

D.Beeman Vs. Tamil Nadu State Election Commission and ors.

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Court : Chennai

Decided On : Jan-12-2012

Judge : D.Murugesan; K.Ravichandrabaabu, Jj.

Acts : Tamil Nadu Pannchayats (Election) Rules, 1995 - Rule 88; Tamil Nadu Panchayats Act 1994 - Section 258; [Constitution of India](#) - Article 343 (o)(b)

Appeal No. : W.P.No.26449 of 2011 and M.P.Nos.1 and 2 of 2011

Appellant : D.Beeman

Respondent : Tamil Nadu State Election Commission and ors.

Advocate for Def. : Mr.A.Navaneethakrishnan, Adv.

Advocate for Pet/Ap. : Mr.N.Jothi, Adv.

Judgement :

The writ petition seeks for a mandamus directing the respondents 1, 2 and 4 to permit the petitioner to function as the duly elected Chairman of Kothagiri Panchayat Union, the Nilgiris District.

2. The petitioner seeks the above said relief based on the following facts and circumstances as stated hereunder:

The Tamil Nadu State Election Commission published a notification in the official gazette announcing election for 191 Panchayat Unions in the first phase of polling

on 17.10.2011. The petitioner contested to the post of ward member in Ward No. 3 of Kothagiri Panchayat under DMK party ticket and he was elected as successful candidate and issued with the declaration form to that effect. There were totally 14 ward members duly elected out of which AIADMK candidates got elected in 7 wards and DMK candidates got elected in six wards and MDMK candidate got elected in one ward.

3. For the election to the post of the Chairman and Vice Chairman to the Kothagiri Panchayat Union, announcement was made by the Election Officer viz, the fourth respondent and accordingly on 29.10.2011 at 9.30 a.m. the election was held to elect the Chairman and Vice Chairman of the Kothagiri Panchayat Union. All the ward members numbering 14 were present. The petitioner's name was proposed by one Arputharaj and seconded by Tmt.Sivakala. Likewise, the candidature of the 24th respondent viz., Ramesh was also duly proposed and seconded by individual members.

4. It is stated by the petitioner that 14 ballot papers were made ready through computer system and the same was countersigned by the Election Officer and distributed to the respective ward members for casting their votes. It is stated by the petitioner that votes were cast in the ballot box and the said process went on for about 30 minutes. Thereafter, the polled votes were counted by the Returning Officer and each of the contesting candidates, viz., the petitioner and the 24th respondent got seven votes each and thereby the result was a tie. It is stated by the petitioner that in view of the above position of securing equal number of votes by both the candidates , the Returning Officer consulted the District Collector for guidance and to take further steps . Thereafter, the Returning Officer proceeded to go ahead for drawal of lots as contemplated under Rule 88 of the Tamil Nadu Pannchayats (Election) Rules, 1995.

5. It is stated by the petitioner that on hearing about the steps taken by the Returning officer to go ahead for drawal of lots, pandemonium prevailed at the instance of 8 AIADMK Ward Members and in the meanwhile the outsiders belonging to AIADMK came in and created troubles to the Returning officer which lasted for nearly more than one hour and demanded repoll and open poll. It is

submitted by the petitioner that the Returning Officer went on consulting with the Collector and he had kept his cell phone quite busy by contacting so many persons. The petitioner has annexed in the typed set of papers the photographs said to have been taken during the entire process of election and wants to rely on those photographs in support of his contention.

6. It is further stated by the petitioner that finally at 11.15 a.m the Returning Officer decided to draw lots and in the meanwhile the AIADMK ward members went on shouting against the Returning Officer and abused him with filthy languages. However, the Returning Officer decided to go in for drawal of lots. Accordingly, even size papers were made out wherein by his own hand, the Returning Officer had written the names of the contesting candidates and placed it in a tray by shuffling it and mixing it so as to see that no lot could be distinguished from each other. Thereafter, a third person was invited and he picked up one roll of paper and handed over the same to the Returning officer and when it was unfolded the name of the petitioner was seen written there. Thereafter, as the petitioner's name was drawn in the lot, the petitioner was declared as a successful candidate and after due consultation with various persons including the District Collector, it was duly recorded by the Returning Officer in the minutes book also.

7. It is further stated by the petitioner that necessary announcement declaring the petitioner as the Chairman was also made. The recording of the result of the election and declaration of the same were openly made and it was signed by the Returning Officer and also other three officers who were assisting the Returning Officer . The petitioner further submitted that infuriated by the defeat, the AIADMK ward members went on rampage and shouting at the Returning Officer and demanded him to have repoll in an open manner, which was refused by the Returning Officer and others. It is contended by the petitioner that the then local Minister by name Buddhi Chandran viz., the 13th respondent came to the Panchayat Union office and straight away went to the Council Hall and called the Returning Officer who in turn in obedience to the call of the Minister went along with the Minutes Book and they were closeted together for about 30 minutes and thereafter the returning officer came out and went to his seat.

