



HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

REPORTABLE

Order

Judgment Reserved on : 26/02/2024

Judgment Pronounced on : 05/03/2024

1. Succinctly pleaded the facts in the instant petition and relevant for adjudication of controversy in hand are that:



1.1. The elections for the post of Sarpanch of Gram Panchayat Gangani were held in the year 2020. Petitioner-Bhanwar Lal Bhadu and the respondent No.1 Ved Prakash contested the elections for the post of Sarpanch. The petitioner secured 2212 votes, whereas the respondent No.1 secured 2069 votes. The petitioner was declared winner in the elections as he secured 145 votes more than the respondent No.1. The respondent No.1 preferred an election petition before the District and Sessions Judge, Jodhpur Metro, Jodhpur (hereinafter referred to as 'the Election Tribunal') under Section 43 of the Rajasthan Panchayati Raj Act, 1994 as well as Rule 80(d)(iii) and Rule 80(f) of the Rajasthan Panchayati Raj Elections Rules, 1994. In the election petition, the allegation levelled is that in the voter list of Ward No.10, the voters from Serial No.440 to 578 were deleted, however, the deleted voters from the Ward No.10 had casted their votes in favour of petitioner at more than one place (double voting) and, therefore, the non-applicant-Bhanwar Lal Bhadu has adopted corrupt practices in the election and, therefore, the election of the petitioner should be countermanded and the applicant may be declared as elected.

1.2. The petitioner-non-applicant filed detailed reply to the election petition and raised certain preliminary objections with respect to the maintainability of the election petition.

1.3. The official respondents also filed the reply stating that the election was conducted in fair manner.



1.4. The learned Election Tribunal, after framing of the issues adjudicated the matter by adducing the evidence submitted before it from both the sides. The learned Tribunal, while allowing the election petition vide order dated 07.12.2023 declared the election for the post of Sarpanch, Gram Panchayat, Gangani, Tehsil Baori, District Jodhpur null and void. Aggrieved against the order dated 07.12.2023, the petitioner-non-applicant has preferred the present writ petition.

2. Learned counsel for the petitioner submitted that a bare perusal of the pleadings in the Election Petition of the respondent-Ved Prakash shows that the names of certain voters had been deleted from Ward No.10 of Gram Panchayat, Gangani and their names had been reflected in Ward No.12 of Village Gangani and thus, the voters, whose names were deleted from Ward No.10, had casted their votes at both the places i.e. at Ward No.10 and Ward No.12. Learned counsel submitted that in the reply filed by the petitioner-non-applicant as well as the State, the submissions made in the Election Petition were denied and on the basis of the pleadings, the learned Election Tribunal framed four issues, out of which, Issue Nos.1 and 4 were decided in favour of the election petitioner/respondent No.1 and Issue No.2 was also decided against the petitioner-non-applicant. Learned counsel vehemently submitted that the Issue No.2 framed by the learned Election Tribunal was very specific and the learned Election Tribunal was under an obligation to discuss the matter



in consonance with the other issues framed. Since the Issue No.2 framed was that *whether the persons whose names have been deleted from Ward No.10 from Sr. No.440-578 and these names having been added in Ward No.12 had casted their votes in favour of petitioner at both the places by resorting to illegal and corrupt means in connivance with returning officer and his team?* Learned counsel further submitted that the finding on Issue No.2 is cryptic and without any basis. He further submitted that there is no evidence on record to show that at the behest of the petitioner, the deleted voters of Ward No.10 had casted their votes at both the places i.e. Ward No.10 and Ward No.12 in favour of petitioner. He further submits that there is no evidence on record to show that a set of same persons had casted their votes at Ward No.10 and Ward No.12 in favour of petitioner. Learned counsel submits that as per the pleadings in the Election Petition, though there is no disclosure of the fact as to what is the serial numbers of those persons whose names have been deleted from Ward No.10, however, the learned Election Tribunal has come to the conclusion that 72 persons whose names have been deleted from Ward No.10 had casted their votes in both the wards.

3. Learned counsel submitted that while dealing with the Issue No.2, the learned Election Tribunal has taken note of the fact that certain persons have illegally casted their votes from Ward No.10 although there were no pleadings to that effect. In paragraph 12 of the judgment, the learned Election Tribunal has taken into consideration the material and evidence which



was neither pleaded nor was subjected to scrutiny by any party.

4. Learned counsel for the petitioner submits that the petitioner produced three persons, namely, Bhagirath S/o Dhokal Ram, Purkha Ram S/o Narayan Ram and Jagdish S/o Durga Ram in support of his evidence, wherein they have very categorically submitted that they had casted their votes only at one place. In the cross examination, these three persons were never asked any question with respect to their signatures having been made on the Exhibits 7 & 8 i.e. Voter's Original Register (मतदाता मूल रजिस्टर) as these two registers are the documents where the signature of a voter who has come for voting is obtained by the Election Officers. Learned counsel further submits that even if it is assumed for a moment that 72 persons have voted in Ward Nos.10 & 12, it cannot be said that those persons who have voted in Ward No.10, are the same persons who have also voted in Ward No.12 unless the evidence to that effect is brought before the learned Election Tribunal which is conclusive in nature.

