

(2010) 11 CAL CK 0044

Calcutta High Court

Case No: Writ Petition No. 20166 (W) of 2010

Sujay Sikdar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 24, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14, 21
- West Bengal Primary Education (Conduct of Election to the Primary School Councils) Rules, 1981 - Rule 2, 35, 37, 53, 54
- West Bengal Primary Education Act, 1973 - Section 100(B)

Citation: (2011) 2 CHN 322

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Joydeep Sen, for the Appellant; Tapabrata Chakraborty, Abhijit Basu on behalf of learned Advocate General; Santi Das, Washef Ali Mondal for the State., for the Respondent

Final Decision: Dismissed

Judgement

1. Affidavit-of-service filed in Court today be kept on record.
2. The writ Petitioner has filed the instant petition challenging inter alia, the provisions of Rules 35 and 37 of the West Bengal Primary Education (Conduct of Election to the Primary School Councils) Rules, 1981, (hereinafter referred to as the "Rules"), as being ultra vires the provisions of Articles 14 and 21 of the Constitution of India.
3. The writ Petitioner is a primary teacher in a Government run primary school whose name is included in the electoral role for election of the Kolkata Primary School Council. According to the writ Petitioner the provisions of Rule 35 of the said Rules take away an elector's right of maintaining secrecy and thereby privacy with regard to his choice of candidates and his votes. Likewise, the writ Petitioner has

challenged the Rule 37 of the Rules, stating that the provisions contained therein also take away the elector's right of maintaining secrecy and thereby privacy regarding his choice of candidates and his votes.

4. At the time of hearing of the instant writ petition, learned Advocate for the writ petitioner, however, submits on instruction that his client does not wish to press the prayer for declaring Rule 37 of the Rules, as being ultra vires the provisions of Articles 14 and 21 of the Constitution of India.

5. Learned Advocate appearing on behalf of the writ Petitioner submit that Rule 35 postulates a position whereby the serial number on the ballot paper issued to an elector is recorded in the marked copy of the electoral roll which, in turn, takes away the element of secrecy, which is essential for conducting an election by means of secret ballot.

6. On the other hand, learned Advocate representing the learned Advocate General takes this Court through the various provisions of the Rules and submits that the scheme of the Rules makes it abundantly clear that each and every elector's vote is kept as a well guarded secret so as to ensure that at no subsequent stage after casting of vote ballot paper, such secrecy is compromised. The learned Advocate for the Rules 35 and 37 read with Rule 2 Sub-rule (12). He also refers to Rules 53, 54, 76, 77 of the rules, as well as Section 100B of the West Bengal Primary Education Act, 1973. After considering the submissions made by the learned Advocates for the parties and upon considering the various provisions of the rules referred to, perhaps, it is necessary to set out the relevant rules, which are as follows:

Rule 35. Issue of ballot paper-- After an elector has entered the polling Station the Presiding Officer or the Polling Officer shall ask the name of the elector and locate it in the electoral roll and issue a ballot paper to him after the elector has put his signature against his name in the marked copy of the electoral roll in token of the receipt of the ballot paper. The serial number of the ballot paper so issued shall then be recorded in the marked copy of the electoral roll.

Rule 37. Arrangement of ballot boxes-- A common ballot box for all the contesting candidates shall be placed at the polling station in view of the Presiding Officer and the polling agent if any of them is present. There shall be a screened compartment within the polling station so that elector can secretly mark his vote on the ballot paper. After recording a (X) mark on the ballot paper against the name of the candidate or candidates where more candidates than one are to be elected for whom the elector desires to vote, the elector shall fold the ballot paper and come out of the screened compartment. He shall show the Presiding Officer the latter's signature, affixed on the reverse of the ballot paper, before inserting the folded ballot paper into the ballot box.

Rule 2 Sub-rule 12-- "marked copy of the electoral roll" means the copy electoral roll set apart for the purpose of marking the names of the electors to whom the ballot

papers are issued at an election.

Rule 53. Sealing of other packets-- (1) The Presiding Officer shall then make into separate packets--

(a) the marked copy of the electoral roll;

(b) the unused ballot paper;

(c) the cancelled ballot papers; and

(d) any other papers directed by the State Government or the Returning Officer to be kept in a sealed packet.

(2) Each such packet shall be sealed with the seals of the Presiding Officer and of those of the candidates or their election agents or their polling agents present who may desire to affix their seals there on.