8. The petitioner has further stated that the 13th respondent thereafter came out by exhibiting his gleeful face by informing the AIADMK Ward members and AIADMK men with the following words:- vy;yhk; ey;ygoahf Koe;Jtpl;IJ/ ,dp ftiyg;gl ntz;lhk;/ ntz;oa cjtpfs; bra;tjhf mjpfhhp mth;fs; xj;Jf;bfhz;lhh;/ vdJ ntiy Koe;Jtpl;IJ/ ehd; tpilbgWfpnwd;.

9. The petitioner has stated that he made a video coverage of the entire events and enclosed the same in the typed set as photographs. The petitioner has also furnished the vehicle Registration No. TN 43 E 666 Tata Safari in which the 13th respondent is said to have visited the election place. The petitioner has further stated that even after meeting the 13th respondent, the fourth respondent, the Returning Officer was much hesitant to oblige. However, he was continuously receiving phone calls and consulted the District Collector.

10. The petitioner further stated that the Personal Assistant to District Collector (Election) also came from Udhagamandalam and met the Returning Officer and they were discussing the issue for considerable time and thereafter the Returning Officer informed re-election to the office of the Chairman in open manner. The petitioner further stated that the re-election was conducted without any proper statutory notice. Six DMK ward members boycotted the second election and in the said second election, the 24th respondent viz., Mr.Ramesh was declared elected as Chairman and the same was recorded in the same minute book. With these facts and circumstances, the petitioner has sought for the relief of writ of mandamus for a direction to the respondents 1,2 and 4 to permit the petitioner herein to function as duly elected Chairman of the Kothagiri Panchayat Union.

11. On 17.11.2011 when the matter was posted for admission , the learned Additional Government Pleader took notice for the first respondent and he was directed to produce the minutes book on the next hearing date. On 24.11.2011 when the matter was taken up for further hearing, the learned Additional Government Pleader took notice for the respondents 1, 2 and 4 and notice to other respondents was ordered. By way of an interim order, the 24th respondent, who has been subsequently elected, was restrained from functioning in the meantime.

12. After notice, the respondents 4 and 5 filed their counter affidavit along with the petition to vacate the interim order granted on 24.11.2011. In the counter affidavit filed in support of the vacate petition, the Returning Officer has contended as follows:- The election for the post of the Chairman of Kothagiri Panchayat Union was properly conducted according to the Rule of Tamil Nadu State Election and they have not misused and abused their official capacity in any way. The Returning Officer viz., the 4th respondent has specifically admitted that in the Chairman's election the petitioner Thiru D.Bheeman and the rival opposite candidate viz., Ramesh had secured 7 votes each and therefore the drawal of votes was conducted and accordingly the petitioner viz., Bheeman was elected as Chairman as the lot was in favour of him.

13. The fourth respondent further contended that after declaring the result of the election, the union ward member for Ward No.1 M.Bomman submitted an application to the Returning Officer stating that he did not know to read and write as he was an illiterate and therefore requested to conduct re-election for this post. Similar request was also made by the respondent No.24 and other six ward members. Further, eight councilors belonging to the AIADMK party had objected for drawal of lot for the above said reasons and insisted to conduct re-election and also boycotted the alleged draw. The fourth respondent contended that Rule 85 (1) of the Tamil Nadu Panchayats (Election) Rules 1995 contemplates a situation where owing to illiteracy or blindness or other physical infirmity, if a ward member who was unable to read the ballot paper and make a mark thereon applies for assistance in doing so, the Returning Officer shall record the vote in the ballot paper in accordance with the wishes of the ward member and fold it up so to conceal the vote.

14. It is next contended by the fourth respondent that no election can be conducted in the absence of the contesting candidates or their authorised agents/representatives. Besides, the aforesaid eight ward members had abstained from the lot drawn proceedings. The 24th respondent had suspected foul play in the lot drawn proceedings as the drawal of lots was manipulated in the name of the petitioner and illegally declared him elected. The said plea of the 24th respondent was also supported by 7 Ward members and therefore their

representations was judiciously perused and it was proposed to hold re-election and accordingly re-election was held and the 24th respondent was duly elected and got declared as he was the sole candidate who filed nomination for the post of Chairman. It is further stated by the fourth respondent that the petitioner has an alternate remedy for agitating the matter before the Election Tribunal under Section 258 of the Tamil Nadu Panchayats Act 1994, if any of the grounds enumerated under Section 259 of the Act are raised. Therefore, the 4th respondent sought for vacating the interim order granted on 24.11.2011 and for dismissal of the writ petition.

