

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. _____ OF 2020

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS. 10733-10734 OF 2019)

LAXMI SINGH AND OTHERS APPELLANT(S)

VERSUS

REKHA SINGH AND OTHERS RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

Leave granted.

2. Sixty-four out of the ninety-two elected members of the Zila Panchayat, Prayagraj, Uttar Pradesh had on 1st October 2018 moved a motion of no confidence (“the Motion”, for short) against the Panchayat Adhyaksha, Ms. Rekha Singh, the first respondent before us.
3. The District Judge, Allahabad had thereupon nominated the Additional District Judge, Allahabad to act as the Presiding Officer in the meeting of the Zila Panchayat summoned to consider the Motion.

4. In the meeting of the Zila Panchayat held on 25th October 2018, forty-eight out of fifty-one members present had voted in favour of the Motion, two members had voted against the Motion and one vote was rejected as invalid. On the same day itself, the Presiding Officer had declared that the Motion was passed by majority of more than half of the total elected members of the Zila Panchayat.
5. On challenge by the first respondent, the High Court of Judicature at Allahabad, vide the impugned judgment dated 13th March 2019, has set aside the minutes of the Zila Panchayat meeting dated 25th October 2018 approving the Motion, on the ground that some of the members had violated the rule of secrecy of ballot. Reliance was placed on the CCTV footage that was played in the Court, to observe that some of the members had displayed the ballot papers or by their conduct revealed the manner in which they had voted.
6. Section 28(8) of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 states that a motion of no confidence shall be put to vote in the prescribed manner by secret ballot. Rule 4 of the Uttar Pradesh (Zila Panchayats) (Voting on Motions of Non-Confidence) Rules 1966 (for short, the '1966 Rules') casts a duty and obligation on the Presiding Officer to cause such

arrangements to be made as would ensure secrecy of the ballot. Our attention was also drawn to sub-rule (2) of Rule 7 of the 1966 Rules, which requires the members to put a specified mark on the ballot paper to indicate their choice without disclosing their names and proscribes any signature or any other mark by which the secrecy of the ballot may be infringed. Further, we may also note sub-rule (3) of Rule 7 of the 1966 Rules, which requires members to fold their ballot paper to conceal the mark made by them and to put the same in the ballot box. The High Court held in the impugned judgment that there was a violation of Rules 4 and 7 of 1966 Rules, and further held that disclosure of vote during the non-confidence motion was in violation of the statutory scheme governing the same in the State and would affect the purity of elections. The High Court therefore set aside the minutes of the non-confidence motion passed on 25th October 2018.

7. Challenging the above finding, the Petitioner before us have submitted that the impugned judgment is not in line with the holdings of this Court regarding secrecy of voting, particularly the Constitution Bench decision of this Court in **S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra and Others**,¹.

¹ 1980 Supp SCC 53
Civil Appeals arising out of SLP (C) Nos. 10733-734 of 2019

8. The Petitioners claimed that the principle of secrecy of ballot is based on public policy aimed at ensuring that the voter cast their vote without fear or favour and without any apprehension of disclosure. These aspects were highlighted in **S. Raghbir Singh Gill** (supra), wherein reference was made to Section 94 of the Representation of the People Act, 1951 ('RP Act' for short), which states that no witness or other person shall be required to state for whom he was voted in an election. Elucidating the importance of the provision, secrecy of ballot was appropriately styled as a postulate and keystone in the arch of constitutional democracy as the electorate or the voter should be absolutely free in exercise of franchise untrammelled by any constraints, including a constraint as to disclosure. Even a remote or distinct possibility that at some point, a voter under compulsion of law can be forced to disclose for whom she has voted would act as a positive constraint and a check on the freedom to exercise of franchise. It is the policy of law to protect the right of voters to secrecy of the ballot, *albeit* this right is something which can be claimed only by the voter himself against unwarranted disclosure. Section 94 of the RP Act enacts a privilege in favour of the voter in that no one can compel him to disclose for whom she had voted but the privilege ends when the voter decides to waive the privilege and instead volunteers to disclose as to whom she had voted. No one can prevent a voter

form doing so nor can a complaint be entertained from any, including the person who wants to keep the voter's mouth sealed as to why she disclosed for whom she voted. Once the voter chooses to waive the privilege and volunteers to disclose, there is no contravention of Section 94 or any other provision of the RP Act. There is no illegality involved in disclosure by the voter.

9. The Petitioners submitted that the High Court, notwithstanding the aforesaid dictum, has wrongly held that the voluntary waiver principle could not apply to the case in hand with respect to the members of the Zila Panchayat voting on a no confidence motion. Whether such a proposition is correct or not would have to be tested in an appropriate case, and we desist from making any observations on the same as the question of law itself was not fully argued before us. However, the Petitioners submitted that certain principles ought to be highlighted regarding this important question.
10. The Petitioners contented that this Court, on several occasions,² and as recently as in ***Shiv Sena v. Union of India***,³ has directed that a vote of confidence or a trust vote, as the case may be, to establish majority on the floor of the House should be conducted

² ***G. Parmeshwara v. Union of India***, (2018) 16 SCC 46, ***Union of India v. Harish Chandra Singh Rawat***, (2016) 16 SCC 744.