54. Transmission of ballot boxes, etc., to the Returning Officer-- (1) The Presiding Officer shall then deliver or cause to be delivered at such places as the Returning Officer may direct--

(i) the used and unused ballot boxes;

(ii) the ballot paper account;

(iii) the sealed packets referred to in Rule 53; and

(iv) all other paper used at the poll.

(2) The Returning Officer shall make adequate arrangement for collection of the polled ballot boxes and the election papers from the Presiding Officers and for their safe custody until the commencement of counting of votes.

Rule 76. Transmission of return in Form VI and other papers relating to election -- the Returning Officer shall after reporting the result of the election under Rule 75 forward the referred to in Clause (i) of Rule 74 and all other papers relating to election referred to in Rules 52, 53 and Sub-rule (2) of Rule 73 to the Secretary to the Government of West Bengal in the School Education Department for custody.

Rule 77. Preservation of papers relating to election. -- (1) The papers referred to in Rule 76 shall be preserved for a period of two years.

(2) While in the custody of the Secretary to the Government of West Bengal in the School Education Department, ballot papers whether counted or rejected, shall not be opened and their contents shall not be inspected or produced for inspection except under the order of the Director of School Education, West Bengal, u/s 100B.

Section 100B of the West Bengal Primary Education Act, 1973, reads as follows:

Any dispute relating to--(a) the eligibility of any person for election as a member of the Board of a Primary School Council, or any Committee thereof, or

(b) the manner in which an election of any person as a member of the Board or a Primary School Council, or any Committee thereof, was held, or

(c) the qualification of any person for continuing as a member of the Board or a Primary School Council, or any Committee thereof, shall be decided by the Director.

7. The apprehension of the writ Petitioner that by virtue of the provision of Rule 35 it is easy to identify an elector with the ballot paper he was issued for voting and thereby it can be ascertained for which candidate he has cast his vote, is wholly unfounded and unsubstantiated. The serial number of the ballot paper issued to an elector is required to be recorded in the "marked copy of the electoral role. "Marked copy of the electoral roll" is statutorily described under Rule 2 Sub-rule 12. The marked copy of the electoral role is set apart for the purpose of marking the names of the electors to whom ballot paper are issued at an election. Rule 53 makes it obligatory for the Presiding Officer to make into separate packets, the unused ballot papers, cancelled ballot papers, any other papers as directed by the State Government or the Returning Officer and the marked copy of the electoral role at the close of the poll. Sub-Rule 2 of Rule 53 makes it further obligatory for such packets to be sealed with the seals of the Presiding Officer and of those of the candidates or their election agents or their polling agents present who may desire to affix their seals thereon. The sealed packets referred to in Rule 53, are thereafter required to be delivered or cause to be delivered by the Presiding Officer at such places as the Returning Officer may direct. This is stated in Sub-rule (1) Rule 54. Sub-rule (2) of Rule 54 makes it mandatory for the Returning Officer to make adequate arrangement for collection of polled ballot boxes and election papers from the Presiding Officers and for their safe custody until the commencement of counting of votes. After the result of the election is reported by the Returning Officer, the return referred to in Clause (i) of Rule 74 and all other papers relating to election referred to in Rules 52 and 53 and Sub-rule (2) of Rule 73 are required to be forwarded by the Returning Officer to the Secretary to the Government of West Bengal in the School Education Department for custody. This will appear from Rule 76, as set out hereinabove. Such papers have to be kept preserved for a period of two years under the provision of Rule 77. During the course of such preservation, ballot papers, whether counted or rejected, cannot be inspected or produced for inspection, except under the order of the Director of School Education, West Bengal. Section 100B of the West Bengal Primary Education Act, 1973, gives the director power to adjudicate all disputes, as referred therein.

8. The overall scheme of the Rules preserves, protects and guards the element of secrecy and privacy, which an elector can claim as a matter of right, in the case of an election held through secret ballot. In any way one looks at it, the privacy of the elector is never compromised under the rules. Rule 35, thus, under no

circumstances can be said to be ultra vires the provisions of Articles 14 and 21 of the Constitution. Since the learned Advocate for the Petitioner at the time of hearing has already given up the challenge with regard to Rule 37, this Court is not required to deal with the same.

9. For reasons stated above, the instant writ petition is liable to be dismissed and is hereby dismissed.

10. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocate for the parties.