- A denial related to the non-following of the procedure in Rule 10 by the Presiding Officer, respondent-2, who held the special meeting. Respondent-2, although served with notice of election petition, did not appear before respondent-3 and make any statement to the contrary. However, as to the ground of one illiterate member having cast her vote, although it was said in the written Statement (reply) that there was no reason for the Presiding Officer, respondent-2, to know about her illiteracy, it was admitted that the members were asked to put a tick-mark against the candidate's name in the ballot according to that voter's choice. The Collector allowed the concerned Election Reference and set aside the election of the appellant upholding ground No. (i) of election being conducted by secret ballot without any member making a demand for election being conducted by secret ballot. The appellant questioned the Order made on the Election Reference made by the Collector by filing an appeal therefrom the Commissioner under section 33(5) of the Act. In dismissing that appeal, the Commissioner not only upheld the Order of the Collector made on the ground of the election having been held by secret ballot without a demand therefor from any member, but also on the ground that the election by secret ballot could not be held by showing the names of the candidates without allotting them any symbol when there was illiterate voter.

3. The appellant challenged the Orders of the Collector made in the election dispute and also that of the Commissioner in the appeal filed by him by invoking the writ jurisdiction of the Bombay High Court. The High Court took the view that conducting of election by secret ballot by the Presiding Officer, respondent-2, for electing the Sarpanch could not have been done under Rule 10 of the Rules when there was no demand by any member for holding the election by secret ballot as required under Rule 10(2) of the Rules, in that, the minutes of the meeting convened by the Presiding Officer, respondent-2, did not show that there was any demand made in that regard by any member. Consequently, the Division Bench, by its Judgment dated November 24, 1992, dismissed the Writ Petition and issued directions in the matter of taking steps for holding fresh election to the Office of the Sarpanch. It is that Judgment which is now under appeal.

4. Mr. K.L. Taneja, learned counsel for the appellant in assailing the Orders of the Collector, the Commissioner and the High Court, contended firstly, that the official act of conducting the election by secret ballot by respondent-2 in the meeting presided over by him must be taken to have

been done regularly i.e. after a demand had been made in that regard by one of the members as required under Rule 10 (2) of the Rules, secondly, when there was nothing to indicate in the recorded minutes of the meeting that there was any opposition for election Sarpanch being held by secret ballot, it was not open to respondent-1 to challenge the result of the election on that ground, and, thirdly, it cannot be said that there was any need for the Presiding officer, respondent-2 to allot symbols for candidates in the election as it was not made known to the Presiding Officer about the illiteracy of any of the voters. On the hand, the learned counsel for respondent-1 sought to counter the contentions raised on behalf of the appellant by obtaining support therefor from the Judgment of the High Court. In the facts of the case and rival contentions urged before us, the points which need our consideration and decision in his appeal would be these :

1. Is an express demand by a member present in the meeting convened for holding election of the Sarpanch or Upa-Sarpanch under Rule 10, necessary for making the Presiding Officer to hold the election by secret ballot?
2. If a demand is made to the Presiding Officer to hold the election of the Sarpanch or Upa-Sarpanch by means of secret ballot, is the Presiding Officer required to allot symbols to the contesting candidates and get the ballot papers to be used in such election printed with such symbols?
3. Was the High Court justified in refusing to interfere with the finding recorded by the Collector - the election disputes resolving authority, and affirmed by the appellate authority - the Commissioner, as to the manner in which the election was held?

5. We shall, now proceed to consider the said points, seriatim.

Point-1:

6. Sub-rule (2) of Rule 10 which provides for the mode of conduct of election for the Office of Sarpanch or the Office of Upa- Sarpanch by the Presiding Officer at the meeting and Rule 13 which provides for the recording of minutes of the election meeting, being material, are

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Rule 10(2) :

B "(2). If more than one candidate have been so nominated, the
presiding Officer shall proceed to elect the Sarpanch as the case
may be, Upa-Sarpanch. The voting at such election shall be by
show of hands. If, however, any member present at the meeting so
demands, the voting shall be by ballot. The candidate who obtains
the highest number of votes shall be declared to have been duly
elected as Sarpanch, or as the case may be, Upa-Sarpanch. When
C any equality of valid votes is found to exist between any two or
more candidates and the addition of one vote will entitle any of
them to be declared as Sarpanch or, as the case may be Upa-
Sarpanch, the determination of the candidate to whom such addi-
tional vote shall be deemed to have been given shall be made by
D lot to be drawn by the Presiding Officer in such manner as he shall
determine."

Rule 13 :

E "13. Minutes : The proceedings of the meeting shall be recorded
in the minute book maintained by the Panchayat under rule 40 of
the Bombay Village Panchayats Meetings Rules, 1959. The names
of the members present at the meeting and when the voting is by
show of hands, the names of members voting for or against any
candidate for election and the names of members who remain
F neutral shall be entered therein. At the conclusion of the meeting,
the proceedings shall be read out and signed by the Presiding
Officer and thereupon they shall be deemed to be confirmed. A
copy of the proceeding shall be submitted to the chairman of the
Panchayat Samiti, the Chief Executive Officer of the Zilla Parishad
and also to the Collector through the Mamlatdar, Tahsildar,
G Mahalkari, Naib Tahsildar concerned within seven days of the
meeting. The proceedings shall be open to inspection, at all
reasonable times, by any member of the Panchayat."