³ (2019) 10 SCC 809

by an open ballot and that the same should be captured in a video recording so as to ensure transparency. Earlier, in ***Kuldip Nayar and Others v. Union of India and Others***,⁴ a Constitutional Bench of five judges of this Court had *inter alia* examined and upheld the constitutional validity of open ballot system which was introduced in the RP Act vide an amendment brought by Act 40 of 2003 for elections to the Council of States. The petitioner therein contended that the open ballot system violates the principle of secrecy which is the essence of free and fair elections and also the voter's freedom of expression which is one of the basic features of the Constitution. Rejecting the challenge to the constitutional validity, the Constitutional Bench under *Issue II: Secrecy of Voting* had held that:

“404. This Court found that Section 94 was meant as a privilege of the voter to protect him against being compelled to divulge information as to for which candidate he had voted. Nothing prevents the voter if he chooses to open his lips of his own free will without direct or indirect compulsion and waives the privilege. It was noticed that the provision refers to a “witness or other person”. Thus, it is meant to protect the voter both in the court when a person is styled as a witness and outside the court when he may be questioned about how he voted. It was found that no provision existed as could expose the voter to any penalty if he voluntarily chooses to disclose how he voted or for whom he voted.

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⁴ (2006) 7 SCC 1

409. Thus, even under the elections that continue to be based on the principle of secrecy of voting, it is for the voter to choose whether he wishes to disclose for whom he had voted or would like to keep the secrecy intact. If he so chooses, he can give up his privilege and in that event, the secrecy of ballot should yield. Such an event can also happen if there is fraud, forgery or other illegal act and the disclosure subserves the purpose of administration of justice.”

11. They also referred to the decisions in **Kuldip Nayar** (supra) and **S. Raghbir Singh Gill** (supra) to highlight that the primary principle and test to be applied by the courts is purity of election, that is, free and fair election. Secrecy of voting is an adjunct to the principle of purity of election. Accordingly, in **S. Raghbir Singh Gill** (supra) it was observed that secrecy is not an absolute principle enshrined in law, but a requirement to subserve the larger public interest of purity of election. Secrecy cannot stand aloof, in isolation or in confrontation to the foundation of free and fair elections. In **Kuldip Nayar** (supra), the Constitution Bench observed that this Court in **S. Raghbir Singh Gill** (supra) had rejected the apprehension that the principle of secrecy enshrined in Section 94 of the RP Act cannot be waived being a prohibition enacted in public interest and founded on public policy to hold that where such a prohibition is in place, the courts should be slow to apply the doctrine of waiver. Nevertheless, this privilege of secrecy could be waived by the voter voluntarily because the very

concept of privilege inheres a right to waive it. Secrecy is for the benefit of the voter and conferred to advance a principle enacted in public interest.

- 12.** The aforesaid position of law was referred to in ***Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari and Another***⁵ to reiterate that the principle of secrecy to vote is for the benefit of the voters to enable them to cast their votes freely. Though this principle is based on public policy, it is upon that person and no one else to waive such benefit.
- 13.** It is to be noted however, that all of the above cases cited by the Petitioners pertain to the RP Act and the Rules made thereunder. It is a trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions. In ***Shri Banwari Dass v. Shri Sumer Chand and Others***,⁶ referring to the Delhi Municipal Corporation Act, 1957, it was observed that an election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which have to be strictly construed. Therefore, even in cases involving election provisions to prevent corrupt practices, the court and the tribunal must act judicially and not in an inquisitorial manner. The court cannot

⁵ (2014) 5 SCC 312

⁶ (1974) 4 SCC 817

bridge the gap and supply an apparent omission by applying principles of common law and equity. Therefore, it is necessary for a proper determination of the issues at hand for an in-depth analysis of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 and the 1966 Rules, specifically the interplay between Rules 4, 7 and 12 of the 1966 Rules, and the legal principles enunciated by this Court in the above pronouncements.

- 14.** It is to be observed that one of the fundamental principles of election law pertains to the maintenance of free and fair elections, ensuring the purity of elections. The principle of secrecy of ballots is an important postulate of constitutional democracy whose aim is the achievement of this goal. The question of whether the waiver of secrecy by individual voters is allowable during the election process, in a circumstances such as the present, where the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 and the 1966 Rules mandate that voting in a no confidence motion would take place by secret ballot requires detailed argumentation and analysis. Whether the same is illegal *de jure*, or is allowable, or depends on the facts and circumstances of each case taking into account the impact on the principle of free, fair and pure

elections is a question where we find the reasoning of the High Court somewhat lacking.

15. That said, during the course of the hearing before us, learned senior counsel appearing for the appellant had suggested on the first day of hearing that the Motion against the first respondent may be put to revote or fresh voting. Accordingly, we directed learned senior counsel for the first respondent to obtain instructions regarding the same, for which the case was adjourned. It was stated on the next date of hearing, that the suggestion was acceptable on a fresh motion of no confidence being moved. The Petitioners objected to the necessity to file a fresh motion, as this would imply that the Motion dated 1st October 2018, which was put to vote on 25th October 2018, would have to be treated as rejected notwithstanding that forty-eight members out of fifty-one members present, that is, almost 95% of the members present had voted in support of the Motion. At the same time, counsel for the first respondent had asserted that the first respondent enjoys support of the Zila Panchayat and is, therefore, confident that any motion of no confidence moved would be defeated.

16. In the light of the above, we feel that ends of justice will be met if the Motion dated 1st October 2018 is put to revote at a meeting of

the Zila Panchayat by way of secret ballot with the District Judge, Allahabad himself or his nominee Additional District Judge, Allahabad, acting as the Presiding Officer on a date and time to be fixed by the District Judge, which shall not be later than two months from today. This would, in our opinion, be a just and fair direction in the factual matrix of the present case given the respective contentions and stand of the parties.

- 17.** The appeals are accordingly disposed of in the above terms, leaving the question of law open. No order as to costs.

.....J.
(N.V. RAMANA)

.....J.
(SANJIV KHANNA)

.....J.
(KRISHNA MURARI)

**NEW DELHI;
JUNE 19, 2020.**