15. The 14th respondent has filed a counter by contending that he is not a necessary party to the proceedings and he is arrayed as a respondent for oblique purpose and that as he is made as a party to the writ petition, he is constrained to disclose the events that are to his personal knowledge. In the said counter affidavit, the 14th respondent has stated that as per Rule 88 of the Tamil Nadu Panchayats (Election) Rules, 1995, the drawal of lots should be conducted in the presence of all the ward members and when admittedly 8 ward members were not present, the fourth respondent could not have drawn the lots in their absence and therefore the drawal of lots by the Returning Officer is illegal and against the provisions of the statute. In view of the above position, the 14th respondent contended that when the drawal of lot itself was illegal, the petitioner cannot seek relief for the issuance of writ of mandamus as prayed for. It is the further contention of the 14th respondent that the Returning Officer conducted the re-election after considering the application submitted by M. Bomman and therefore the petitioner after losing the election cannot resort to the legal proceedings. It is the further contention of the 14th respondent that if the request of the petitioner is conceded it would result in ignoring the properly held election. The 14th respondent by filing the said counter affidavit also prayed for vacating the interim injunction granted on 24.11.2011 for dismissal of the writ petition.

16. The 24th respondent filed a counter affidavit by stating that he was elected as Chairman of the Kothagiri Panchayat Union on 29.10.2011 and the declaration of the result by the Returning Officer declaring him as duly elected Chairman has not been challenged by the petitioner in the manner known to law. Accordingly, the

24th respondent submitted that the writ petition is not maintainable and the petitioner has an effective alternative remedy for challenging the election by filing an appropriate election petition. He has further stated in the counter affidavit that there was no quorum for the meeting, when the petitioner was elected as Chairman and the Election Officer had properly conducted the subsequent election and consequently he was declared elected. He has also enclosed a copy of the minutes of the proceedings dated 29.10.2011 held at 4.30 P.M. whereby the 24th respondent was declared as elected in pursuant to the election conducted.

17. The respondents 16,17,20,21,23,25,26 have filed separate affidavits dated 7.12.2011 by identically stating that in an election held on 29.10.2011 to the office of the Chairman, out of 14 members, 9 members including these respondents voted in favour of Ramesh viz., the 24th respondent and five members did not participate in the election and boycotted the same. They have further submitted that the said Ramesh was duly elected as Chairman with 9 votes in his favour and in view of the above, they contended that the writ petition is not maintainable and the prayer sought for therein cannot be granted.

18. The 13th respondent an Ex-Minister, though arrayed as respondent in this writ petition against whom specific allegations were made in the affidavit filed in support of the writ petition, has not chosen to appear before this court either in person or through counsel and has not contested the matter or denied the allegations.

19. The petitioner filed a reply affidavit dated 13.12.2011 wherein he has contended that the 4th respondent has admitted in his common counter affidavit about the petitioner's election in pursuant to the lot conducted and the application submitted by one Bomman was in fact rejected by the Returning Officer himself by passing orders on the said petition by his own hand writing. Therefore, according to the petitioner the said rejected material cannot be relied on for conducting re-election by the Returning officer and such new plea raised by the Returning Officer in the counter affidavit in respect of the complaint given by the said Bomman is per se false as per his own records. The petitioner also stated that the same is the case in respect of the other petition presented by 7 ward members also.

Therefore, the petitioner has stated that the once the Returning Officer rejected the petition and declared the result of the election of the petitioner he had no power to order re-election as he has no jurisdiction to review his own earlier orders of rejection of those petitions. The petitioner has also contended that Rule No. 85(1) of the said Rules relied on by the Returning Officer in his counter affidavit would come into play only at the time of voting and not after the results were announced. The petitioner has also stated that the Returning Officer in his counter affidavit had not specifically denied the role played by the then Minister Budhi Chandran the respondent No.13. The petitioner further submitted that it is not correct to say that certain ward members abstained the lot drawn proceedings and the said stand is only an after thought and after knowing the results they started agitation. The re-election conducted by the fourth respondent was an unauthorised one and contrary to law . The counter affidavit filed by the fourth respondent and the minutes of the proceedings are totally contrary to each other. It is also contended by the petitioner in the reply affidavit that the presence of unauthorised persons questioning the Returning Officer and forcing him to conduct re-election was not denied by the fourth respondent.

20. Heard Mr.N.Jothi, learned counsel for the petitioner, Mr.A.Navaneethakrishnan, learned Advocate General for the first respondent, Mr.R.Vijayakumar, learned Additional Government Pleader for the respondents 2, 4, 6, 8, 10, 12 and 15 and Mr.V.Raghavachari for 14th respondent and Mr.V.Selvaraj for respondents 16, 17, 20, 21, 23 to 26 and Mr.C.Samadharma Arasu for respondents 18, 19, 22 and 28. and perused the affidavits, counter affidavits and reply affidavit filed by the respective parties and also perused the documents filed in support of their contentions in the typed set of papers and the case laws relied on by them. On direction by this Court, the 4th respondent produced the original minutes book along with the CD containing the videograph of the entire election process.

