

(2013) 10 AHC CK 0136

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 18924 of 2013

Smt. Ishrat Jahan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Oct. 10, 2013

Citation: (2014) 1 UPLBEC 152

Hon'ble Judges: Arun Tandon, J; Anjani Kumar Mishra, J

Bench: Division Bench

Advocate: Kesari Nath Tripathi, Sri Neeraj Tripathi, Sri Tripathi B.G. Bhai and Smt. Anita Tripathi, for the Appellant; Shashi Nandan, Sri K.R. Sirohi, Sri Shashi Bhushan, Sri Rajesh Yadav and Sri Rajiv Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Arun Tandon and Anjani Kumar Mishra, JJ.

Heard Shri Kesari Nath Tripathi, Senior Advocate assisted by Shri Neeraj Tripathi, Advocate, Shri Shashi Nandan, Senior Advocate and Shri K.R. Sirohi, Senior Advocates assisted by Shri Rajesh Yadav, Advocate on behalf of respondents No. 6, 7 and 8. Petitioner before this Court seeks quashing of the proceedings resulting in a no confidence motion as per the meeting of Kshetra Panchayat, Dumariaganj, District Siddhartha Nagar held on 18.3.2013 as well as of the consequential order of the District Magistrate dated 25.3.2013.

2. Facts in short leading to the present petition as are follows:

Petitioner before this Court was elected as the Block Pamukh of Kshetra Panchayat, Dumariaganj, District Siddhartha Nagar in the elections which were held in the year 2010. A request for a no confidence motion was served upon the District Magistrate by the members of the Kshetra Panchayat resulting in a notice dated 14.2.2013 fixing 2.3.2013 as the date of the meeting for consideration of the motion of no confidence against the petitioner. The Sub Divisional Magistrate, Dumariaganj was nominated as the Presiding Officer by the District Magistrate in respect of the

meeting to be held on 2.3.2013. The meeting was adjourned and was subsequently fixed for 18.3.2013.

3. The notice of no confidence motion was challenged by means of Civil Misc. Writ Petition No. 14540 of 2013 by the petitioner wherein an interim order was granted which provided that the meeting for consideration of the motion of no confidence may take place but the result of the meeting shall abide by the decision of the writ petition.

4. In terms of the order of the High Court a meeting for considering the no confidence motion of Kshetra Panchayat did take place on 18.3.2013. As against the total number of elected members i.e. 114, only 68 members participated in the meeting. after deliberations the no confidence was put to vote. The Presiding Officer made arrangements for casting of votes by the members present as per the provision of Uttar Pradesh Kshetra Samities (Voting on motions of non-confidence) Rules, 1966 (herein after referred to as the Rules, 1966). The total number of votes polled in favour of the motion after counting was declared as 64 while those against the motion as 3 only. One of the ballot paper was declared invalid. The result that the motion of no confidence have been carried was declared. Information was given to the District Magistrate of the same who in turn having been passed against the petitioner and issued the order on 25.3.2013 removing the petitioner from the office of Adhyaksh of the Kshetra Panchayat. He appointed a three member committee for looking after the affairs of the Kshetra Panchayat. This consequential order is also under challenge in the present petition.

5. On behalf of the petitioner it is submitted by Shri Kesari Nath Tripathi that from the photographs which have been taken at the time of casting of votes, it is apparent that there has been violation of the rules laying down the procedure in the matter of such voting. According to him Rule 4 of Rules, 1966, requires the Presiding Officer to ensure that secrecy of ballot is maintained. This secrecy has been violated with impunity and in support thereof heavy reliance has been placed upon the photographs which have been enclosed at pages 96 to 111 of the present paper book. He explains that video recording of the meeting has also been done and from the same it is clear that persons have voted outside the polling booth including affixation of stamp on the ballot paper at the table of Presiding Officer himself. This was in clear violation of Rule 4. Therefore, the entire proceedings are to be nullified. It is also his case that 3 persons were provided companion although there were not illiterate and further other 15 persons who were provided companions who were not their relatives and were in fact residents of other villages/distant place. These companion had been arranged by respondent No. 6 and the husband of respondent No. 7 who had initiated the motion of no confidence. Shri Tripathi submits that because of such unauthorized assistance provided through companions the entire voting at the no confidence motion stands vitiated.

