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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P.(C) 9615/2022, CM APPL. 28691/2022 and CM APPL. 31629/2022**

Between: -

SH. BIJENDER SINGH
S/ O SH. RAMPHAL GROUP YARD (CAMP & YARD GROUP)
CONSTITUENCY NO.4, ORDNANCE DEPOT
SHAKURPUR BASTI, DELHI-110056.PETITIONER

*(Through: Mr. Mukesh M. Goel and Mr. Dharmender Kumar,
Advocates.)*

AND

UNION OF INDIA,
MINISTRY OF DEFENCE
THROUGH DEFENCE SECRETARY
ORDNANCE DEPOT, SHAKUR BASTI
DELHI-110056RESPONDENT NO.1

OFFICIATING COMMANDANT
ORDNANCE DEPOT, SHAKUR BASTI
DELHI-110056RESPONDENT NO.2

CHIEF ELECTION OFFICE/RETURNING OFFICER
ADMINISTRATIVE OFFICER
ORDNANCE DEPOT, SHAKUR BASTI
DELHI-110056.

MOB:6263665340

.....RESPONDENT NO.3

BALJEET YADAV
S/ O SH. HARL SINGH YADAV
GROUP YARD (CAMP & YARD GROUP)
CONSTITUENCY NO.4, ORDNANCE DEPOT
SHAKURPUR BASTI, DELHI-110056.
MOB:7011620456.

.....RESPONDENT NO.4

(Through: Ms. Pratima N. Lakra, CGSC with Mr. Chandan Prajapati, Ms. Vanya Bajaj, Advocates and Mr. Aditya, LDC for R-1 to 3 along with Major Partho Katyayan. Mr. Rajat Aneja and Ms. Aditi Shastri, Advocates for R-4.)

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Pronounced on: 06.04.2023

J U D G M E N T

1. The petitioner in the instant petition under Article 226 of the Constitution of India seeks for quashing of the letter dated 03.06.2022, issued by respondent No.3-Chief Election Office/ Returning Officer (RO), whereby, the RO declared respondent No.4-Baljeet Yadav as an elected member of the works committee with respect to Constituency No.4 of Ordnance Depot, Shakurpur Basti, Delhi-110056. The petitioner is also challenging the letters dated 06.06.2022 and 11.06.2022 passed by respondent No.2 dismissing the objections raised by the petitioner to the election result.

2. The facts of the case relevant for the adjudication of the controversy involved herein are that the petitioner is an employee of the Ordnance Depot, Shakurpur Basti, Delhi-110056. The Ordnance

Depot falls within the definition of an 'establishment' under the **Industrial Disputes Act, 1947** (hereinafter referred to as 'the Act'). As per Section 3 of the Act, works committees are to be constituted in all establishments where 100 or more workmen are employed or have been employed on any date in the preceding 12 months. For the purpose of conducting elections, rules have been framed known as the **Industrial (Central) Rules, 1947** (hereinafter referred to as 'the Rules'). Part VII of the Rules deals with the constitution of the works committee. On 05.05.2022, respondent No.2 had issued the order announcing the schedule for the election of works committee, which was to be conducted on 02.06.2022. Respondent No.3 was appointed as the RO for overseeing the election process.

3. On 25.05.2022, respondent No.3 issued the criteria directions/instructions for the candidates, their agents and the voters. On 02.06.2022, voting took place and 87 members casted their votes. After the counting was over, on 03.06.2022, respondent No.3 announced the result declaring respondent No.4 as the elected candidate. On the same day, the petitioner raised an objection/appeal to the Appellate Authority i.e. respondent No.2-Officiating Commandant, who *vide* order dated 06.06.2022 rejected the same. The petitioner again filed objections by way of review, it also suffered the same fate and was rejected. Accordingly, the petitioner has approached this court in the instant petition.