21. Mr.N.Jothi, the learned counsel for the petitioner argued and reiterated the contentions raised in the affidavit filed in support of the writ petition. According to the learned counsel for the petitioner, once the petitioner was declared elected in pursuant to the drawal of lot in accordance with law and in accordance with Rule

88 of the Tamil Nadu Panchayats (Election) Rules, 1995, the Election officer has absolutely no power for conducting the re-election and as such the second election conducted by the fourth respondent wherein the 24th respondent was declared elected is non-est in the eye of law and the petitioner need not question the same. On the other hand, he contended that this court can ignore the said illegal proceedings and consequently grant the relief as prayed for by the petitioner since the drawal of lots conducted by the fourth respondent was in accordance with law and the procedure contemplated under Rule 88 of the said Rules. He has also contended that there is no illegality in conducting the drawal of lot by the fourth respondent and the minutes of their meeting recorded by the fourth respondent in the minutes book with regard to the drawal of lot on 29.10.2011 and consequential declaration of the petitioner as Chairman does not show any illegality. He further argued that Rule 88 of the said Rules contemplates presence of "Ward members" and not "all the Ward members". Therefore, it is not necessary that all the ward members should be present at the time of drawing the lot and therefore the declaration of result of the election under Rule 88 by the fourth respondent on 29.10.2011 was perfectly in accordance with law by following all the procedures contemplated under the said Rules. Therefore, according to the learned counsel once the declaration has been made by the fourth respondent under Rule 88 declaring the petitioner as the duly elected Chairman of the Kothagiri Panchayat Union, he has become functus officio and the only subsequent ministerial action on the part of the 4th respondent is to issue Declaration Form in favour of the petitioner. He also argued that the 4th respondent has no jurisdiction to conduct re-election except by following other procedures contemplated under the Rules by recording the proceedings of the meeting in the minute book and send a report of the result of the election to the District Election Officer and the State Election Commission for publication of the name of the elected candidate as soon as possible in the Tamil Nadu Government Gazettee. Therefore, according to the learned counsel for the petitioner, the prayer sought for in the writ petition seeking for mandamus is perfectly in order and the petitioner need not question the re-election which is not est in law as it has been conducted without jurisdiction and without any prior notice.

22. The learned Advocate General appearing for the official respondents argued that the writ petition is not maintainable under Article 343 (o)(b) of the [Constitution of India](#) and contended that re-election conducted on 29.10.2011 was perfectly in order electing the 24th respondent as the Chairman of the Kothagiri Panchayat Union. Therefore, he wanted this court to dismiss the writ petition as not maintainable.

23. Mr. V.Raghavachari, learned counsel appearing for the 14th respondent argued that the writ petition is not maintainable since the petitioner has not challenged the subsequent election conducted wherein the 24th respondent was declared as elected chairman. He has also contended that the meeting conducted without majority is invalid as there was no proper quorum for conducting the meeting. According to the learned counsel under Rule 88 of the said Rules, the Returning officer shall draw the lot only in the presence of “all the Ward members” and in the absence of “all the ward members” the very drawal of the lot under Rule 88 is invalid and bad in law and consequently the writ petitioner's election and declaration made and recorded in the minutes is illegal and based on the same the petitioner cannot claim relief as sought for in the writ petition. The learned counsel in support of his contentions relied on the following decisions:

1. JAYRAJBHAI JAYANTIBHAI PATEL VS. ANILBHAI NATHUBHAI P;ATEL AND OTHERS (2006 (8) SCC 200)
2. in KRISHNADEVI MALCHAND KAMATHIA AND OTHERS VS. BOMBAY ENVIRONMENTAL ACTION GROUP AND OTHERS (2011 (3) SCC 363)
3. SYED HASAN RAZA SAHIB SHAMSUL ULAMA AND OTHERS VS. MIR HASAN ALI SAHIB AND AOTHERS (1917 (V) L.W. 419)
4. MAHARSHI DAYANAND UNIVERSITY VS. SURJEET KAUR (2010(11) SCC 159)
5. PANCHAM CHAND AND OTHERS VS. STATE OF HIMACHAL PRADESH AND OTHERS (2008 (7) SCC 117)