5. Learned counsel for the petitioner further submits that the finding recorded by the learned Election Tribunal is only on the basis of examination of the Voter's Original Register (Exh.7 & 8), wherein the Election Tribunal has seen the signatures of the persons named therein by naked eyes and has come to the conclusion that these are the same persons who have voted at Ward Nos.10 & 12. Learned counsel submits that the



methodology adopted by the learned Election Tribunal is *de hors* Section 73 of the Indian Evidence Act, 1872.

6. Learned counsel further submits that the learned Election Tribunal has recorded an incorrect finding to the effect that the respondent No.2 could not have raised the dispute before completion of the election process as it takes time to complete the election process and once the same is completed, only then a person can come to know that whether any irregularities have been committed in the election or not. He submits that the finding recorded by the Election Tribunal is factually incorrect as the respondent No.1 has authoritatively stated that while the polling was in process, his polling agent objected to the casting of the votes by the persons whose names have been deleted in Ward No.10.

7. Learned counsel had taken this Court to the cross examination of D.W.2. Oma Ram and D.W.4 Ramrakh Solanki to show that they are also not aware of the fact that whether their names are reflected in the voter list Exh.14 or not and they are not aware of the fact that whether their names have been deleted from the Exh.13 from Sr. No.440-578.

8. Learned counsel submits that the respondent No.1 has cross-examined D.W.5 Purkha Ram, D.W.6 Bhagirath and D.W.7 Jagdish Choudhary, wherein suggestive question asked by the respondent No.1 was whether they have voted at two places or not and the reply given by the D.W. 5 to 7 was that



they have casted vote at one place only. Thus, the finding recorded by the learned trial court is erroneous.

9. In support of his submission, learned counsel for the petitioner relies upon the following judgments :-

1. I.Viksheshe Sema vs. Hokishe Sema, (1996) 4 SCC 53;

2. O. Bharathan vs. K. Sudhakaran & Anr., (1996) 2 SCC 704;

3. Municipal Committee, Bahadurgarh vs. Krishnan Behari & Ors, (1996) 2 SCC 714;

4. Ajay Kumar Parmar vs. State of Rajasthan, (2012) 12 SCC 406

5. Vijay vs. Union of India & Ors., 2023 (4) RLW 3528 (SC).

He, therefore, prayed that the order dated 07.12.2023 may be quashed and set aside.

10. *Per contra*, the learned counsel for the respondent No.1 vehemently opposed the submissions made by the learned counsel for the petitioner and submits that the learned Election Tribunal has taken note of each and every fact and after dealing the pleadings minutely and on careful examination of the evidence brought before it, has rightly recorded the finding on the issues framed by it on 22.09.2021. Learned counsel for the respondent No.1, after having taken this Court to the pleadings of the Election Petition and the reply of the respondents, vehemently submitted that it is a settled law that a person cannot cast his vote at two places, thus, it was conclusively proved before the learned Election Tribunal that the persons whose names were deleted from Ward No.10 and registered in Ward No.12, they had casted



their votes in Ward No.10 and also in Ward No.12, which is not permissible in law.

11. Learned counsel for the respondent No.1 vehemently argued that in view of the prayer made by the respondent No.1, the learned Election Tribunal called for the original record from the election authorities and while examining the same, it has reached to the conclusion that there were as many as 72 persons whose names were deleted from Ward No.10 and were added in Ward No.12 and on the basis of their signatures after examination by naked eye in Exh.7 & 8(मतदाता मूल रजिस्टर), it has rightly come to the conclusion that the persons whose names were deleted from Ward No.10 were the persons who had casted their votes in Ward No.12 also. Learned counsel for the respondent No.1 submitted that as per the reply filed by the petitioner-non-applicant and the official respondents, they denied the fact of votes having casted at two places despite the names of the voters were deleted from the Ward No.10. He submits that the reply itself is factually incorrect as the discussion and deliberation on Issue No.2 clearly shows that the learned Election Tribunal had examined the record and reached to the conclusion that the persons whose names were deleted from Ward No.10, had casted their votes in Ward No.10 as well as in Ward No.12. Learned counsel for the respondent submits that since there were ample evidence on record to show that 72 persons had voted at two places i.e. at Ward No.10 and Ward No.12 and,



therefore, there was no reason for the learned Election Tribunal to sustain the election of the petitioner.

12. Learned counsel for the respondent No.1 vehemently argued that as per the guidelines of the Election Commission, a person is not allowed to vote unless he carries a photo identification document with him and in the present case, it can safely be presumed that the persons whose names are deleted from Ward No.10 had voted in Ward No.10 as well as in Ward No.12 as the persons named at both the places were identified by their identification documents while they were allowed to cast their vote by the Election Officers and, therefore, they were the same person. He further submits that since the voters are required to carry their identification card and, therefore, it can safely be presumed that the persons whose names mentioned at Serial No.440-578 in Voter's Original Register were the same persons who had casted their votes and in that view of the matter, the persons at Serial No.440-578 have casted their votes at more than one place.