7. According to sub-rule (2), the Presiding Officer conducting the
election of the Sarpanch or the Upa-Sarpanch among the contestants in a
H meeting of the members of the Panchayat concerned convened for the

purpose, is required to call upon such members to vote by show of hands. A
But, it requires the Presiding Officer to carry out such election by secret
ballot if any member present at the meeting, makes a demand in that
regard. Thus, the sub-rule clearly specified the method by which the
Presiding Officer shall proceed to have the Sarpanch or Upa-Sarpanch, as
the case may be, elected. However, the question is, whether the sub-rule B
permits the Presiding Officer of the election meeting to have the Sarpanch
or Upa-Sarpanch, as the case may be, elected by calling the voters to elect
the Sarpanch, by show of hands or by voting by ballot, according to his
choice. If it is to be so held, the requirement of holding of election by ballot
on demand by any member present at the meeting convened under the
sub-rule, becomes superfluous. No requirement in a Rule can be regarded C
as superfluous unless such a construction is likely to lead to an unwarranted
anomaly. Having regard to the requirement of the provision which specifi-
cally provides as to how the Presiding Officer has to proceed to elect the
Sarpanch or Upa-Sarpanch, as the case may be, we find it difficult to think
that the Presiding Officer is given the choice or liberty of proceeding to D
have the Sarpanch or Upa-Sarpanch elected in a manner different from
that indicated in the provision in sub-rule (2) of Rule 10. Hence, the
provision in Rule 10(2) of the Rules, in our view, makes it incumbent on
the Presiding Officer to proceed to elect the Sarpanch or Upa-Sarpanch,
as the case may be, in a meeting held by him by calling upon the voters in
the meeting to elect the Sarpanch or Upa-Sarpanch, as the case may be, E
by show of hands unless there is a demand by any member present at the
meeting to proceed with the election of the Sarpanch or Upa-Sarpanch, as
the case may be, by having recourse to voting by secret ballot.

8. While sub-rule (2) of Rule 10, requires the Presiding Officer to F
proceed to elect the Sarpanch or Upa-Sarpanch, as the case may be, by
show of hands unless there is a demand for permitting the members to vote
by secret ballot, rule 13 requires that the Presiding Officer shall record the
names of members voting for or against a candidate or being neutral in the
minutes of the meeting and on the conclusion of the meeting to read out G
the same to the members before signing the same resulting in their deemed
confirmation and becoming available for inspection by any member of the
Panchayat. Hence, it becomes obvious that voting by show of hands is a
general method contemplated in the said Rules while the voting by secret
ballot is contemplated as an exception in a special situation. Thus, Rule 13
supports our view that the Presiding Officer of the Meeting cannot call H

- A upon the members present in such meeting to vote by secret ballot in favour of one or the other candidates contesting the election for the Office of Sarpanch or Upa-Sarpanch unless a demand in that behalf is made by any member so present.

Point-2 :

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9. There is no provision in the Rules requiring allotment by the Presiding Officer of symbols to candidates, where the voting of the members of the Panchayat for the election of the Sarpanch or Upa-Sarpanch by means of secret ballot becomes necessary. Such provision is not envisaged since the Presiding Officer cannot be expected to get the ballot papers with symbols ready all of a sudden in the meeting wherein the election has to be completed. However, if a situation arises where an illiterate member is required to vote, that fact may be borne in mind by the Presiding Officer and he may evolve a procedure which would enable the illiterate member to vote, e.g., if there are two or more candidates, he may ask the member to put a cross mark for candidate A, a zero mark for candidate B and so on or the Presiding Officer may assist such a member to cast the vote for the candidate of his or her choice. In such situations, the Presiding Officer, could, as well, record in the minutes of the meeting, as to how, he has rendered the assistance to a member who could not cast his vote by ballot, in the usual course, for such recording may help in avoiding future controversies on the matter. Hence, it is not necessary for the Presiding Officer, presiding over the election meeting convened for electing Sarpanch or Upa-Sarpanch to allot symbols to contesting candidates, even where there are illiterates among members who have to cast their votes by ballot. This is our answer to Point- 2.
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Point-3 :

10. Here, in the Reference Petition containing election dispute, there was a specific allegation made by respondent-1 to the effect that there was no demand made to the Presiding Officer by any member of the Panchayat present in the meeting for holding the election by having recourse to secret ballot. The appellant did not deny this allegation specifically. In a situation as the one on hand, when the minutes of the meeting did not record that there was any demand made for voting by ballot, it cannot be said that the election disputes resolving Authority, namely, the Collector was unjustified in drawing an inference that there was no such demand and that the

Presiding Officer resorted to the method of conducting the election by secret ballot despite the absence of such demand. In the instant case, when the recorded minutes of the meeting did not show that there was any such demand, it cannot be inferred that there was such a demand merely because the election conducted by the Presiding Officer by resorting to secret ballot was done in course of discharge of his official duty under the Rules. Such a finding when is affirmed by the appellate authority, the High Court has very rightly, in our view, refused to interfere with such finding of fact, particularly, when the proceeding instituted before it was a Writ proceeding where its extra-ordinary jurisdiction was invoked. A B

11. For the foregoing reasons, we do not find any valid reason to interfere with the Orders of the Collector, the Commissioner and the High Court, impugned in this appeal. C

12. The appeal, therefore, fails and is dismissed with costs. The costs in this appeal shall be Rs. 5,000 and same shall be payable by the appellant to respondent-1. D

A.G.

Appeal dismissed.