6. (KALABHARATI ADVERTISING VS. HEMAN VIMALNATH NARICHANIA AND OTHERS) 2010 (9) SCC 437
7. STATE OF ASSAM VS. RANGA MUHAMMAD AND OTHERS (AIR 1967 SC 903)
8. MOHAMMAD SWALLEH AND OTHERS VS. THIRD ADDITIONAL DISTRICT JUDGE, MEERUT AND ANOTHER AIR 1988 SC 94
9. MAHRAJA CHINTAMANI SARAN NATH SHAHDEO VS. STATE OF BIHAR (1999 (8) SCC 16)
10. CHANDRA SINGH VS. STATE OF RAJASTHAN AND ANOTHER (2006 (3) SCC 545)
11. V.SELVARAJ VS. MYLAPORE HINDU PERMANENT FUND LTD AND OTHERS (AIR 1968 Madras 378)
24. Mr.V.Selvaraj, the learned counsel for the respondents 16, 17, 20, 21, 23, to 26 argued that the fourth respondent did not follow the procedure contemplated under Rule 89 after the drawal of lot and therefore the petitioner cannot seek the relief without there being the proper procedure followed by the Returning Officer.
25. We have considered the submissions made by the learned counsel appearing for the petitioner and the respondents, perused the affidavits, counter affidavits and the reply affidavit filed by the respective parties and also perused the case laws cited by them .
26. Before going into the respective contentions of both the parties it is better to appreciate the various provisions dealing with the election of Chairman and Vice Chairman of District Panchayat and Panchayat Union Councils provided under the Tamil Nadu Panchayat (Election) Rules 1995.
27. Part 7 of the said Rules specifically deals with the election of Chairman and Vice Chairman of District Panchayat and Panchayat Union councils . Rule 7 to 77 deals with the procedure to be followed commencing from the place of election to the declaration of result of election when there is no contest. Rule 78 to 88 of the

said Rules deals with the procedure of election when there is contest till the declaration of result.

28. The admitted facts between the parties are as follows:-

1. There are 14 ward members elected to the Kothagiri Panchayat Union and all of them have taken the oath of office on 25.10.2011 at 11 a.m.

2. Election to the Chairman of the Kothagiri Panchayat Union was held on 29.10.2011 at 9.30 a.m. and all the 14 Ward Members were present.

3. There were two contestants, one being the petitioner and the other being 24th respondent.

4. The voting took place at 10 a.m. and all the 14 ward members were present till counting of the votes.

5. The total votes polled are 14 and all the 14 were declared valid.

6. The petitioner and the 24th respondent got 7 votes each.

7. As there was a tie between the petitioner and the 24th respondent, the Returning Officer drew a lot wherein the petitioner was declared elected as he being deemed to have got one additional vote in pursuant to the said lot.

8. The entire proceedings commencing from the voting till the declaration of the petitioner as elected as Chairman was duly recorded in the minutes of the meeting by the Returning Officer and counter signed by the Assistant Returning Officer on 29.10.2011 itself. In so far as the second election is concerned, the following are the admitted facts between the parties

(1) There was no notification issued by the State Election Commission under Rule 73(2) of the said Rules notifying the second election to elect the Chairman.

(2) There was no compliance of Rule 73(3) by the fourth respondent as admittedly there was no notice with 7 clear days of interval was given to all the ward members.

29. Based on the above said admitted facts, we need to examine as to whether the conduct of first election and declaration of the petitioner as the Chairman by the fourth respondent on 29.10.2011 in the morning were properly done in accordance with the rules and consequently whether the petitioner is entitled to seek the relief as sought for in the writ petition, based on such election.

30. The contention raised by the respondents in respect of the drawal of lot is that all the Ward Members were not present at the time of drawal of lot and that procedure contemplated under Rule 88 was not followed and hence the petitioner's election as Chairman is not valid. It is also contended by them that when there is a subsequent election conducted by the fourth respondent on the same day in the evening wherein the 24th respondent was declared elected, the petitioner cannot maintain this writ petition without challenging such election of the 24th respondent.

31. Rule 88 of the Tamil Nadu Panchayat (Election Rules), 1995 , reads as follows:

88. Declaration of result of election - (1) if the number of Candidates are two, the Candidate who obtains the largest number of votes shall be declared to have been duly elected. In the event of there being an equality of votes between the two Candidates and the addition of one vote to any one of such Candidates will entitle him to be declared duly elected, the Returning Officer shall draw for in the presence of the Ward members and the Candidate whose name is drawn shall be deemed to have the additional vote and shall be declared to have been duly elected. (2) If the number of Candidates are three and if any one of them secures more than one half of the total number of votes polled, he shall be declared to have been duly elected. If none of them secures more than one half of the number of votes polled, the Candidate who obtains the smallest number of votes shall be eliminated and a second ballot taken. In the event of there being an equality of votes among the three Candidates, the Returning Officer shall draw lots in the presence of the Ward members present and the Candidates whose names are first and second drawn shall be retained and a second ballot taken.

(3) If there is an equality of votes between two Candidates and if the third Candidate secures a lesser number of votes he shall be eliminated and a second ballot taken. If there is an equality of votes between two candidates and if the third Candidate secures a larger number of votes than the two, a lot shall be drawn between the two Candidates who had secured equal number of votes and the Candidates whose name is first drawn shall be retained and second ballot taken between him and the third Candidates.

(4) If the number of Candidates are more than three and if any of the Candidates secures more than one half of the number of votes polled, he shall be declared to have been duly elected. If none of the Candidates secured more than one half of the number of votes polled, the first Candidate who secures the largest number of votes and the second Candidate who secures the next larger number of votes shall be retained and the other Candidates eliminated and a second ballot taken.

(5) In other cases, the principle enunciated in sub-rule (2) above shall be adopted till there remain two Candidates in the field.

