

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3681/2019

Nagpur Shahar (Zilla) Congress Committee and anr

..VS..

The Collector & Returning Officer, Collectorate Compound, Nagpur Mah.,
and anr

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri R.S.Akbani, Counsel for the Petitioners.
Ms N.P.Mehta, Assistant Government Pleader for the State.
Shri J.B.Kasat, Counsel for Respondent No.3.
Shri Narayan Fadnis, Counsel for Respondent No.3.

CORAM : SMT.PUSHPA V.GANEDIWALA, J.

DATED : MAY 23, 2019.

1. Just a day ahead of counting of votes for Election from Nagpur Lok Sabha Constituency No.10, Nagpur District, Maharashtra, the present petition is filed seeking following reliefs:

(i) pass a writ of mandamus or any other appropriate direction to the Respondent No.1 to provide and allow candidate or his agent on the table of Assistant Returning Officers during the counting of votes to be held on 23.5.2019 in respect of Election for Nagpur Lok Sabha Constituency No.10, District Nagpur, Maharashtra held on 11.4.2019;

.....2/-

(ii) pass writ of mandamus or any such interim relief directing the respondent No.1 to allow petitioner or his agent on the table of Assistant Returning Officers during the counting of votes to be held on 23.5.2019 in respect of Election for Nagpur Lok Sabha Constituency No.10, District Nagpur, Maharashtra held on 11.4.2019;

(iii) pass writ of mandamus or any other appropriate direction to the respondent No.1 to follow the rules and guidelines issued under Election Manual and Handbook for Returning Officers.

2. Petitioner No.1 is the Nagpur Shahar (Zilla) Congress Committee, Nagpur and petitioner No.2 is a Member of petitioner No.1 who contested the election from Nagpur Lok Sabha Constituency No.10, Nagpur District, Maharashtra, for which the voting was done on 11.4.2019. The counting of the votes is scheduled to be held on 23.5.2019.

3. It is stated that petitioner No.2 is called upon to submit names of counting agents. Petitioner No.2 learnt that Returning Officer (RO)/respondent No.1 has not allowed counting agent at Assistant Returning Officers' (ARO) tables.

4. It is grievance of the petitioners that RO is not

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allowing presence of counting agents on the tables of 6 AROs.

5. On the contrary, learned Assistant Government Pleader appearing on behalf of the State states that role of ARO is only to supervise counting process and to fill up Part-I of Form No.20 (Result Sheet), after completion of counting of votes, to be submitted to the RO to prepare Part-II of the said Form-20.

6. Learned counsel appearing for the respective parties have brought to notice of this Court relevant Rules in the “Hand Book for Returning Officer” (hereinafter referred to as, “the Manual”) issued by the Election Commission of India in February 2019 for the purpose to decide the present petition.

7. I have considered submissions made on behalf of both the parties. Perused the record and the relevant Rules in the Manual.

8. At the outset, as per the aforesaid Manual, RO has pivotal role in election management. He is responsible for overseeing the election in the Constituency. While, ARO can perform function subject to overall control of RO.

9. As per Sections 21 and 22 of the Representation of the People Act, 1951, the Election Commission of India appoints Returning Officers and Assistant Returning Officers for a Constituency, in consultation with the State Governments and Union Territories, as the case may be.

10. As per communication dated 19.5.2019 issued by RO-respondent No.1 herein, it is informed that there

would be 20 counting tables for each Constituency and 3 tables in the chamber of RO for counting of postal ballots and, therefore, candidates would be allowed the presence of their counting agents which shall not exceed 124.

11. The petitioners state that for fair counting process, the counting agents of petitioner No.2 shall be allowed on the tables for AROs too.