13. Learned counsel for the respondent submits that the learned Election Tribunal has conclusively proved by matching the signature of the persons from the Voter's Original Register Exh.7 & 8 and has conclusively proved and rightly come to the conclusion that the persons who have voted in Ward No.12 were the same persons who had casted their votes in Ward No.10 despite their names been deleted from Ward No.10.



14. Learned counsel repeatedly and vociferously submitted that since the same set of persons (72 persons) had casted their votes at two places, the election of the petitioner-non-applicant has rightly been declared null and void. He, therefore, prays that no interference is warranted in the order passed by the learned Election Tribunal on 07.12.2023.

15. Learned counsel for the respondent No.1 further submits that since the registers Exp.7 & 8 were the Public documents, therefore, the veracity of the same was not required to be proved before learned Election Tribunal. In support of his submissions, learned counsel for the respondent No.1 relied upon following judgments :-

- 1. A. Neelalohithadasan Nadar vs. George Mascrene & Ors, (1994) AIR (SCW) 2198;**
- 2. Sewaram vs. The District Judge, Jhunjhunu & Ors, (S.B. Civil Writ Petition No.2934/2027, decided on 25.08.1999, 386 WLC (Raj.) 2000 (2).**
- 3. Director, Central State Farm, Suratgarh vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.914/89), decided on 17.11.1999,**
- 4. Nenu Ram vs. Amara Ram, (S.B. Civil Writ Writ Petition No.13595 of 2015 decided on 13.04.2016), 2016 (3) CJ (Civ.) (Raj.) 1625**
- 5. N.Mani vs. Sangeeta Theatre, (2004) 12 SCC 278.**

16. Learned counsel for the respondent Nos.4 & 5 submitted that the election of Sarpanch, Gram Panchayat, Gangani was conducted fairly and the persons named from serial No.470 to 578 in the voter list of Ward No.10 had not voted twice.

17. I have considered the submissions made at the Bar and have gone through the relevant record of the case.



18. It will be relevant to reproduce the prayer of the election petition in the first instance which reads as under :-

“अतः चुनाव याचिका प्रस्तुत कर याचिकाकर्ता की माननीय न्यायालय से विनम्र प्रार्थना है –

- (अ) कि ग्राम पंचायत गंगाणी के सरपंच पद के चुनाव सम्बंधी वार्ड संख्या 10 व 12 के मतदाताओं की सूची, मतदाताओं के हस्ताक्षसुदा रजिस्टर (जो कि निर्वाचन अधिकारी के पावर एण्ड पजेशन में है) को तलब फरमाया जावे।
- (ब) कि याचिकाकर्ता की चुनाव याचिका को स्वीकार फरमाया जाकर ग्राम पंचायत गंगाणी पंचायत समिति बावड़ी जिला जोधपुर के सरपंच पद के चुनाव 2020 में प्रत्यर्थी संख्या-एक के निर्वाचन को निरस्त करने के आदेश प्रदान करावें तथा याची को ग्राम पंचायत गंगाणी के सरपंच पद हेतु प्रत्यर्थी संख्या-1 का निकटतम प्रतिद्वन्दी होने से निर्वाचित घोषित किये जाने के आदेश फरमावें।
- (स) कि अन्य कोई न्यायोचित आदेश, जो माननीय न्यायालय उपरोक्त तथ्यों व परिस्थितियों में याची के पक्ष में उचित समझें, पारित फरमावें।”

A bare perusal of the prayer made in the election petition clearly shows that the election-petitioner/respondent No.1 has prayed for declaring the election as null and void and to declare him as a returned candidate. It is important to note that there was no prayer in the election petition for declaration of the election itself as null and void on account of the fact that certain voters have casted their votes at more than one place. Therefore, the first argument of learned counsel for the respondent No.1 to declare the election of the Sarpanch of Gram Panchayat Gangani as null and void is noted to be rejected in view of the prayers made in the election petition

19. The learned Election Tribunal based on the pleadings of the parties framed following issues :-



“1. आया ग्राम पंचायत गांग्राणी के वार्ड संख्या-10 के क्रम संख्या 440 से 578 तक के मतदाताओं के नाम मतदाता सूची में से विलोपित किये जा कर उक्त सभी मतदाताओं के नाम वार्ड संख्या-12 के क्रम संख्या 246 से 384 तक में जोड़ा गया ?

प्रार्थी / -

2. आया अप्रार्थी संख्या-4 रिटर्निंग अधिकारी एवं उसके दल द्वारा अप्रार्थी संख्या-1 से मिलीभगत कर वार्ड संख्या-10 के क्रम संख्या 440 से 578 तक के विलापित मतदाताओ, जिनके नाम वार्ड संख्या-12 में दर्ज किये गये है, को वार्ड संख्या-10 में अनैतिक व भ्रष्ट तरीके से मतदान करने की स्वीकृति दे कर सहयोग किया गया?