4. The learned counsel appearing on behalf of the petitioner states that the elections are to be conducted strictly in accordance with the applicable guidelines. According to him, Clause 8(d) of the instructions dated 25.05.2022 leaves no iota of doubt that no discretion in favour of any of the candidates, can be exercised by the RO. In case, the procedure prescribed therein is violated, election stands

vitiated. He explains that the voter cannot put any kind of mark of identification or attach anything along with the ballot paper as otherwise such a marking or attachment on or along with the ballot paper will make the vote invalid, before counting of votes. He states that in the instant case, if the mark for the purpose of casting vote, in question, is seen, the same would indicate that it is not permissible and an altogether different mark has been used for casting of the votes than the mark which was prescribed by the RO. He has indicated both the marks in his list of dates to explain that they do not even remotely resemble each other. He, therefore, states that the entire election procedure is vitiated on account of counting of 4 such votes in favour of respondent No.4, which ought to have been rejected. He states that there were 42 clear votes which the petitioner had undisputedly obtained and 38 votes were clear in favour of respondent No.4. However, on account of the counting of 4 disputed votes, the votes obtained by both the candidates were the same.

5. Learned counsel for the petitioner further states that in case of a tie, the respondents were to draw lots in the presence of the RO and the concerned candidates, for deciding the winning candidate. He submits that in the present case, tossing of a coin was done instead of a draw of lots, which is in violation of Clause 5(j) of the instructions dated 25.05.2022.

6. The learned counsel further states that the sanctity of the election process is vitiated on account of firstly, not following Clause 8(d) and secondly, ignoring Clause 5(j) of the instructions dated 25.05.2022. According to him, the uniformity in marking of the votes in the election process is the primary responsibility of the RO and irrespective of the fact that the concerned candidates agree to any of the alternative modes, the RO is under an obligation to follow the rule

position. The RO is left with no discretion to take a different view or to dilute what is stipulated under the applicable guidelines. He, therefore, states that the pictorials which have been shown by the respondents in their counter-affidavit would not be the reason to consider the votes which have been cast by a wholly different sign. He explains that in the pictorial, it is shown that if the concerned mark is used against the same candidate more than once or it is used in a manner where it crosses the bracket; in that case, the intent of the voter will have to be adjudged but that pictorial does not deal with the present scenario. He, therefore, states that the aforesaid aspects have not been considered correctly by the Appellate Committee and, therefore, he prays for setting aside the result of the election and all subsequent decisions taken by the Appellate Authority.

7. The learned counsel appearing on behalf of respondent Nos.1 to 3 opposes the submissions and she explains that firstly, there is no particular way to cast the vote. She states that the rules do not prescribe any sign and secondly, even before counting, it was decided that any mark affixed horizontally, vertically or diagonally would be considered to be a valid vote. Since the petitioner did not raise any objection either at the time of counting or immediately thereafter, he cannot be allowed to raise objection after declaration of the result. She states that even the result sheet was signed by the petitioner without any objection. According to her, a few of the votes cast in the same manner were also counted in favour of the petitioner and once the petitioner agreed for counting of such votes, he, at a later stage, cannot be allowed to have any grievance in that respect. She also states that in terms of the directions given by this court, all ballot papers which are rejected and accepted have been brought in original for the perusal of this court. The seal which was used for the purpose of casting the vote

has also been brought before this court. She explains that the same stamp has been used in the disputed ballots; the only discrepancy being that instead of being used vertically, the same has been used horizontally. She states that the sign would only appear when the mark is used vertically but unfortunately in this case, because of illiteracy of the voters, the concerned workers have put it horizontally.

8. She further states that once similar votes have been allowed to be counted in favour of the petitioner and the petitioner did not object to the same, therefore, at this stage, the petitioner has no right to challenge the aforesaid approach of the RO. She, therefore, explains that 4 votes were validly counted in favour of respondent No.4 and on account of obtaining equal votes by the petitioner and respondent No.4, the next stage was of draw of lots and if the said exercise is carried out by tossing of a coin, the same would not vitiate the election process. She explains that the tossing of a coin is one of the modes of draw of lots. She also places reliance on a decision of the Punjab and Haryana High Court in the case of **Karnail Singh v. State of Punjab and Ors.** dated 04.12.2013 in LPA No.1518 of 2013 to indicate that the similar submissions have been considered by the Division Bench of Punjab and Haryana High Court and the arguments advanced by her herein were accepted in the said decision. She also explains that in any case, if the petitioner has any grievance with respect to whether the petitioner agreed to such a recourse or not, the petitioner should have filed a civil suit instead of approaching this court in its writ jurisdiction under Article 226 of the Constitution of India.