32. A perusal of Rule 88 makes it mandatory on the part of the Returning Officer to draw a lot if the number of candidates are two and the votes between those two candidates are equal and the addition of one vote to any one of such candidates will entitle him to be declared duly elected . No doubt the said Rule contemplates that the Returning Officer shall draw lot in the presence of Ward Members. The word "Ward members" referred to under Rule 88 is sought to be interpreted by the learned counsel for the respondents as it means "all ward members" Therefore, according to them in the absence of "all Ward members" present during drawal proceedings the drawal of lot conducted by the returning officer was not in accordance with Rule 88 and consequently the election of the petitioner in pursuant to the lot is not valid.

33. On the other hand the contention of the learned counsel for the petitioner is that the word "Ward members" does not mean "all the ward members" and if such interpretation is given, then the purpose contemplated under Rule 88 to draw a lot would be defeated in the event of any unwilling member or members attempt to abstain or walk out from the lot drawal proceedings. Therefore, according to the

learned counsel for the petitioner, Rule 88 cannot be resorted to at all by the Returning Officer in the event of there being a tie and it requires the presence of “all the ward members”.

34. We find force in the argument advanced by the learned counsel for the petitioner. As rightly pointed out by the petitioner's counsel if that was the intention of the legislature the word “all” should find a place in the said Rules itself. On the other hand it only says in the presence of “ward members”. In our view more than one member becomes “Members”. Therefore, at the time of drawing the lot, if two or more members are present it should be considered as sufficient compliance of presence of ward members as required under Rule 88 and consequently the drawal of the lot in their presence would be a valid procedure.

35. It is also to be noted that the role of the ward members during the drawal of lot is only to witness the drawal proceedings and not participating themselves in the voting procedure. It is only the Returning Officer who is to draw the lot and declare the duly elected candidate whose name is drawn, as successful candidate. The interpretation of Rule 88 sub-clause (1) as projected by the respondents, if made, would certainly makes the provision unworkable as it is always open to any one or more of the ward members to walk out or abstain from the lot drawal proceedings and consequently make the said procedure invalid. The intention of the legislature is to give effect to the procedure intended upon and not to defeat the same.

36. At this juncture, we would like place our reliance on the decisions rendered by the Honourable Supreme Court in *Surjit Singh v. Mahanagar Telephone Nigam Limited*, (2009) 16 SCC 722, wherein it has been held at paragraphs 22 and 23 as follows:-

22. Though, no doubt, ordinarily the literal rule should be applied while interpreting a statute or statutory rule, but the literal rule is not always the only rule of interpretation of a provision in a statute, and in exceptional cases the literal rule can be departed from. As observed in the Constitution Bench decision of this Court in *R.L. Arora v. State of U.P.*⁹: (AIR pp. 1236-37, para 9) 9. Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the

circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made. (emphasis supplied) Hence it follows that to interpret a statute one has to sometimes consider the context in which it has been made and the purpose and object which it seeks to achieve. A too literal interpretation may sometimes frustrate the very object of the statute, and such an approach should be eschewed by the court. (emphasis supplied)

37. In the case of *Union of India v. R. Vasudeva Murthy*, (2010) 9 SCC 30. the Apex Court held as follows:-

17. It is well settled that the courts must lean against a construction which reduces a statute to a nullity. In our considered opinion, the OM must be so construed to make it effective and operative, on the principle expressed in the maxim *ut res magis valeat quam pereat* meaning thereby that the thing may rather have effect than be destroyed.

38. In the case of *H.SHIVA RAO AND ANOTHER VS. CEILIA PEREIRA AND OTHERS* reported in AIR 1987 (SC) 248 the Honourable Supreme Court held at paragraph 5 as follows:

5. It has to be borne in mind that Rent Control legislation are beneficial to the tenant and restrictive of the rights of the landlords these legislations were passed to meet the problem of shortage of accommodation in cities and towns. Whether that is the best way to meet the problem of finding habitats for growing number of people is another issue. Whether or not the problem could not be met by another way is also another question. Courts must find out the literal meaning of the expression in the task of construction. In doing so if the expressions are ambiguous then the construction that fulfils the object of the legislation must provide the key to the meaning. Courts must not make a mockery of legislation and should take a constructive approach to fulfil the purpose and for that purpose,

if necessary, iron out the creases. (emphasis supplied).

39. From the perusal of the above case laws and the law laid down by the Hon'ble Supreme Court in respect of interpretation of statute, it could be seen that while interpreting a statute the Court has to consider the context in which it has been made and the purpose and the object which it seeks to achieve. If any interpretation which makes a statute either nullity or unworkable is made, it will not be in the interest of the objects sought to be achieved by the legislature. The Honourable Supreme Court in fact in the above decision referred to in H.SHIVA RAO AND ANOTHER VS. CEILIA PEREIRA AND OTHERS (AIR 1987 SC 248) has in crystal clear terms declared that the Courts must find out the literal meaning of the expression in the task of construction. In doing so if the expressions are ambiguous then the construction that fulfils the object of the legislation must provide the key to the meaning.