6. Shri Shashi Nandan and Shri K.R. Sirohi in reply submit that the objections which have been raised in respect of secrecy of ballot paper being infringed are all after thought. At the time of voting, absolutely no objection was raised by the petitioner with regard to companions provided nor any objection was taken in the manner of casting of votes by the members/companions. It is further their case that no person has come forward till date to allege that any vote has been cast by the companion contrary to his/her desire. It is also explained that under the Rules, 1966 there is no prohibition in respect of companions being other than relatives. Further the secrecy of ballot is not infringed merely because a person at the time of casting of his vote. The secrecy is infringed only when somebody other than the voter can see as to in whose favour the vote has been cast by the known voter. Unless the petitioner with whatever evidence has been brought on record, can identify surety state that the particular vote has been cast for or against the motion, it cannot be said that the secrecy of the ballot has been infringed. Counsels further submitted that bare reading of Rule 7, 12 and 19 of the Rules, 1966 it is apparent that only such ballot paper are to be infringed or rendered invalid which bear permanent marks on the ballot paper itself whereby the identity of the voter can be ascertained. It is only in that circumstances that the vote can be excluded from counting. It is also the case of the respondents that petitioner having taken his chance at the time of voting and having lost after the count of votes, cannot be permitted to raise technical objection for defeating the motion of no confidence. Lastly, it is submitted that if the plea raised on behalf of the petitioner to the effect that as soon as any voter is seen while casting his vote, the entire elections stand vitiated is accepted it will lead to a situation where meeting of no confidence can be frustrated easily. It is further their case that video CDs which have been produced in respect of meeting of no confidence has been so prepared through a private videography.

7. In rejoinder, Counsel for the petitioner states that the videography has been done on the asking of the Presiding Officer and, therefore, can be relied upon.

8. However, there is no order in writing directing for any videography being done of the meeting. At least no order has been produced before us. We leave the issue at this stage.

9. Under orders of the High Court dated 22.4.2013, the Secretary, Panchayat Raj Department was directed to see the videography/C.D. and to submit his report to the Court in respect of malpractice, if any, at the meeting of no confidence and as to whether the prescribed procedure has been violated in any manner or not.

10. The report of the Secretary has been filed before this Court. From the report so produced, we find that only observations made in the report relevant for our purposes is that eight of the voters had affixed the stamp either by keeping the ballot paper at the door or on the wall near the polling booth and they could be seen by the members who were present in the meeting doing so. Two persons had cast their votes by affixing of the stamp on the ballot paper at the table of the

Presiding Officer. It has been recorded that the total number of such persons works out to 11. These persons have cast their vote in a manner that its secrecy has been infringed.

11. The issue before us in the facts of the case is as to whether the affixation of stamp by the 11 persons mentioned above as reported by the Secretary can lead to any adverse inference in the matter of no confidence motion having regard to the Rules, 1966 and whether this Court can declare all these 11 votes as infringed or invalid. It may be recorded that if these 11 votes are declared infringed or invalid then the result of no confidence motion would be adversely effected.

12. In order to examine the aforesaid issue, it would be relevant to reproduce Rule 4, 7 and 12 of the Rules, 1996 which are being quoted herein below:

Rule 4. Secrecy of Ballot.--The Presiding Officer shall cause such arrangements to be made as will ensure the secrecy of the ballot.

Rule 7. Voting.--(1) Every member wishing to record his vote shall do so in person and not by proxy:

Provided that nothing in this sub-rule shall be deemed to prohibit the rendering of any assistance to any member who, on account of any physical infirmity or illiteracy is unable to record his vote on the ballot paper and requests for such assistance.

(2) The member shall put a (tick) or (cross) "X" on the mark ballot paper against the word "Yes" or "No" according as he is in favour or against the motion of non-confidence respectively, and shall not put his signature or write his name on the ballot paper or make any other mark by which the secrecy of the ballot paper may be infringed.

Rule 12. Validity of Ballot Papers.--Any ballot paper which contains marks against both the words "Yes" or "No" or which bears any mark or any signature of any voter by which he can be identified on which does not bear a serial number or the official seal or signature as required under rule 5 shall be invalid.