प्रार्थी / -

3. आया चुनाव याचिका की विषय वस्तु एवं उसके साथ संलग्न दस्तावेजात आदेश 6 नियम 14 व 15 में वर्णित रीति से हस्ताक्षर करते हुए सत्यापन कर प्रस्तुत नहीं किये जाने से याचिका खारिज किये जाने योग्य है ?

अप्रार्थी सं.1 / -

4. अनुतोष? ”

20. Since the issue No.2 is only relevant in the present set of facts, therefore, learned counsel for the parties have addressed their arguments on issue No.2 only.

21. The issue No.2 clearly shows that the respondent No.4 - Returning Officer in connivance with petitioner by adopting corrupt practices, allowed the voters, whose names at Serial Nos.440 to 578 in Ward No.10 were deleted from Ward No.10 and added in Ward No.12, to vote in Ward No.10 as well as in Ward No.12. Learned Election Tribunal called for the original record of election and after examination of the same recorded a finding on issue No.2 in favour of the election-petitioner/respondent No.1 and held that the same persons whose names were deleted from Ward No.10 had casted their



votes at two places and, therefore, their votes were declared null and void.

22. It will be appropriate to reproduce the relevant finding recorded by learned Election Tribunal while dealing with Issue No.2 for declaring the votes of those persons who had casted their votes at two places as null and void.



“23— दौराने बहस अप्रार्थी सं. 01 के विद्वान अधिवक्ता ने जाहिर किया कि प्रार्थी ने वार्ड सं. 10 व वार्ड सं. 12 में मतदाताओं द्वारा डबल मतदान करने का आक्षेप लगाया है, परन्तु इस संबंध में मतदान रजिस्टर प्रदर्श-07 व प्रदर्श-08 जो निर्वाचन विभाग की ओर से प्रस्तुत किये गये हैं, उसमें मतदाताओं के हस्ताक्षरों का एफएसएल भी नहीं करवाया गया है और ना ही मिलान किया गया है। ऐसी स्थिति में यह नहीं माना जा सकता है कि उसी मतदाता द्वारा वार्ड सं. 10 व वार्ड सं. 12 में मतदान किया गया। इस संबंध में मूल मतदाता रजिस्टर प्रदर्श-07 व प्रदर्श-08 पत्रावली पर उपलब्ध है जो निर्वाचन विभाग की ओर से प्रस्तुत किया गया है। दोनो ही मूल रजिस्टर का अवलोकन करने हेतु भारतीय साक्ष्य अधिनियम 1872 की धारा 73 के तहत न्यायालय सक्षम है, जिनका नग्न आंखों से देखने पर व अवलोकन करने पर यह भी प्रकट है कि सारिणी में वर्णित मतदाता रामदीन, पुरखाराम, तिलोकसिंह, भागीरथ, मानाराम, जगदीश, रिन्कू धोलिया, ओमाराम, अशोक, कैलाश, रामपाल, कौशल्या ने वार्ड सं. 10 व वार्ड सं. 12 में मतदान करते हुए मतदान के दौरान वार्ड सं. 10 के मतदाता रजिस्टर प्रदर्श-8 के क्रम सं. क्रमशः 507, 553, 662, 317, 410,303, 611, 674, 693, 707, 663, 704 पर वार्ड सं. 12 के मतदाता रजिस्टर प्रदर्श-07 के क्रम सं. क्रमशः 499, 168, 646, 257, 402, 259, 514, 389, 347, 297, 585, 309 पर क्रमशः अपने-अपने एक ही प्रकार के हस्ताक्षर किये है। चूंकि धारा 18 (ग) खण्ड 3 राजस्थान पंचायती राज अधिनियम के तहत कोई भी व्यक्ति किसी, भी निर्वाचन में एक से अधिक वार्ड या निर्वाचन क्षेत्र में मत नहीं देगा और यदि कोई व्यक्ति एक से अधिक वार्ड या निर्वाचन क्षेत्र में मत देता है तो ऐसी सभी वार्ड निर्वाचन क्षेत्र में कि उसके मत शून्य समझे जायेंगे।

24— दौराने बहस प्रार्थी के विद्वान अधिवक्ता का तर्क रहा कि मतदान के दौरान वार्ड सं. 10 के लगभग 15 मतदाताओं ने दोहरे मतदान का प्रयोग किया अर्थात् एक ही मतदाता ने उसी वार्ड में 02 बार मतदान का प्रयोग किया। ऐसी स्थिति में उसका वार्ड सं. 10 में किया गया मतदान शून्य है, जो कि मानने योग्य नहीं है। जिस पर बहस के दौरान अप्रार्थी सं. 1 के विद्वान अधिवक्ता का विरोध रहा कि चूंकि प्रार्थी ने उक्त तथ्य अपनी याचिका में अंकित नहीं किये हैं, ऐसी स्थिति में प्रार्थी प्लीडिंग्स से वाहर नहीं जा सकता। अतः इस तर्क को