40. In view of the above stated legal position, we have no hesitation in holding that the word "Ward Members" referred to under Rule 88 does not mean "all the ward members" and if two or more members are present it would be a sufficient compliance of the requirement as contemplated under Rule 88 of the said Rules. Therefore, in the present case, when the drawal of lot was conducted by the fourth respondent though not in the presence of all the ward members but admittedly in the presence of six ward members, it is a valid drawal and consequently the declaration of the election of the petitioner as Chairman is also a valid declaration.

41. The minutes of the meeting recorded by the fourth respondent in respect of the drawal of lot and declaration of election of the petitioner in the minutes book also does not indicate any procedural lapse. Once the petitioner has been validly declared elected by the drawal of lot by following the procedure contemplated under Rule 88 then the next duty cast upon the Returning Officer is to follow the procedure contemplated under Rule 89.

42. It is true that the petitioner has not challenged the re-election conducted wherein the 24th respondent was declared elected. But at the same time, we can take judicial notice of the events and circumstances projected before us in respect of the subsequent election. It is seen from those facts that the fourth respondent

has conducted the second election without there being any proper notification from the Election Commission as required under Rule 73(2). Apart from notifying the election by the State Election Commission, the Returning Officer is required to give atleast seven clear days notice to all ward members. Admittedly, there is no notification of the second election by the Election Commission and notice by the fourth respondent and in the absence of any such notification and notice the conduct of the fourth respondent in conducting the re-election on his own is without jurisdiction and void ab initio and may not have any sanctity of law. That apart, the Returning Officer became functus officio after the first election was held and the results were declared and for that reason he can not hold further election. It is also to be noted that Bomman viz., the 16th respondent and Ramesh viz., 24th respondent had given representations to the Returning Officer by stating that the said Bomman is an illiterate person and therefore he was not in a position to read the name of the candidate in the ballot papers and the said objection though raised at the time of the election was not considered by the Election officer, and therefore they wanted the re-election to be conducted. But the fact remains that the said representations made by the said respondents 16 and 24 were rejected by the fourth respondent by making an endorsement at 11.10 a.m. by stating that the election was conducted properly.

43. At this juncture it is to be noted that Rule 85 of the said Rules requiring the Returning Officer to record the vote in the ballot paper in accordance with the wishes of the Ward member who is an illiterate or blind or other physical infirmity applies for assistance in making a mark in the ballot paper, comes into play only during the time of election and not after the completion of election and declaration of the result thereon. When admittedly, the Returning Officer in the minutes book has not referred to any of their objections , while declaring the petitioner as the successful candidate in pursuant to the lot, this objection cannot be raised as an after thought that too after the election was over and the results have been declared.

44. In the case of DEEPAK AGRO FOODS VS. STATE OF RAJASTHAN AND OTHERS (2008 (7) SCC 748 the Hon'ble Apex Court at para 17 held as follows:-

“All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See Kiran Singh Vs. Chaman Paswan -AIR 1954 SC 340).

45. Likewise in the recent decision of the Hon'ble Supreme Court reported in 2011 (3) SCC 436 in the case of STATE OF ORISSA AND ANOTHER VS. MAMATA MOHANTY it has been held as follows:- 37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide Upen Chandra Gogoi Vs. State of Assam (1998 (3) SCC 381); Mangal Prasad amoli Vs. Narvadeshwar Mishra (2005 (3) SCC 422; and Ritesh Tewari Vs. State of U.P. (201`0 (10) SCC 677) .

59. The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even given an impression of bias, favouritism and nepotism. Procedural fairness is an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision making process remains bad (

vide Haji T.M.Hassan Rawther Vs. Kerala Financial Corporation, (1988 (1) SCC 166), Rash Lal Yadaav (Dr.) Vs. State of Bihar (1994 (5) SCC 267) and Tata Cellular Vs. Union of India (1994 (6) SCC 651).

46. It is also to be noted that Rule 92 deals with the powers to postpone or advance the election wherein the State Election Commission for sufficient reasons may direct the postponement of the election or the advancement as the case may be and the Returning Officer shall give effect to such direction.

47. we have perused the case laws relied on by the 14th respondent. The decision in SYED HASAN RAZA SAHIB SHAMSUL ULAMA AND OTHERS VS. MIR HASAN ALI SAHIB AND AOTHERS (1917 (V) L.W. 419) was relied on by the learned counsel for the 14th respondent for the proposition that election meeting conducted without proper quorum is not valid. In this case, admittedly at the time of conducting the first election, all the 14 Ward Members were present and cast their votes. Only when the petitioner and the 24th respondent got equal votes, the procedure contemplated under Rule 88 was resorted to. Therefore, the contention of the 14th respondent and consequently placing his reliance on the above said case law are to be rejected.