Proviso to Rule 7 makes the provision for providing an assistance to a member who is illiterate or handicapped so that he may cast his vote with the help of the companion provided. It is no doubt true that rule 4 contemplate that the Presiding Officer shall make such arrangement as may required to ensure the secrecy of the ballot in a meeting of no confidence motion under the Rules, 1966.

13. From the report of the Secretary as well as from the pleading of the parties, we find that the Presiding Officer had made arrangements so as to ensure that the secrecy of ballot is maintained at the time of polling. Ballot papers were issued after verification of credentials of the members qua which there is no dispute and there is no allegation of any malpractice having been adopted in the matter of issuance of ballot paper and casting of votes. A separate booth covered from three sides with

entry from the back was prepared for casting of votes.

14. The objection taken by the petitioner to the voting proceedings is with reference to the affixation of stamp on the ballot paper by the 11 voters mentioned in the report of the Secretary, only reflects that their voters could be seen by the members sitting at a distance while casting of vote.

15. In our opinion for secrecy of the ballot being infringed not only it is necessary for the petitioner to establish that these 11 voters had cast their vote within the vision of other members present in the meeting, it is also to be established that the other members could known by such casting of vote as to whether the vote has been cast in favour of the motion or against the motion with certainty. Unless the second aspect of the matter is established by cogent evidence, merely because other members present could see a voter affix the stamp on the ballot paper will not render the secrecy of the ballot paper infringed.

16. From the report of the Secretary in respect of six voters and 3 voters with the companion would be seen affixing the stamp by keeping the same on the door/wall near the polling and not on the table which was kept inside the booth. There is no allegation/evidence to establish as to in whose favour these nine persons had cast the vote. So far as two voters who had affixed the stamp on the table of the Presiding Officer are concerned, even if these two votes are declared invalid, there shall be no material change in the result of no confidence motion.

17. We may record that the conditions as per Rule 7(2) and Rule 12 of Rules, 1966 do not stand satisfied in the facts of the case so as to either render the votes infringed or invalid. On a simple reading of the aforesaid Rules would lead to the conclusion that it is only when the identity of a particular voter vis-à-vis the manner in which he has cast the vote is ascertained that the rule contemplate that the vote is infringed/rendered invalid under Rule 7 and.12 respectively.

18. Merely because some voter are seen while casting the vote or even if he display the ballot paper bearing the seal from a distance without anybody being able to see as to whether the vote has been cast in favour or against the motion, the entire voting cannot be said to have been vitiated. Therefore, what follows is that the entire elections cannot be said to be vitiated merely because some voters could be seen casting their vote. Thus the plea raised by Shri Tripathi that the entire elections stand vitiated in the facts of the case has to be rejected.

19. Now turning to the last question raised by Shri Tripathi qua companions having been provided to the literates and companion in some cases being not relatives of the voter/residents of other villages, we find that under the Proviso to Rule 7 of Rules, 1966, there is a specific provision for providing companion to the voters who are illiterate/infirm. Even if the plea raised by Shri Tripathi that 3 persons were literate and they have wrongly been provided companion is accepted, it does not rule out the possibility that these literate person may not be in a position to cast

their vote for physical difficulties. This is only by way of an example. What we want to highlight is that it is at the time when a Presiding Officer provides the assistant to a voter that objection should be raised so that he may examine as to whether the conditions as per the proviso to Rule 7 are satisfied to provide a companion or not. The petitioner did not raise any such objection. He took his chance in the process of voting and having lost, cannot now be permitted to turn around and contend that the elections stand vitiated because of companions being provided to certain voters contrary to Rule 7. We may also record that none of the voters who were provided companion has come forward to allege that the companion had affixed the stamp on the ballot paper contrary to the instructions of the voter.

20. The plea that a relative or a resident of the same village where the particular voter resides alone could be provided as companion, has no substance. From a simple reading to proviso to Rule 7 of Rules, 1966, it is clear that it contemplates no such restriction.

21. In the totality of the circumstances, we find no good ground to interfere. with the result of motion of no confidence as well as the consequential action taken by the District Magistrate. Writ petition lacks merit and is accordingly dismissed.

Interim order, if any, stands discharged.