9. The learned counsel appearing on behalf of respondent No.4 also supports the submissions made by the learned counsel appearing on behalf of the respondent Nos.1 to 3 and in addition, he states that this court in exercise of power under Article 226 of the Constitution of

India cannot go into the disputed questions of fact and, therefore, the contentions raised by the petitioner have to be rejected. He also explains that the petitioner, after the entire counting was done, congratulated respondent No.4 and went to his home. Later on, he started raising objections with respect to the manner of counting of the votes. According to him, if the intent of voters is to be seen, the same is unequivocally clear that they wanted to cast their votes in favour of a particular candidate. Using the voting seal containing the mark in a different or wrong manner, in no way raises any doubt with respect to the intention of the voter. He, therefore, drawing clue from page No.36 of Annexure P/3 i.e. the pictorial demonstration therein, states that the mark used by the voters would clearly indicate that their intention was to cast their votes in favour of respondent No.4. He, therefore, states that there is no question of vitiating the election process as even in cases where the voters cast vote by putting the mark at more than once places against the name of the candidates is also accepted to be a valid casting of vote. If the interpretation suggested by the learned counsel appearing on behalf of the petitioner is accepted, the entire understanding of the RO from Page No.37 of Annexure P/3 is vitiated. He then explains that the submissions raised by the petitioner in the instant writ petition are outside the jurisdiction of court under Article 226 of the Constitution of India.

10. I have heard the learned counsel appearing on behalf of the parties and perused the record.

11. Clause 8(d) of the instructions dated 25.05.2022 requires that the voter will not put any kind of mark/identification or attach anything with the ballot paper. Such marking or attachment on or along with the ballot paper will make the vote invalid before counting of votes. Clause 5(j) stipulates that if in any constituency, two

candidates secure the same number of votes, the winning candidate shall be decided by the draw of lots in the presence of the Chief Election Officer, Offg DLWC and the concerned candidates. For the sake of clarity, Clause 5(j) and 8(d) of the instructions for the voter are reproduced as under:-

"5. **Conduct of Elections.** The conduct of the election will be as follows:-

x
x
x

(j) If in any constituency, two candidates secure the same number of votes, the winning candidate shall be decided by draw of lots in the presence of the Chief Election Officer, Offg DLWC and the concerned candidates.

8. **Instructions For The Voters.**

x
x
x

(d) The voter will not put any kind of mark of identification/attach any thing alongwith the ballot paper. Such marking or attachment on or along with ballot paper will make the vote invalid before counting of votes."

12. When the petitioner raised the grievance with respect to counting of four votes in favour of the private respondent, the said objection came to be decided in terms of the order dated 04.06.2022 by respondent No.2-Officiating Commandant. The decision on the representation of the petitioner reads as under:-

"APPEAL ON CONSITUENCY NO 4 (CAMP & YARD GROUP) IN WORK COMMITTEE ELECTION 2022 HELD ON 02 JUN 2022

1. Ref your letter No Nil dt 02 Jun 2022.

2. In this context it is intimated that throughout the counting process Gen Secy of both the Unions and counting agents were available. During the counting both the candidates/counting agents and Gen Secys of the union and polling officer accepted that stamp on three ballot papers which were marginally crossing the lines of NOTA column to be rejected. Also same was viewed, analysed and discussed in detail by the Appellate authority with counting agents and Gen Secys of both the Union, Chairman and polling officer.

The decision taken was acceptable to all and signed to that effect. Only on completion of counting process for constituency No 4, the Chairman proceeded with counting of subsequent constituencies.

3. Further, after rejection of three disputed votes counting of votes was resumed/carried out and both the candidate received 42 votes each and three votes were rejected. Since both the candidate recd equal nos of votes then as per Industrial Dispute (Central) Rule. 1957, para 51, the matter was decided with draw of Lots. Both the candidates as well as Gen Secys accepted that the decision be taken based on toss of the coin. You (Bijender Singh) candidate of The Ordnance Employees Union from constituency No 4 was first to opt for 'head' before the toss. Baljit Singh of New Pragati Sheel Def Emp Union accordingly opted for 'tail'. Baljit Singh candidate of New Pragati Sheel Def Emp Union won the draw and was declared as winner, which was cheerfully accepted by you and your Gen Secy signed the result sheet in my presence. Thereafter the counting of constituency No 5 was carried out.