नहीं माना जा सकता। चूंकि प्रार्थी ने ग्राम पंचायत गंगाणी के दिनांक 28.09.2020 को हुए चुनाव के पश्चात् यह याचिका प्रस्तुत की है और उक्त दोहरे मतदान के संबंध में चुनाव की प्रक्रिया से पूर्व या तत्काल चुनाव दिनांक 28.09.2020 को ही प्रार्थी को उक्त दोहरे मतदान का पता चल जाये, यह संभव नहीं है। इस संबंध में निर्वाचन विभाग की ओर से प्रस्तुत हुई वार्ड सं. 10 की मतदाता चिन्हित मूल प्रति प्रदर्श-14 के रूप में पत्रावली पर उपलब्ध है, जिसमें क्रम सं. 6 पर सरिता पत्नी राजू धोलिया, क्रम सं. 100 पर रामनिवास पुत्र शेराराम, क्रम सं. 101 पर बेबी पत्नी रामनिवास क्रम सं. 103 पर कानाराम पुत्र रामूराम, क्रम सं. 120 पर श्रवण पुत्र कानाराम, क्रम सं. 124 पर पानी पत्नी चन्द्राराम, क्रम सं. 147 पर चेलाराम पुत्र पुसाराम, क्रम सं. 231 पर जगदीश पुत्र चैनाराम, क्रम सं. 239 पर मोहनराम पुत्र मंगलाराम, क्रम सं. 262 पर बाया पत्नी गुमनाराम, क्रम सं. 383 पर ओमाराम पुत्र चोथाराम व क्रम सं. 399 पर बिबकी पत्नी प्रकाश का नाम अंकित किया हुआ है और वार्ड सं. 10 में हुए मतदान का मतदाता मूल रजिस्टर प्रदर्श-8, जो कि निर्वाचन विभाग की ओर से न्यायालय में प्रस्तुत हुआ है जो भी पत्रावली पर उपलब्ध है। जिसके अवलोकन से प्रकट है कि वार्ड सं. 10 में सरिता पत्नी राजू धोलिया ने क्रम सं. 616 व 632 पर, रामनिवास पुत्र शेराराम ने क्रम सं. 230 व 743 पर, बेबी पत्नी रामनिवास ने क्रम सं. 256 व 354 पर, कानाराम पुत्र रामूराम ने क्रम सं. 316 व 740 पर, श्रवण पुत्र कानाराम ने क्रम सं. 192 व 654 पर, पानी पत्नी चन्द्राराम ने क्रम सं. 287 व 573 पर, चेलाराम पुत्र पुसाराम ने क्रम सं. 105 व 123 पर, जगदीश पुत्र चैनाराम ने क्रम सं. 72 व 257 पर, मोहनराम पुत्र मंगलाराम ने क्रम सं. 65 व 361 पर, बाया पत्नी गुमनाराम ने क्रम सं. 80 व 621 पर, आमाराम पुत्र चोथाराम ने क्रम सं. 109 व 383 पर व बिबकी पत्नी प्रकाश ने क्रम सं. 47 व 623 पर दो-दो बार मतदान किया है। साथ ही वार्ड सं. 12 में मतदाता सूची के अनुसार दिलीप पुत्र रूपाराम चुकी पत्नी सूजाराम ने मूल मतदाता रजिस्टर प्रदर्श-07 के अनुसार क्रमशः क्रम सं. 134 व 360 पर, एवं क्रम सं. 136 व 171 पर दो-दो बार मतदान किया है। चूंकि इस संबंध में राजस्थान पंचायती राज अधिनियम 1994 की धारा 18 (ग) खण्ड (4) में विहित किया गया है कि कोई भी व्यक्ति किसी भी निर्वाचन में इस बात के होने पर भी कि उसका नाम एक ही वार्ड या निर्वाचन क्षेत्र की निर्वाचन नामावली में एक से अधिक बार रजिस्ट्रीकृत कर दिया गया है, उसी वार्ड या निर्वाचन क्षेत्र में एक से अधिक बार मत नहीं देगा और यदि वह एक से अधिक वार्ड या निर्वाचन क्षेत्र में मत देता है तो ऐसे सभी वार्ड व निर्वाचन क्षेत्र में दिये गये उसके मत शून्य समझे जायेंगे। अर्थात् उक्त उपबंधों के अनुसार उस वार्ड या निर्वाचक नामावली में व्यक्ति एक ही बार मत दे सकता है, यदि उसने उसी वार्ड/ निर्वाचन नामावली में एक से अधिक बार मत कर दिया है तो उसके सभी मत शून्य समझे जावेंगे।”