48. The other decision relied on by the learned counsel for the 14th respondent is in the case of JAYRAJBHAI JAYANTIBHAI PATEL VS. ANILBHAI NATHUBHAI PATEL AND OTHERS (2006 (8) SCC 200) where the facts are totally different and not applicable to the facts and circumstances of the present case In that case, before election was conducted two councillors were arrested and thereafter in the election two candidates got equal number of votes and in pursuant to the lot conducted the respondent therein was elected. The High Court therein set aside the election and declared the respondent before the Hon'ble Supreme Court as elected. Therefore the Apex Court held that the order passed by the High Court was purely on speculation that the two arrested councillors would have definitely voted for the respondent before them. But in this case admittedly all the 14 members have exercised their franchise and therefore there is no relevance for relying on the above said decision of the Hon 'ble Apex Court. 49 Insofar as the decision rendered in KRISHNADEVI MALCHAND KAMATHIA AND OTHERS VS.

BOMBAY ENVIRONMENTAL ACTION GROUP AND OTHERS (2011 (3) SCC 363) and relied on by the 14th respondent is concerned, it is to be seen that the petitioner is seeking only the relief of mandamus in pursuant to the first election concerned. Based on the facts and circumstances and considering Rule 88 of the said Rules when this Court has come to the conclusion that the petitioner's election was valid, there is no impediment in issuing a mandamus as prayed for and therefore the said decision of the Hon'ble Supreme Court relied on by the petitioner is not applicable to the facts and circumstances of the case.

50. The learned counsel for the 14th respondent has relied on the decision in MAHARSHI DAYANAND UNIVERSITY VS. SURJEET KAUR (2010(11) SCC 159) for the proposition that court cannot give direction contrary to law. Absolutely there is no quarrel about the said proposition and when this court has come to the conclusion that the first election has been validly conducted in compliance of the said Rules and found that the petitioner has been validly elected as Chairman, the direction as sought for in the prayer in the writ petition is certainly not contrary to any law. Therefore, the said decision relied on by the 14th respondent is also not supporting his case

51. In the judgment reported in 2010 (9) SCC 437 (KALABHARATI ADVERTISING VS. HEMAN VIMALNATH NARICHANIA AND OTHERS), the learned counsel for the 14th respondent relied on para 25 of the said judgment. In the case on hand the facts and circumstances discussed above would show that when there was proper election conducted in the morning and subsequent election conducted in the evening was without any authority of law there is no impediment for issuing a mandamus as prayed for and therefore the above decision relied on by the learned counsel for the 14th respondent is not supporting his case in any way..

52. All other judgments relied on by the learned counsel for the 14th respondent are totally different and distinguishable on facts and consequently they are not supporting the case of the 14th respondent in any manner.

53. At this stage, we must point out that the presence of the 14th respondent who is totally a stranger, inside the election meeting hall is totally unlawful and unwarranted, especially when he is not one of the ward members. The Returning

Officer who has filed his counter has also not denied specifically that the 14th respondent was not present as alleged by the petitioner. Admittedly, in this case while conducting the election all the 14 ward members were present and they have participated in the election and cast their votes. Only when both the petitioner and the 24th respondent got 7 votes each, the procedure contemplated under Rule 88 was invoked. Therefore, the question of absence of quorum does not arise in this case and hence all the case laws relied on by the learned counsel for the 14th respondent are totally inapplicable and irrelevant to the facts and circumstances of the case. It is further to be seen that the petitioner has specifically made allegation against the 13th respondent and averred at para 19 that the 13th respondent met the Returning Officer and thereafter the entire episode has changed. To this categorical assertion by the petitioner there was no specific denial by the fourth respondent in the counter affidavit except by saying that there was no external pressure exerted by any one. More curiously, the 13th respondent, even after service of notice in this writ petition, has chosen not to represent himself before this court either in person or through counsel. Therefore, this court has to draw an adverse inference against the 13th respondent to conclude that the allegation made against him is either accepted or proved.

54. In so far as the maintainability of the writ petition before this court is concerned, the contention raised by the learned Advocate General cannot be appreciated in view of the fact that this Hon'ble Court in 2007 (1) CTC page 705 at para 148, 218 has held that the writ petition in respect of election matter is maintainable under special circumstances. The prayer sought for in the writ petition is only seeking a relief in pursuant to a properly conducted election and this court while exercising jurisdiction under Article 226 of the [Constitution of India](#) can issue a mandamus and as such the writ petition is maintainable.

55. For all the reasons discussed above, we hold that the election conducted on 29.10.2011 in the morning wherein the petitioner has been declared elected as Chairman in pursuant to the drawal of lots conducted under Rule 88 of the Tamil Nadu Panchayat (Election) Rules 1995 is a valid election and consequently the petitioner is entitled to succeed in the writ petition and as such the writ petition is allowed as prayed for. Consequently, the connected M.Ps. are closed. No costs.