4. Furthermore, it is not understood as to why you are blaming the Chairman as entire conversation/discussion and decision was mutually taken with consensus of Gen Secys of both the union, both candidates of constituency No 4, Chairman, Polling Officer and Appellate Authority.

5. In view of the foregoing and on ground facts and discussion with Appellate auth and Chairman by both the Gen Secys of the unions and candidates of constituency No 4 at the time of counting and willfully acceptance of result of draw of lots, your contention/appeal is not accepted/agreed to."

13. It is thus seen that the decision with respect to counting of only 3 votes was taken where the stamp was marginally crossing the line. The consent of the candidates, each Counting Agent/General Secretary of the Union and Polling Officer was taken. No objection with respect to 4 disputed votes was taken at the time of counting.

14. It is also seen that the decision of tossing of the coin as well, was taken with the consensus, as can be seen from paragraph No.3 of the order dated 04.06.2022.

15. In the review/appeal filed by the petitioner, which has been decided in terms of order dated 11.06.2022, it is noted that the ballots for Constituency No.4 were re-checked and it was confirmed that the

same were having stamp marks within the laid down parameters.
Order dated 11.06.2022 (*Annexure P-7*) reads as under:-

**"APPEAL ON CONSITUENCY NO 4 (CAMP & YARD GROUP)
IN WORK COMMITTEE ELECTION 2022 HELD ON 02 JUN
2022**

1. Ref your letter No Nil dt 02 Jun 2022 and even No dt 06 Jun 2022 & 07 Jun 2022.

2. It was clarified before commencement of counting the votes and mutually agreed by all that the stamp marking either vertical or horizontal or diagonal within the box/column of candidate will be considered as valid vote. Gen Secys of both Unions, counting agents, polling officer and Chairman had unanimously decided and agreed on the decision, only then the counting of votes commenced.

3. During the entire counting process for constituency No 4 you (Sh Bijender Singh) candidate of constituency No 4 and Sh Satya Vart Punia, Gen Secy, The Ord Emp Union (Regd) were present. The decision of tie during counting due to each candidate getting 42 votes each and further decision to select candidate based on toss of coin was readily agreed by you. Based on the outcome, result sheet was signed and only after that counting of votes for constituency No 5 was carried out.

4. It is submitted that result of DWC election was declared by Chairman on 02 Jun 2022. Neither you or any other Union member approached First Appellate Auth with any objection related to election process on the day of declaration of results.

5. In order to satisfy you it is further submitted that votes for constituency No 4 were rechecked and confirmed having stamp marks within the laid down parameters hence considered valid.

6. In view of the foregoing, your appeal is not considered."

16. The summary sheet has been signed by the petitioner, respondent No.4 and other authorities as can be seen from *Annexure R-1*. Had there been any objection with respect to the counting of four votes, there was no reason for the petitioner to sign the summary sheet without any protest.

17. The ballot paper clearly contains the mark in front of the name of the candidate in whose favour the vote was cast. The intention of the voter is clear. There is no specific mark prescribed under the rule.

The contested candidates did agree on the issue that whether the mark is placed horizontally, vertically or diagonally, it will be accepted to be the correct impression. Once the intention of the voter is clear, there is no reason as to why, the concerned vote should not be counted in favour of the candidate in whose favour the votes were cast. It is thus seen that in exercise of power under Article 226 of the Constitution of India, this court should not normally substitute its own opinion in place of the opinion of the RO. More so, the petitioner himself agreed to count such votes and some of the votes of having similar impressions were counted in his favour also.

18. So far as the action with respect to the tossing of coin by the respondents is concerned, the same is also found to have been resorted to with the consent of the parties. As has been held by the Division Bench of the High Court of Punjab and Haryana in the case of ***Karnail Singh (supra)***, the tossing of coin is one of the methods for draw of lots. It is thus seen that there is no discrepancy with respect to tossing of coin that too when the petitioner himself has accepted the aforesaid method and having lost the result of the toss of coin, he cannot be allowed to raise any grievance with respect to the said aspect.

19. In view of the aforesaid, this court does not find any reason to interfere with the view expressed by the respondents in the impugned orders.

20. Accordingly, the instant petition is dismissed along with pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 06, 2023/Priya/MJ