23. For arriving at the finding recorded above, learned Election Tribunal had examined the original election registers



(मतदाता मूल रजिस्टर) and compared the signatures of those persons whose names mentioned at Sr. No.440 to 578 in Ward No.10 and the same were also reflected in the Ward No.12 and had come to the conclusion that by bare perusal of naked eyes, the signatures of those persons are identical and similar and, therefore, a finding was recorded that they were the same persons who had cast their votes in Ward No.10 and Ward No.12 as well. Learned Election Tribunal had not taken recourse to Section 73 of the Indian Evidence Act, 1982 (hereinafter referred to as the 'Act of 1972') before recording the findings in the present case that the signatures of the persons mentioned therein were the same persons who had cast their votes in Ward No.10 and Ward No.12. Section 73 of the Act of 1972 very clearly postulates that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in the Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. Therefore, in the humble opinion of this Court, merely by comparing the signatures by naked eye from the मतदाता मूल रजिस्टर - Ex.P.7 and Ex.P.8, the



Court could not have come to the conclusion that the persons whose names were deleted from Ward No.10 were the same persons who casted their votes at Ward Nos.10 and Ward No.12.

24. The argument of learned counsel for the respondent No.1 that the persons who were named in Ex.P.7 and Ex.P.8 were presumably the same persons as a person who is going for casting the vote, had to carry an identification card and was allowed to cast the vote only if he had showed the Identity Card and since in the present case, it can be presumed that the persons who were named in both the Ex.P.7 and Ex.P.8 were the persons whose names have been deleted from Ward No.10 were carrying their identification card and, therefore, they were the same persons, is noted to be rejected only on the ground that no question was asked to DW.5 Purkha Ram, DW.6 Bhagirath and DW.7 Jagdish in their cross-examination with respect to the signatures made in Ex.P.7 and Ex.P.8, more particularly when all the three persons had denied the fact that they have casted their votes at one place and not two places. This point/issue with respect to the Identification Card carried by the voters was neither pleaded in the Election Petition nor raised before the Election Tribunal, therefore, the same was not discussed and deliberated by the Election Tribunal. Therefore, merely the presumption of the respondent No.1 raised before this Court has no force.



25. The next argument of the respondent No.1 with respect to the presumption of the official documents is of no help as nobody had disputed the veracity or legality of Ex.7 and Ex.8 but the signatures made in Ex.P.7 and Ex.P.8 were required to be proved beyond doubt that the persons named therein have only penned those signatures to show that the same person had casted his/her vote at two places. Since the signatures were only examined by learned Election Tribunal by naked eye without taking recourse provided under the law to establish the fact that those persons whose names have been deleted from Ward No.10 had only penned those signatures while casting their votes at Ward No.10 and Ward No.12. The said fact was required to be proved and in the opinion of this Court, the same was not done.

26. The argument of learned counsel for the respondent No.1 that D.W.2 Oma Ram, DW.4 Ramrakh Solanki and DW.5 Purkha Ram in their cross-examination gave a satisfactory answer with respect to their photographs in the voter list – Ex.14 and Ex.15. The submission of learned counsel for the respondent No.1 has no bearing in the case as in the voter list if the name and photograph of a person at two places as mentioned will be of no consequence unless it is positively shown and proved by the cogent material that those persons whose names were reflected in the voter list had actually casted their votes at two places. Needless to say that voter list Ex.14 and Ex.15 is totally different from Ex.7 and Ex.8 (मतदाता



मूल रजिस्टर) which are the relevant documents for the present controversy.

27. The Hon'ble Supreme Court in the case of **Vijay vs. Union of India & Ors, 2023(4) RLW 3528 (SC)** has held that :-

"33. After perusing various judgments of this Court, we can deduce the following principles relevant for examining the admissibility of secondary evidence:

33.1 Law requires the best evidence to be given first, that is, primary evidence(See *Neeraj Dutta vs. State (NCT of Delhi (5-Judges Bench) (2023) 4 SCC 731; Yashoda vs. K. Shobha Rani (2-Judge Bench) (2007) 5 SCC 730*).

33.2 [Section 63](#) of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence (See *Yashoda (supra)*).

33.3 If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given (See *Yashoda (supra)*).

33.4 A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party (See *M. Chandra vs. M. Thangamutha (2-Judges Bench) (2010) 9 SCC 712*).

33.5 When the non-availability of a document is sufficiently and properly explained, then the secondary evidence can be allowed (See *Neeraj Dutta (supra)*).