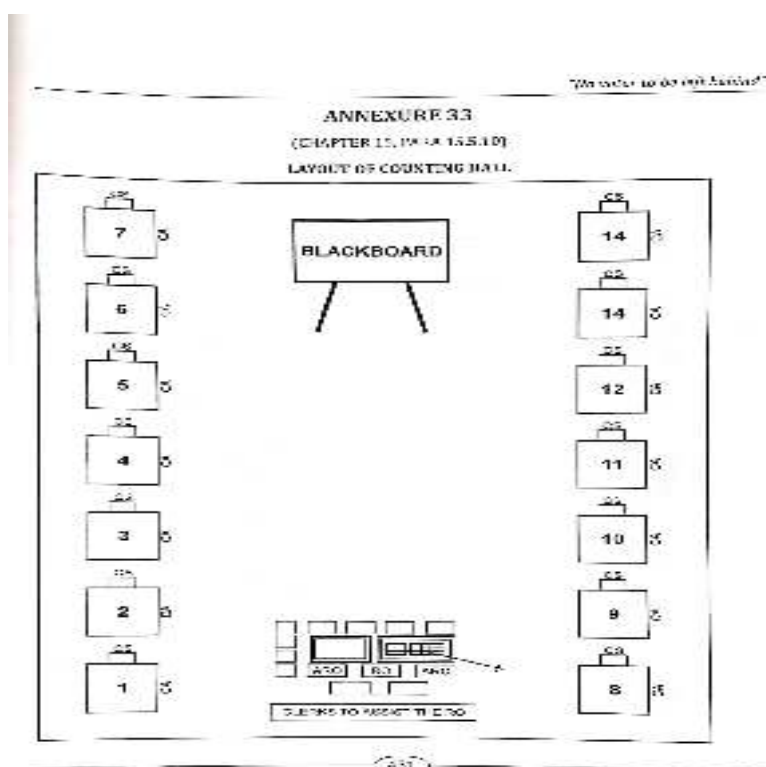
12. On perusal of the relevant Rules in the Manual, it does not say anything about separate and independent tables for AROs for the purposes of counting.

13. Rule 15.5.5 provides that RO's table shall be in the counting hall itself. It should be a separate table with demarcated area and candidates and their election agents will also be seated at this table and watch the counting proceedings.

14. Rule 15.5.7 provides that tables and computers on which the computation of data from each table at the conclusion of a round shall be done shall be in the counting hall alongside the RO's table where the candidate/agent will also be seated. It further provides that in case the table is a separate one from RO's table then one additional counting agent besides a micro-observer shall be allowed to sit at that table and area of table aforesaid shall be clearly demarcated from the rest of the area where counting tables etc. are kept.

15. Rule 15.5.1 provides that maximum limit of the counting tables shall be 14 plus RO's table, under any circumstance, in a counting hall. However, upper limit of 14 counting tables can be increased only with prior approval of

the Commission. Rule 15.5.10 provides a layout of a model counting hall which is at Annexure-33 in the Manual. The same is reproduced herein below for ready reference.



As per this layout, there are no separate and independent tables for AROs. The AROs' tables are along side the RO's table. As per the said Manual, the duty of AROs is to supervise the counting process and to prepare Part-I of Form-20 (Result Sheets) on the basis of computation and compilation of data from each table at the conclusion of a round.

16. As stated earlier, as per Rule 15.5.7, the table and the computer on which the computation and compilation of data from each table at the conclusion of a

round shall be done shall be in the counting hall alongside the ROs table where the candidate or his agent will also be seated and in case, the table is separate one from RO's table then one additional counting agent shall be allowed to seat.

17. Learned Assistant Government Pleader on behalf of the State conceded that they are scrupulously following all the Rules of the Manual for the purposes of counting of the votes.

18. Learned counsel for the petitioners could not show to this Court any Rule which provides an independent and separate table for AROs for the purpose of counting of votes. However, as per Rule 15.4.11, in the case of election from a Parliamentary Constituency, the counting of votes may have to be done at different places for the various assembly segments comprised within that Parliamentary Constituency, such counting may be done under the supervision of AROs, as they are also legally competent to take up counting.

19. In the instant case, undisputedly, the counting of votes would not be done at different places. The function of the AROs is to supervise the counting process under the directions and control of RO and prepare Part-I of Form-20 (Result Sheets) by sitting on the table along side the RO's table after completion of counting of votes on the basis of compilation of data from each table at the conclusion of a round. The presence of candidate or his agent is already allowed as per Rule 15.5.7. Part-II of Form-20 will be completed by the RO by consolidating the Result Sheets of

all the assembly segments. The RO will also record the result of voting of postal ballot papers in Part-II of the said Form-20. Learned counsel for the petitioners could not justify the reliefs sought in this petition vis-a-vis the Rules in the Manual. Learned Assistant Government Pleader on behalf of the State has already conceded that the Returning Officer is following the Rules scrupulously. In the above conspectus, there is no substance in the petition. Therefore, there is no need of any direction.

20. Moreover, on perusal of the Rules in the Manual especially Chapter 15 which is relating to counting of votes, each and every provision is made minutely with the sole object that the counting of votes is one of the most important stages of the election process.

21. Since I do not find any merit in the petition, the writ petition is dismissed and disposed of accordingly.

JUDGE

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