33.6 *Secondary evidence could be given when the party cannot produce the original document for any reason not arising from his default or neglect (See Surendra Krishna Roy vs. Muhammad Syed Ali Matwali Mirza 1935 SCC OnLine PC 56).*

33.7 *When the copies are produced in the absence of the original document, they become good secondary evidence. Still, there must be foundational evidence that the alleged copy is a true copy of the original. (See H. Siddiqui v. A. Ramalingam, (2-Judge Bench) (2011) 4 SCC 240).*

33.8 *Before producing secondary evidence of the contents of a document, the non-production of the original must be accounted for in a manner that can bring it within one or other of the cases provided for in the section. (See H. Siddiqui v. A. Ramalingam, (2-Judge Bench) (2011) 4 SCC 240).*

33.9 *Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents.²³ It has to be proved in accordance with the law (See H.Siddiqui (supra))."*

28. Mere production and marking of a document as an exhibit by the Court cannot be held to be due proof of its contents as it has to be proved in accordance with law. In the present case, since the documents which were brought on record were not proved as per the mandate of Hon'ble Supreme Court, therefore, mere production of the same was not sufficient and could not be taken to have been proved by itself.

29. The Hon'ble Supreme Court in the case of **O. Bharathan vs. K. Sudhakaran & Anr. (1996) 2 Supreme Court Cases 704** has held as under :-





“12. It appears that the learned Judge has decided the question of void and invalid votes on insufficient materials and evidence in the case. Majority of the witnesses denied that they have voted more than once and they have also denied their signatures in the counterfoils. Under such circumstances, the learned judge could have summoned documents containing admitted signatures for comparison by an expert and also by comparing them himself. Instead the learned judge understood the hazardous task of comparing hundreds of disputed signatures which are not having individual characteristics to set aside the election of a candidate, the appellant herein.

13. The learned Judge in the course of the judgment has observed as follows :

"Most of the witnesses either denied their signatures or expressed their inability to identify their signatures. In the case of some well-educated persons when counterfoils containing the signature were shown to them, they stated that they could not identify the signatures. Every reasonable prudent person would be able to identify his signature whenever the signature is shown to him."

14. Notwithstanding the above fact, namely, the learned Judge while doubting the testimony of the witnesses, instead of confronting them in a legal way to get the truth, jumped to his own conclusion. The learned judge in the course of appreciating the scope of [Section 73](#) of the Evidence Act and having given a finding that under [Section 73](#) of the Evidence Act a disputed signature could be compared only with the admitted signatures, proceeded to compare the signatures found in the counterfoils to find out whether both the signatures were to be by the same person.

15. On the peculiar facts of this case, the learned Judge erred in taking upon himself the task of





comparing the disputed signatures on the counterfoils without the aid of an expert or the evidence of persons conversant with the disputed signatures. Therefore, the approach made by the learned judge is not in conformity with the spirit of [Section 73](#) of the Evidence Act. Though the rulings of this Court in [State \(Delhi Admn.\) vs. Pali Ram](#) and [Fakhruddin vs. State of Madhya Pradesh](#) were brought to his notice, the learned judge proceeded to compare the disputed signatures by himself and decided the issue. While doing so, the learned judge observed as follows :

"So all these witnesses are in the habit of occasionally putting their signature. Strangely enough most of the witnesses either denied their signature or expressed their inability to identify their signature. Even in the case of some well-educated persons when counterfoils containing the signatures were shown to them, they stated that they could not identify the signatures. Every reasonable, prudent person would be able to identify his signature whenever the signature is shown to him. It is clear that these witnesses denied their signatures or failed to identify the signature with a definite purpose that at least one signature should not be taken as the admitted signature so as to make a comparison with the denied signature. It is also possible that the witnesses who had cast more than one vote pretended that they could not identify any of the signatures to make believe that they had not cast more than one vote. The denial of the signatures and the failure of these witnesses to identify their own signatures is to be viewed in the background of similarity of the signatures found in the various counterfoils."

18. The learned Judge in our view was not right either in brushing aside the principles laid down by this Court in [Pali Ram](#) on the ground that it was not a criminal case or taking upon himself the hazardous task of adjudicating upon the genuineness and





authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered. To quote it has been held in Pali Ram (SCC p.168, Para 30);

"The matter can be viewed from another angle also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identify of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other: and the prudent course is to obtain the opinion and assistance of an expert."

19. *The necessity for adhering to the said sound advise and guidance is all the more necessary in a case where hundreds of signatures are disputed and the striking dissimilarities noticed by the Court at the time of trial of the Election Petition.*

20 *The learned counsel appearing for the first respondent was not able to convince us that the learned Judge was right in comparing the signatures himself at any rate in the peculiar facts and*





circumstances of the case and rendering the findings against the appellant herein. As we are satisfied on the peculiar facts of this case also that the learned Judge was not right in deciding hundreds of the disputed signatures by comparing the counterfoils by himself to declare the votes as void, we need not go into other arguments advanced before us.

21. *As we find that at least 130 votes are validly polled in favour of the appellant for the reasons given earlier then he must be held to have secured 43 votes more than the first respondent herein.*

22. *In the result, we hold that the learned Judge was not right in declaring the election of the appellant as void and declaring the first respondent as duly elected. Accordingly, the appeal is allowed and the Election petition is dismissed with costs throughout”.*

Interestingly, the judgment relied upon by learned counsel for the respondent No.1 in the case of **A. Neelalohithadasan Nadar vs. George Mascrene & ors. (1994) AIR (SCW) 2198** supports the petitioner as it clearly postulates the manner in which Section 73 of the Evidence Act is required to be applied while comparing the signatures :-

15. *In the matter of correlation and employment of [Section 73](#) of the Evidence Act, the High Court took support from a decision of this Court in *Fakhruddin v. State of Madhya Pradesh*, AIR 1967 SC 1326, the High Court justified its step of comparison in paragraph 13 of the judgment under appeal as follows:*

“Learned counsel representing the first respondent raised a contention that this Court should not take the part of an expert in handwriting to compare the signatures of witnesses to find out whether they were signatures of the same person. According to counsel, the disputed signatures should be sent to experts for their opinion. In the alternative it is contended that petitioner should examine persons familiar





with the signature of the witnesses to establish the identity of signatures. Handwriting may be proved on admission of the writer or by the evidence of some witness in whose presence it was written. This is direct evidence. In the absence of such direct evidence, opinion of handwriting expert or of some who is familiar with the writing of the person is relevant. Thus besides direct evidence which of course is the best method of proof, the law makes two other modes also as relevant, i.e., a writing may be proved to be the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to compare the handwritings on a scientific basis. A third method is also provided by the [Evidence Act in Section 73](#). It is comparison by the court with the writing made in the presence of the court or admitted or proved to be the writing of the person. The Court can apply its own observation to the admitted or proved writings and to compare them with the disputed one. This comparison depends on an analysis of the characteristics in the admitted or proved writings and of the same characteristics in large measure in the disputed writing. Even if there is the opinion of the expert on the handwriting, it is subjected to the scrutiny by court. The expert's opinion is not the final word. The court must see for itself whether it can safely be held that the two writings are of the same person. To this extent, court may play the role of an expert. The court can accept the disputed signature to be that of the witness when it is satisfied on its observation that it is safe to accept the same. In this view, I do not think it necessary to have the admitted signature of the witness to be compared with the signature in the disputed counterfoils of the ballot paper by any expert. This Court can scrutinise the characteristics of the signatures. If it finds that the disputed signature has the same characteristics in large measure with the admitted signature, it can safely come to the conclusion that both are of the same person.

The High Court finally recorded its satisfaction or otherwise in the case of signatures resulting in double voting and impersonation, and signatures and thumb impression not tallying at all. No meaningful argument on facts in regard thereto was addressed before us except to the approach of employing [Section 73](#) of the Evidence Act. It was urged that the





High Court should not have become an expert. We, however, are of the view that when larger public interest is served by expeditious disposal of an election petition, then the course adopted by the High Court, as suggested from the afore-extraction, is in conformity therewith. Although courts should be slow in resorting to this method, we do not find it faulted, more so when the courts resort to exercise of such power is approved in two other cases of this Court in [State \(Delhi Administration\) v. Pali Ram](#), and 1980 CrilJ 396 (SC). As a sequitur the finding recorded by the High Court on Issue No.1 is perfectly sound”.

30. The other judgments relied upon by learned counsel for the respondent No.1 are not applicable in the facts & circumstances of the present case. Thus, this Court is not inclined to elaborately deal with them.

31. Looked at from another angle, although there is no impediment or legal bar for the Election Tribunal to examine the signatures with naked eyes, however, the disputed signatures were required to be compared with the admitted signatures of those persons even without aid of any handwriting expert. But in the present case, the learned Election Tribunal, without adhering to the procedure enshrined in Section 73 of the Indian Evidence Act and the judgments of the Hon'ble Supreme Court, has simply compared the signatures of those persons named in Voters Original Register in Ex.7 and Ex.8 and formed its opinion. The sole comparison so made by the Judge himself was not the correct approach. Therefore, the Presiding Officer of the Election Tribunal was not correct in taking upon himself the task of comparison of the two signatures in Ex.7 and Ex.8 without comparing the same with the admitted signatures of those persons and



without taking the assistance of a handwriting expert in the matter. Therefore, the Election Tribunal committed an error while recording the finding on issue No.2.

32. In the light of the judgments of the Hon'ble Supreme Court, the finding recorded by learned Election Tribunal for reaching the conclusion on issue No.2 is merely the comparison of the signatures in Ex.7 and Ex.8 of those persons named in the order by naked eyes without taking the recourse available under Section 73 of the Evidence Act. The persons who made those signatures were neither confronted nor their admitted signatures were compared with the signatures which are in dispute and, therefore, arriving at such conclusion that these signatures have been made by those persons whose names have been deleted from Ward No.10 in the opinion of this Court, is not just, proper and correct.

33. In view of the discussions made above, the present writ petition merits acceptance. Accordingly, the same is allowed. The order of the Election Tribunal dated 07.12.2023 is quashed and set aside. The Election Petition is dismissed.

34. The stay application and other pending applications, if any, also stand disposed of.

(VINIT KUMAR MATHUR),J

275-Dr.Anil Arora/SanjayS/VivekM/